UNITED NATIONS

United Nations Interim Administration Mission in Kosovo



NATIONS UNIES

Mission d'Administration Intérimaire des Nations Unies au Kosovo

Investigation Task Force

Irregularities in the procurement and contract award for the New Car Park at Pristina Airport (Case 0274/04)

I. INTRODUCTION

- 1. This case arose from an audit report dated 28 February 2003 into the financial statements of Pristina International Airport conducted by the Chartered Accountants, which led to a general investigation concerning alleged corruption and irregularities in the course of procurement activities at Pristina Airport.
- 2. There are four specific allegations in this report of investigation;
 - a bidder, "Vendor 1" had its bid accepted when it contained no bid security;
 - a bidder, "Vendor 2" handed an open envelope to the PEAP Official, containing documents relating to the company's tender submission, including two diskettes, after the time for submission of bids had closed;
 - single-source procurement had been requested for the new car park lighting system when a competitive process would have sufficed;
 - approval of the contract and the "capital expenditure approval" for the new lighting system appear to have been requested retrospectively.
- 3. In a report on this matter prepared by the PEAP Official and addressed to the Divisional Manager, dated 8 October 2002, it is alleged that after a meeting held in the PEAP Official's office on 4 October 2002 on this contract, he/she found an envelope on his/her desk containing the sum of €5,200. However, this allegation forms the substance of a separate report under Case No 218/04.

II. APPLICABLE TERRITORIAL LAWS AND UNITED NATIONS PROCEDURAL RULES

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

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

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

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

Article 4.1 – "Competition among and participation in the procurement process shall be maximised."

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

Article 4.3.3. – "If a consultant or any principal, officer or employee of such consultant has participated or will participate in any manner in the preparation of the UNMIK Kosovo Interim Administration's Tendering for a contract, including but not limited to preparations of specifications or any other Tender Documents, no such consultant nor any principal officer or employee of such consultant, no "related person" nor any "illegal payer" may tender for or sponsor or participate in the Tendering for such contract."

Article 6.3.3 – "When the total estimated value of the contract exceeds DM 1,000,000, the Deputy Special Representative for Civil Administration or the Deputy Special Representative for Reconstruction may approve

- (a) deviations from the normal procedures specified in Articles 19-31 or
- (b) the use of any method of payment."

Article 8.2 –"Procuring entities shall maintain records of Public Procurement in sufficient details for the PPRB to verify that the provisions of this Instruction have been followed. For each procurement, the record shall contain as a minimum: justification pursuant to 6.3, (a) of the method of procurement chosen if that method differs from the normal method specified by this Instructions, or (b) of the procedures followed if they differ from the normal procedures specified by this instructions for the method of procurement chosen…"

Article 24 – "Direct Single Source Procurement may be used for Goods, Works or Ancillary Physical Services:

- 24.1 If such Direct Single Source Procurement is not used to
 - 24.1.1 Avoid Competition
 - 24.1.2 Discriminate against other suppliers and
- 24.2 Direct Single Source Procurement is the appropriate method to be used: 24.2.1 as the Goods, Works or Services can be provided by only one supplier:......"
- Article 31 "Emergency Procurement may be used for goods, Works or Services if:
 - 31.1 the need for the procurement is urgent;
 - 31.2 the conditions giving rise to the urgency were not under the control of nor due to the negligence or other action(s) of either the Requesting or the Procuring Entity;
 - 31.3 the urgency could not reasonably have been foreseen; and 31.4 the method of Emergency Procurement is not utilized;
 - 31.4.1 to avoid competition in quality and costs;
 - 31.4.2 to avoid the normal requirements of transparency; nor
 - 31.4.3 to discriminate against other suppliers"

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

III. METHODOLOGY

4. This investigation was conducted pursuant to Executive Decision No 2003/16 on the establishment of the Investigation Task Force. The ITF investigators conducted interviews with persons indicated to be witnesses and persons potentially implicated in the allegations; by obtaining documents from the Pristina Airport administration and from Pillar IV, which were then analysed for relevance to the inquiry at hand.

IV. BACKGROUND INFORMATION

- 5. Pristina International Airport constitutes a state owned enterprise under Yugoslavian law. The assets of the airport include the runways, terminal buildings, hanger, fuel storage facilities and equipment. During the period covered by this investigation, from 2001 until 2003, they were maintained by the Public Enterprise Airport Pristina, (PEAP) in cooperation with Military Units of the Kosovo Force (KFOR). Pursuant to United Nations Security Council Resolution 1244 dated 10 June 1999, and UNMIK Regulation No 1/1999 dated 25 July 1999. UNMIK is mandated to administer the territory of Kosovo, including state owned and publicly owned assets. This includes Pristina International Airport.
- 6. Until the end of June 2002, responsibility for the administration of the Pristina Airport was entrusted to the Civil Administration Pillar (Pillar II) of UNMIK, including Official 1 and Official 2. Further involved in this case was Department of Transport and Infrastructure (DOTI) Official 1. The DOTI was later known as the Transport Sector of the UNMIK Directorate of Infrastructure Affairs. DOTI Official 1 left UNMIK at the end of June 2002. DOTI Official 2 was recruited by the DOTI as an international staff member on 31 July 2000 in charge of airport operations and reporting to DOTI Official 1 and continued in this role until 30 September 2001. Engineering expertise was provided by a series of engineers seconded from the French Army, specifically Airport Engineer 1, Airport Engineer 2, and Airport Engineer 3, and later by a consultant from the Consulting Company.
- On 1 July 2002, the responsibility for the administration of the Airport passed from Pillar II to the Kosovo Trust Agency (KTA) and Pillar IV. The Divisional Manager was appointed. Under him/her were the PEAP Official and Official 3.
- 8. On 1 April 2004, Pristina International Airport, which had until that time been under the jurisdiction of KFOR, was handed over to civilian jurisdiction, under ICAO regulations.
- 9. It is against this background of change that procurement procedures relating to the following contract have been examined.
- 10. This report relates to the Contract for the construction of a new car park at Pristina Airport. The value of the contract was €801,438. It also deals with a single source contract to supply and install the lighting system at the airport car park in the sum of €34,501 and a second contract to supply and install a cover for the automatic barriers in the new car park in the sum of €24,864.
- 11. The case concerns allegations of corruption and irregularities in the tender procedures arising out of the procurement and contract award for the construction of the new car park at Pristina Airport; a single source contract to supply and install the lighting system at the airport car park and a further contract to supply and install a cover for the automatic barriers in the new car park.
- 12. An internal memorandum from DOTI Official 2 and Airport Engineer 1 dated 10 August 2001 indicates that the initial proposal to provide a new car park came from the PEAP Official, due to flooding in the area being used as the airport car park at that time, although the proposal was postponed until the following year to

ensure that the tender was launched in an appropriate manner, and to ensure that necessary funding was in place.

V. INVESTIGATIVE DETAILS

Allegation 1:

(It is alleged that two draft bid evaluation reports for the car park construction indicate that Vendor 1 had no bid security information in their bid documentation. However, the company is indicated in the final bid evaluation report and document entitled "report about rejection of the companies" to have passed the evaluation before being awarded the contract for the construction of the car park.)

- 13. A tender exercise was launched on 16 August 2002 for the construction of a new car park at Pristina Airport. The bid submission deadline was 14 September 2002. The tender evaluation process occurred on 17 September 2002 according to an undated letter written by the Procurement Officer to the members of the evaluation committee.
- 14. Two undated draft bid evaluation reports for the car park construction indicate that Vendor 1 had no bid security, (i.e. that it had not submitted a security from its Bank to guarantee its participation in the tender). However, a final bid evaluation report dated 30 September 2002 indicates that the contractor "Vendor 1" passed the evaluation and was awarded the contract for the construction of the car park.
- 15. A contractual agreement between UNMIK and Vendor 1, dated 1 October 2002, was signed by Official 4 Pillar IV on behalf of Pristina Airport. Information received from the Procurement Officer suggests it was signed by Vendor 1 Representative during a meeting on 5 October 2002.
- 16. When asked about the apparent difference between the two draft bid evaluation reports and the final bid evaluation report in his/her interview, a Pristina Airport Civil Engineer, who was on the evaluation committee, indicated that the first two draft bid evaluation reports related to the tender opening meeting at which he/she was not present. Therefore, he/she could not indicate the reason for the comments. He/she added that the final bid evaluation document dealt with the technical evaluation of the tender, and confirmed that Vendor 1 submitted correct documentation, as a result of which it was selected as one of the companies that fulfilled the specifications required in the tender.
- 17. The Procurement Officer indicated that the first two draft evaluation bids were given to him/her by the evaluation committee as working sheets and added that he/she did not view the draft documents as being official documents as they were not signed.
 - The Procurement Officer added: "The bank guarantee of Vendor 1 had all the conditions and they submitted the request for this project but the bank had forgotten to include the guarantee price, but referred to the project, which indirectly includes the sum. Regarding this project, this was the first project on which I worked at the airport and we decided that the bank guarantee would not be a decisive factor in the evaluation decision. We, the Committee, where I had no evaluation right, went for a technical evaluation in deciding which company would do the job. This was the verbal decision of the evaluation committee." The Procurement Officer also added "since this was one of the first evaluations we tolerated that aspect, but regarding the other projects we were stricter."

- 18. The ITF is unable to verify the Procurement Officer's statement, as it has not seen a copy of the bid security in the contract file. In addition, the ITF was not able to interview Vendor 1, since its representative is a potential suspect in an ongoing police investigation (ITF Case 218/02).
- 19. A bank guarantee for advance payment and a performance security have been located in the contract file. However, they are both dated 16 October 2002, after the contract had been signed.
- 20. When asked what type of document Vendor 1 had submitted in support of its bid and it whereabouts, the Procurement Officer told the ITF "the original copy of Bank Guarantee for Offer security was given back to Vendor 1 based on the rules since it brought the guarantee for performance and a copy has to be here in the file but it can be found at the Bank." Due to data protection provisions, the ITF was unable to secure a copy of it.

Allegation 2:

(It is alleged in a note from Airport Engineer 3 to the Procurement Officer dated 26 September 2002, that Vendor 2 handed an open envelope to the PEAP Official containing documents relating to the company's tender submission, including two disks, after the time for submission of bids had closed, and that the PEAP Official gave the envelope to Airport Engineer 3 for checking.)

- 21. A note from Airport Engineer 3 to the Procurement Officer, dated 26 September 2002, indicates that Vendor 2 handed an open envelope containing tender documents and two diskettes to the PEAP official, which he/she then handed to Airport Engineer 3 for evaluation. It is not clear whether the envelopes contained either a complete bid or the technical part of the tender documents.
- 22. The note also indicates that the evaluation committee were on the point of finishing their evaluation for the new car park. Therefore the time for submission of tenders had closed.
- 23. Airport Engineer 3's note states that the PEAP Official had asked the Consulting Company to draft the technical specifications and alleges that Vendor 2 were improperly given the opportunity to examine the tender specifications, prior to submitting their bid.
- 24. The ITF has been unable to contact Airport Engineer 3 to discuss the incident, despite efforts to trace him/her through the Authorities of his/her country. In addition, it was not possible to conduct an interview with Vendor 2 Representative, since he/she is no longer based in Kosovo.
- 25. A letter dated 25 September 2002 from the Consulting Company to PEAP, indicates that the company prepared the complete dossier for the airport car park and submitted it to PEAP on 14 June 2002. The Consultant confirmed this to the ITF and explained that the Consulting Company had drafted the technical specifications and drawings for the car park as an introductory donation to promote its services.
- 26. When the PEAP Official was asked in interview by the ITF, on what date the incident involving Vendor 2 took place, he/she gave a long, convoluted and

evasive response. The PEAP Official first sought to confuse the issue by suggesting that the documents in the envelope handed to him/her were the technical specifications for the car park produced by the Consulting Company, which formed the basis of the ongoing evaluation being undertaken by the evaluation committee. It was then pointed out to him/her that PEAP had received the technical specifications on 14 June 2002. Therefore, the evaluation committee would already have been in possession of them. Following this, he/she changed his answer and indicated that he/she was confused and was not aware about the date.

- 27. The PEAP Official added that Vendor 2 Representative brought a package tied with string to the airport, rather than an open envelope, and stated that he/she was informed it contained the technical specifications in hardcopy and soft copy as well as the tender documents for the car park tender. However, he/she could not specify the date on which this was alleged to have happened.
- 28. The PEAP Official was asked whether Vendor 2 had already submitted a bid for the contract to build the new car park. The PEAP Official stated "I don't remember. I believe no. I don't know, but according to the discussion that I had with the Divisional Manager and Airport Engineer 3, the latter told us that Vendor 2 should be eliminated because they brought the document physically (to the Airport) and he/she must have had the data beforehand. Therefore Vendor 2 should not be allowed to compete in the tender."
- 29. This response is contradictory. If Vendor 2 had not submitted a bid by 26 September 2002, then they would have been too late to do so at the date of this incident. It should be noted that time for submission of bids closed on 14 September 2002 and the memorandum from Airport Engineer 3 states that the evaluation had nearly finished. The question as to whether the bid was submitted to the Airport physically or by other means is immaterial.
- 30. The ITF asked the Divisional Manager whether a meeting had been held with the PEAP Official and Airport Engineer 3 to which he replied, "Not to my knowledge." There are no notes of any meeting and the Divisional Manager indicated that he/she did not have any idea what this incident concerned.
- 31. The PEAP Official denied giving the open envelope to Airport Engineer 3 to evaluate, indicating only that he/she was present when Vendor 2 Representative gave the envelope to Airport Engineer 3.
- 32. The PEAP Official was asked why Vendor 2 representative would have given the document or offer to Airport Engineer 3, when Section 2 of the bidding documents at paragraph 14.2a states that the Procurement Officer is the person to whom bids should be submitted. The PEAP Official replied "......Vendor 2 brought the technical specifications to be checked by Airport Engineer 3 and to be delivered to the office of the procurement to the Procurement Officer for tender procedures."
- 33. Having regard to the period during which the incident took place, this is unlikely, since the bid opening meeting had already taken place. An alternative explanation, in the view of the ITF, for handing the documents to Airport Engineer 3 is that he/she was a member of the evaluation committee and the documents

represented an out of time or altered bid, or tender specifications which had been irregularly received by Vendor 2.

Allegation 3:

(It is alleged that single-source procurement had been requested for the new car park lighting system when a competitive process would have sufficed, had the project for the construction of the car park been adequately planned and executed.)

- 34. Article 31 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement, provides that emergency procurement may be used for goods, works or services if the need for the procurement is urgent; the conditions giving rise to the urgency were not under the control of nor due to the negligence or other action(s) of either the requesting or the procuring entity and the urgency could not reasonably have been foreseen.
- 35. Following the tender procedure in September 2002, Vendor 1 was awarded the contract for the construction of the car park and a contractual agreement was signed on 1 October 2002.
- 36. Less than one month later, a memorandum from the Pristina Airport Civil Engineer to the Divisional Manager dated 21 October 2002 requested single-source procurement for the lighting system at the car park. The justification for the single source was that the lighting pillars had no cable, the transformer was obstructed, and there was no electricity supply for the light.
- 37. The request was approved by the Divisional Manager on 25 October 2002 and authorised as single-source procurement by a Staff Member of UNMIK Office of the Legal Adviser, on behalf of the KTA Official on 28 October 2002.
- 38. A later memorandum from the Divisional Manager to the KTA Official dated 13 April 2003, indicates that:

 "the lighting system in the car park had to be installed first so that work on the asphalting of the surface and kerbstone could go ahead, as this system was located under the surface of these structures."
- 39. This justification raises the question as to why the lighting system was not included in the contract for the construction of the main car park.
- 40. When asked why the lighting system was not included in the contract for the construction of the main car park, the Pristina Airport Civil Engineer stated: "This is a very good question that concerned me as well. I think that the previous system was not done properly and for that reason it started to be damaged. For example the electric cables started to get cut due to the vehicles that were passing there. Cables were simply covered by gravel and they were not deep enough under ground."
- 41. The Pristina Airport Civil Engineer was asked whether in view of this, any tests were carried out on the car park lighting system. He /she replied: "I do not know whether a test was carried out or not in this regard, but I can say that it was very clear that the lighting system was not working due to the fact that the electric cables were cut in many places."

- 42. DOTI Official 2 who left UNMIK employ before the tender for the car park was launched, confirmed this by stating:
 - "The cable in the car park, which was separate from the one connecting the Airport to the electricity sub-station, was very badly damaged by heavy vehicles by about December 2000-January 2001, due the fact that it had not been laid sufficiently deep under the ground."
- 43. The PEAP Official in contrast, when asked why the lighting system was not included in the contract for the construction of the main car park stated: "In the part of the car park which was not being used, the cables were damaged by KFOR and civilian vehicles to the extent that they were laid bare."... "We did not include a new lighting system because we thought the cables were undamaged. There were not too many arguments which indicated the cables were damaged until the work started."
- 44. A memorandum from DOTI Official 2 and Airport Engineer 1 indicates that the area of ground used as the Airport car park also suffered from flooding.
- 45. The Consultant, from the Consulting Company, the company which designed the car park, was asked whether his technical specifications included a lighting system. He/she replied:

 "The technical specifications did not include provision for a lighting system...
 - "The technical specifications did not include provision for a lighting system... and at that time, my contact was the PEAP Official. The requirements given to me by the PEAP Official were of a general nature, such as the number of car parking spaces and the location of the car park. I remember that the poles for the lights were already there."
- 46. In summary, the lighting system was not included in the contract for the construction of the main car park, due to poor management and forward planning.

Allegation 4

(It is alleged that approval of the contract and the "capital expenditure approval" for the new lighting system appears to have been requested retrospectively. (i.e. after the work had been completed.)

- 47. A capital expenditure approval form for the lighting system was signed by the Divisional Manager on 2 November 2002 and countersigned on 6 November 2002 by the Staff Member of UNMIK Office of the Legal Adviser.
- 48. The Airport signed a contract with Vendor 1 to supply and install the lighting system at the airport car park on 29 January 2003. The value of the contract was €34,501.
- 49. A note dated 30 January 2003 from the Procurement Officer to Official 5 Pillar IV, indicates a request was made for Official 5's authorisation to enter into the contract.
- 50. A routing slip from a KTA Internal Auditor to the KTA Official dated 6 March 2003, raises concerns at the authorisation of a single source procurement for the contract to supply and install the lighting system at the airport car park. Specifically, the KTA Internal Auditor asserts that the documentation does not support single source procurement, there is no evidence the public procurement

- rules had been followed and there is no evidence the contract had been signed off by the legal department. As a result the KTA Internal Auditor refused to give approval for the capital expenditure.
- 51. Analysis of a memorandum from the Divisional Manager to the KTA Official dated 13 April 2003, in response to the refusal of the KTA Internal Auditor to approve capital expenditure for the contract to supply and install the lighting system at the airport car park, indicates at item 2 that due to the necessity to complete the asphalting of the car park, the Divisional Manager gave the go ahead for the work on the car park lighting system, prior to receiving capital expenditure approval in any event.
- 52. The note is confirmed by an email from the KTA Official to the Divisional Manager dated 14 April 2003 in which he/she reminds the Divisional Manager that he/she must obtain capital expenditure approval prior to initiating procurement, contracting and implementation procedures.
- 53. The Divisional Manager, when asked in interview whether he/she obtained financial approval retrospectively stated:

 "That is correct. From memory, this is one of the few times I did this, because at this time clearance of document by the KTA was incredibly slow to the extent that it would have affected the operational viability of the airport. I gave approval for the work to go ahead but did not approve for any monies to be paid. I took the decision with great reluctance because the previous experience I had had with the KTA's slow procedure in approvals would have resulted in the bad weather setting in before the car park could be partially completed."
- 54. A bid evaluation report dated 24 June 2003, indicates that a competitive tender was held for the award of a contract to provide a covering for the automatic barriers in the car park. The report confirmed that the contract was awarded to the contractor Vendor 1.
- 55. A contract was signed by the Divisional Manager on behalf of Pristina Airport with Vendor 1 on 25 June 2003 in the sum of €24 864.96. Whilst it is note that this was done buy means of competitive tender, it should have been included in the tender for the new car park.

VII. Analysis of evidence Allegation 1

- 56. Two draft bid evaluation reports indicate in the "preliminary examination" section that Vendor 1 had no bid security. In the first document, the wording "no bid security" is written in manuscript and in the second the Albanian equivalent also indicates the same information. Neither document is signed nor has the ITF been unable to identify the author of the documents.
- 57. In the final bid evaluation report, the bid from Vendor 1 is indicated to have contained complete documentation, been technically responsive, commercially responsive, have the correct bid validity and be acceptable for financial examination.
- 58. An undated report detailing the reasons for rejection of ten companies indicates, inter alia, that certain companies did not have their bid security in the format as

- requested, or that the bid security was not valid as requested. In addition, the report indicates views concerning the pricing level. However, the only comment referring to Vendor 1 is the word, "passed".
- 59. Four companies are indicated to have bid at a "high price", despite the fact that their prices were lower than the second placed company against whose name there was no comment.
- 60. The ITF has been unable to verify the format of the bank guarantee submitted in support of its bid, since no copy of it was left on the file. However, on a strict interpretation of the rules, based upon the draft evaluation report and the Procurement Officer's response in his/her interview dated 6 July 2004, Vendor 1 did not submit a bank guarantee in accordance with the requirements of the tender rules.
- 61. Having regard to the fact that an undated report detailing the reasons for rejection of ten companies indicates inter alia that certain companies did not have their bid security in the format as requested, or that the bid security was not valid as requested, this suggests that the evaluation of the bids for the car park tender was inconsistent.
- 62. In summary, evidence indicates that Vendor 1, which was awarded the contract for the construction of the new car park, did not submit a bank guarantee in accordance with the requirements of the tender rules. In addition, the decision to award the tender to Vendor 1 appears to be based on an inconsistent evaluation of the bids, from which it appears to have benefited.
- 63. Whilst noting that this was one of the Procurement Officer's first tender exercises at the Airport, he/she was the procurement specialist present at the time and therefore, responsible for the process.

Allegation 2

- 64. Evidence in the note of Airport Engineer 3 dated 26 September 2002 suggests that the PEAP Official received an open envelope from Vendor 2, after the date on which the evaluation was due to take place, which he/she then passed to Airport Engineer 3 to evaluate. The contents of the envelope appear to have been either technical documents received by Vendor 2 with a view to affording the company an advantage in the tender for the new car park, or an out of time bid by the company.
- 65. The attempt by Vendor 2 to obtain an improper advantage in the tender procedure appears to have occurred with the apparent knowledge and acquiescence of the PEAP Official. Whilst it is noted that the Procurement Officer excluded the company from the tender, it should have been the responsibility of the PEAP Official to draw the matter to the Procurement Officer's attention and take appropriate action.
- 66. The PEAP Official's responses in interview when asked about the incident, lead the ITF to doubt the truthfulness of his evidence, and suggest irregular conduct.

- 67. The ground on which the car park was to be built was known to be prone to flooding and the cables in the area of the new car park were clearly damaged a long time before the contract for the main car park was signed. In addition, the cables for the lighting system had to go under the main car park. It therefore represents poor management and forward planning that no provision was made for a lighting system in the contract for the main car park and no tests were carried out to see whether the existing car park lighting system worked prior to work beginning on the car park.
- 68. The conditions required by Article 31 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement to justify an emergency procurement procedure are not fulfilled in this case, since the single source / emergency procurement arose due to poor forward planning and the urgency could reasonably have been foreseen.
- 69. The persons responsible for these shortcomings are firstly, the PEAP Official, who proposed the project, together with persons responsible for checking the main specifications and contract for the main car park, specifically the Airport engineers present at the time. Airport Engineer 2 and to a lesser extent, Airport Engineer 3 who took over in July 2002.
- 70. A second contract for a canopy over the entry barriers was tendered using the competitive shopping procedure in June 2003 and a contract awarded to Vendor 1. Whilst the tender process appears to comply with competitive procedures, it should also have formed part of the main car park tender.

Allegation 4:

71. Evidence indicates the Divisional Manager gave the approval to proceed with the work on the car park lighting system prior to obtaining the necessary capital expenditure approval.

VIII. CONCLUSIONS

- 72. Evidence indicates that Vendor 1, which was awarded the contract for the construction of the new car park, did not submit a bank guarantee in accordance with the requirements of the tender rules. In addition, the decision to award the tender to Vendor 1 appears to be based on an inconsistent evaluation of the bids, from which it appears to have benefited.
- 73. Whilst noting that this was one of the Procurement Officer's first tender exercises at the Airport, he/she was the procurement specialist present at the time.
- 74. Evidence in the note of Airport Engineer 3 dated 26 September 2002 suggests that the PEAP Official received an open envelope from the company Vendor 2, after the date on which the evaluation of the tenders was due to take place, which he/she then passed to Airport Engineer 3 to evaluate. The contents of the envelope appear to have been either technical documents received by Vendor 2 with a view to affording the company an advantage in the tender for the new car park, or an out of time bid by the company.
- 75. This appears to have occurred with the apparent knowledge and acquiescence of the PEAP Official. Whilst it is noted that the Procurement Officer excluded the

company from the tender, it should have been the responsibility of the PEAP Official to draw the matter to the Procurement Officer's attention and take appropriate action.

- 76. The PEAP Official's responses in interview, when asked about the incident lead the ITF to doubt the truthfulness of his evidence, and suggest irregular conduct.
- 77. The entire process therefore represents poor management and forward planning in that no provision was made for a lighting system in the contract for the main car park and no tests were carried out to see whether the existing car park lighting system worked prior to work beginning on the car park.
- 78. The conditions required by Article 31 of UNMIK Finance Administrative Instruction 1999/2 on Public Procurement to justify an emergency procurement procedure are not fulfilled, since the single source / emergency procurement arose due to poor forward planning and the urgency could reasonably have been foreseen
- 79. The persons responsible for these shortcomings are firstly, the PEAP Official who proposed the project, together with persons responsible for checking the main specifications and managing the contract for the main car park, specifically the Airport engineers present at the time Airport Engineer 2 and to a lesser extent, Airport Engineer 3.
- 80. A second contract for a canopy over the entry barriers was tendered using the competitive shopping procedure in June 2003 and a contract awarded to Vendor 1. Whilst the tender process appears to comply with competitive procedures, it should also have formed part of the main car park tender.
- 81. Evidence indicates the Divisional Manager gave the approval to proceed with the work on the car park lighting system prior to obtaining capital expenditure approval.

XI. RECOMMENDATIONS

82. The ITF offers the following recommendations:

It is recommended that UNMIK considers and reviews the performance of the Procurement Officer in the conduct of the Car Park tender exercise for any action deemed appropriate. (IV04/274/01);

It is recommended that the PEAP Official's failures in respect of his/her actions in the incident concerning Vendor 2, and in his/her failure to fulfil his/her responsibilities in the management and forward planning of the project for the construction of the new car park, be reviewed for any action deemed appropriate. (IV04/274/02);

It is recommended that UNMIK review the roles of the Airport engineers present at the time, Airport Engineer 2 and to a lesser extent, Airport Engineer 3, for any appropriate action deemed necessary. (IV04/274/03);

It is recommended that the ITF's findings concerning the PEAP Official's evasive and contradictory responses in interview be considered, together with his/her

apparent unwillingness to accept managerial responsibility, for any appropriate action deemed necessary. (IV04/274/04);

It is recommended that UNMIK review the performance of the Divisional Manager in approving the contract for the car park lighting system prior to obtaining capital expenditure approval and in light of the fact that the Divisional Manager has left the Mission, this report should be placed on his personnel file for future reference. (IV04/274/05)