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

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ST/SGB/273, paragraph 18, of 7 September 1994*

**INVESTIGATION REPORT
ON THE SUBJECT**

Report no. PTF-R006/06

**Case nos. PTF/003/06; PTF/006/06; PTF/007/06;
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I. INTRODUCTION

1. The Procurement Task Force (PTF) was created on 12 January 2006 to address all procurement matters referred to the Office of Internal Oversight Services (OIOS). The creation of the PTF was the result of perceived problems in procurement identified by the Independent Inquiry Committee into the Oil for Food Programme, and the arrest and conviction of UN Procurement Officer Alexander Yakovlev.
2. Under its Terms of Reference, the PTF operates as part of OIOS, and reports directly to the Under Secretary-General of OIOS. The remit of the PTF is to investigate all procurement cases, including all matters involving procurement bidding exercises, procurement staff and vendors doing business with the United Nations (UN or Organisation). The mandate of the PTF also includes a review of certain procurement matters which have been closed, but it nevertheless has been determined that further investigation is warranted.
3. The PTF investigations have focused upon a myriad of individuals and vendors doing business with the Organisation. Some of these matters are particularly complex and span significant periods of time. Since its inception, more than 200 matters involving numerous procurement cases in various UN Missions and UN Headquarters have been referred to the PTF. The PTF will report on matters individually. The PTF has given priority to the matters involving eight staff members placed on special leave with pay, which included the Subject.
4. On 20 January 2006, the Internal Audit Division (IAD) of the Office of Internal Oversight Services issued an Audit Review (Audit Review) (See AP2005/600/20) addressing particular concerns expressed in Recommendations 17, 30 through 33. These matters relate to certain procurement exercises for the United Nations Mission in Sudan (UNMIS) and the UN Transitional Administration of East Timor (UNTAET).
5. Since the issuance of the initial Audit Review, a further draft Audit Report (Report), dated 3 August 2006, was issued by the IAD and raised concerns in certain other procurement exercises in UNMIS. These procurements, which include accommodations, gravel and inland transportation, occurred during the Subject's tenure as the Chief Administrative Officer (CAO) in UNMIS. These matters involve contracts of significant value, and have since been referred to the PTF for investigation. Although the referral does not allege fraud or corruption on the part of the Subject, the Report intimates mismanagement. Accordingly, this report should be considered interim, subject to the further findings of the PTF on the matters set forth in the Report of 3 August 2006.

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II. ALLEGATIONS

6. This report addresses several procurement exercises undertaken during the course of the Subject's term as CAO in UNMIS, and includes the matters identified in Recommendations 17, 30 through 33 of the Audit Review, as well as additional matters which have come to the attention of the PTF during the course of its investigation, such as the procurement of aviation lights for the Kadugli airport in Sudan, utilized by the Mission. This matter was not a subject of the Audit Review.
7. Specifically, during its investigation the PTF has examined:
 - i. The expenditure of more than US\$1 million for air flight services to support the deployment of Egyptian troops and equipment from Cairo to UNMIS in 2005;
 - ii. The procurement by UNMIS of solar powered aviation lights for Kadugli airport;
 - iii. The procurement of an MI-26 helicopter for UNTAET;
 - iv. The procurement in 2004-2005 of a fuel contract in excess of US\$85.9 awarded to the Canadian based vendor, SkyLink Aviation, including allegations of severe over-estimation of fuel requirements and collusion between UN staff and SkyLink Aviation; and
 - v. The procurement for UNMIS of a food rations contract in excess of US\$200 million awarded to the vendor Eurest Support Services.
8. Although other staff members are involved in these matters and identified herein, this report concerns only the Subject.

III. APPLICABLE UN STAFF RULES AND REGULATIONS

9. The following UN Staff Rules and Regulations are applicable in this matter, or implicated by the facts adduced or allegations made:

UN Staff Regulations and Rules, Regulation 1.2(b): states that “[s]taff 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.”

UN Financial Regulations and Rules, Rule 101.2: provides that “all United Nations staff are obligated to comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules. Any staff member who contravenes the Financial Regulations and Rules or corresponding administrative instructions may be held personally accountable and financially liable for his or her action.”

UN Financial Regulations and Rules, Rule 105.13(b)(c): defines procurement as “actions leading to the award or amendment of

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procurement contracts, which, for purposes of these Regulations and Rules, includes agreements or other written instruments such as purchase orders and contracts.” It further provides that where “the advice of a review committee is required, no final action leading to the award or amendment of a procurement contract may be taken before such advice is received.”

UN Procurement Manual, Sections 12.1.8(1)(a), (2), (4)(a): addresses *ex post facto* situations and provides that a “procurement action, whether a written contract exists or not, in which deliverables have already been fully furnished prior to submission of the procurement action to the HCC/LCC for its advice, or the approval of all other appropriate authorities, is a ‘[f]ully ex post facto’-case.” Such a case “may be accepted by the Organisation under exceptional circumstances, provided all other UN procurement practices and procedures have been followed.” It cautions, however, that these cases “shall be rare exceptions; and when they occur, written justification shall be provided to explain the reasons why timely presentation was not possible.” It further instructs the “heads of respective offices” to “inform the appropriate officials that they may be held personally accountable and financially liable pursuant to financial Rule 101.2 for authorizing any ‘ex post facto’ -case that cannot be properly justified.”

UN Procurement Manual, Section 9.5.2: defines exigency as “an exceptional compelling and emergent need, not resulting from poor planning or management or from concerns over the availability of funds, that will lead to serious damage, loss or injury to property or persons if not addressed immediately.”

IV. METHODOLOGY

10. The PTF’s investigation has included interviews with relevant witnesses, the examination and analysis of relevant documents, extensive searches and examination of electronic media and evidence. The PTF made significant efforts to locate and obtain all relevant files.
11. Investigators interviewed UN staff members in New York as well as in the Mission in Sudan, former UN staff members, as well as witnesses in various other locations throughout the world. The PTF interviewed the Subject on a number of occasions, and posed questions concerning each of the matters addressed in this report. A written record of conversation (ROC) was prepared after each such meeting.
12. PTF investigators collected and reviewed extensive documentation, to include:

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- Procurement files;
 - Contracts;
 - Relevant bids and requisitions for the contracts involved;
 - Vendor registration files;
 - Local Committee on Contracts minutes, where available;
 - Headquarters Committee on Contracts minutes, where available;
 - Background material concerning UNMIS;
 - Telephone records, where available;
 - Information relating to deployment, movement orders, and schedules of troops;
 - Personnel files;
 - Electronic evidence; and
 - Financial and Treasury Departments records located at Headquarters.
13. Other relevant documents and electronic evidence were gathered in Sudan. Forensic data recovery was employed in the investigation and led to the identification of valuable evidence. Certain files, such as the procurement file for the runway lights at Kadugli airport, were in disarray and numerous documents were found to be missing. The PTF staff has attempted to reconstruct the events at issue to the extent possible from existing documents, witness interviews, and other means.
14. Since the establishment of the PTF, significant effort has been expended on procurement matters in UNMIS. The PTF currently maintains in its inventory approximately one dozen cases involving procurement and related financial exercises in the Mission. The investigation has revealed at least one procurement exercise which was allegedly tainted by fraud and collusion amongst a procurement officer, a member of an aviation unit, and a vendor. The PTF also is in the process of examining a number of procurement exercises in which there are additional claims of misconduct. PTF investigative teams have visited the Mission on two separate occasions, and have spent considerable time gathering documents, electronic evidence, and relevant materials.
15. The PTF's investigation of UNMIS-related cases has faced a number of challenges, including the complexity of the matters addressed, a significant volume of documents required to be examined, an extensive scope of UNMIS-related logistics and deployment planning issues, and the fact that several UN staff members with relevant knowledge of the events discussed herein have since left the Organisation, including Mr. Terry Allen, Mr. Philip Taylorson, and Mr. Alisher Saliev. Further, investigative efforts have met with some resistance in the Mission.
16. Furthermore, the PTF has identified evidence of fraudulent activity in connection with the award, execution and administration of the Eurest Support Services contracts. These activities concern Mr. Alexander Yakovlev, the former procurement officer who shared responsibility for the food rations

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contracts. During July 2005, Mr. Yakovlev was arrested by US authorities and shortly thereafter pleaded guilty to conspiracy, wire fraud and money-laundering in the United States District Court, Southern District of New York (Southern District), stemming from investigations into the UN Oil-for-Food Programme.

17. The PTF notes that some of the issues related to the food rations and the short-term fuel contracts for UNMIS remain a subject of further investigation.
18. It should be noted that for the most part the Subject was cooperative. However, despite the fact that the Subject was offered the opportunity to review, comment, and sign a written record of the interviews with him, a procedure afforded all witnesses and devised to ensure the accuracy of the document, the Subject nevertheless challenged the ROCs. On one occasion, investigators spent several hours with the Subject reviewing a draft of the ROC with him, and incorporating many of his proposed changes and edits. Investigators listened, considered, and provided the Subject with significant latitude, affording him the benefit of the doubt in several instances. Nevertheless, even after this cumbersome process, the Subject declined the invitation to sign the ROC claiming that it was “unreliable.” (Attachment A)

V. BACKGROUND

A. UNMIS

19. On 9 January 2005, the Government of Sudan and the Sudan People’s Liberation Movement/Army (SPLM/A) executed the Comprehensive Peace Agreement (CPA or Agreement), thus ending the almost two-decade conflict between the parties. Following the Agreement, the UN Security Council unanimously adopted on 24 March 2005 a resolution which established the UN Mission in Sudan.¹ UNMIS replaced the UN Advance Mission in Sudan (UNAMIS), a special political mission which was formed to assist in the preparation for the then-envisaged peace operation.²
20. UNMIS is headquartered in Khartoum, Sudan. The purpose of the Mission is to support the Government of Sudan and the SPLM/A in the implementation of the CPA. In addition to supporting the CPA, it was contemplated that UNMIS would help facilitate and assist in the coordination of the voluntary return of refugees and displaced persons, provide humanitarian demining assistance, and contribute towards international efforts to protect and promote human rights in Sudan. Its mandate authorized UNMIS to maintain a complement of as many as 10,000 military personnel

¹ S/Res/1590 (2005).

² The UN established UNAMIS pursuant to the adoption of UN Security Council Resolution 1547 on 11 June 2004.

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and an appropriate civilian component, including as many as 715 civilian police personnel.

21. As a result of developments relating to Sudan peacekeeping operations, the UN was required to build the Mission from its inauguration, and assemble teams to address the prospective needs of the Mission's commencement. The Subject was part of that planning effort, as discussed more fully below.

B. The Subject

22. The Subject was Chief Administrative Officer for UNMIS until he was placed on special leave with pay in January 2006.
23. The Subject, a U.S. citizen, was educated at West Point Military Academy, where he earned a Bachelor of Science in Engineering.³ In 1985, he received a Master's of Military Art and Science in Operations from the United States Command and General Staff College. In addition to his university degrees, the Subject is a certified commercial helicopter pilot.
24. The Subject spent 22 years in the United States military. He held several roles in aviation operations. In addition to being an aviator and helicopter pilot, he served as Commander and Section Leader for the U.S. Army. There, he supervised up to 200 people involved in aviation, maintenance, and ground support, and governed the operation of more than 30 aircraft. He later became involved in developing long-range plans for the Army's institutional management and field support operations. By the time of his retirement, the Subject had reached the rank of Lieutenant-Colonel.
25. In July 1994, the Subject joined the UN as a Logistics Officer in the United Nations Operation in Somalia (Somalia II). Three years later, the Subject was transferred to the UN Angola Verification Mission III and assumed the post of the Contracts Management Officer. In April 1999, the Subject was promoted and returned to New York to serve in the Department of Peacekeeping Operations (DPKO) as Chief of the Transport Section. At one point, the Subject worked briefly with the Mission in DR Congo (MONUC) prior to achieving the post of interim Chief Administrative Officer in Afghanistan.
26. In April 2004, the Subject began working full time on UNMIS and transferred to Khartoum as Officer in Charge (OIC), DPKO Sudan Planning Group, and Chief Administrative Officer-designate. The Subject eventually became the Chief Administrative Officer for UNMIS, and remained in this position for nearly two years.⁴ As CAO of UNMIS, the Subject was in charge of Mission Support, meaning that he possessed managerial responsibility for all systems and services reporting to the Mission, and oversaw the entire

³ The following information was derived from the Subject's personnel file.

⁴ Luiz Carlos da Costa memorandum to Jane Holl Lute (8 April 2004).

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civilian administration for UNMIS. The Subject also served as the general manager of several sections, including the Aviation Section. The Subject supervised Mr. Craig Goodwin, the Chief Aviation Officer in the Mission.

27. Importantly, the Subject was vested with a delegation of authority for financial matters, which will be discussed in detail below. The exercise of this authority, and limits placed upon him by this delegation and the financial rules are central to the discussion herein. (See *infra* para. 45 *et. seq.*).
28. The Subject remained in the capacity of the CAO until he was placed on special leave following the issuance of the Audit Review in January 2006.

C. Financial Regulations and Rules**1. General Principles**

29. The UN Financial Regulations and Rules (FRR or Financial Rules) govern all financial transactions in the Organisation.⁵ Financial Regulation 5.12, and corresponding Rules 105.13, *et. seq.*, set forth the general principles and procedures involving procurement. Procurement activities are defined as “all action necessary for the acquisition, by purchase or lease, of property.” It necessarily follows that the acquisition of goods and services are included in this definition.⁶
30. The Financial Rules dictate that a competitive bidding process is necessary prior to the award and execution of contracts. The process proceeds through formal methods of solicitation, such as an Invitation to Bid (ITB) or a Request for Proposal (RFP). The purpose of these procedures is to ensure that the Organisation achieves the best value in return for the expenditure of its funds.⁷
31. In the event that a mission seeks goods or services, an established procedure must be followed. First, the department requiring the item or service must initiate a request for it locally. The requisitioning officer must identify the requirement, and provide a basis for it. If the requirement is deemed proper and necessary, and funds are available from an authorized and approved budget, the requisition is presented to the procurement office who in turn initiates a competitive bidding process, such as an ITB or RFP. Upon the selection of a vendor following this procedure, the proposed award is presented to the relevant committees (local or Headquarters) as described below.

2. Committee Recommendations

32. The Organisation maintains two committee structures to review procurement matters. Locally in the mission, the relevant body is the Local

⁵ The Financial Regulations and Rules as promulgated in ST/SGB/2003/7 as of 9 May 2003.

⁶ FRR 5.12.

⁷ FRR 105.14, 105.14(d).

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Committee on Contracts (LCC). A second committee, the Headquarters Committee on Contracts (HCC), is located at the headquarters of the Organisation.⁸ Financial Rule 105.13(b) provides that these committees shall render written advice to the Under-Secretary General for Management on “procurement actions leading to the award or amendment of procurement contracts.” Contracts are broadly interpreted to include “agreements or other written instruments such as purchase orders and contracts that involve income to the United Nations.”⁹

33. The rule prohibits action leading to an award or amendment of a procurement contract when the “the advice of a review committee is required.”¹⁰
34. Not all procurement exercises, however, require committee approval. The Procurement Manual specifies that an LCC reviews awards which are expected to exceed a certain financial threshold.¹¹ HCC review, however, is needed for all proposed awards over US\$200,000, unless otherwise determined by the Assistant Secretary General/Office of Central Support Services (ASG/OCSS).¹²
35. After an LCC makes its recommendation, the proposal is forwarded to the Chief Administrative Officer for the Mission.¹³ “[U]pon approval by the CAO/DOA,” the procurement action is “forwarded to the UN HQ for HCC consideration. The presentation of the procurement case that has been subject of a recommendation by the LCC, and accepted by the CAO/DOA, shall be sent to the Chief, UN/PS,” (at missions, a copy of the LCC presentation also is forwarded to LSD/DPKO for their review and recommendation), who can request the LCC presentation be returned for reconsideration or clarification, or be submitted to HCC for consideration.¹⁴ The HCC then makes its own determination and recommends action, where appropriate, to the ASG/OCSS.¹⁵
36. However, the Committees’ recommendations are not dispositive. The Under-Secretary General (USG) for Management is the final arbiter of the determination of an award, and can choose not to accept the advice of the

⁸ FRR 105.13(b).

⁹ FRR 105.13(b).

¹⁰ FRR 105.13(c). See also Procurement Manual Section 12.1.1(2) (the “prior approval of the ASG/OCSS shall be obtained, prior to any contractual commitment being made”).

¹¹ Procurement Manual Section 12.1.2(1) (a).

¹² Procurement Manual Section 12.1.1(1) (a).

¹³ Procurement Manual Section 12.1.3(2).

¹⁴ Procurement Manual Section 12.1.3(2).

¹⁵ Procurement Manual Section 12.1.3(2).

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review committees.¹⁶ The USG for Management makes the ultimate decision in the matter.

3. Ex Post Facto Presentations

37. The financial and procurement rules recognize limited exceptions to the formal solicitation process. These rules may be obviated where a formal method of solicitation is not practicable, such as in the case of a circumstance where the goods have already been purchased, or the services furnished as a result of an urgent need.¹⁷ In these cases an *ex post facto* presentation to the relevant committee is deemed appropriate under the Procurement Manual.
38. The Procurement Manual cautions, however, that *ex post facto* presentations “shall be rare exceptions,” and limits reliance upon the exceptional of exigency.¹⁸ Exigency is defined as “[a] compelling and emergent need, not resulting from poor planning or management or from concerns of the availability of funds, that will lead to serious damage, loss or injury to property or persons if not addressed immediately.”¹⁹ Exception based upon this principle is inappropriate if the action resulted from “delay or omission on the part of the requisitioning office.”²⁰
39. In these exceptional cases, an *ex post facto* presentation is acceptable so long as all other necessary procedures have been followed.²¹ The Procurement Manual instructs that in these circumstances, “written justification shall be provided to explain why timely presentation was not possible,”²² and cautions that officials who authorize ‘*ex post facto*’-cases remain personally accountable for their decisions and may be financially liable pursuant to Financial Rule 101.2 for any case that cannot be properly justified.²³
40. Furthermore, all *ex post facto* cases, regardless of their monetary value, must ultimately be submitted to the LCC for review and recommendation.²⁴ Further, HCC consideration will be required in those instances where the financial amount exceeds the local threshold.²⁵
41. On 15 September 2005, the Assistant-Secretary General (ASG) Controller, Mr. Warren Sach, issued a memorandum addressing the excessive number of

¹⁶ FRR 105.13(c) (if so, must record in writing reasons for that decision) and FRR 105.15(c) (can reject bids or proposals for a particular procurement action).

¹⁷ Financial Rule 105.16(a) (vii) and Procurement Manual Section 12.8.1 (a).

¹⁸ Procurement Manual Section 12.1.8.

¹⁹ Procurement Manual Section 9.5.2(1).

²⁰ Procurement Manual Section 9.5.2(2) (a).

²¹ Procurement Manual Section 12.1.8(2).

²² Id.

²³ Procurement Manual Section 12.1.8(4) (a).

²⁴ Procurement Manual Section 12.1.8(3).

²⁵ Id.

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submissions of *ex post facto* to the HCC and reinforced the narrow definition of exigency. The memorandum emphasized that only in rare cases was an *ex post facto* award justified on the basis of exigency, and directed that all submissions of *ex post facto* cases must include a “detailed justification of the action taken and contain an explanation, personally signed by Head of the Department or Office (DOA/CAO in the case of Peacekeeping Missions. . .), indicating whether one or more of the conditions of exigency as defined by the General Assembly have been met.”²⁶ (Emphasis in the original). The memorandum cautioned that detailed facts substantiating these conditions shall be provided.²⁷

VI. UNIVERSAL WEATHER & AVIATION

42. Sections A through C address the concerns raised in Recommendation 33 of the Audit Review, which questioned the “irregular” procurement of flight services for UNMIS in the amount of US\$1.1 million. The Audit Review alleged that senior administrative personnel at UNMIS disregarded the Financial Regulations and Rules for the *ex post facto* procurement. The PTF agrees with the Audit Review’s assessment, and the investigation confirms these assertions. Section D below addresses the Subject’s authority in authorizing payment to the vendor for these services, and whether such actions were in compliance with the relevant financial and procurement rules. This report addresses these issues only as they apply to the Subject.

A. Background**1. The Procurement Process**

43. Procurement activities for UNMIS were governed by the financial and procurement rules of the Organisation, as well as by a special Delegation of Authority (Delegation) that was bestowed upon the Subject as the CAO of UNMIS.²⁸
44. The approval process for the requisition of goods in the Mission was dictated in most instances by the monetary value of the proposed contract. For contracts of US\$75,000 or less, Mr. John Purcell, Chief Procurement Officer (CPO), maintained individual authority to approve an award.²⁹ Awards in excess of US\$75,000, however, had to be submitted to the LCC

²⁶ Warren Sach, Assistant Secretary-General, memorandum to Heads of Departments and Offices, Chiefs/Directors of Administration at Offices-away-from-Headquarters and Peacekeeping Missions (15 September 2005).

²⁷ Id.

²⁸ Jane Holl Lute memorandum to the Subject (6 June 2005). The Subject signed, and in doing so acknowledged, his authority for procurements on 13 June 2005. Id.

²⁹ Id., p. 1 (para. 4) and Annex B, and the Subject memorandum John Purcell (27 June 2005).

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and the Subject.³⁰ As set forth above, the function of the LCC was to provide advice and guidance to the CAO concerning a proposed contract.³¹ Upon the receipt of a recommendation by the LCC, it was the responsibility of the CAO to review the “contract[...] to be entered into.”³² If the proposed value of the contract fell below the threshold, the local procurement service needed only the approval of the CAO prior to execution of the contract. If the estimated award exceeded the CAO’s authority, the CAO, or his or her delegate, through Chief of Procurement Services (C/PS), was required to forward the proposal to HCC.³³ In such instances, there was an examination by the HCC of the proposal and advice memorialized in writing was then offered to the ASG/OCCS/Department of Management (DM).³⁴ All of the aforementioned steps were required to be completed prior to final procurement action.

2. Delegation of Authority

45. As CAO for the Mission, the Subject was provided with a delegation which established the parameters of his authority, including those for all procurement decisions which included the purchase or rental of services, supplies or equipment. (See Attachment B). For lesser amounts, the Subject was permitted to assign authority to his Chief Procurement Officer, or “other suitably qualified staff” whose designation had been cleared by C/PS, OCSS/DM, and Ms. Jane Holl Lute, Assistant-Secretary General, Peacekeeping Operations.³⁵ Nevertheless, the Subject remained responsible for the manner in which the assigned authority was exercised. The CAO could be held “personally accountable and must likewise hold those to whom [he] delegated authority, accountable for their actions in the performance of their delegated authority and responsibility.”³⁶

3. The Subject’s Financial Limitations

46. Under the Delegation, the Subject was authorized to execute contracts and bind the Organisation without HCC approval for amounts which did not exceed US\$200,000. Notably, these contracts still had to comply with the Financial Regulations and Rules and established procedures outlined in the Procurement Manual.³⁷
47. In order to enhance “operational efficiency,” the Delegation included independent authorization to approve contracts up to US\$1 million for specific

³⁰ Id., p. 1 (para. 4) and Annex B.

³¹ Id., p. 3 (para 14).

³² Id., p. 3.

³³ Id., pp. 3-4. A copy also was to be sent to Ms. Lute, Assistant-Secretary General, Peacekeeping Operations. Id.

³⁴ Id.

³⁵ Id., p.1 (para. 4).

³⁶ Id. (para 5).

³⁷ Id., p. 2 (para. 2).

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items entitled “Core Requirements.”³⁸ Annex C to the Delegation outlined these “[e]ssential goods and services, which by their nature lend themselves to local procurement.” For example, fresh food, waste disposal services, and potable water supply contracts fell under this authority. The Subject acknowledged to PTF investigators that these were indeed his financial limitations.³⁹

48. Approval of a Core Requirement in excess of US\$200,000 correspondingly required the prompt submission of a written report (“no later than thirty (30) days after the procurement”) to both Ms. Lute and Chief of the Procurement Services.⁴⁰ The Delegation required that the report identify the essential, relevant information, including the duration and value of contract, the approved minutes of the Local Committee on Contracts, and the basis for the procurement award (including identification of the relevant applicable financial rule).⁴¹

4. Committee Approval

49. In accordance with FRR 105.13(b), the Subject established an LCC for UNMIS. The LCC was comprised of various staff members, such as a CPO, a Finance Officer and a Legal Officer.⁴² In October 2005, Mr. John Noisette, Chief Finance Officer, chaired the LCC, while Ms. Abena Kwakye-Berko, a legal officer, and Mr. John Scutts, Chief of Communication and Information Technology Services, served as alternate members.⁴³ The mandate of the LCC required it to review and offer recommendations on all procurement activities valued over US\$75,000. Any “transaction” estimated to be over US\$200,000 -- or in the case of a Core Requirement, US\$1 million -- had to be submitted to both LCC and HCC for review and approval.⁴⁴
50. The Delegation, consistent with the Financial Rules and Procurement Manual, prohibited any “final action leading to the award of a procurement action” over financial limits without the review of the HCC, and the subsequent approval of the ASG/OCSS/DM.⁴⁵

5. Exigency Procurements

51. For procurements premised upon an exigency, the Delegation made reference to the Procurement Manual, discussed above at paragraphs 37 *et.*

³⁸ Id.

³⁹ The Subject interview (26 June 2006).

⁴⁰ Delegation, p. 2.

⁴¹ Id.

⁴² Id., p. 3.

⁴³ LCC Meeting Minutes No. LCC/MIS/05/30 (25 October 2005).

⁴⁴ Delegation, pp. 3-4.

⁴⁵ Id., p. 2 (para. 9).

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*seq.*⁴⁶ The Delegation further cautioned that staff members should be reminded that personal accountability could flow from any violation of the Financial Rules.⁴⁷

B. The UWA Agreement**1. Background**

52. As part of its operations, UNMIS operated aircraft within Sudan, including a Lear Jet used to transport the Special Representative to the Secretary-General (SRSG) throughout Africa.⁴⁸ In 2004, UNMIS was without aircraft services or a refueling arrangement in place for its external flights for the Lear Jet and an Antonov 74, and set out to achieve these services from a vendor. Following an Invitation to Bid (ITB) in September 2004,⁴⁹ one company, Universal Weather & Aviation, Inc. (UWA), submitted a response.⁵⁰ As a result, UNMIS entered into an agreement with UWA to provide these services to support the designated aircraft.⁵¹

53. On 21 November 2004, UNAMIS issued a purchase order to UWA, which served as the contract, in an amount not-to-exceed (NTE) US\$45,000.⁵² The Subject signed the purchase order. Nonetheless, UWA extended further credit to UNMIS based on the existing agreement, exceeding the NTE amount.

2. The Egyptian Deployment

54. The Egyptian troop deployment to UNMIS, initially scheduled to commence in April 2005, was delayed until June. At that time, the Joint Military Commission (JMC) was withdrawing from the Nuba mountain region, and there was an urgent need for troops to replace them and it was determined that the troops would be provided by the Egyptian military. Typically, arrangements concerning troop deployments are handled at Headquarters by the Movement Control Unit (MOVCON), part of DPKO's Logistic and Supply Division, who would normally contract with an air charter company capable of moving troops and military equipment.

55. As of late May 2005, the Egyptians had not supplied sufficient details of their readiness to deploy the troops in order to initiate a procurement process.

⁴⁶ *Id.* (para. 11).

⁴⁷ *Id.*, p. 4 (para. 16).

⁴⁸ Staff Member 1 interview (29 June 2006).

⁴⁹ UNAMIS Invitation to Bid No. ITB/RM/09/SUD (20 September 2004).

⁵⁰ Richard McKervey memorandum to Craig Goodwin (3 October 2004) and UWA Proposal for Richard McKervey, UNAMIS (21 September 2004).

⁵¹ Purchase Order Contract Number 5MIS-143 (21 November 2004).

⁵² Purchase Order Contract Number 5MIS-143 (21 November 2004).

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Pursuant to the CPA, the Egyptian troops were scheduled to replace the JMC by 22 June 2005.⁵³

56. Due to failure on the part of the Egyptian government to provide load specifications, UN Headquarters could not coordinate the deployment of the troops and equipment to meet the June 2005 deadline. In light of time constraints and the urgency of the movement, UNMIS and MOVCON agreed the most expeditious method to deploy the troops would be for UNMIS to handle the transport locally in the Mission.⁵⁴ Headquarters and the Mission also agreed that the Mission would utilize its own aircraft to accomplish the move.⁵⁵ Although it was not initially intended for this purpose, the UWA contract was utilized to provide fuel, ground handling, and air flight services for the Egyptian deployment.
57. The circumstances of the authorization for, and the use of, the UWA credit agreement to purchase fuel and other flight services for the aircraft used to deploy the Egyptian troops have been the subject of this investigation. PTF investigators have spent considerable time and effort attempting to reconstruct the series of events, engaging in an effort to identify the individual(s) responsible for the authorization and the basis for it and the extent of knowledge and participation in the decision making process by senior managers in UNMIS. PTF investigators have conducted various interviews, including one with Staff Member 4, the aviation technical officer. Staff Member 4 reported to Mr. Craig Goodwin, who reported to the Subject. The investigation has revealed that Mr. Goodwin and Staff Member 4 spoke about the use of the UWA contract in June 2005. When interviewed by PTF investigators, Staff Member 4 stated that at the time of the Egyptian deployment, he made a verbal request of UWA to utilize the existing agreement for the deployment. Staff Member 4 stated that there was no discussion at the time of the financial implications of the use of the agreement for these purposes.⁵⁶

C. Abuse of UWA Contract

58. UNMIS transported the Egyptian contingent from Cairo to Sudan in two separate movements. The first deployment began mid-July 2005; the second

⁵³ Jan Pronk Code Cable to Jean-Marie Guehenno, *et. al.* (No. CG4-126, KHA-126) (16 May 2005).

⁵⁴ Harjit Dhindsa email to Gary Taylor (26 May 2005); Gary Taylor email to Harjit Dhindsa (26 May 2005); Kel Gleeson email to Graeme Basson (26 May 2005); and Staff Member 2, Staff Member 3 interview (12 April 2006). The parties discussed the deployment issue on more than one occasion. UNMIS Video teleconference Minutes (25 May 2005) and LCC Meeting Minutes No. LCC/MIS/05/33, p. 9 (20 November 2005).

⁵⁵ UNMIS Video teleconference Minutes (25 May 2005) and LCC Meeting Minutes No. LCC/MIS/05/33, p. 9 (20 November 2005).

⁵⁶ Staff Member 4 interview (30 July 2006).

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commenced at the end of August. UNMIS flew approximately thirty sorties and completed the deployment in early September.⁵⁷

59. While UNMIS retained responsibility for the movement of the troops and equipment, it correspondingly assumed responsibility for the ground handling and uploading of fuel in Cairo, Egypt. In Cairo, UNMIS purchased fuel and other services, including ground transportation, crew accommodations, and airport handling fees. UNMIS aviation staff charged these items to UWA's account, relying on the November 2004 contract as a basis to do so.⁵⁸
60. Upon completion of the deployment on 4 September 2005, UNMIS had already accrued more than US\$1 million in fees, amounts which were due and owing to UWA.⁵⁹ Some of the invoices, which were transmitted in instalments, were past due and UWA contacted UNMIS at that time demanding payment.⁶⁰

1. Ex Post Facto

61. The investigation has revealed that the Subject learned of the outstanding balance owed to UWA on 19 October 2005. The Subject, reportedly furious, summoned his staff and learned for the first time that the UWA contract had been abused, and that cargo aircraft had been utilized to transport the Egyptian contingent relying upon the UWA agreement as a basis to obtain the necessary fuel services. During the meeting, Mr. Goodwin, Chief of Aviation Services, publicly accepted responsibility for the use of the UWA contract for this purpose. No further substantive investigation appears to have been pursued by the Subject to determine the circumstances of the use of the agreement, and whether and to what extent other individual(s) may have been involved. The Subject said he was unable to direct an investigation, such as an OIOS investigation, and expected the LCC would be able to determine what happened.⁶¹ The PTF noted that the LCC was not an investigative body and that the appropriate course of action would have been for the CAO to refer the matter to the OIOS auditors and investigators present in the Mission. However, the Subject made no such referral. However, OIOS auditors and investigators were present in the Mission.
62. The Subject then directed the local procurement service to prepare a presentation for the LCC on an *ex post facto* basis.⁶² However, pursuant to the Delegation, as well as Rule 12.1.8(3) of the Procurement Manual, the HCC

⁵⁷ LCC Meeting Minutes No. LCC/MIS/05/30, p. 13 (25 October 2005).

⁵⁸ LCC Meeting Minutes No. LCC/MIS/05/30 (25 October 2005).

⁵⁹ See Attachment C summarizing UWA invoices.

⁶⁰ Laura Scott emails to Karen Hong (12 - 14 September 2005) and Karen Hong email to Craig Goodwin, *et. al.* (13 September 2005).

⁶¹ The Subject interview, pp. 1-2 (17 August 2006).

⁶² The Subject interviews, p. 3 (26 June 2006) and p. 1 (17 August 2006).

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needed to be advised and its input considered because the award being considered exceeded the threshold of the Subject's delegated authority.

63. Notwithstanding these requirements, on 24 October 2005, Mr. John Noisette, UNMIS Chief of Finance, requested permission from the Subject to pay UWA in advance of the LCC and HCC presentation.⁶³ Mr. Noisette sought the Subject's approval to immediately process US\$983,431.77 owed to UWA, which the Subject granted.⁶⁴
64. The next day, 25 October 2005, the Procurement Service made its first presentation to the LCC on the matter. The OIC of Procurement, Mr. Pornchai Kanjanakantron, and Mr. Goodwin presented a recommendation for the award of the contract on an *ex post facto* basis, claiming an exigency.⁶⁵ At the meeting, two explained that these services were required for the Egyptian deployment. They further asserted that the Movement Order requesting UNMIS' assistance in the deployment did not arrive until two days before the first round of scheduled departures. Since UNMIS had only a "48 hour window to get things done," they asserted that the "Aviation Section utilized the Purchase Order No. 5MIS-143 with Universal Weather Aviation" to arrange for these services.⁶⁶
65. As CAO, the Subject was required to review the LCC's recommendation, and upon approval, forward the presentation to the HCC through the C/PS. On 27 October 2005, upon review of the minutes, however, the Subject voiced his dissatisfaction with the minutes and asserted that critical information was omitted. He declined to forward the presentation.⁶⁷ The Subject claimed the presentation failed to explain the basis for exceeding the Mission's authority and the financial limitation imposed by the UWA contract. He further explained that he felt the presentation appeared to reflect a disagreement with UNMIS and Headquarters regarding financial responsibility. The Subject noted at the time that when UNMIS agreed to move the Egyptian contingent, "it assumed the responsibility for arranging, through regular procurement action, for all associated goods and services."⁶⁸

⁶³ John Noisette memorandum to the Subject (24 October 2005).

⁶⁴ See *infra* FN 69, the Subject's handwritten note (dated 27 October 2005) in response to Mr. Noisette's 24 October 2005 memorandum to the Subject.

⁶⁵ LCC Meeting Minutes No. LCC/MIS/05/30, p. 12 (25 October 2005) and The Subject interview (26 June 2006).

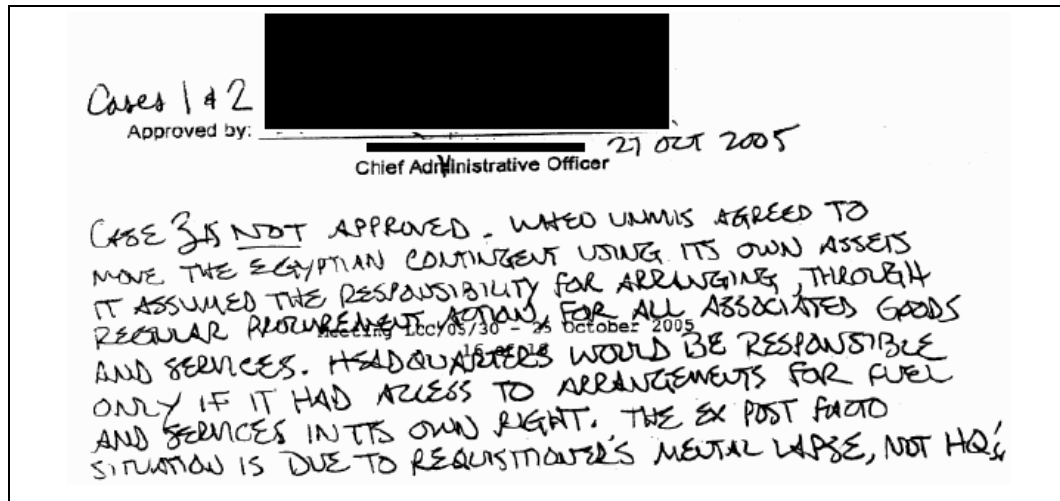
⁶⁶ LCC Meeting Minutes No. LCC/MIS/05/30, p. 13 (25 October 2005).

⁶⁷ The Subject interview (26 June 2006). For example, the presentation did not explain how the Mission exceeded the financial threshold. *Id.*

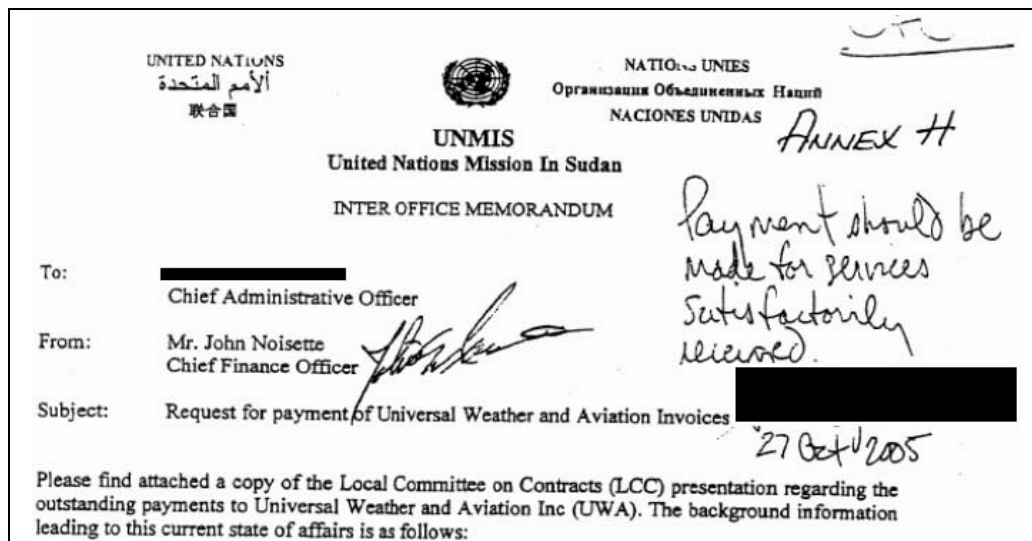
⁶⁸ The Subject handwritten note on LCC Meeting Minutes (27 October 2005).

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66. On the very same day the Subject declined to approve the LCC minutes, he returned Mr. Noisette’s memorandum with a hand-written note approving payment, reasoning that “[p]ayment should be made for services satisfactorily received.”⁶⁹



67. The second presentation before the LCC did not occur until 20 November 2005. Mr. Goodwin and Mr. John Purcell, the Chief Procurement Officer in the Mission, presented the matter to the LCC at that time, and sought *ex post facto* approval for the contract.⁷⁰ The minutes of the meeting reflect that Mr. Goodwin and Mr. Purcell acknowledged “there was a procedural lapse within the Aviation Section,” but explained that in their view it was “a matter of oversight.”⁷¹ The minutes further reflect that in the opinion of Mr. Goodwin

⁶⁹ The Subject’s handwritten note (dated 27 October 2005) in response to Mr. Noisette’s 24 October 2005 memorandum to the Subject.

⁷⁰ LCC Meeting Minutes No. LCC/MIS/05/33, p. 7 (20 November 2005).

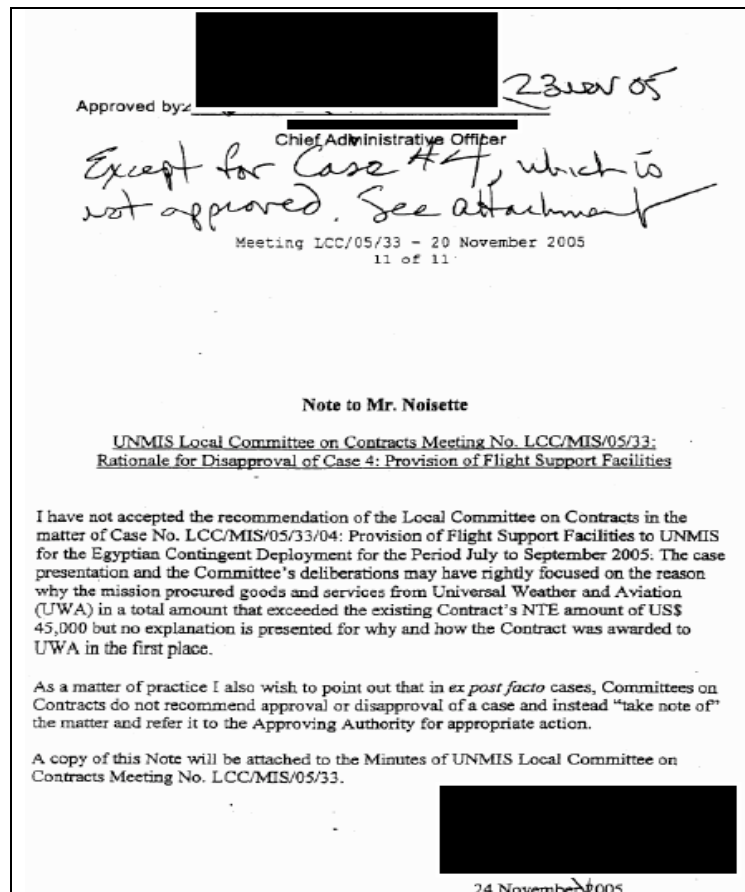
⁷¹ *Id.*, p. 9.

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and Mr. Purcell, there was “no deliberate or willful negligence of financial or procurement rules.”⁷² The two further reasoned that UNMIS maintained, and had instituted, additional checks and balances to prevent any such future recurrence.⁷³

68. Again, the Subject declined to approve the minutes, and did not authorize referral of the matter to the HCC.⁷⁴ On this occasion, the Subject asserted that the basis for his rejection of the minutes was that the presentation failed to fully address the initial contractual arrangement with UWA.⁷⁵



Most troublesome is that the Subject failed to notify the Chief of PS at Headquarters, and alert him to the incursion of the expense, and the status of the matter. The Subject said he sent the case to Ms. Lute with a cover letter, but did not indicate he contacted PS or anyone else.⁷⁶

⁷² Id.

⁷³ Id.

⁷⁴ The Subject interview (26 June 2006).

⁷⁵ Id. The Subject's typewritten Note to Mr. Noisette is dated 24 November 2005; however, his handwritten note is dated 23 November 2005.

⁷⁶ The Subject interview (17 August 2006). It is unclear to what document the Subject referred as PTF did not locate any such cover letter.

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2. The Subject's Explanation

69. The Subject acknowledged that the primary purpose of the UWA agreement was to provide the necessary services for the SRSG's travels outside Sudan, and asserted that his staff abused the agreement when it was used to support the Egyptian deployment.⁷⁷
70. Nevertheless, the Subject defended his decision to authorize payment to UWA of the outstanding balance prior to LCC and HCC approval, asserting that these committees were merely advisory bodies. He later described the HCC chair as a "hand-maiden" to the Controller.⁷⁸
71. The Subject argued that the procurement rules were not applicable because the debt owed to UWA was not the product of a "contract." The Subject asserted that he simply approved payment of a "debt" rightfully due and owing for services satisfactorily rendered, and emphatically claimed that immediate payment was "the correct thing to do morally, managerially and ethically"⁷⁹ and necessary to protect the UN's reputation and prevent the accumulation of any further arrears.⁸⁰ Therefore, the Subject argued that he acted within the confines of his authority and therefore did not violate his duties.⁸¹
72. Addressing the fact that the use of the UWA agreement without a procurement exercise in the first instance gave rise to an *ex post facto* circumstance, the Subject blamed this result upon "the requisitioner's mental lapse."⁸² He admitted the "ball had been dropped" and that no one utilized the appropriate procurement process which had been established for such a situation.⁸³

D. PTF Investigation and Evaluation

1. The Abuse of the UWA Contract

73. It is undisputed that UNMIS staff charged fuel and services incurred during the Egyptian deployment to UWA and that the Organisation paid UWA approximately US\$1.376 million for these goods and services.⁸⁴ (See Attachment C).
74. It is also clear that the primary purpose of the UWA agreement was to provide services to accommodate the travels of the SRSG. Equally without

⁷⁷ The Subject interview (26 June 2006).

⁷⁸ The Subject interview (17 August 2006).

⁷⁹ The Subject interview (26 June 2006).

⁸⁰ The Subject interviews (26 June and 17 August 2006).

⁸¹ The Subject interview (26 June 2006).

⁸² The Subject's note regarding LCC Minutes (27 October 2005) (See *supra* FN 68).

⁸³ The Subject interviews (26 June and 17 August 2006).

⁸⁴ Summary of UN payments to Universal Weather & Aviation.

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disagreement is the fact that the arrangement with UWA was never intended to cover costs associated with the transport of the Egyptian contingent, and that the Mission exceeded the NTE amount of US\$45,000 when it charged over US\$1 million in services under the agreement. A proper procurement exercise should have occurred, absent an urgent need justifying an exception to the procurement process under the exigency situations as outlined in Section 9.5.2 of the Procurement Manual.

2. The Failure to Follow the Necessary Procurement Process

75. The Subject recognized that although procurement procedures and procurement staff were in place in the Mission at the time, no one followed the procedure in this circumstance. Clearly, the Subject should have been alerted to the fact that UNMIS needed in excess of US\$1million for fuel and air flight services before the Mission actually accrued these charges. He certainly should have learned about this before the deployment, not several weeks after the services were obtained.
76. The Procurement Manual outlines the process required before the requisition of goods and services which exceed a certain financial threshold. Proper procedure dictates that the Aviation Section in the Mission should have notified PS that it needed to secure a contract for fuel and flight services for movement of the Egyptian contingent. A recommendation would have then followed to seek a competitive bidding process to identify a vendor, or, in the alternative, an amendment to the original contract with UWA to cover these services could have been explored. Further, to the extent that there was an exigency, PS would have been alerted early in the process and an evaluation of the claim could have occurred, and the necessary procedural steps could have been followed.
77. Officials in UNMIS were aware by the end of May that the Mission would be responsible for deploying the Egyptian contingent.⁸⁵ The first deployment did not occur until mid-July, almost six weeks later. Therefore, there was time to conduct a procurement exercise. Moreover, the second deployment did not commence until the end of August, almost three months later. The Mission, therefore, had several weeks, if not months, to make the necessary arrangements and engage in the proper procedures.
78. A proposed award would have in the normal course been presented to the Subject as CAO after the LCC made its recommendations as the amount at issue exceeded US\$75,000. If signed and accepted, the Subject would have been required to forward the proposal to HCC because the value exceeded US\$200,000. Accordingly, the HCC would have made the determination whether a contract with UWA for these services could be pursued.

⁸⁵ See, *supra*, FN 54.

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79. In this case, neither the Aviation Section nor PS followed the proper procedure for the requisition of flight services. Instead, UNMIS staff simply arranged with UWA to provide these services without commencing a competitive bidding process, and without obtaining the requisite approvals.

3. Presentation to the Subject

80. Although the PTF did not identify any evidence that the Subject was aware, or was in any way involved in the misuse of this contract, these charges were incurred by employees of the Aviation Section, which was under his ultimate control and authority.
81. The Subject reasoned that “controls” broke down and that the expenditures incurred were not properly monitored. Albeit, the Subject cannot be faulted for each and every error committed by staff in the Mission, he nevertheless was responsible for confirming that controls were in place to prevent such occurrences. While certainly there is no guarantee such transgressions could be fully prevented, however, in light of the other issues which occurred at this time and are discussed in this report, it appears that such a failure was not limited to just this circumstance.

4. The Subject’s Authority to Approve Payment

82. UWA was paid in excess of US\$1 million for the flight services provided for the Egyptian troop deployment. Accordingly, both LCC and HCC approval was required for an award of this financial magnitude. As stated in the Delegation of Authority provided to the Subject, as well as Financial Rule 105.13(c), “final action” on an award was not permissible without HCC approval. The Subject conceded that authorization was “beyond his or anybody’s price signature authority.”⁸⁶
83. Nevertheless, the Subject unilaterally authorized payment to UWA before he received LCC and HCC approval. This action is “final” in as much as it led to the award/amendment of a contract with UWA. The Subject was aware, or certainly should have been aware, that the UWA services had been obtained in violation of the Financial and Procurement Rules, and yet approved payment prior to the requisite authorization from the HCC. Regardless of any merit to his position that the amounts owed UWA were accurate and proper, the Subject’s unilateral action exceeded his delegated authority at the time he made the decision.

⁸⁶ The Subject interview (26 June 2006).

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5. Ex Post Facto Presentation of the Procurement**a) Failure to Meet Definition**

84. While the need to provide fuel services to support the troop deployment may certainly constitute an exigency, it is difficult to conclude that the payment to UWA for the debts incurred from the use of the services also met this definition. The *ex post facto* rules define these cases where services have already been furnished to the Mission, irrespective of a written contract. The rules do not permit payment for such services. Rather, they address the procedure to be followed when an emergency prevented the Mission from employing a formal solicitation process.
85. While the rapid movement of the Egyptian contingent— and thus, fuel and services acquired in Cairo in order to deploy the troops and equipment – may in fact have been a truly urgent need, payment to UWA was not (especially in light of the Organisation’s history of untimeliness).⁸⁷ Moreover, any exigency was due to the Aviation Section’s poor planning and mismanagement. UNMIS knew as early as 25 May 2005 that it would be responsible for the deployment. As stated in the Procurement Manual Section 9.5.2(2)(a) and reiterated in the ASG’s September 2005 memorandum, the General Assembly exempted those cases that were the result of “delay or omission on the part of the requisitioning office.” Under this definition, UNMIS may not have been able to justify the *ex post facto* presentation. Consequently, there is no reason why payment to UWA was not delayed until after the matter was properly presented to both the LCC and HCC.

b) Committee Approval

86. The Subject did not personally notify the Chief of PS or HCC of the matter. He said he never considered contacting HCC. Rather, he asserted that he was more concerned with other pressing matters and did not consider this situation to be one of them.⁸⁸
87. The Subject’s Delegation of Authority, however, specifically required that he, or a delegate, promptly notify Ms. Lute and Chief of PS of any contract over US\$200,000, even for a Core Requirement.⁸⁹ Written notification was required to be submitted no later than 30 days after the procurement.⁹⁰ Certainly, the Subject cannot be faulted for failure to file the report within 30 days of the deployment since he did not learn of the situation until October. However, upon learning of the amount of the expenditure and that no procurement exercise had been initiated or otherwise contemplated, he should have considered it pressing. Accordingly, the Subject should have promptly

⁸⁷ The Subject interview (17 August 2006) (referring to late payment of bills in the UN Mission in Angola).

⁸⁸ The Subject interview (17 August 2006).

⁸⁹ Delegation, p. 2.

⁹⁰ Delegation, p. 2.

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notified the Chief of DPKO and Chief of PS, describing, *inter alia*, the nature of the commodity purchased, the circumstances surrounding the acquisition and procurement, the approved LCC minutes, and the amount of funds expended.

88. There was significant delay in forwarding the LCC minutes to HCC after the presentations. On the very same day the Subject instructed Mr. Noisette to satisfy the outstanding balance and make payment to UWA, the Subject also declined to accept the LCC minutes. While such an action may have been entirely appropriate if the minutes failed to contain necessary information, a similarly consistent effort should have been pursued to ensure that the minutes were promptly and properly corrected, and expeditiously delivered to the HCC.
89. It is significant that a subsequent presentation to the LCC was not made for several weeks, and there is no evidence that there was an effort to expedite the matter. In fact, at the time he was placed on special leave in January 2006, the Subject still had not advanced the presentation to Headquarters, or more importantly, notified the Chief of PS.

VII. KADUGLI RUNWAY LIGHTS

90. The PTF's investigation has revealed a number of troubling procurement exercises during the Subject's tenure as CAO of UNMIS, including the requisition for goods which were later claimed to be unnecessary. Some procurement exercises for air flight equipment which commenced during the Subject's tenure have been halted. Further, separate PTF investigations have confirmed that the head of Aviation Airfields and Terminals, Mr. Alisher Saliev, may have colluded with a procurement officer to assist Radiola Aerospace, a New Zealand company, to achieve a UN contract. This matter will be the subject of a separate report on this issue. It should be noted that Mr. Saliev has since left the Organisation's employment.
91. Section A below will address the procurement of aviation lights for the Kadugli airport in Sudan which failed to meet both UN and international regulatory specifications as set forth by DPKO Aviation Manual and the International Civil Aviation Organisation (ICAO).⁹¹ As a result, the lights could not be used alone, and UNMIS therefore was required to purchase a second system at an additional cost. Section B will address the Subject's role in authorizing the contract.

⁹¹ The International Civil Aviation Organisation is a specialized UN agency which sets forth the international standards and recommended practices regulating international air transport. Essentially, it standardizes all flight aircraft and airfields for each member nation to insure safety. An ICAO standard is a specification whose uniform application is recognized as necessary for safety or regularity of international air navigation and to which contracting states will conform in accordance with the convention. Sudan is a member and contracting state to ICAO.

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A. Background

92. UNMIS utilizes several airports in Sudan. In Khartoum, there is an international airport maintained by the Government of Sudan. UNMIS also operates flights from an airport located in Kadugli, which it upgraded and currently maintains.

1. Invitations to Bid

93. In February 2005, Aviation Airfields and Terminals submitted a request to the Procurement Section of UNMIS for runway lights for the Kadugli airport in anticipation that the airport would be accommodating night flights. Procurement Services sent out an Invitation to Bid to several companies requesting a full set of electronically-powered lights for the airport runway.⁹² Aviation estimated the cost would be approximately US\$500,000. Four companies responded: (1) Asif Lighting Developments Ltd.; (2) Alstom Power Conversions, Ltd.; (3) ADB; and (4) Airfield Signs and Markings.⁹³

94. It appears Mr. Saliev may have been the sole evaluating officer for the proposals. If so, such an action is inconsistent with Procurement Rule 11.5.6(2) which requires a committee to perform any evaluation when the estimated contract is over US\$200,000.

95. After Mr. Saliev's review, he claimed that the price of the light system was much higher than anticipated.⁹⁴ Accordingly, he recommended Procurement Services cancel the first ITB and re-bid the contract.⁹⁵ This time, he wanted to include South African and Pacific Rim countries. Based on his experience, vendors from these areas provided similar services for lower prices.⁹⁶ Mr. Goodwin, Mr. Saliev's supervisor, and Chief Aviation Officer at the time, approved the memorandum.⁹⁷

96. On 1 March 2005, Procurement issued a second ITB with a closing date of 25 March 2005. This time, UNMIS invited a Pacific Rim company located in New Zealand, Radiola Aerospace (Radiola).⁹⁸ At the time, Radiola was not a registered vendor with the UN, but was listed as a temporary vendor.

⁹² The PTF was unable to locate the original requisition or UNMIS' ITB. Investigators attempted to reconstruct as much of the procurement file as possible, but documents, like these, were missing from the file. See also The Subject interview (26 June 2006).

⁹³ John Purcell memorandum to Graig Gleeson (sic) (7 February 2005).

⁹⁴ See, e.g., Alisher Saliev's memorandum to John Purcell (14 February 2005).

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Invitation to Bid – List of Invitees (Tender No. ITB/BKH/06/SUD) (undated) and Pornchai Kanjanakantron facsimile (PK facsimile) to Siemens AG regarding Invitation to Bid – Supply and Installation of Runway Lighting and NDB to UNAMIS (1 March 2005).

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97. Several vendors submitted proposals, including Radiola. There were two problems with Radiola's bid. First, it was untimely.⁹⁹ The facsimile header on the transmission of its proposal was dated 31 March 2005, six days past the deadline for the receipt of proposals.¹⁰⁰ In fact, UNMIS received the bid at 14:42 hours, just eighteen minutes before the bids were to be opened at 15:00 hours, as specified in the ITB.¹⁰¹
98. Second, Radiola proposal included non-compliant equipment. Radiola offered two options: the first provided electronically-powered lights (as per the ITB) and the second, solar power lights.¹⁰² The solar power lights, however, did not meet UN regulations. Indeed, Radiola's bid specified that this proposal was not compliant.

⁹⁹ PTF investigators found no justification for UNMIS' acceptance of this late bid. Nor were they able to ascertain who accepted the bid. This issue will be addressed in a later report regarding Mr. Alisher Saliev.

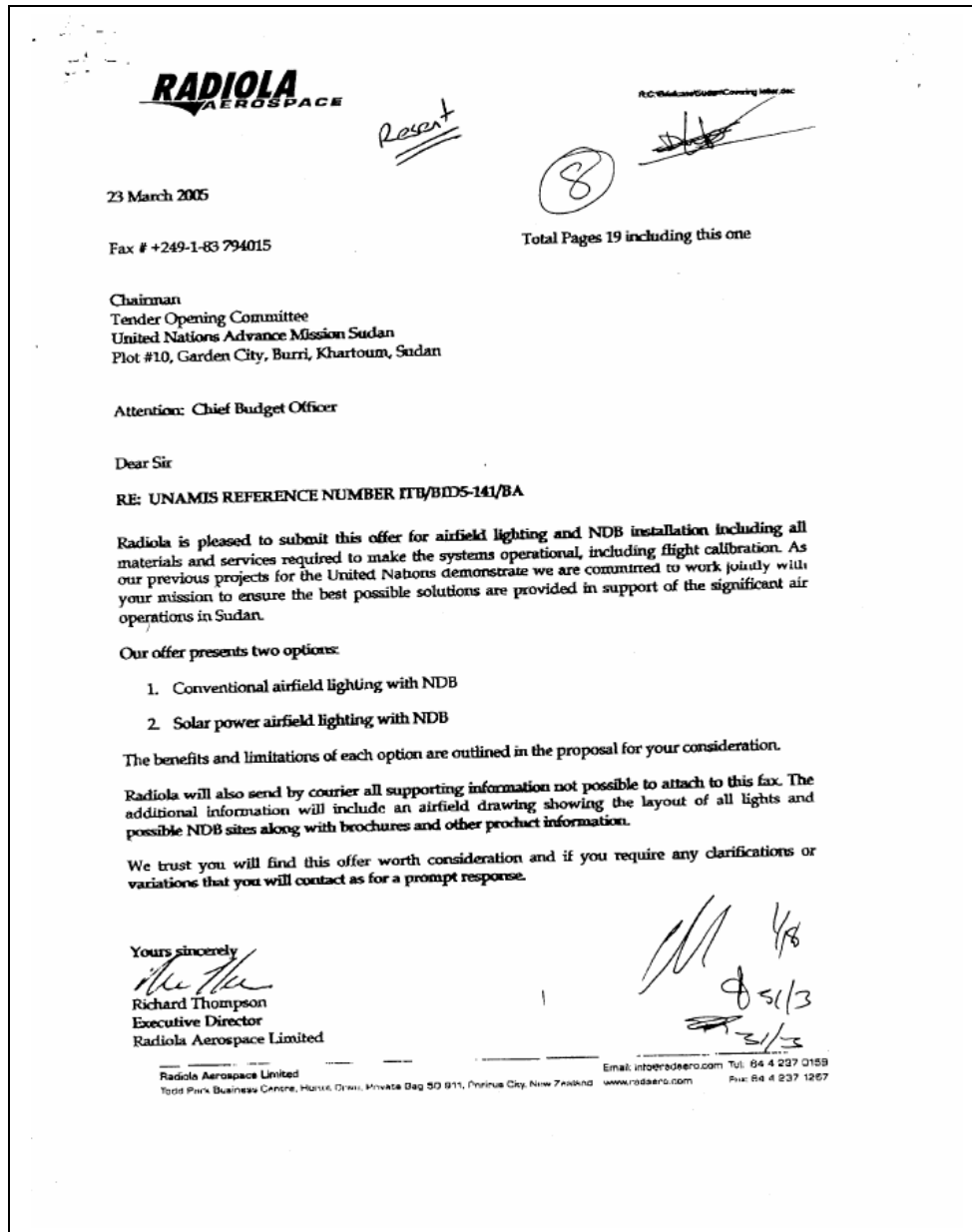
¹⁰⁰ See PK facsimile, p. 2.

¹⁰¹ Radiola Tender for UNAMIS Reference No. ITB/BID5-141/BA

¹⁰² Id., p. 4.

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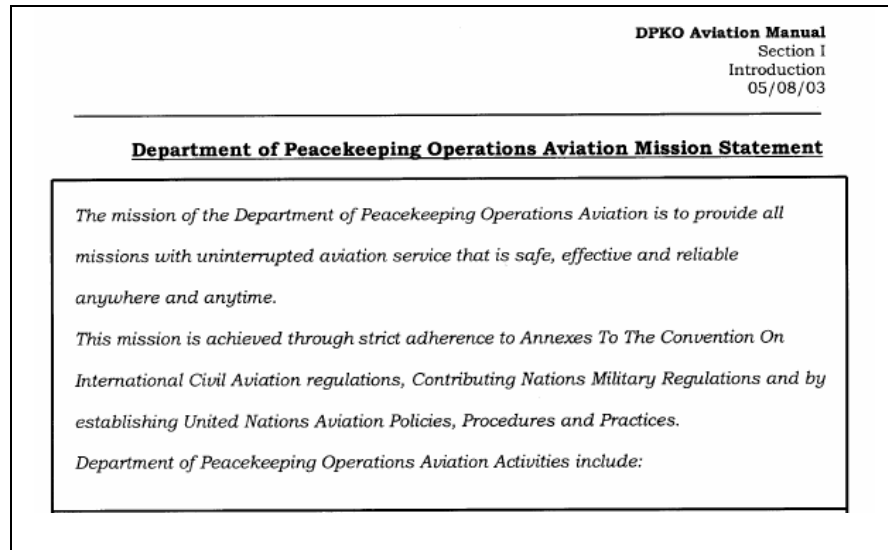


According to the DPKO Manual, runway lights must comply with ICAO regulations. ICAO does not permit solar powered lights for airports.¹⁰³

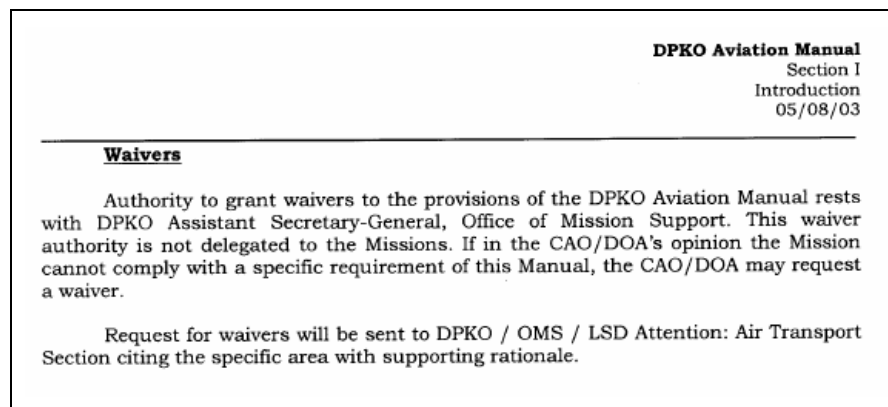
¹⁰³ International regulations specify that runways should have one system in place and then a back-up system in the event of a malfunction. Solar lights do not contain a back-up system and thus do not meet these requirements.

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If a matter is not compliant, the DPKO Manual requires a waiver be obtained.



99. Despite these issues, UNMIS opened Radiola's bid and included it in the list of acceptable vendors. Nonetheless, no contract was awarded. Mr. Saliev then requested Procurement Services issue a third and final ITB. This time, however, Mr. Saliev sought bids for solar lights – the same non-compliant lights Radiola initially proposed. Radiola prevailed and won the contract.¹⁰⁴
100. The Local Procurement Authority (LPA) for the Kadugli runway lights gave a conditional approval for the requisition. The LPA held that the project's technical specifications were subject to review by the Aviation Transport Section (ATS) in New York.¹⁰⁵ Although the LCC approved the

¹⁰⁴ LCC Meeting Minutes No. LCC/MIS/05/19 (28 June 2005). Notably, according to Radiola's bid for solar lights, this proposal was only US\$86,000 less than an electronically-powered, DPKO/ICAO compliant system would have been.

¹⁰⁵ Karen Hong email to Anita Pinto and Ard Venema (27 June 2005).

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contract on 28 June 2005, UNMIS never presented it to HCC because of action taken by the Procurement Service.¹⁰⁶

2. Re-characterization as Core Requirement

101. Around this time, the procurement was re-characterized as a “refurbishment” project, which allegedly constituted a “Core Requirement” for the Mission.¹⁰⁷ By reclassifying the contract, the requisition now fell under the delegated authority of the CAO, and UNMIS no longer needed HCC approval (as the Subject was able to authorize procurement of a Core Requirement up to US\$1 million).
102. Procurement Services in New York, however, disagreed with UNMIS’ characterization of the requisition. On 1 August 2005, New York cautioned UNMIS that such procurement did not constitute a “Core Requirement.”¹⁰⁸ The Chief Procurement Officer, Mr. John Purcell, was aware of New York’s position. Nevertheless, UNMIS proceeded with the contract.
103. On 15 March 2006, DPKO ATS sent via facsimile a memorandum to UNMIS to stop the work order for the Kadugli runway lights project.¹⁰⁹ Staff Member 5, OIC of UNMIS, received this order, and forwarded it to several divisions, including the OIC of Aviation.¹¹⁰ Despite this order, UNMIS still continued with the project.
104. On 15 April 2006, Mr. Saliev and Ms. Hong flew to Kadugli and “inspected” and “approved” the solar lights.¹¹¹
105. On 14 May 2006, Chief Finance Officer Staff Member 6 discovered the project was still pending before the HCC.¹¹² As a result, UNMIS was without the authority to pay Radiola. Staff Member 6 attempted to stop payment, but was unsuccessful. The UN ultimately paid Radiola more than US\$589,000 for the project.¹¹³

¹⁰⁶ LCC Meeting Minutes No. LCC/MIS/05/19 (28 June 2005) and Karen Hong email to Ard Venema (30 July 2005).

¹⁰⁷ Karen Hong email to Ard Venema (30 July 2005).

¹⁰⁸ Anita Pinto email to Karen Hong (1 August 2005) and John Purcell computer file, Chart of Ex Post Facto Cases 2004/2005 (undated).

¹⁰⁹ Serge Divounguy facsimile to Mary Roth (14 March 2006).

¹¹⁰ *Id.* and Staff Member 5 interview (17 May 2006).

¹¹¹ Radiola memorandum to Alisher Saliev (22 March 2006) (signed by Alisher Saliev, 15 April 2006); UNMIS Movement of Personnel Form filed by Karen Hong (13 April 2006); and UNMIS Movement of Personnel Form filed by Alisher Saliev (13 April 2006).

¹¹² See John Purcell memorandum to John Noisette (4 May 2006) and PTF telephone call with Staff Member 6 (14 May 2006).

¹¹³ See UNMIS Purchase Order No. 5MIS-822 (30 June 2005).

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3. The Subject's Explanation

106. The Subject, in his interview with PTF investigators, defended the requisition, asserting that solar lights made sense and would be beneficial to the Mission.¹¹⁴ He based his decision on presentations by his subordinates, such as Mr. Goodwin.¹¹⁵ He believed that since Kadugli was not an international airport, the lights need only comply with Sudanese civil regulations.¹¹⁶

B. PTF Investigation**1. Authority to Reclassify Procurement and Approve Contract**

107. Under the Subject's Delegation of Authority as CAO, he needed HCC approval before UNMIS procured non-core items over US\$200,000 (see *supra* paragraph 45 *et. seq.*). In order to achieve exemption from HCC approval, the requisition had to be classified as a "Core Requirement." As explained above, one of the enumerated "Core Requirements" included "building materials and refurbishment services."

108. Although a staff member classified the runway lights as a "refurbishment," the Subject, as CAO, gave final approval for this action. The Subject admitted to PTF investigators that he did in fact authorize this re-classification, and argued in his defence that the refurbishment applied to the airport "in general." In his opinion, the runway lights were merely part of this overall upgrade.¹¹⁷

109. The validity of re-classifying runway lights as a "refurbishment" to meet the Core Requirement definition is dubious. These were new lights, and not an alteration to existing ones. Under this theory, any and all acquisitions, repairs and services of attendant goods would fall under this definition. The letter and spirit of the rules do not seem to support this broad definition. If the lights were not properly characterized as "Core Requirements," their procurement actually fell outside the Subject's Delegated Authority. Consequently, his unilateral approval of a \$589,000 contract violated the FRR and Delegation of Authority.

110. Even assuming *arguendo* that the lights were Core Requirements, the Subject failed to comply with his Delegation of Authority. Since the award was over US\$200,000, the Subject should have submitted a written report to the Assistant-Secretary General to whom he reported and to C/PS no later than 30 days after the procurement. In such report, he should have submitted

¹¹⁴ The Subject interview (17 August 2006).

¹¹⁵ *Id.*, p. 3.

¹¹⁶ The Subject interview (21 August 2006).

¹¹⁷ The Subject interviews (26 June, 17 August, and 21 August 2006).

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details of the contract, including, *inter alia*, the approved minutes of the LCC, the financial rule basis of the procurement award, and the summary of the procurement process.

2. Non-Compliance with DPKO Manual

111. The Subject, as CAO, approved the requisition of US\$589,000 in aviation lights which failed to comply with the DPKO Manual. As a result, the UN had to acquire another system of “Calkit” lights to replace the solar lights at an additional cost.
112. According to the DPKO Manual, all runway lights must follow all ICAO standards. Solar lights for runways do not meet these standards. Indeed, the Aviation Transport Section at Headquarters advised UNMIS on numerous occasions that solar lights were not DPKO or ICAO compliant. The Subject claimed he did not learn of the ATS’ objections until “after the fact,” in 2006. However, New York notified UNMIS Aviation as early as the beginning of August 2005.
113. When PTF asked the Subject about ICAO approval, he initially asserted that it was up to the individual country to decide whether or not it would comply with the Convention.¹¹⁸ After the PTF pointed out that Sudan is a signatory to the convention and therefore bound by its requirements, he changed his answer. He then conceded Sudan would have been obligated to comply, but said the Sudanese “do what they want.”¹¹⁹

3. The Subject’s Alleged Lack of Knowledge

114. Despite his experience as an aviator, the Subject further professed he was not aware of the DPKO or ICAO regulations. This argument is untenable. Certainly the Subject should have had constructive, if not actual, knowledge of these rules.

4. UNMIS’ Need for Runway Lights

115. The decision to purchase the capability for night flights is confounding in light of the fact that, at the time, only the Sudanese military was permitted to fly from dusk to dawn. All airports, other than the international airport of Khartoum, were officially closed during this time, a fact the Subject conceded. The Sudanese government enforced this order and permission was required to be sought for an emergency inbound or outbound flights.
116. In response to the fact that the Sudanese military had not yet approved such flights, the Subject reasoned that UNMIS expected to use Kadugli as a centre hub, and hoped to eventually operate the airport twenty-four hours a

¹¹⁸ The Subject interview (26 June 2006).

¹¹⁹ Id.

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day. The Subject further stated that he was presented with a report from a British Military Survey team who had been hired by DPKO. The team examined the airport upgrades and indicated that runway lights would be required. The Subject's actions were premature.

VIII. MI-26 HELICOPTER

117. The Audit Review noted several irregularities with the procurement of an MI-26 helicopter for UNTAET in 2000. This matter has been the subject of extensive investigation. The issues and facts are addressed here to the extent they pertain to the Subject.
118. Specifically, this report addresses the criticisms of the Audit Review on the negotiation of the Letter of Assist with Peru, including the Subject's role in establishing the initial requirement. The PTF also examined the actual negotiations themselves, and the cost-efficiency of the procurement.
119. In 2000, the Subject was head of the DPKO Transport Section. His immediate supervisor was Mr. Peter Phelan, who reported to Mr. Hocine Medili, Director of FALD. The Subject was in charge of four units within the Transport Section, including Air Transport. At that time, Mr. Joseph Warren was the Chief of the Air Transport Unit.

A. Background

120. In early 2000, the Organisation issued an Invitation to Bid for two heavy lift helicopters for UNTAET.¹²⁰ UN staff was of the view that the commercial offers received were excessive and sought to try and obtain the aircraft through a Letter of Assist (LOA).¹²¹ Under an LOA, the Mission would pay only for the actual hours flown by the helicopters as opposed to paying for a set number of minimum hours per month. The UN subsequently awarded the LOA to the Government of Peru. The stated reason for the LOA was that "competitive bidding d[id] not give satisfactory results."¹²²
121. Peruvian Generals Edmundo Silva Tejada and Luis Salazar Monroe purported to represent the Peruvian government during negotiations for the LOA.¹²³ The two informed Field Administration and Logistics Division (FALD) that a private company, Global Aviation Network (GAN), would be responsible for logistical and project management support as well as start-up

¹²⁰ Loida Madrigal facsimile cover sheet and accompanying Invitation to Bid (ITB No. RSQN 5033/LM)(20 January 2000).

¹²¹ The Subject interview (26 June 2006).

¹²² HCC Meeting Minutes No. HCC/00/24 (7 April 2000).

¹²³ Brig. General Edmundo Silva Tejada letters to Hocine Medili (30 March 2000, 31 March 2000, 4 April 2000); Lt. General Luis Salazar-Monroe letter to Hocine Medili (26 September 2000); and Hocine Medili facsimile to Brig. General Edmundo Silva Tejada (7 March 2000).

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financing.¹²⁴ In a letter dated 21 February 2000, one of the Peruvian Generals negotiating the LOA stated, “[w]e have made an agreement with Global Aviation Network, Inc., to provide us with logistical and project management support... Global Aviation will also be in charge of positioning and depositing of the helicopters from Lima to East Timor and will provide us with start up financing.”¹²⁵

122. During the LOA negotiations in early 2000, the Generals requested that payment for the lease of the helicopter be made directly to GAN.¹²⁶ The UN would not accept this arrangement of paying a third-party and told the Generals that all disbursements under the contract would be made directly to the Peruvian government.¹²⁷
123. When the Organisation received the first invoices from Peru, the invoices contained a request that payment be made directly to a Swiss bank account owned by GAN.¹²⁸ The Organisation refused, and instead issued a cheque made payable to the Government of Peru.¹²⁹ This cheque was deposited into a bank account opened in the name of the Permanent Mission of Peru and established specifically to accept monies under the LOA.¹³⁰ The investigation has shown that the money, however, was immediately transferred to a GAN bank account in Switzerland.¹³¹
124. A Peruvian investigation revealed that the Generals in charge of negotiations had planned to use the LOA to personally enrich themselves. These Generals, along with representatives of GAN, have been indicted in Peru and charged with criminal offences.

B. PTF Investigation**1. The Need for Heavy Lift Capability in UNTAET**

125. The Audit Review stated “UNTAET repeatedly expressed its opposition to this procurement.”
126. When the PTF interviewed the Subject he said he disagreed with the findings in the Audit Review. He told investigators that UNTAET made frequent requests for heavy lift helicopter support. He also did not recall stating the procurement was a “decision beyond him” as the Audit Review reported.

¹²⁴ Brig. General Edmundo Silva Tejada letters to Hocine Medili (21 February 2000 and 4 April 2000).

¹²⁵ Brig. General Edmundo Silva Tejada letter to Hocine Medili (21 February 2000).

¹²⁶ Brig. General Edmundo Silva Tejada letter to Hocine Medili (31 August 2000).

¹²⁷ The Subject interview (15 August 2006).

¹²⁸ Invoice to United Nations (R.U.C. 13136912) (10 July 2000).

¹²⁹ United Nations Cheque No. 199786 (9 October 2000).

¹³⁰ JPMorgan Chase Bank Account Records and Monthly Statement (Acct. No. 292-5008241-65) (16 September – 16 October 2000).

¹³¹ Chase Bank Account Transfer Application (12 October 2000).

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127. The PTF spoke to the witness who referred to the Subject's statement that the procurement was made beyond his control. The witness did in fact express reservations about the use of such a large and expensive aircraft, but said he supported the project if "cost-effectiveness" was not an issue. He added that he was never pressured by FALD to obtain the MI-26; any pressure for the aircraft came from the military.
128. The PTF examined extensive documentation concerning the Mission's need for such aircraft. The Subject said that in 1999, DPKO's Logistics and Communications Services planning team identified a need for heavy lift capacity. The documents confirm that the military initially indicated that four MI-26 helicopters were needed. The military also made repeated requests for such aircraft, later reducing its request from four to two, and finally one.¹³² FALD officials asked the Mission on numerous occasions to justify the use of such a costly asset.¹³³ These requests were made both prior to and during the procurement process. UNTAET provided the requested justification.¹³⁴
129. The Subject told PTF investigators that the Mission was aware of the high costs of procuring a heavy lift aircraft. He explained that UNTAET considered dropping the requirement for an MI-26 altogether, and using alternatives such as MI-8 helicopters. Headquarters, however, stressed that MI-8 aircrafts would not be able to perform all the specified heavy lift tasks. FALD clarified that under the LOA with Peru, UNTAET paid only for the hours actually used. As a result, UNTAET reaffirmed its view that it needed just one MI-26 to accomplish its goals.
130. There is no doubt that the helicopter performed important, albeit limited functions after it arrived in the field. UNTAET continued to use an MI-26 well after the Peruvian helicopter was depositioned, and until the time the Mission was downsized¹³⁵ the Mission remained cost-conscious. It is evident that UNTAET attempted to minimize the number of flights to save money.

2. The Commercial Bids

131. The Audit Review concluded there was no need for an LOA because commercial options were available. The Review found UNTAET's bidding process flawed in as much as it showed "indications that bid-rigging may have occurred."

¹³² Liuga Faumui facsimile to Hocine Medili (14 November 1999); William Grice email to the Subject (5 January 2000).

¹³³ Hocine Medili facsimile to Liuga Faumi (20 January 2000); Corrie Metz facsimile to Colonel Bob Philips, *et. al.* (21 January 2000); Liuga Faumui facsimile to Hocine Medili (6 March 2000); Joseph Warren email to Ronnie Stokes (14 March 2000); and Liuga Faumui facsimile to Hocine Medili (31 March 2000).

¹³⁴ Id.

¹³⁵ Chief, Procurement Division's Submission to HCC for Approval of Procurement by ASG/OCSS (PD Case No. RSQN-6915) (8 May 2001).

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132. In January 2000, the UN issued an ITB for two heavy lift helicopters.¹³⁶ Two vendors responded, but only one was deemed technically acceptable.¹³⁷ The UN awarded a contract to this bidder, but the vendor eventually withdrew its offer. The Subject stated to the PTF that he and others believed these bids were exorbitant, therefore FALD researched alternative means of acquiring the helicopters. One option examined was a Letter of Assist.¹³⁸
133. A second ITB was issued in February 2000.¹³⁹ This time, five bids were received. Again, only one bid was ruled technically acceptable.¹⁴⁰ Accordingly to the Subject, the second ITB was a “comparator bid,” issued solely for cost comparison. He said the companies in the market were likely aware of FALD’s negotiations for an LOA. FALD hoped vendors would reduce their prices in the second ITB. Unfortunately, this did not happen. When the second round of proposals came back excessively high, however, FALD continued to pursue the LOA. Consequently, no commercial contract was awarded and FALD entered into an LOA with Peru.
134. The PTF does not suspect any impropriety in the technical evaluations performed by FALD staff under the Subject’s supervision. Nor has the PTF found any evidence of complicity by FALD officials or the Subject in any bid collusion. FALD’s arguments as to the cost-effectiveness of an LOA option as opposed to a commercial lease can be viewed as justifiable.
135. Nevertheless, the PTF concurs with the Audit Review that there are significant concerns of the commercial bidding process. Further review is ongoing.

3. The LOA with Peru

136. The Audit Review suggested a number of irregularities in the negotiation process for the LOA. First, the process did not commence with an invitation from the UN to Peru. Rather, it originated when Mr. Andrew Toh, Chief of Procurement, who referred Peruvian officials to FALD staff. Second, the Subject and other FALD officials met with the Peruvian Generals and representatives of GAN, but did not keep notes of their conversations. The auditors believed there was a “high likelihood” of a conflict of interest, and the failure to maintain records of conversations indicated fraud on behalf of UN officials. Third, the Audit Review indicated that FALD officials were aware of a Peruvian presidential decree offering two helicopters for US\$2.4 million, an amount much lower than UNTAET’s contract price of US\$10.9

¹³⁶ Loida Madrigal facsimile cover sheet and accompanying Invitation to Bid (ITB No. RSQN 5033/LM) (20 January 2000).

¹³⁷ Joseph Warren memorandum to Paulette Austin (31 January 2000).

¹³⁸ Hocine Medili facsimile to the Permanent Mission of Ukraine to the United Nations (4 February 2000).

¹³⁹ Loida Madrigal facsimile cover sheet and accompanying Invitation to Bid (ITB No. RSQN 5033/LM) (21 February 2000).

¹⁴⁰ Joseph Warren memorandum to Paulette Austin (2 March 2000).

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million for a single MI-26. The auditors also commented on the Subject's knowledge that the Peruvians officials requested payments be made directly to GAN.

a) Mr. Toh's Involvement

137. The PTF's investigation supports the assertion that Mr. Toh initially referred FALD staff to Peruvian officials. The precise involvement of Mr. Toh is a subject of PTF's ongoing investigation, and will be addressed in a subsequent report involving him.

b) Record of Meetings

138. The PTF found that the UN staff, including the Subject, indeed communicated with officials from GAN and Peru.¹⁴¹ For example, telephone records indicate that from mid-February forward, Air Transport Unit staff was in direct contact with the Peruvian Generals.¹⁴² There are no existing notes of these conversations. The Subject acknowledged meeting with representatives from Peru and GAN, but said he only participated in technical discussions. He told the PTF he never discussed finances, which he left to his direct subordinates, Staff Member 7, Chief of ATU, and another ATU desk officer. In general, the Subject said he relied on Staff Member 7 who had more experience in these matters. The Subject did recall discussing costs with the Chief of ATU as they were "out of the ordinary." He believed that ATU was responsible for all financial negotiations. At the same time, the Chief of ATU believed that financial negotiations were being handled by senior management.¹⁴³ It is not clear who, if anyone, took responsibility for the negotiations. Nevertheless, the PTF did not find evidence that supported a finding that a failure to keep records of conversations necessarily indicated fraud.

c) Knowledge of Presidential Decree/Alleged Fraudulent Scheme

139. In late 2000, Peruvian newspaper articles reported that the Peruvian authorities alleged a fraudulent scheme on the part of the Peruvian Generals to defraud the UN and Peru. The presidential decree, quoting the US\$2.4 million price to lease two MI-26 helicopters to the UN, was reprinted in these articles.

140. Following the allegations of the fraudulent scheme, Staff Member 7 and Mr. Medili met, and it was decided that a commercial replacement should be located once the LOA expired.¹⁴⁴

¹⁴¹ The Subject interviews (26 June 2006 and 15 August 2006).

¹⁴² UN Call Detail Records Database (Call Nbr. 741919) (February 2000-April 2000).

¹⁴³ Staff Member 7 interview (28 August 2006).

¹⁴⁴ Staff Member 7 interview (28 August 2006).

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141. There is no evidence that the Subject, nor FALD staff, had any knowledge of the alleged fraudulent scheme, or of the US\$2.4 million offer contained in a presidential decree at the time of negotiations. In September 2000, one of the two Peruvian Generals involved sent via facsimile a copy of the decree to FALD.¹⁴⁵ This version, however, was redacted and there was no price information included. The first confirmed date that the Subject saw a copy of the unredacted presidential decree, which included the US\$2.4 million price, was in late 2000 when it was reprinted in Peruvian newspaper articles. The Subject said the price of US\$2.4 million – in his view, an unrealistic amount – was never the part of a formal offer to the UN. The Subject believes it was part of a secret agreement among the Peruvian Generals.¹⁴⁶

4. Payment Arrangements under the LOA

142. The Subject told PTF investigators that ATU staff informed him during the negotiations that the Peruvian Generals requested payment be made directly to GAN. The Subject said he made it very clear to ATU staff that the UN could only make payment to the Government of Peru, and not to a third-party.

143. When the first invoices arrived requesting payment be made directly to a Swiss bank account owned by GAN, officials in DPKO/FMSS noted this anomaly and refused to pay into this account. The Organisation properly insisted on paying the Government of Peru and issued the cheque accordingly.

5. Links between GAN and SkyLink

144. The PTF has found no evidence to suggest that FALD officials made any effort to verify GAN's bona fides, or its ability to provide the services described by the Peruvians. When questioned, the Subject explained that FALD saw Peru's use of GAN as a "station manager" to be an internal matter for Peru, and not an issue for the Organisation. Yet, he acknowledged that neither the Organisation, nor FALD staff, were familiar with GAN or its employees.

145. The PTF has established that for all intents and purposes GAN was in fact an existing UN vendor, namely SkyLink. For example, during the relevant time period, GAN used the same office address and facsimile number as SkyLink. Similarly, certain senior officers directed both companies.¹⁴⁷ SkyLink represented or acted on behalf of at least two of the bidders during the commercial bid process.

¹⁴⁵ Lt. Gen. Luis Salazar-Monroe facsimile to Peter Phelan (18 September 2000) and accompanying Republic of Peru Resolucion Supreme No. 053 (6 March 2000).

¹⁴⁶ The Subject interview (15 August 2006).

¹⁴⁷ GAN Correspondence, GAN Representative Business Card, UN Vendor Website; UN vendor response to ITB (25 February 2000); and UN vendor letter to Andrew Toh (12 March 2001) (discussing GAN complaint).

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146. The Subject told PTF that he was not aware of any connection between the two at the time they were negotiating the LOA or the Memorandum of Understanding. He asserted the first time he learned of a possible link between GAN and SkyLink was in August 2000. At that time, OIOS investigators had been examining the positioning costs of the project. They informed the Subject and FALD officials that a GAN representative had worked previously for SkyLink. The connection was confirmed in February 2001 when the Subject attended a meeting with SkyLink. One of its representatives complained about the OIOS investigation into positioning costs for the helicopter.
147. Moreover, records reflect that in the summer of 2000, FALD staff sent facsimiles to SkyLink's main number.¹⁴⁸ This is particularly troublesome in light of the fact that the Organisation did not have an existing contract with SkyLink. Such evidence, though circumstantial, is highly suspicious. At least by early April 2000, these commonalities should have alerted someone in FALD that there may be a connection between these two companies.
148. FALD staff was under instructions to avoid the appearance of prejudice against SkyLink following a previous arbitration ruling resulting in an award in SkyLink's favour. Nonetheless, the Subject said if he or FALD had known about the relationship between these companies, they would have been more cautious. FALD staff apparently was "very sensitive" to any involvement of SkyLink because of its history of controversial dealings. This fact alone may not have prevented DPKO from entering into the LOA, but staff would have been more "alert" and "doubly careful."¹⁴⁹

6. Waste of Funds

149. In sum, the Audit Review concluded that DPKO squandered US\$5.9 million in funds, the full amount the UN paid for the MI-26. Its conclusion appears to be based on a prior determination that the Mission did not need the helicopter.
150. The PTF does not agree with the Audit Review's conclusion. As explained above, UNTAET identified a justifiable – in this regard - need for the helicopter; this need was properly documented and appears to have been made in good faith.
151. Similarly, the evidence appears to support FALD's decision to use an LOA in light of the overall savings through an LOA. The Peruvian Generals quoted US\$1.9 million for positioning and depositioning costs.¹⁵⁰ While the initial estimated positioning costs recorded in the ATU requisition was US\$450,000, the seven commercial bids received quoted comparable

¹⁴⁸ UN Call Detail Records Database (Ext. 38655) (May 2000-October 2000).

¹⁴⁹ The Subject interview (15 August 2006).

¹⁵⁰ Brig. General Edmundo Silva Tejada letter to Hocine Medili (28 February 2000).

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positioning/depositioning costs for two helicopters, figures between US\$1.1 million and US\$3 million.¹⁵¹

152. DPKO staff found initial positioning costs expensive. At FALD's request, the Peruvian Generals provided a detailed breakdown for these figures. FALD officials then tried to work with the Peruvian officials to lower these costs.¹⁵²
153. OIOS reported comments made by a Peruvian official in East Timor that the actual costs of positioning were just US\$300,000.¹⁵³ FALD officials raised this issue with Lt. General Salazar-Monroe at the Mission, and he confirmed the costs were indeed as reflected in the invoices.¹⁵⁴
154. When asked about the high positioning/depositioning costs for the LOA, the Subject said that the commercial market had been behaving unpredictably at this time. For example, he reasoned that two commercial bidders who responded to both ITBs quoted entirely different positioning costs in each of its submissions. The Subject said they ultimately decided to pursue the LOA despite the high positioning costs because overall it was the best value. Since the Mission paid only for the hours the MI-26 flew, and not a set figure each month, the LOA provided the most cost-effective means to procure the aircraft. The PTF does not take issue with this view.

IX. SUDAN MISSION SHORT-TERM FUEL CONTRACT

155. Sections B-D below address issues raised in the Audit Review's Recommendations 17, 31, and 32 regarding procurement of the short-term fuel contract with SkyLink Aviation, Inc. (SkyLink). Concerning the Subject, the Review a) asserted poor planning and inflated requirements in the "irregular procurement" of the contract; b) described the Subject's role in the unjustified increase of fuel requirements from 6.5 million to 10 million litres per month; c) requested an investigation of whether the Subject and other UN staff colluded to award the contract to SkyLink. In addition, the sections below further discuss unjustified inflation of the NTE estimates for SkyLink's Best and Final Offer (BAFO) in December 2004. In sum, the PTF's investigation into these broad issues is ongoing and the PTF cannot reach a final conclusion concerning these allegations at this time. However, the PTF has identified a related issue, set forth in Section C, which supports a finding of mismanagement.

¹⁵¹ United Nations Abstract of Bids (p. 3 of 3). This figure was derived from IMIS. United Nations Requisition for Services (Req. No. RSQN5033) by Kevin Shelton-Smith (Requisition Date 5 January 2000).

¹⁵² Hocine Medili facsimile to Brig. General Edmundo Silva Tejada (3 April 2000) and Brig. General Edmundo Silva Tejada letter to Hocine Medili (4 April 2000).

¹⁵³ Hocine Medili facsimile to Lt.Gen. Salazar-Monroe (14 September 2000).

¹⁵⁴ Lt. General Luis Salazar-Monroe facsimile to Hocine Medili (26 September 2000).

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A. Background**1. The Planning Team**

156. The Subject led the original Planning Team in New York for the Sudan Mission. As a result, he was familiar with the planning and progress of the Mission from its inception in late 2003. At that time, the Subject initially served as Head of Logistics Operations (LogOps/LSD/DPKO), which was located at UN Headquarters, a role which he held until April 2004 when he was transferred to Khartoum as OIC, DPKO Sudan Planning Group, and Chief Administrative Officer-designate. The Subject was subsequently appointed to Chief Administrative Officer for UNMIS.¹⁵⁵
157. The Subject asserted that throughout his involvement with Sudan planning he generally supervised several groups at that time as well as those responsible for logistics planning. At the Subject's specific direction, Mr. Dhindsa led the Integrated Support Planning Team based at Headquarters.¹⁵⁶ At the same time, Mr. Ian Divers led a group of Logistic Support Division (LSD) staff members slated to become the future managers of the Mission. The Subject said that he supervised this group but was not involved in consultations on technical details.¹⁵⁷

2. SkyLink

158. SkyLink is a privately-owned firm based in Toronto, Canada, with subsidiaries in several countries. SkyLink is a long-standing vendor to the Organisation and began supplying air transport services to UN missions in 1989. During the 1990s, SkyLink was suspended twice from the UN vendor list following various allegations that it had manipulated the bidding process and acted improperly in the execution of various contracts. This suspension in 1993 led ultimately to an arbitration proceeding between the Organisation and SkyLink.
159. In early 2000, SkyLink returned to the UN vendor roster in good standing. In more recent years the company diversified its offering, and responded to solicitations from the Organisation for a wide variety of products and services. In 2004, SkyLink submitted bid proposals to supply fuel and fuel equipment to several UN missions, and was formally awarded the short-term fuel contract at UNMIS in January 2005. Pending the award of a long-term fuel contract, and at the time of this writing, SkyLink remains the fuel supplier at UNMIS. Notably, SkyLink also is a logistics supplier to the United States government, managing five major airports in Iraq.

¹⁵⁵ Luiz Carlos da Costa memorandum to Jane Holl Lute (8 April 2004).

¹⁵⁶ Jane Holl Lute memorandum to Hazel Scott and Luis Carlos da Costa (26 December 2003).

¹⁵⁷ The Subject interview (21 August 2006).

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B. Fuel Requirement Estimates for Sudan**1. Initial Estimate of Fuel Requirements**

160. In the autumn of 2003, subsequent to promising developments in the negotiations for the proposed Mission, PS and DPKO began preparations for a peacekeeping mission in Sudan.¹⁵⁸ A crucial component in establishing the Mission was to organize the supply and distribution of fuel for military operations and the civilian administration. Significant quantities of fuel were required to operate aircraft and vehicles, and provide electricity for the generators. The Supply Section at DPKO handled the requisition of the contract, while PS at UNHQ handled the procurement exercise. This complex logistics contract was one of the largest for the mission in Sudan, and the Mission's entire operation depended on an efficient and comprehensive supply chain.

161. In December 2003, Mr. Philip Taylorson of DPKO's Supply Section produced a fuel report which contained a basic fuel management plan for the proposed Mission. Mr. Taylorson had visited Sudan in the preceding weeks to assess the fuel and relevant logistical infrastructure. After the visit, Mr. Taylorson estimated that the initial requirement for the Mission would be approximately 6.5 million litres of fuel per month.

162. As a result, in January 2004, PS issued an RFP for a short-term fuel contract for seven locations in various regions in Sudan (excluding Darfur). The RFP expected the Mission would consume 6,495,445 litres of fuel (diesel and jet fuel combined) monthly,¹⁵⁹ a figure taken from Mr. Taylorson's report.¹⁶⁰ The calculation relied heavily on the logistics routes mapped, the type and size of military units envisaged, the number and type of vehicles and aircraft, and the locations specified in the plan. Three vendors responded, including SkyLink, which ultimately won the award.

2. Fuel Assessment Changes During 2004

163. The UN, however, did not immediately execute a contract with SkyLink because the peace process was not proceeding as quickly as the UN had originally believed. Until a peace agreement was signed, no Security Council resolution, and hence no deployment, could follow. Thus, throughout 2004, there was considerable uncertainty within LSD/DPKO regarding the deployment plans and fuel consumption needs of the Mission. Various plans were considered, involving different supply routes,¹⁶¹ but no new detailed calculations were completed until at least August 2004. Furthermore, the

¹⁵⁸ Security Counsel Presidential Statement (10 October 2003).

¹⁵⁹ RFPS 600, SOR, pp. 1-3.

¹⁶⁰ Sudan Survey – Fuel (December 2003).

¹⁶¹ For instance, on 17 March 2004, Mr. James Boynton of the technical preparatory team produced a rough calculation of fuel requirements on the basis of an alternative supply route via Entebbe in Uganda.

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Advance Mission was without a fuel expert and hence, no in-house capacity to calculate fuel requirements. The Mission therefore had to rely on the Supply Section at UNHQ, and specifically, Mr. Taylorson. In mid-August 2004, however, Staff Member 8 arrived in Khartoum to serve as the fuel officer.

164. Thereafter, the Mission shared responsibility with the Supply Section at UNHQ for fuel planning. Staff Member 8 obtained the latest logistics planning data from other units at the Mission and calculated fuel consumption estimates.¹⁶² However, according to Staff Member 8, he did not complete any new calculations until mid-September 2004.¹⁶³ Upon completion, Staff Member 8 passed on the revised figures to Mr. Taylorson, who made adjustments based on his own research and consultation with units of DPKO at UNHQ.
165. Between early September 2004 and in the first week of December 2004, various iterations of the fuel consumption and cost estimates were produced, both by Staff Member 8 and by Mr. Taylorson. Until the investigation is complete, the PTF cannot form a decided view on whether the various increases in fuel requirements were legitimate, and what role the Subject played in those increases. It shall be noted that the investigation into these issues concerning fuel contract is ongoing.
166. The PTF has ascertained that the Subject was not vested with primary responsibility for fuel planning; it was LSD/SSS that requisitioned the fuel and planned for its consumption. However, the Subject—both as Chief LogOps and as the CAO of the Mission—did participate directly in the logistical planning that impacted directly on the scale and scope of the short-term fuel contract for Sudan. Furthermore, he participated in discussions with DPKO concerning whether the procurement action begun in January 2004 should be suspended, cancelled or continued and was frequently informed of the progress of the procurement action. The PTF will defer its determination of the Subject's role in this matter until it reaches a conclusion as to whether the increases in fuel consumption estimates were justifiable and reasonable. One other matter, however, is more problematic.

C. Inflation of NTE amount in December 2004**1. NTE Amount Calculations dated 3 December 2004**

167. On 15 November 2004, in response to a request by PS, SkyLink submitted its BAFO, citing monthly fuel consumption of 10,735,179 litres.¹⁶⁴ After

¹⁶² Staff Member 8 reported to Stephen Kriken, Chief of Supply; Mr. Kriken reported to the Chief of Integrated Support Services (initially Ian Divers, then Upinder Klair, then Harjit Dhindsa), who in turn reported to the Subject.

¹⁶³ Staff Member 8 interview (29 August 2006).

¹⁶⁴ Alexander Yakovlev letter to Jan Ottens (5 November 2004) and SkyLink BAFO (15 November 2004), pp. 1, 16.

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receipt of the SkyLink's BAFO, DPKO undertook efforts to calculate the NTE amount.¹⁶⁵ The calculations were performed by Staff Member 9 based on the figures supplied to him by Staff Member 8, the Mission's fuel officer.¹⁶⁶ On 3 December 2004, Mr. Ian Divers, Chief of the Supply Section at LSD/DPKO, e-mailed the most recent NTE amount of US\$78,025,704 to the Subject, requesting him to review the calculations and provide a formal confirmation of the requirements.¹⁶⁷ On 6 December 2004, following review of the calculations by Staff Member 8, the Subject sent a facsimile to DPKO stating that "UNAMIS has reviewed the submission" and discussing a number of logistical issues, but adding that they did not affect the overall cost of implementation of the contract.¹⁶⁸

2. NTE Amount Calculations dated 6 December 2004

168. However, on the same day as the Subject sent his facsimile to DPKO, Staff Member 9 distributed a revised NTE amount of US\$85,907,554, stating that it was changed based on "revised fuel figures" that he received from Staff Member 8.¹⁶⁹ In his e-mail to Mr. Divers, Staff Member 9 stated that "the NTE rises to almost \$95 million due to the substantial increase in aviation fuel uplift in the 8th and 9th month of the contract." Staff Member 9's e-mail contained an obvious discrepancy, since the excel spreadsheet with calculations attached to the e-mail contained an amount of US\$85,907,554.¹⁷⁰ Shortly after receiving Staff Member 9's e-mail, Mr. Divers forwarded it to the Subject, pointing out that the increase from the previous NTE amount was due to incorporation of the "latest figures from Sudan (arrived over weekend)" and requesting him to "confirm [the figures] by return fax."¹⁷¹
169. In fact, PTF's interviews with relevant UN staff members as well as review of relevant documents show that the substantial increase in fuel cost in the 8th and 9th month of the contract (i.e., Phase 4) was due to unsubstantiated incorporation of fuel estimates for the "UN Family," largely consisting of fuel estimates for the World Food Programme (WFP), and amounting to an additional US\$22.5 million.¹⁷² The inclusion of WFP in the

¹⁶⁵ Philip Taylorson email to Christian Gregoire (29 November 2004); Staff Member 8 interviews (29 August and 1 September 2006); and Staff Member 9 interview (23 August 2006).

¹⁶⁶ Staff Member 8 interviews (29 August and 1 September 2006); Staff Member 9 interview (23 August 2006); The Subject interview (21 August 2006); and Staff Member 10 interview (18 August 2006).

¹⁶⁷ Ian Divers email to the Subject (3 December 2004) (with attachments containing NTE calculations).

¹⁶⁸ The Subject facsimile to Luiz Carlos da Costa (5 December 2004) (showing that the facsimile was drafted by Staff Member 8).

¹⁶⁹ Staff Member 9 email to Alexander Yakovlev (6 December 2004); Staff Member 9 email to Ian Divers (6 December 2004); and Staff Member 8 interview (1 September 2006).

¹⁷⁰ Staff Member 9 email to Ian Divers (6 December 2004).

¹⁷¹ Ian Divers email to the Subject (6 December 2004). Interestingly, Mr. Divers did not point out to Staff Member 9's typing error when forwarding his email to the Subject. *Id.*

¹⁷² Staff Member 8 interviews (29 August, 1 September, and 8 September 2006) (stating that "UN Family" included WFP, UNDP, UNHCR, OCHA, and UNICEF and that WFP amounted for 99.9 per cent of

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calculation was erroneous. The PTF continues to examine whether inclusion of estimates for WFP in the final NTE calculations was negligent or intentional. However, as discussed below, a lack of proper review by the Mission allowed this issue to go unnoticed.

3. Mission's review of the 6 December 2004 NTE amount

170. Shortly after receiving Mr. Divers' e-mail with updated NTE amount, the Subject sent an e-mail to Staff Member 11, Deputy Chief Integrated Support Services and OIC of Fuel Section at UNAMIS, instructing him to "review and prepare our reply" to the updated NTE calculations of US\$85,907,554.¹⁷³ At the time of receiving the Subject's e-mail, Staff Member 11 had been at the Mission for just one month and by his own admission "was not comfortable" with performing the functions of OIC of Fuel Section.¹⁷⁴ In the absence of Staff Member 8, who left the Mission on 6 December 2006 for a one-month leave, Staff Member 11 consulted Staff Member 9 regarding the NTE estimates.¹⁷⁵ In his e-mail dated 8 December 2004, Staff Member 11 requested Staff Member 9 to "suggest [a] response" to the Subject's request, because Staff Member 11 "have not been able to match/reconcile figures at my end."¹⁷⁶ Shortly after receiving Staff Member 11's email, Staff Member 9 responded by stating that "the Mission has final say as to what NTE is presented to the HCC" and that "[w]hat is needed at the end of the day is confirmation that [the] mission is happy and agrees with the data."¹⁷⁷ However, Staff Member 11's e-mail exchange with Staff Member 9 did not contain a substantive discussion of the reasons for the increase in the NTE amount. Likewise, Staff Member 11's review did not include any independent verification of the new NTE calculations.¹⁷⁸ Nevertheless, on 9 December 2004, Staff Member 11 reported that "I have gone through the

aviation fuel for "UN Family" estimates); Staff Member 9 interview (23 August 2006); Staff Member 10 interview (8 September 2006); Excel file "Surge Capacity Contractor – Fuel Requirements for UNMIS – 6 Dec 04" (created by Staff Member 8); Excel file "Surge Capacity Contractor – Fuel Requirements for UNMIS – 4 Feb 05" (created by Staff Member 8); and Excel file "UN - Sudan Forecasted Monthly Fuel Requirements" (created by Staff Member 8 on 21 November 2004).

¹⁷³ The Subject email to Staff Member 11 (7 December 2004); The Subject interview (31 August 2006); and Staff Member 11 interview (1 September 2006). Interestingly, the Subject, similarly to Mr. Divers, made no reference to Staff Member 9's typing error that was obvious from looking at the actual calculations attached to the email. The Subject email to Staff Member 11 (7 December 2004).

¹⁷⁴ Staff Member 11 interview (1 September 2006) and Staff Member 11 personnel file (showing Staff Member 11 joining the Sudan Mission on 6 November 2004).

¹⁷⁵ Staff Member 8 interview (1 September 2006) (stating that he handed his files to Staff Member 11 before departing from Sudan on 6 December 2004); Staff Member 11 interview (1 September 2006); Staff Member 11 email to Staff Member 9 (8 December 2004); and Staff Member 9 email to Staff Member 11 (8 December 2004).

¹⁷⁶ Staff Member 11 email to Staff Member 9 (8 December 2004).

¹⁷⁷ Staff Member 9 email to Staff member 11 (8 December 2004) (further commenting that "[m]y calculations are based upon spreadsheets sent to me by Ash over last weekend").

¹⁷⁸ Staff Member 11 interview (1 September 2006); Staff Member 11 email to Staff Member 9 (8 December 2004); and Staff Member 9 email to Staff Member 11 (8 December 2004).

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requirements, figures, and the costs” and that they “seem to be OK.”¹⁷⁹ In follow-up to Mr. Staff Member 11b’s e-mail, the Subject sent a one-line e-mail asking to “draft a short fax to Headquarters consenting to its proposal.”¹⁸⁰ The same day, a facsimile was sent to DPKO under the Subject’s signature stating that “we [UNAMIS] agree to the SKYLINK proposal and BAFO sent with your referred e-mail.”¹⁸¹

171. On 14 December 2004, HCC unanimously recommended for approval the proposed contract award to SkyLink in the NTE amount of US\$85,907,554.¹⁸² Minutes of the HCC meeting reflect that the HCC was not informed of the reasons for the substantial increase in the fuel figures in Phase 4.¹⁸³ On 25 April 2005, following a three-month negotiation and contract drafting period, the UN and SkyLink signed a contract for provision of fuel support services to UNMIS for US\$85,907,554, which was about US\$22.5 million higher than it should have been as it erroneously included fuel estimates for the “UN Family.”

172. The review of the updated NTE amount authorized by the Subject on 7 December 2004 was deficient, and a cause of the US\$22.5 million over-inflation of the NTE for the short-term fuel contract. As conceded by Staff Member 8, the increase of fuel consumption in Phase 4 was principally the result of the erroneous inclusion of the WFP figures.¹⁸⁴ The Subject’s approval of the two NTE amounts containing significant price differences occurred within a few days of each other. The Subject should have questioned the substantial difference in the figures.¹⁸⁵ It cannot be said that US\$22.5 million discrepancy was a minor issue. Similarly, the Subject was aware that Mr. Najeeb was a new staff member at the Mission with a lack of necessary experience. As such, there was a need to closely examine the figures as a result of that fact. Further, in the end, the Mission relied upon the sole opinion of Staff Member 9 in reviewing the calculations—ironically, the same staff member who provided the Mission in the first instance with the final NTE estimates. The Subject maintains responsibility for each of these personnel decisions.

¹⁷⁹ Staff Member 11 email to Upindir Klair (9 December 2004).

¹⁸⁰ The Subject email to Staff Member 11 (9 December 2004).

¹⁸¹ The Subject facsimile to Luiz Carlos da Costa (9 December 2004) (showing that the facsimile was drafted by Staff Member 11).

¹⁸² HCC Meeting Minutes No. HCC/04/83, p. 20-26 (14 December 2004).

¹⁸³ *Id.* at p. 23 (stating that “[d]istribution cost of fuel . . . was consulted with LSD Transportation Section and UNAMIS and was considered reasonable”).

¹⁸⁴ Staff Member 8 interviews (29 August and 1 September 2006); Staff Member 9 interview (23 August 2006) (stating that revised fuel consumption figures must have included WFP); and Staff Member 10 interview (8 September 2006) (stating that fuel planning-related discussions with “UN Family,” including WFP, were never formalized).

¹⁸⁵ The Subject interview (31 August 2006) (stating that he was not aware of any substantive developments that warranted actual inclusion of the WFP figures into fuel assessments for the Mission).

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173. It is evident that the contract between the UN and SkyLink provided that payments were to be made against SkyLink's actual invoices, and that the Organisation did not guarantee payment for the entire NTE amounts.¹⁸⁶ However, the erroneous inclusion of WFP figures into NTE calculations had potentially negative consequences for the Organisation. As was emphasized in the Audit Review, projected budget inflation created risks, one of which was that SkyLink could claim a loss of significant revenue at the expiration of the contract period if such sums had yet to be paid in full, irrespective of the incursion of actual costs.¹⁸⁷ In fact, this concern came to fruition in this case as SkyLink ultimately did claim substantial financial losses in the amount of US\$10.5 million directly relying on the NTE amounts.¹⁸⁸ The PTF continues to examine the potentially negative implications of the overestimation of the NTE amount for the short-term fuel contract.

174. The PTF further continues to examine the conduct of at least two staff members who appear to have been aware of the unsubstantiated increase in the fuel assessment as early as January 2005, about three months before the contract was signed. Whether or not the inclusion of the estimates into final NTE calculations was negligent, or the product of intentional malfeasance, continues to be a subject of further examination by the PTF.

D. Alleged Collusion with SkyLink

175. The Audit Review expressed a concern that favouritism on behalf of SkyLink existed in the contract procurement process, a concern which the PTF also shares after considerable independent examination. While the PTF continues to investigate this matter, the PTF has not identified evidence that the Subject participated in any such effort.

176. The following facts are relevant in reaching this assessment. On 20 July 2004, the Subject attended an internal meeting to discuss, *inter alia*, the fuel requirement contract. At this meeting, Mr. Maxwell Kerley, Deputy Director DPKO/LSD, served as the chairperson, and the participants discussed the fact that SkyLink was the sole vendor to have been found technically compliant. Shortly following this meeting, the fuel requirements were raised. These events gave rise to a concern of a potential concerted effort to afford SkyLink an advantage in the selection process, and confidential information.

¹⁸⁶ UN-SkyLink contract No. PD/C0329/04, section 3.1.

¹⁸⁷ Audit Review, para. 60.

¹⁸⁸ The issue of SkyLink's alleged losses came up during negotiations of the extension of the SkyLink's short term fuel contract. According to notes from a meeting between DPKO, DM, PS, and OLA, dated 5 January 2006, during the negotiations SkyLink "indicated that it would be willing to extend the contract only if the RFP volumes were achieved . . . or, alternatively, if the existing price structure was revised to minimize the risks and that past losses were compensated." Record of Discussions and Decisions Taken at the Meeting Concerning Fuel Support Services for UNMIS (5 January 2006).

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177. The Subject acknowledged that such a discussion about SkyLink did occur. The information that SkyLink was the sole bidder, however, had been common knowledge within both DPKO and the Mission itself for months. Therefore, this fact was no secret. As well, this information had been transmitted in the course of normal communications between staff most closely responsible for planning the fuel contract. The Subject told the PTF that he had received memoranda to this effect, and that he had engaged in conversations with others about this issue as early as the end of March, or the beginning of April, 2004.¹⁸⁹
178. The PTF has not identified evidence that the Subject participated in any effort to purposefully favour SkyLink in the process. Nor has any evidence been adduced that the Subject received tangible or intangible benefit from SkyLink. To the contrary, in the summer of 2004, the Subject alone voiced his concerns to DPKO colleagues in awarding a turnkey contract to SkyLink,¹⁹⁰ and initiated an internal debate about seeking alternative means of fuel supply. The Subject further emphasized that he called for a cancellation of the bidding exercise when he thought that there had been a significant change in the Mission fuel requirements, an assertion the PTF has confirmed as accurate.
179. Furthermore, the PTF has not identified evidence of improper contact between the Subject and SkyLink during the procurement process. The review of telephone and other data records do not reflect evidence to the contrary.

X. SUDAN FOOD RATIONS CONTRACT

180. In 2005, Eures Support Services (Cyprus) International, Limited (ESS) was selected to provide food rations to UNMIS. Ultimately, the provision of these services and attendant costs exceeded US\$201 million.¹⁹¹ This section of the Report addresses this award in so far as it concerns the Subject's role in exercising overall responsibility for managing it. The investigation of the provision of goods and services by ESS to the Organisation, which was provided in the absence of a signed and executed contract, continues to be a matter of ongoing investigation.
181. First, the interaction between the Organisation and ESS was complicated by the lack of a formal contract with ESS. While the failure to have such a written document in place exposed the Organisation to the risk of financial harm, the Subject bears no fault for this circumstance. However, the

¹⁸⁹ The Subject interview (21 August 2006).

¹⁹⁰ The Subject email to Clemens Adams and Philip Taylorson (18 June 2004).

¹⁹¹ Eures Support Services (Cyprus) International Ltd. is a fully owned subsidiary of Compass Group PLC (Compass Group). ESS was registered as a vendor with the UN in September 2001, when several Compass Group subsidiaries were consolidated under the ESS umbrella.

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Mission's actions in the absence of a written contract, and the Subject's overall managerial responsibility in this circumstance, is discussed herein and a subject of the PTF's investigation concerning the Subject and others.

182. By way of background, at the inception of the Mission's formation the Organisation required a mechanism to supply food rations and associated services to the troops. As a result, on 31 December 2004, ESS was selected to supply food rations to the Mission in Sudan. The proposed contract was for a term five years, and its value with an NTE of US\$201,560,104.80.¹⁹² That same day, PS forwarded a Letter of Award to both ESS and the Mission which authorized ESS to begin immediate mobilization, and identified the Subject as the contact person in the Mission.¹⁹³ Although the Letter of Award had been issued, the Organisation and ESS did not execute a written contract. While the Letter of Award advised that a draft contract could be expected by third week of January 2005, such a document was never prepared by that time.¹⁹⁴ In fact, a contract had yet to be executed when ESS was suspended from the Organisation's vendor roster in October 2005.¹⁹⁵

183. Because of the imminent arrival of the troop contingent, the Mission was placed in a position in which it was forced to utilize ESS to provide rations and related services, despite the lack of a formal contract. The Mission cannot be faulted for the existence of such a circumstance, and blame cannot be placed upon them for the use of ESS' services notwithstanding the lack of a formal agreement. Such services were vital, and urgent. Therefore, goods and services were provided by ESS pursuant to the Letter of Award, which failed to include precise terms for pricing as well as other important matters. (The Subject offered that he believed the Letter of Award constituted a sufficiently binding commercial relationship between the UN and ESS notwithstanding the lack of a formal contract.) Nevertheless, based on the Letter of Award, ESS commenced mobilization with the consent of the Organisation, and the Mission placed corresponding orders for food rations.¹⁹⁶

184. In the period between April and December 2005, a number of problems arose in the provision of these rations. First, Mr. Terrence Allen, the Mission's food rations officer, unilaterally agreed with ESS on a pricing list for commodities which fell outside the ration scale, and was contrary to food management guidelines.¹⁹⁷ Second, Mr. Allen ordered rations for a contingent of 10,000 troops, despite the fact that the actual troop strength was only 7,000.¹⁹⁸ Further, Mr. Allen agreed to accept, and pay for, stock that had

¹⁹² HCC Minutes of Special Meeting No. HCC/04/87 (30 December 2004).

¹⁹³ Alexander Yakovlev email to Andy Seiwert (31 December 2004) with attached Letter of Award.

¹⁹⁴ Alex Yakovlev memorandum to ESS (31 December 2004).

¹⁹⁵ ESS was suspended followed allegations of corrupt practices, which will be discussed in a subsequent report.

¹⁹⁶ ESS-UNAMIS mobilization Report (16 February 2005).

¹⁹⁷ Linda Telles email to Harjit Dhindsa (7 December 2005).

¹⁹⁸ Id.

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passed its expiration date.¹⁹⁹ In arguing that his actions were appropriate, Mr. Allen asserted that “the contract was not for obedience but only a guide,” and that his actions were justified, a difficult position to understand.²⁰⁰ Nonetheless, Mr. Allen engaged in these activities in the absence of clear instructions from supervisors.²⁰¹

185. UNMIS continued to engage ESS’ services and accept ESS’ goods throughout 2005 notwithstanding the lack of a formal contract. Throughout much of this time, the Subject failed as a CAO of the Mission to issue directions to his staff regarding the manner in which the Mission should conduct its business with ESS, and the procedure to be followed. In effect, there was a lack of guidance provided concerning the Mission’s interaction with ESS, the lack of which carried potential financial implications and risks.
186. Ultimately, in December 2005, the Subject issued a memorandum outlining the scope of work for the Contracts Management Unit (CMU), a unit charged with monitoring contract implementation. In the memorandum, the Subject finally set forth guidelines for the management of the food rations, and related responsibilities.²⁰² However, this effort was made only upon learning of Mr. Allen’s actions, including his unilateral agreement with ESS of a pricing list for commodities which fell outside the ration scale. Shortly thereafter, Mr. Allen left the Organisation.²⁰³
187. By January 2006, UNMIS had expended more than US\$4,662,223 for food rations in the absence of a formal contract.
188. In the estimation of the PTF, the Organisation faced potential risks as a result of operating without a formal contract, and suffering from a lack of direction. The food rations contract represents an additional example of an apparent deficiency of internal controls, and a resulting circumstance of management and financial risks. The issue of whether the Organisation suffered any actual loss as a result of these actions is a subject of continuing examination by the PTF. Notwithstanding such actual loss, the potential was certainly present.

¹⁹⁹ ESS-UNAMIS Mobilization Report (16 February 2005).

²⁰⁰ Linda Telles email to Harjit Dhindsa (7 December 2005).

²⁰¹ Mr. Allen’s conduct towards ESS will be subject of a subsequent report.

²⁰² The Subject Administrative Instruction to Mary Roth and Harjit Dhindsa (19 December 2005) and Staff Member 12 interview (30 August 2006). Similarly, as was explained to the PTF by the Chief of the CMU, there was no briefing when she commenced duties as Chief in April 2005. *Id.*

²⁰³ Staff Member 12 interview (30 August 2006).

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XI. PTF FINDINGS**A. UWA**

189. The investigation has demonstrated that, notwithstanding the fact that the Subject was a signatory on behalf of the Organisation to the UWA agreement to provide fuel to the aircraft utilized by the SRSG, the investigation has not identified evidence that the Subject was aware of the use of the contract by personnel in the Aviation Section to obtain fuel services for the deployment of troops from Cairo to Sudan until after the services were rendered. However, the Subject should have had an awareness of the manner in which the Mission was going to secure such services, as he was vested with final procurement authority. When the Subject learned that the Organisation had incurred an outstanding balance of just under US\$1million for this service, he granted approval to pay the balance, and subsequently ordered the matter to be presented to the LCC. Ultimately, the Organisation paid in excess of US\$1.3 million for these services. The authorization of these payments by the Subject contravened Financial Rule 105.13 in as much as it exceeded his delegated financial authority, and this financial rule.

190. Further, the Subject's argument that a procurement exercise was not triggered because the outstanding balance constituted a debt by the Organisation to UWA, rather than a binding contract, lacks merit. Had proper procedures been followed, a requisition would have been raised, a procurement initiated, and a contract signed. Or, in the alternative, an amendment to the existing UWA contract could have been sought with the advice and consent of the procurement service. In either event, a procurement exercise was necessary. The lack of a written "contract" for the provision of these precise services prior to fuel being obtained is of no legal or practical moment. Certainly there was reliance upon, and an expectation pursuant to, a written agreement in the first instance between the Organisation and UWA for the provision of distinct fuel services. A belief by the parties that the subsequent fuel services were obtained and provided under the existing agreement, and constituted in effect an amendment to the contract, resulted in the ability of the Organisation to acquire fuel services which were ordered by an authorized representative of the Organisation. Thus, it can reasonably be said that the fuel services were obtained in reliance upon the existing agreement with UWA to provide such services to the Organisation, albeit for a separate and distinct purpose. In effect the incursion of the debt, and the payment of it, was affirmation of an oral agreement between the parties.

191. Further, the incursion of the expense prior to the presentation of the matter to the LCC and HCC triggered the *ex post facto* provisions of the procurement rules. Under these rules, matters of presentation to the HCC after a service to the Organisation had been provided should occur in only exceptional circumstances, and not as a result of a managerial shortcoming. By the

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Subject's own admission, the circumstance arose because of such a "mental lapse" of the "requisitioner." Such a "mental lapse" is difficult to accept, and does not excuse accountability. The Mission is the requisitioner, an entity over which the Subject serves as the head of its administration.

192. The presentation of the matter to the LCC was delayed several months in part as a result of the Subject's refusal to sign and accept the meeting minutes of the LCC because of perceived corrections which were required to be made. The matter was first presented on 25 October 2005, and again on 20 November 2005, without formal notification to PS and the HCC that such a debt had been incurred, and that more than \$1.3million was expended without a procurement exercise. Regardless of any precise requirement to notify the HCC of the incursion of the debt and its payment, the spirit of the procurement and financial rules dictated that PS and the HCC should have been informed in some manner early in the process—and certainly after knowledge of the debt was identified by senior management. When the Subject, as CAO, authorized payment of the debt, he thereafter assumed even greater responsibility that the process follow the proper procedure and that prompt notifications of the debt be made to PS, the HCC, and relevant officials at UN Headquarters. Certainly, the need to achieve accuracy of the minutes is of paramount importance. However, the sluggishness with which the minutes were sought to be corrected becomes problematic because it constituted an additional delay in the presentation of the matter to the HCC.
193. The PTF does not pass upon the issue of whether the need to obtain such fuel services constituted an exigent circumstance in the first instance. It may well have. However, this fact, which is well appreciated by the PTF, is not particularly relevant to the analysis here. It is the subsequent payment of the debt, and not the incursion of the debt in the first instance, that is at issue. Therefore, while the investigation has not revealed evidence that the Subject caused the use of the UWA contract for air transport of troops, he failed to properly address the situation notwithstanding his belief that the debt was validly incurred, and payment was rightfully due and owing. The Subject made this determination himself without consultation with the LCC and the HCC. Such unilateral action is violative of the letter and spirit of the relevant rules. Certainly the Subject may have been ultimately proven accurate that the debt was validly incurred, however, this independent decision unilaterally deprived the process from taking its proper course. In taking such action, the Subject deprived the relevant bodies in the Organisation, including the PS, the LCC and the HCC, of participating in the process, and appropriately passing upon whether the services were adequately rendered, the debts validly incurred, and payment properly made.
194. Lastly, despite the Subject's claims to the contrary, it is evident that proper controls were not sufficiently put in place to safeguard against this divergence from appropriate and required procedure. Full effort should have

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been made to identify all those responsible for the “requisitioner's lapse,” including those individual(s) who communicated directly with UWA. Further, there should have been appropriate reinforcement of the need for adherence to the financial and procurement rules, and cautioned about potentially severe implications of a failure to follow them.

B. Kadugli Lights

195. The procurement process for the runway lights at Kadugli Airport in Khartoum was flawed as a result of the activities of an official in the aviation unit and a procurement officer. The Subject did not have initial involvement in the procurement exercise and claims he was not aware of such misconduct in the normal course. However, the Subject learned of the procurement when a subordinate informed him of the prospective purchase to facilitate flights during evening hours, a practice at the time forbidden by the local authorities. The Subject, an expert in aviation matters, nevertheless approved the purchase notwithstanding the fact that the technology did not meet the approval of the regulatory body recognized by the Organisation, ICAO, and that the Sudanese government had yet to approve night flights. In light of the Subject's professed authority in aviation matters, his argument that he was unaware of the ICAO standard, and the fact that the local Sudanese Civil Aviation Authority approved temporary use of this technology, is unavailing. As CAO of the Mission, and a UN Staff Member, the Subject certainly should have known of the propriety of the use of such technology, and the validity of the purchase under existing guidelines of the Organisation, prior to the expenditure of the funds.

C. MI-26 Helicopter

196. The PTF has examined the decision making process to secure the use of a heavy lift helicopter in UNTAET. Evidence was presented that officials believed there was a need for such services by the Organisation, and the legitimacy of the need was identified after inquiry by officials of FALD. However, there was some disagreement on this issue, and at least one official voiced a contrary view. The PTF does not reach this issue in this report as it is not dispositive of the issues concerning the Subject. After the decision was made to secure such services, the Mission in good faith believed the use of a Letter of Assist (LOA) was in the Organisation's best interests, a decision which the investigation has revealed was made in good faith.

197. However, the investigation has identified that a scheme existed between Peruvian officials and others to obtain monies from the Organisation in return for the provision of the helicopter. It was then evident that a third party, Global Aviation Network (GAN) maintained a role in the transaction and provision of these services, and that certain officials purporting to act on behalf of the Peruvian Government requested that the Organisation make

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payment to a Swiss bank account controlled by GAN. In late 2000, press accounts of a purported scandal involving the Peruvian officials were published in various newspapers. The Subject acknowledged he was aware of these press reports. On its face, and in light of these facts, the role of GAN appeared dubious. At the time, the nature and extent of the involvement of GAN and SkyLink in this matter should have been more closely scrutinized by FALD officials, and the Subject. Inquiry should have been made, or caused to have been made of the Peruvians and/or GAN officials, about the precise nature of the involvement of the officials of SkyLink. While FALD officials cannot be faulted for failing to uncover the scheme, identification of the motivating forces behind this transaction during the initial negotiations of this matter may have led to further scrutiny of the circumstances surrounding the LOA, and aided any subsequent inquiry. Further efforts in this regard should have been made.

198. The PTF has not identified evidence that the Subject, or other FALD officials, were a party to the scheme or had any knowledge of it prior to its publication in the press.

D. Sudan Short-term Fuel Contract

199. PTF has initiated a broad review of the assessments for the provision of fuel for UNMIS, including the increase in the projected requirements, and the corresponding increase in the estimation of costs associated with such anticipated fuel increases. The PTF's investigation of the circumstances surrounding the increase in fuel consumption, and relatedly, whether there was any improper concerted effort to purposefully inflate such figures, is ongoing. The PTF has also examined whether the Subject participated in any effort to favour the vendor SkyLink in the procurement process.
200. The PTF's investigation has not identified evidence that the Subject was involved in the initial fuel assessments and calculations, or in the technical evaluation of the proposals submitted by vendors. Thereafter, the Mission made a decision to increase the fuel requirements in 2004, a circumstance which continues to be investigated by the PTF. The PTF continues to explore whether the decision to elevate these estimates involved any nefarious behaviour of UN Staff.
201. The PTF has not identified evidence that the Subject colluded with other staff members at UNMIS, DPKO, or PS to award the contract for the provision of fuel in UNMIS to SkyLink. The PTF does not address in this report the broader question whether in fact such collusion existed as it is unnecessary to reach such a determination in this report. This allegation continues to be a matter under investigation by the PTF.
202. The PTF finds that the revised NTE for the short term fuel contract which increased the fuel costs by approximately US\$22.5 million, approved by the

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Subject, was unjustified. The increase improperly and inaccurately included estimates for the “UN Family,” which principally consisted of WFP. The PTF further finds that the Subject was aware of the proposed increase, was presented with the figures on 6 December 2004, and approved the revised calculations without ensuring an appropriate review of the figures by the Mission’s staff. The Subject had been presented with two sets of calculations which reflected an unsubstantiated difference of more than US\$22.5 million in fuel costs for Phase 4 of the deployment. The risk to the Organisation from an inflated NTE amount was potentially profound for it allowed an opportunity for the vendor to eventually claim loss of revenue at the end of the contract period. Indeed, SkyLink ultimately claimed losses of more than \$US10 million, relying in part on the NTE figure.

203. The PTF has not identified any evidence of improper contacts between the Subject and any representatives of SkyLink. Furthermore, the PTF has not identified evidence that the Subject received any tangible or intangible benefit from SkyLink in connection with the matters it has examined.

E. Sudan Food Rations Contract

204. The vendor ESS supplied food rations to the Mission in the absence of a written contract throughout 2005. Fault for the absence of a formal agreement does not lie with the Mission, or the Subject. The Mission was placed in a circumstance in which it was required to urgently obtain critical goods to feed troops. As such, the Mission utilized ESS to obtain such goods notwithstanding the lack of a formal agreement. The Mission's food rations officer, Mr. Terry Allen, maintained principal responsibility to interact with ESS, without ample supervision. The investigation has revealed issues and potential risks flowing from this circumstance in which a Staff Member acted unilaterally with a vendor in a circumstance where the Organisation was spending significant sums of money. This situation provides an additional example of a lack of managerial oversight and the failure to ensure that proper controls were in place, which, in and of itself may be less noteworthy. However, in light of the totality of the circumstances, and the other matters set forth herein, such a dereliction becomes more significant.

XI. CONCLUSION

205. The PTF is not unmindful of the challenges faced at the inception of any mission, and the difficult environment which was presented in Sudan in this case in particular. While certain failures could reasonably be expected to occur in these circumstances, this reality does not translate into a corresponding lessening of expectations of senior management, and most importantly the Subject who served as the Mission's chief administrative official, to appropriately respond to such failures, take appropriate corrective action, establish proper controls, and engage in best efforts to ensure that all

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staff comply to the greatest extent with the letter and spirit of the relevant procurement and financial rules.

206. It is evident that certain transgressions were presented to the Subject after they had materialized, and that the Subject was forced to react to a situation in which rules and/or policies were already ignored. Nevertheless, as the Mission's CAO, it was incumbent upon the Subject to establish controls to avoid future reoccurrences, create an environment mindful of the need to adhere to the Organisation's financial and procurement rules, and operate within existing rules himself—setting an appropriate example. In sum, there must be a cumulative effect when findings intimate similar conduct, namely a lack of managerial oversight and the lack of proper controls to secure adherence to these rules.
207. The Aviation Section in UNMIS was the unit which presented the most problems, and suffered from the greatest number of allegations of violations of the procurement and financial rules. The failures identified in this section are of greater concern to the extent that the Subject was experienced in this field and maintained a self-professed interest in the activities of this section.

XII. RECOMMENDATIONS

208. The PTF recommends that consideration be given by the Organisation whether the failings identified above warrant sanction, and in particular whether the lack of application of the financial rules warrant personal accountability.

INVESTIGATION REPORT ON THE SUBJECT

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ST/SGB/273, paragraph 18, of 7 September 1994*

Investigation Report

United Nations Staff Member



APPENDIX A

Report Submitted by:
OIOS Procurement Task Force
13 September 2006

INVESTIGATION REPORT ON THE SUBJECT

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Note to File

Record of Conversation – Second Conversation with PTF
about UNTAET Helicopter

Given that I have been required to review the draft record of my second conversation with representatives of the Procurement Task Force (PTF) about the UNTAET helicopter matter “on the spot” and not at my leisure with the assistance of counsel I cannot reasonably be expected to remember all the details of that conversation sufficiently to make accurate corrections, or make meaningful comments or additions, in every instance. Its contents therefore should be regarded as unreliable, and I would not agree to be bound by anything contained therein without careful consideration.



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Investigation Report

United Nations Staff Member



APPENDIX B

Report Submitted by:
OIOS Procurement Task Force
13 September 2006

INVESTIGATION REPORT ON THE SUBJECT

REDACTED AND STRICTLY CONFIDENTIAL

TO: [REDACTED]
A: UNMIS

DATE: 6 June 2005

FROM: Jane Holl Lute, Assistant Secretary-General
DE: for Peacekeeping Operations

REFERENCE:

SUBJECT: Delegation of procurement authority under the Financial Regulations and
OBJET: Rules of the United Nations

1. This delegation of authority supersedes all previous delegations of procurement authority to officials in UNMIS under the Financial Regulations and Rules. Its purpose is to further delegate the authority vested in me by the Assistant Secretary-General for Central Support Services (ASG/CSS/DM) in his memorandum dated 16 February 2005, including, where specified, in consultation with the Controller.
2. The authority delegated to you as CAO, UNMIS is personal; you do not possess this authority solely by virtue of your office. While you may assign an alternate to exercise the authority described herein, your alternate must have been cleared to perform significant financial management functions in accordance with ST/SGB/213/Rev.1. The assignment of an alternate must be in writing with a signed copy promptly provided to me.
3. You may further delegate the authority delegated to you under this instrument, in whole or in part, to the Chief Procurement Officer or other suitably qualified staff under your supervision in UNMIS, whose designation has been cleared by the Chief Procurement Service, OCSS/DM (PS) and by me.
4. All delegations of authority must be issued in writing and a signed copy promptly submitted to me, with a copy to the Chief PS, for monitoring and compliance purposes. A sample memorandum for this purpose is attached as **Annex A**. The level(s) of authority delegated to UNMIS staff members must not exceed those specified in **Annex B**.
5. The act of delegating authority and responsibility does not absolve the official to whom authority was initially delegated of responsibility for the manner in which the authority is exercised. Accordingly, you as CAO, UNMIS may be held personally accountable and must likewise hold those to whom you have delegated authority accountable for their actions in the performance of their delegated authority and responsibility.

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I. Procurement Authority

6. You are hereby granted the authority to enter into contracts for the purchase or rental of services, supplies, equipment or other requirements for UNMIS up to a financial limit of US \$200,000 on an annualized basis¹, involving commitments to a single contractor in respect of a single requisition or series of related requisitions in accordance with Financial Rules 105.13 through 105.19, with the exception of 105.17, and in compliance with established procedures described in detail in the Procurement Manual available in the Procurement Service intranet website (<http://extranet.unsystem.org/pd>).

7. To enhance operational efficiency and notwithstanding the US\$200,000 financial authority granted to you, you are authorized to procure “Core Requirements”, which for the purposes of this delegation means the goods and services listed in **Annex C**, up to the annualized financial limit for commitments to a single contractor in respect of a single requisition or series of related requisitions of US\$1,000,000.

8. Promptly, and no later than thirty (30) days after the procurement of a Core Requirement that exceeds \$200,000 in value, you or your authorized delegate shall submit a written report to me and to C/PS. Such report shall contain, *inter alia*, the following information: description of commodity purchased, summary of procurement process, name of selected vendor, duration and value of contract, approved minutes of the Local Committee on Contracts and the financial rule basis of the procurement award. For monitoring purposes, the Headquarters Committee on Contracts (“HCC”) may be requested to review any field mission procurement cases involving Core Requirements on an ex-post facto basis.

9. For non-core requirements exceeding \$200,000 in value, and for Core Requirements exceeding \$1,000,000 in value, no final action leading to the award of a procurement action may be taken without HCC review and the subsequent approval of ASG/CSS/DM.

10. “Special requirements”, which for the purposes of this delegation means the goods and services listed in **Annex D**, that by their nature lend themselves to centralized procurement (e.g. for reasons of standardization, economies of scale, global multi-year master agreements), shall only be procured through PS/UNHQ, unless otherwise approved in writing by the C/PS. Copies of all requests by UNMIS to purchase special requirements shall be provided to me.

11. In cases of exigent procurement requirements, the provisions set forth in Section 9.5.2 of the Procurement Manual shall apply.

1. For the purposes of this instrument, “annualized basis” shall mean one calendar year, except for peacekeeping operations with special accounts, where “annualized basis” shall mean the period of one year from 1 July to 30 June.

INVESTIGATION REPORT ON THE SUBJECT

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II. Establishment of Local Committee on Contracts

12. Pursuant to this delegation and Financial Rule 105.13 (b), you are hereby authorized to establish Local Committees on Contracts (LCC) for UNMIS, which shall be comprised of the following members or those with comparable responsibilities:

- Member: Finance Officer
- Member: Legal Officer
- Member: Administrative Officer
- Attendant: Chief Procurement Officer (Ex-Officio)
- Attendant: Secretary of LCC (Ex-Officio)

13. The Chairperson of the LCC, its members and alternates shall be appointed by you or your authorized delegate, and their names and any changes in the membership shall be promptly communicated to me and to the Chairman, HCC for monitoring and compliance purposes.

14. The LCC shall render written advice to you or your authorized delegate on:

- (a) All contracts to be entered into which involve commitments to a single contractor in respect of a single requisition or a series of related requisitions for expendable and non-expendable supplies, rental agreements and service contracts in excess of \$75,000;
- (b) Proposals for modification of an existing contract not to exceed the amount of the previously approved contract by more than 20%, or \$75,000 whichever is the lower amount, or renewal of contracts previously reviewed by the LCC; and
- (c) Such other matters as may be referred by you, or your authorized delegate, to the LCC, including such matters as may require referral to the HCC for advice.

15. Intended transactions for:

- (a) Core requirements which are estimated by you or your authorized delegate to exceed US \$1,000,000; and
- (b) Other requirements which are estimated by you or your authorized delegate to exceed US \$200,000

shall be submitted to the C/PS, with information copy to me, for review of the proposed requisition in order to determine whether appropriate procurement action should be taken at Headquarters or locally. Such intended transactions which the C/PS determines should be taken locally shall be handled as follows: (i) procurement actions shall be initiated locally, (ii) the proposed award shall be submitted to the LCC of UNMIS for its review and written advice to you or your authorized delegate (iii) and, if favourably reviewed by you or your authorized delegate, then referred and presented to the HCC through the C/PS

INVESTIGATION REPORT ON THE SUBJECT

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for written advice to the ASG/CSS/DM for approval, before a commitment is made by you or your authorized delegate in respect to such requisition.

III. Accountability

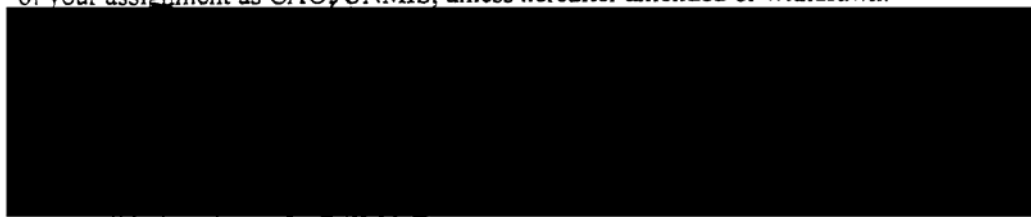
16. In accordance with Financial Rule 101.2, any staff member who contravenes the Financial Regulations and Rules or administrative instructions may be held personally accountable and financially liable for his/her actions. You shall remind all staff members to whom you assign or delegate responsibility pursuant to this delegation accordingly.

17. If any difficulty is experienced interpreting or enforcing the Financial Regulations and Rules of the United Nations governing procurement, related instructions, or this delegation of authority, I should be consulted immediately.

18. Any exceptions to the provisions of this delegation of authority must be referred to me for prior approval. Failure to abide by the provisions of this delegation may result in its withdrawal.

19. This delegation of authority shall take effect upon receipt of your confirmation, through your signature below, that you understand, accept and will abide by the provisions outlined above.

20. This delegation of authority shall remain in full force and effect until the expiration of your assignment as CAO, UNMIS, unless hereafter amended or withdrawn.



13 JUNE 2005
Date

cc: The Controller
Director, LSD
Chief Procurement Service
Chairman, Headquarters Committee on Contracts

INVESTIGATION REPORT ON THE SUBJECT

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Annex B

Maximum levels of procurement authority that can be delegated to [mission] personnel

Regional/Sector Administrative Officer (P-5 or P-4)	Maximum of \$75,000, at the discretion of the DOA/CAO in the duty station; exercise of authority is subject to review by the CPO in the duty station for procurement action in excess of \$30,000.
Senior Procurement Officer, (P-5 or CPO)	Maximum of \$75,000 at the discretion of the DOA/CAO in the duty station; exercise of authority is subject to review by the LCC for procurement actions in excess of the \$75,000.
Procurement Officer, P-4/FS7	Maximum of \$75,000; at the discretion of the DOA/CAO, in consultation with the CPO, in the duty station
Procurement Officer, P-3/FS6	Maximum of \$50,000; at the discretion of the DOA/CAO, in consultation with the CPO, in the duty station
Associate Procurement Officer, P-2/FS5	Maximum of \$25,000; at the discretion of the DOA/CAO, in consultation with the CPO, in the duty station
Procurement Assistants, G-5 and above or FS4/3	Maximum of \$7,500; at the discretion of the DOA/CAO, in consultation with the CPO, in the duty station

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Annex C

Core Requirements: Essential Goods and Services, which by their nature lend themselves to local procurement
Fresh food, if not already included in a rations contract
Building materials and refurbishment services
Waste disposal services
Landscaping, janitorial and cleaning services
Laundry/dry cleaning services
Local telecommunications services (excluding personnel)
Potable water supply
Catering and cooking services
Local utilities services (electricity, water, gas and sewer)
Local maintenance contracts
Local customs clearance and freight forwarding services
Petrol, Oil and Lubricants (POL) contracts

Annex D

Special requirements: Goods and services which by their nature lend themselves to centralized procurement (e.g. for reasons of standardization, economies of scale, global multi-year master agreements)
Chartering of aircraft
International sea freight
Specialized services (except those covered under 'Core Requirements' or in excess of personal delegation to CPOs)
All types of vehicles
Pharmaceutical products
Satellite imaging/aerial photography
Satellite transponder capacity
Medical equipment
Plants
Boats
Generators
Prefabricated structures
Rations
ICT hardware and software

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PROCUREMENT TASK FORCE

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Investigation Report

United Nations Staff Member



APPENDIX C

**Report Submitted by:
OIOS Procurement Task Force
13 September 2006**

INVESTIGATION REPORT ON THE SUBJECT

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Schedule of Payments to Universal Weather & Aviation By United Nations					
UWA Invoice	Amount	Invoice Date	Paymt Amount	Paymt Date	
1191846	1,198.00	22 June 2005	\$2,103.63	24 Jul 2005	
1194052	905.63	29 June 2005			
1200125	270.00	13 July 2005	\$734.00	16 Aug 2005	
1202727	464.00	20 July 2005			
1205258	180,654.68	27 July 2005	\$738,678.39	31 Oct 2005	
1211168	2,795.63	10 Aug 2005			
1213563	369,594.88	17 Aug 2005			
1218239	48,377.34	31 Aug 2005			
1220189 (late fee)	1,338.88	2 Sep 2005			
1225534	122,294.85	21 Sep 2006			
1229351	13,622.13	5 Oct 2005			
1207974	179,665.44	3 Aug 2005	\$179,665.44	8 Nov 2005	
1223265	2,835.00	14 Sep 2005	\$82,119.69	8 Nov 2005	
1226914	75,875.07	28 Sep 2005			
1228102 (late fee)	3,409.62	3 Oct 2005			
1232028	9,844.00	12 Oct 2005	\$9,844.00	8 Nov 2005	
1238766	2,111.85	31 Oct 2005	\$2,111.85	4 Dec 2005	
1234696	32,153.44	19 Oct 2005	\$33,963.44	15 Dec 2005	
1236916	1,810.00	26 Oct 2005			

*Payment of \$82,119.69 and \$9,844.00 combined for actual total payment of \$91,963.69

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UWA Invoice	Amount	Invoice Date	Paymt Amount	Paymt Date
1242288	14,255.68	9 Nov 2005	\$17,883.49	16 Jan 2006
1245549	3,627.81	16 Nov 2005		
1251071	267,641.82	30 Nov 2005	\$267,641.82	22 Jan 2006
1281880	5,550.29	8 Feb 2006	\$11,151.52	8 Mar 2006
1254432	(1,502.29)	7 Dec 2005		
1272746	540.00	18 Jan 2006	(note Credit to Invoice 1242288)	
1269974	16.20	11 Jan 2006		
1262778	3,986.00	28 Dec 2005	(note Credit to Invoice 1249014)	
1249014	4,747.00	22 Nov 2005		
1269973	(2,185.75)	11 Jan 2006		
1290556	77.08	3 Mar 2006	\$6,344.01	19 Mar 2006
1277831	4,672.71	31 Jan 2006		
1287194	1,594.22	22 Feb 2006		
1240459	20,470.63	3 Nov 2005	\$23,509.80	23 Mar 2006
1252956	2,224.91	5 Dec 2005		
1266580	638.90	5 Jan 2006	(Note these are all LATE FEES)	
1278905	175.36	3 Feb 2006		
\$1,375,751.08		Total Payments to UWA as supported by Invoice		