



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

*This Report is protected under the provisions of
ST/SGB/273, paragraph 18, of 7 September 1994*

**TCIL/THUNDERBIRD/PCP
INVESTIGATION REPORT**

**INTERIM REPORT ON MR. SANJAYA
BAHEL**

Report no. PTF-R003/06

Case nos. PTF/026/06; PTF/033/06

27 July 2006

INTRODUCTION.....	3
ALLEGATIONS	4
METHODOLOGY.....	4
RELEVANT CONCEPTS OF CRIMINAL LAW.....	6
Fraud.....	6
Conspiracy	6
Aiding and Abetting an Offence	6
Unlawful Gratuity.....	6
APPLICABLE UN RULES AND REGULATIONS	7
UN Staff Regulations:.....	7
Conflict of Interest.....	7
BACKGROUND.....	8
THE RELEVANT COMPANIES	10
IT Staffing Contract.....	10
Subsistence Allowance to the Contract Staff.....	13
Article 13, Subsistence of Contractor's Personnel:.....	13
The Execution of the Contract	15
THE SUBCONTRACTS	29
THE KOHLI COMPANIES	37
The Effort to Re-Bid the Contract	40
TCIL's Current Cooperation with the PTF	43
MR. SACHDEVA'S RESPONSE.....	44
MR. BAHEL'S RESPONSE	44
PTF'S EVALUATION	45
Trigyn Technologies Inc	46
Thunderbird Industries LLC Engineering Manpower Contract.....	46
References	55
References in support of the RFP	56
Multi-Links	56
Indo-Kuwait General Trading & Contracting Company.....	57
VeriSign	58
Marshals Power and Telecom India.....	58
Laptop Computer Contract Awarded to TCIL.....	58
OTHER TCIL CONTRACT AWARDS	63
Radio Trunking Systems – PD/C0209/00 & PD/C0055/00.....	63
Mr. Bahel's Personal Relationship with the Kohlis.....	65
THE NEW YORK CONDOMINIUM UNITS.....	66
Bahel's Sons Wedding.....	70
PCP International and the Procurement of Generators	70
RFP 86	71
Use of the London Apartment	75
RFP 118 – Procurement of Generators	78
Bahel's Relationship with the Indian Government.....	84
FINDINGS	85
CONCLUSIONS.....	87
RECOMMENDATIONS	88

The following Interim Report sets forth findings of the Procurement Task Force (PTF) concerning United Nations Staff Member Mr. Sanjaya Bahel, UN vendors Telecommunication Consultants of India Ltd. (TCIL), En-Kay Associates, Guru Trust Investments (GTI), Thunderbird Industries, LLC (Thunderbird) and PCP International Ltd (PCP). A subsequent final report will be issued addressing the involvement of Mr. Andrew Toh, Assistant Secretary General, in these matters as well as the UN vendor Trigyn Technologies, Inc which currently holds the manpower staffing contract. The investigation of these matters is ongoing.

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 (IIC), 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 the procurement bidding exercises, procurement staff, and vendors doing business with the United Nations (hereinafter “UN” or “Organisation ”). The mandate of the PTF also includes a review of some procurement matters which have been closed, but it is nevertheless determined that further investigation is warranted.
3. The PTF investigations have also 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 the eight staff members placed on special leave with pay.
4. A number of the matters set forth herein, including the examination of several contracts awarded to Telecommunication Consultants of India Inc. (hereinafter “TCIL”) were the subject of the audit report of the Internal Audit Division of Office of Internal Oversight Services (OIOS), AP2005/600/20, dated 26 January 2006. The audit report made several adverse findings against United Nations Procurement Officer Mr. Sanjaya Bahel, UN Procurement Officer, in connection with the procurement exercises in the awards of these contracts to TCIL, Thunderbird and PCP.
5. Further, in early April 2006, the PTF was directed by the USG for the OIOS to reinvestigate all matters concerning the award of contracts to TCIL and Thunderbird. The TCIL and Thunderbird matters are interrelated in that the principals of Thunderbird also acted as representatives of TCIL in their interaction with the Organisation. Mr. Sanjaya Bahel was involved in the procurement exercises associated with both companies.

ALLEGATIONS

6. Based upon the audit report, AP2005/600/20, and the referral from the USG/OIOS, the allegations addressed in this report are:
 - Whether Mr. Sanjaya Bahel purposefully and improperly favoured TCIL in the procurement exercises in which TCIL was a participant;
 - Whether Mr. Sanjaya Bahel improperly demonstrated favouritism towards Mr. Nanak Kohli, and his son Mr. Nishan Kohli. Both were representatives of TCIL in their interaction with the UN, and simultaneously Mr. Nishan Kohli was the Managing Partner of Thunderbird;
 - Whether Mr. Bahel improperly favoured PCP International in its bid to gain generator contracts with the Organisation;
 - Whether Mr. Sanjaya Bahel, purposefully and improperly, favoured Thunderbird, in their efforts to secure a proposed engineering manpower contract with the Organisation;
 - Whether Mr. Sanjaya Bahel purposefully and improperly, interfered in the registration of Thunderbird as a UN vendor;
 - Whether Mr. Sanjaya Bahel suffered from a conflict of interest as a result of his personal friendship with Mr. Nanak Kohli and Mr. Nishan Kohli. Consequently whether he acted in the best interests of the Organisation by handling, and supporting, procurement contracts involving these individuals and their associated companies;
 - Whether there existed a scheme to defraud the Organisation in connection with the award of contracts to TCIL and Thunderbird. And, if a scheme existed, who were its participants and what was its scope. In particular, were UN staff members party to this scheme

METHODOLOGY

7. The PTF has investigated, ab initio, the matters referred to in the audit report, namely the five TCIL contracts, the Thunderbird matter, and the PCP contract, and placed no reliance upon any previous findings. It has examined other TCIL and Thunderbird contracts and related issues. The investigation of the PTF included interviews with relevant witnesses, examination of documents, and extensive searches of electronic media and evidence. The PTF made significant efforts to locate and obtain all relevant files.
8. The PTF reviewed documents and various portions of files provided by the Investigations Division of OIOS (hereinafter ID/OIOS); records provided by the Procurement Department; records produced by the Audit Division, OIOS;

documents provided by TCIL and employees formerly employed by TCIL and Guru Trust Investments (GTI); records provided by the principals of IECS-IRCON, the vendor which held the engineering manpower contract prior to the re-bidding exercise in 2002; electronic records including data, telephone records, email correspondence, and information and evidence provided by the Independent Inquiry Committee into the United Nations Oil for Food Programme (IIC).

9. PTF investigators interviewed more than 40 witnesses, including former TCIL employees, TCIL's current representative to the UN in New York, and senior officials of the company in New Delhi, India. Further the PTF interviewed UN staff members, in particular procurement officers, and UN vendors who either preceded, or succeeded, TCIL in various UN contracts. The PTF also reviewed notes of interviews conducted by Assistant United States Attorneys of various UN staff members in connection with their investigation of these matters.
10. The PTF has also spoken with a number of present and former employees of TCIL and other companies with which Mr. Nanak Kohli and Mr. Nishan Kohli are associated, as referred to herein. Several of these witnesses have expressed concern about being identified by name in this report, indicating that they fear that they would be subject to retribution and retaliation if the information they provided was publicly attributed to them. In that regard, these individuals will be identified as "Informants," and have been promised anonymity. Their information is included insofar as it has been corroborated by other witnesses or documents.
11. In connection with the review of the TCIL contracts, the investigation has faced the following significant challenges:
12. The PTF sought to speak with Mr. Nanak Kohli and Mr. Nishan Kohli; Mr. Nishan Kohli retained counsel and did not submit to an interview. The PTF did not receive a response from Mr. Nanak Kohli.
13. Further challenges included the condition of the procurement files related to this matter, the procurement department's policy of short term retention of cancelled bids and the turnover and movement of staff. The Thunderbird procurement file cannot be located, as well as several portions of the TCIL file. Nevertheless, forensic data recovery has been an important tool utilized to examine the circumstances and the relevant communication on the issue, and has been instrumental in obtaining relevant information and important evidence.
14. The PTF sought records from various vendors registered to do business with the Organisation, including VeriSign Inc. (VeriSign), a Virginia based company. Further, it requested an opportunity to interview VeriSign employees in connection with correspondence the company submitted to the Organisation on behalf of Thunderbird LLC. However, VeriSign, despite representing its desire

to cooperate with the PTF, has failed to produce the requested documents or make its employee available for an interview.

RELEVANT CONCEPTS OF CRIMINAL LAW

15. The following well established concepts of criminal law of the host country are applicable to this matter:

Fraud

16. Commonly, fraud is defined as an unlawful scheme to obtain money or property by means of false or fraudulent pretences, representations, or promises. A scheme or artifice has been repeatedly defined as merely a plan for the accomplishment of an object. A scheme to defraud is any plan, device, or course of action to obtain money or property by means of false or fraudulent pretences, representations or promises reasonably calculated to deceive persons of average prudence.

Conspiracy

17. Another concept relevant to the analysis in this matter is the offence of conspiracy. Conspiracy is simply an agreement to do an unlawful act. It is a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act. In this case, it is the agreement to engage in a scheme to improperly obtain sums of money under contracts with the United Nations not properly due and owing to them.

Aiding and Abetting an Offence

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

Unlawful Gratuity

19. It is unlawful to offer or promise anything of value to any public official or because of any official act performed or to be performed by such public official, former public official or person selected to be a public official.¹

¹ It is unclear whether or not a United Nations Staff Member would fall under the definition of “public official” for purposes of US federal law.

APPLICABLE UN RULES AND REGULATIONS

The following UN Staff Regulations are of relevance:

20. United Nations Staff Regulation 1.2(b) Staff members shall uphold the highest standards of efficiency, competence, and integrity. The concept of integrity includes, but not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.
21. United Nations Staff Regulation 1.2(d) states that “[i]n the performance of their duties staff members shall neither seek nor accept instructions from any Government or from any source external to the Organisation.
22. United Nations Staff Regulation 1.2(e) states that by accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organisation only in view. Loyalty to aims, principles and purposes of the United Nations, as set forth in its charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants.
23. United Nations Staff Regulation 1.2(g) states that Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour.
24. United Nations Staff Regulation 1.2(i) states that Staff members shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General.

Conflict of Interest

25. United Nations Staff Regulation 1.2(m) states that “Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit making, business or other concern to benefit from such

association or financial interest by reason of his or her position with the United Nations.

Other relevant instructions include:

26. If any evidence of receipt of a bribe or gratuity is revealed during the course of this investigation Federal and State laws will apply and therefore a referral to the appropriate prosecutorial agency will be recommended.
27. Procurement Manual Section 4.2.5 “Corrupt Practices”. The United Nations shall communicate to the vendors during the registration phase, in the solicitation documents and in the contract documents that all United Nations vendors shall adhere to the highest ethical standards, both during the bidding process and throughout the execution of a contract. Some examples of “Corrupt Practices” are Bribery, Extortion or Coercion, Fraud and Collusion.
28. On 25 March 2003, the then UN Chief of Procurement issued a Memorandum addressing Conflict of Interest. Paragraph 4 of the memorandum states that “UN Procurement Division staff shall avoid conflict of interest situations. Conflict of interest includes circumstances in which a UN staff member would appear to benefit improperly, or allow a third party to benefit improperly, from their association in the management or the holding of a financial interest in an enterprise that engages in any business or transaction with the Organisation.”
29. Paragraph 5 provides that “UN Procurement Division staff shall avoid assisting private bodies or persons in their dealings with their Organisation where this might lead to actual or perceived preferential treatment. This is particularly important in procurement matters.”

BACKGROUND

30. This matter has a lengthy procedural history. Several IAD/OIOS audits and an ID/OIOS investigation have been conducted of topics addressed herein. The audits found critical errors in the procurement processes and more than one report found misconduct by Mr. Bahel. The ID report of 15 December 2004 cleared Mr. Bahel of wrongdoing. It should be noted that the PTF has not been influenced by the conclusions set forth in these reports, but has considered the analysis. PTF investigators have read, and considered, all previous reports, memoranda, and notes of interviews conducted in previous investigations for lead and investigative value. However, the PTF has not subscribed any particular merit to any allegation, or any previous finding.
31. This Report focuses upon the following procurement exercises, and the performance of the vendors, with respect to, the following contract awards:

- 1) a contract awarded to TCIL for information technology (IT) staffing support (PD/0049/00)
 - 2) a proposed contract for engineering manpower to Thunderbird LLC (RFPS 374)
 - 3) a contract awarded to TCIL for desktop computers (PD/202/00)
 - 4) a contract awarded to TCIL for Radio telephone links (PD/209/00)
 - 5) a contract awarded to TCIL for laptop computers (PD/155/02)
 - 6) a contract awarded to TCIL for satellite test equipment (PD/535/00)
 - 7) a contract awarded to PCP International for generators
32. The total aggregate value of all of the contracts awarded to TCIL between 1999 and 2004 exceeded US \$100 million. The value of the contract awarded to PCP International (PCP) had an aggregate value of US\$9,900,000. The IT Staffing Contract exceeded \$27,000,000. The participation by Nanak Kohli and Nishan Kohli in the procurement and execution of these contracts, as well as Procurement Officer Sanjaya Bahel, will be discussed throughout the report. These contracts will be discussed individually, seriatum.
33. Sanjaya Bahel joined the United Nations Procurement and Transportation Division as Acting Chief of Field Missions Procurement Section on 10 August 1995. Beginning in or about 1998 and continuing through and until 2003, Mr. Bahel served as Chief of the Commodity Procurement Section. In 2003, on the recommendation of Andrew Toh, the then Director of Facilities and Commercial Services Section, Mr. Bahel was re-assigned to Chief of the Commercial Activities Service in the UN Postal Administration, where he served until he was placed upon special leave. Mr. Bahel frequently served as Acting Chief, or Officer in Charge, of the Procurement Department in the absence of the Chief.
34. Prior to joining the United Nations, Mr. Bahel worked for the Government of India in various capacities, including Assistant Financial Advisor in the Ministry of Finance; Director of Purchase for the Indian Embassy in Washington, D.C.; Deputy Controller General for the Ministry of Defence; Directory of Finance in the Ministry of Defence; and Controller/Additional Controller General in the Ministry of Defence.
35. A full recitation of all of the facts and circumstances surrounding these matters is provided to set forth the extent of the role and level of participation of Mr. Bahel in these transactions. Therefore, the matters will be discussed in detail.

THE RELEVANT COMPANIES

36. At all relevant times, TCIL was fully owned by the government of India. Nanak Kohli, and his son, Nishan Kohli, represented TCIL with the United Nations as their agents, but were not TCIL employees. At all relevant times, Nishan Kohli and his brother, Ranjit Kohli, also served as Managing Partners of Thunderbird Industries LLC (Thunderbird). Further, Nanak and Nishan Kohli, either individually or together, served as principals or officers in several other related companies relevant to these inquiries, including Guru Trust International (GTI), En-Kay Associates (En-Kay) and Acumen International (Acumen). Nanak Kohli is a citizen of India and a well known public figure in India. Nishan Kohli is Nanak Kohli's son, and a citizen of the United States. Thunderbird was, and continues to be, a U.S. corporation, based in Virginia, with offices in New York City, McLean, Virginia and a branch in New Delhi, India. As discussed in more detail below, Ranjit Kohli served as an officer in VeriSign, Incorporated (VeriSign), a U.S. company which provided a reference for Thunderbird in its effort to achieve the engineering manpower contract. (Neither Thunderbird, nor Nishan Kohli advised the Organisation of this fact despite utilizing the company as a reference).
37. According to TCIL representatives, TCIL severed its relationship with the Kohlis and GTI in 2003 because of the failure of the Kohlis to honour the obligations under the IT Staffing Contract, as discussed below, and is now critical of the Kohlis' activities. The relationship between TCIL and the Kohlis, and the relationship between the Kohlis and Mr. Bahel, is significant and discussed herein.

IT Staffing Contract

38. The first contract addressed in this Report is the contract on behalf of DPKO for communications and information technology staffing. The contract was awarded to TCIL in early 2000.
39. The issues addressed in this Report in connection with this Staffing Contract include the failure to pay full subsistence allowance, the failure to disclose sub-contracting agreements to the Organisation, and the failure to provide required benefits to contract staff. The discussion will also focus on the ability of PD to have identified the issues and prevented much of the problems which arose. Lastly, the Report will cover Mr. Bahel's involvement in the Staffing Contract. At that time, Mr. Bahel was Chief of Field Procurement, and at times acted as Officer in Charge of Procurement.

40. In 1998 the Organisation established a number of new Peacekeeping Missions, and DPKO was in need of engineering and IT manpower support in several of them. As such DPKO sought a contract for IT manpower, and in the fall of 1999 TCIL submitted a proposal for, and ultimately obtained, a contract from the Organisation for the provision of communications and information technology technicians (IT staffing contract) (#PD/CO0490/00). The IT staffing contract was requisitioned at the request of the Department of Peacekeeping Operations (DPKO), Field Administration and Logistic Division (hereinafter “FALD”).
41. The evolution of the contract, and the issues which emerged during the course of its execution follows. On 29 July 1999 FALD submitted to PD a draft Request for Proposal (RFP) for staffing support for various Field Missions. FALD sought a one year contract where the UN would order technicians for a period between three months and one year. On 13 October 1999, PD issued the RFP and sent it to registered vendors. Six vendors submitted proposals. In November 1999 FALD performed technical evaluations of the proposals, and deemed five to be compliant. FALD sought to utilize more than one vendor, and sought to award multiple contracts based upon a concern that it have qualified staff for prompt deployment to the field missions, as well as that it have a steady supply of able and qualified workers from which to choose.
42. In a memorandum dated 26 November 1999 to Mr. Bahel, Rudy Sanchez, Chief of FALD, represented that after a review of sample Curriculum Vitae (CVs) of prospective workers provided by vendors, FALD recommended the award of contracts to two lowest bidders in each category of technicians sought. Mr. Sanchez reasoned that this approach would provide the ability of the Missions to draw on a second supplier if the first vendor is incapable of adequate performance, or there was an insufficient quantity of workers.
43. On 30 November 1999 Mr. Bahel denied FALD’s request, stating that “reasoning put forth for awarding two contracts for each category are not only extraneous to the technical issues but to the RFP itself.” Assuring FALD that adequate safeguard had been already incorporated into the RFP, Mr. Bahel indicated his intention to proceed with the presentation of the case to the HCC based on the commercial evaluation.
44. On 6 December 1999 Hocine Medili, then Director of FALD, issued a memorandum to Andrew Toh, Chief of Information Management Services Branch, reiterating FALD’s position that the “lowest two bidders in each category be granted an award.” While acknowledging the ability of the performance bond to protect the commercial aspects of the contract, FALD expressed a view that PD failed to address the concerns raised by FALD.
45. Nevertheless, in his memo to FALD of 10 December 1999 Mr. Bahel offered assurances that prompt action would be taken to ensure a sufficient number of

qualified staff in the event that such needs arose. Based upon such assurances, FALD agreed to utilize one vendor. In its memo of 5 January 2000 FALD confirmed Mr. Bahel's representations. On the basis of this understanding, FALD submitted to PD its projected requirement for staffing support for a one-year period in furtherance of the expected presentation of the matter to the Headquarters Committee on Contracts (HCC).

46. On 8 February 2000 PD recommended the award of a three-year systems contract for the IT staffing support, and PD presented the case to the HCC. The official minutes of the HCC meeting demonstrate that PD and FALD recommended the award of the contract, valued at \$7,858,764, to TCIL on the basis of lowest cost proposal.
47. The record further shows that during the deliberations the HCC questioned the ability of TCIL to provide the services it offered, and sought assurances that TCIL was a sound company. The HCC expressed a concern that the selection was premised solely upon that TCIL offered the lowest cost to the Organisation. As discussed herein, the concerns expressed by the Committee proved to be well founded when issues with Mission Subsistence Allowance (MSA) payments, employee driving ability, and delays with deployment of personnel arose in the fall 2000.
48. Furthermore, the HCC commented on the issue of subsistence payments to workers, noting that the "UN needs safeguards that minimum labour standards are met." The HCC also "expressed concern about payments going directly to the company and DSA costs." Taking note of the FALD's contention that the arrangement of this scope had not occurred in any other mission, the Committee recommended that PD confer with the Office of Legal Affairs (OLA) to address personnel issues, humanitarian concerns, and administrative issues.
49. At the time the case was presented to the HCC, it is now evident that the HCC was not made aware of the fact that MSA-related issues arose in the course of implementation of the IRCON contract which were known to the Organisation, including PD, and the HCC was not advised of PD's intention to structure the new systems contract along the same terms as the one in place with IRCON. Mr. Bahel participated in the execution of the IRCON contract, and had to have been aware of such problems.
50. It is now evident that the HCC members were not informed of FALD's desire to award the contract to two vendors, and the procurement department's opposition to it. FALD shares some responsibility for the failure to raise this issue in the HCC meeting, as it clearly should have been done. It is important to note, however, that after operational problems with TCIL emerged, similar requests by FALD in October 2000 and January 2001 to bring in additional vendors to "meet the operational requirements of the missions" were again denied by PD.

51. Despite its reservations, the Committee recommended the award of the contract to TCIL “in the total not-to-exceed amount of \$7,858,764, the lowest cost acceptable proposal. (The contract with TCIL was extended, and ultimately the Organisation paid TCIL more than \$27 million for providing IT staffing support to the Organisation’s peacekeeping Missions. As later explained, TCIL passed on most of these funds to GTI, who significantly short-changed the contract staff.)
52. Three days later, PD received an expedited approval from the HCC secretariat and, on 15 February 2000 a Letter of Award under Sanjay Bahel’s signature was sent to TCIL office in India. On 23 March 2000 Mr. Bahel forwarded to Bruce Rashkow, Director of General Legal Division, a draft of the Contract and supporting documents, requesting an expeditious review in light of “FALD’s urgent requirement for TCIL’s consultants in UNMIK.”
53. In the same memorandum, Mr. Bahel reminded OLA that the draft TCIL contract was tailored along the lines of the IRCON contract. Mr. Bahel, however, failed to advise OLA of the problems which arose during the execution of the IRCON contract, namely that the disbursement amounts of MSA to the personnel in the field was a problematic issue.

Subsistence Allowance to the Contract Staff

54. An important provision in the TCIL Contract was the provision addressing the subsistence allowance for the contract staff. The contract provided that subsistence must be paid to the contract staff at a rate equivalent to that paid to UN employees in the Missions. This amount was a significant portion of the man day rate the Organisation paid to the Contractor for each worker supplied to the Missions. (As discussed more full below, this constituted approximately half of the amount paid by the Organisation to the contractor per worker per month.) The contract provided:

Article 13, Subsistence of Contractor’s Personnel:

[T]he Contractor shall be responsible for making suitable arrangements for the general welfare, including food and lodging, of the Personnel. . . [T]he UN shall **reimburse** the Contractor, in respect of each of the Personnel, an amount equal to the equivalent food and accommodation components of the UN Mission Subsistence Allowance (MSA) or Daily Subsistence Allowance (DSA), as the case may be, (herein referred to as “Subsistence Amount”).

55. This provision was designed to achieve the same function as the UN Mission Subsistence Allowance (MSA) and the UN Daily Subsistence Allowance (DSA) provided to UN international staff serving in the Mission, in which staffing support is performed by such personnel. The contract required that the living expense amounts “shall be payable at the lower of the two rates applicable to such Mission. The combined payment for each worker per month was between \$8,000 and \$9,400, approximately half of which was intended to cover the MSA portion of the contract.

56. OLA later found the provision to be clear and unambiguous, requiring the contractor to pay its staff at the UN rate regardless of the costs for subsistence borne by TCIL. (The provision is “clear and [does] not leave room for interpretation.” There is also no further provision in the Contract that would suggest that subsistence amounts are not payable at the established contract rate in the event they prove to be materially higher than the actual costs incurred by TCIL).

57. Further, the Contract provided for subsistence allowance to TCIL staff to be paid to the Contractor only. The original text of this section, however, had offered flexibility and had permitted the Chief Administrative Officer in the Mission (CAO) at his/her discretion to provide subsistence facilities to TCIL employees in lieu of the MSA payment. Nevertheless, subsequent changes to the contract in January 2001, at the insistence of the Vendor, removed that flexibility. After January 2001 Article 13.1 read as follows:

The Contractor shall be responsible for making suitable arrangements for the general welfare, including food and lodging, of the Personnel. . . [T]he UN shall **pay** the Contractor, in respect of each Personnel, an amount in account of the living expenses of such Personnel (such amount hereinafter the “Living Expense Amount). **It is expressly understood between the Parties that the Living Expense Amounts shall be payable to the Contractor only.....**The applicable Living Expense Amounts shall be included in the Contractor’s invoices. [Emphasis added].

58. Another significant provision of the contract was the prohibition against further sub-contractual agreements without notice to, and consent of, the Organisation. The UN General Conditions of Contract, Paragraph 5.0, appended to the contract, provided that:

In the event that a contractor requires the services of subcontractors, the contractor shall obtain the prior written approval and clearance of the United Nations for all subcontractors. The approval of the United Nations of a subcontractor shall not relieve the contractor of any of its

obligations under this contract. The terms of any subcontract shall be subject to, and conform with, the provisions of this contract.²

The Execution of the Contract

59. Problems quickly emerged in the execution of the contract, and the two key components of the contract – namely the failure to disclose sub-contracts and the requirement for MSA payments to be made to the contract staff – were violated near the inception of its execution.
60. Technicians first began to arrive in late August 2000. The deployment of technicians was complicated in part by the failure of some to pass the UN driving test (despite a requirement in the contract that the staff have “a mandatory valid driver’s license”). As of 1 February 2001 TCIL fell short of the required staff, providing just 101 of the required 170 technicians requested.
61. Almost immediately upon deployment to the field contract employees began to complain that they were not receiving the subsistence allowance. The failure to provide subsistence funds resulted in the inability of workers in many cases to pay their hotel bills or buy food. Most notably, it is now evident, as discussed in detail below, that there was an intentional failure to provide the technicians with subsistence allowance as required under the contract.
62. For example, on 19 September 2000 a petition by several of the contract staff was submitted to TCIL’s Chairman and Managing Director in New Delhi, G.S. Chauhan, raising the issue, and requesting payment of MSA to the contract staff. In the letter, the petitioner, Mr. Vijendra pal Bansal, represented that the Mission itself had advanced contract staff sums of money to allow the contract employees to pay their hotel bills and food expenses.³ The contract staff requested that the UN pay them directly as a result of the failure by TCIL to make these payments as required under the contract. Instead of paying the contract staff, the position of the company was that UN Missions were violating the contract by paying workers directly.

² The General Terms are appended to all contracts. Paragraph 6.0 provides that “[t]he contractor warrants that no official of the United Nations has received or will be offered by the contractor any direct or indirect benefit arising from this contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this contract.

³ Letter to G.S. Chauhan through M.P. Singh (TCIL Coordinator), 19 September 2000.

I received 500 US dollar when I started from New Delhi to Kinshasa. UN Mission in Kinshasa paid me 2000 US dollar against MSA as advance. Due to stay in Hotel Memling for 10 days, hiring the house after paying security and 3 months advance and food expenses, which is very costly, all the money has been exhausted.

THE CHAIRMAN CUM MANAGING DIRECTOR
TCIL, NEW DELHI (INDIA)

Kind Attn: Mr. G.S.Chauhan
GGM(T)

Thru: Mr. M.P.Singh (TCIL Co-Coordinator)

Vijendra Pal Bansal
Communication
MONUC, KINSHASA
RDC (Africa)

Dated: 19th September 2000

Sub: Payment of MISSION SUBSISTENCE ALLOWANCE

Considering above said facts, it is requested that an arrangement may please be made for the payment of MSA through UN, so that I can perform my duties efficiently and up to the satisfaction of UN Mission.

Figure 1

63. Complaints from TCIL's technicians about the lack of a subsistence allowance were quickly presented to UN administrative staff in the missions, particularly MONUC, including the Chief Communication Officer. The complaints also quickly reached UN Headquarters, in particular, the Director of FALD, and supervisory officials in the PD by October 2000. By late October, early November, 2000, senior managers in the PD were made aware of the issues and their participation in rectifying the situation was sought by FALD and MONUC's resident auditor, who was looking into the issues.

from India, TCIL gives all of us 500 US \$ & traveller cheques of 700 US \$. when we reached here our Team-leader takes those travellers cheques from us, because he told us he has to pay hotel rent, house rent & bala-bala. Before departure from INdia, TCIL also assured us for free food & accomodation & traveller allowance. But the real thing is that, TCIL is only paying house rent which is 250 US \$ per month for each person. TCIL is not paying anything for food, MSA, salary & hazard pay, even TCIL is deducting the ammount of DA (daily allowance), which is payable to us here in UNMIK, from advance money of 500 US \$. some peoples are getting 10 US \$ & some are getting 4 US \$ for DA here.
UN is paying a lot of amount in kind od MSA, Hazard pay, salary & etc, but we are not getting anything.

Figure 2

64. Complaints also reached United Nations procurement officer Kanwarjit Sachdeva as early as 6 October 2000. Mr. Sachdeva inquired of TCIL officials about the issue. TCIL representative "N. Singh" wrote to Mr. Sachdeva and assured him that the contract staff was being paid. In referring to the contract staff's claims of TCIL's failure to pay subsistence, N. Singh wrote "[t]hese allegations are certainly very serious however we feel that they are unfounded." Mr. Singh assured that the matter would be "thoroughly investigated."⁴
65. However, the PTF investigation has revealed that the contract staff was continuously deprived of MSA allowance and that no sincere effort was made by those acting on behalf of TCIL to remedy the situation.
66. On 9 October 2000 Mr. Roy Joblin, Communication Officer, FALD, UNMIL, sent an email to N. Singh emphasizing once again that contract staff had yet to receive salary payments.

ROY JOBLIN@UNLB
09/10/2000 05:57 AM

To: "N. Singh" <singh-gti-tcil@rcn.com>
cc: "Kanwarjit SACHDEVA" <sachdeva@un.org>@UN-MAILHUB@UNHQ-DPKO, "Rudy Sanchez" <sanchez@un.org>@UN-MAILHUB@UNHQ-DPKO, "Rolf Sjoberg" <sjoberg@un.org>@UN-MAILHUB@UNHQ-DPKO, "Mike McNally" <mcnallym@un.org>@UN-MAILHUB@UNHQ-DPKO, "Roy Joblin" <joblin@un.org>@UN-MAILHUB@UNHQ-DPKO, "Henry Thomason" <thomason@un.org>

Subject: Re: "Subsistence Payments for TCIL Staff in Field (Document link: Kanwarjit SACHDEVA)

Mr. Singh,

I am informed this morning by the UNLB TCIL team leader that his group is still yet to receive salary payments and consequently they are in rent arrears with their landlord-who is now threatening eviction.

Obviously this type of situation does not reflect well on UNLB in the local community. and I trust that you will action this appropriately and without delay.

rgds,

RJ

Figure 3

67. In response, TCIL's representative, N. Singh, falsely represented to the Organisation that contract staff was being paid full subsistence allowance. On 11 October 2000 Mr. N. Singh wrote to Mr. Sachdeva claiming that the failure to pay the contract staff in UNMIL was a result of "a mistake in a banking transaction which caused a delay in receipt of their allowance." He represented to Mr. Sachdeva that senior executive "U.B. Singh" was travelling to MONUC to investigate the matter, and assured that contract staff was being paid.

⁴ 6 October 2000 email from N.Singh to Kanwarjit Sachdeva at sachdeva@un.org.


"N. Singh" <singh-gti-tcil@rcn.com> on 10/11/2000 11:10:15 AM

Subject: Re: "Subsistence Payments for TCIL Staff in Field"

Dear Mr. Sachdeva,

I do apologize for the delay in my response.

In reference to payments made to our staff in UNLB, we regret the mistake in a banking transaction which caused a delay in receipt of their allowance. However, we do confirm that our staff have now received sufficient and surplus funds and assure you the mistake shall not be repeated.

Further, and in order to guarantee the above, we have deployed our senior executive Mr. UB Singh to MONUC to investigate the matters there.

TCIL understands and appreciates the gravity of this situation and the reflection on the UN group in the respective Missions and apologizes for the strain placed.

Thanking you and with best regards.
N. Singh

Figure 4

68. Meetings concerning the issue between TCIL contract staff and U.B. Singh took place on 12 and 13 October 2000. However, on 13 October 2000 the staff wrote to the UN's Chief Communications Officer in the Mission and stated that they had met with TCIL's U.B. Singh and he "has failed in resolving the above mentioned impending issue." The contract staff asked the Chief Communications Officer to intercede.

A meeting was held on 12-10-2000 and 13-10-2000 between Mr. U B Singh (Sr. Executive-TCIL) and TCIL Technicians regarding the disbursement of Subsistence amount and salary through UN. Mr. U B Singh has failed in resolving the above mentioned impending issue. We request your offices to kindly ascertain the following facts from Mr. U B Singh.

To,
Mr. Mike McNally,
Chief Communication Officer,
MONUC, Kinshasa

From:
TCIL- Technicians,
MONUC, Kinshasa.

DATE: 13 oct '02

Sub: - MINUTES OF THE MEETING HELD ON 12th & 13th OCTOBER REGARDING PAYMENT OF SUBSISTENCE AMOUNT AND SALARY.

Figure 5

69. On 17 October 2000 the Chief Communications Officer in MONUC authored a "Note to the File" setting forth his concerns about the issue and memorializing his view that TCIL was failing to honour its obligations under the contract to pay subsistence, and his belief that TCIL was discharging contract staff who complained about the failure to receive it.

70. Mr. McNally expressed opposition to TCIL's effort to remove technicians who were complaining of a lack of subsistence payments:

Observations/Recommendations:

MONUC has an immediate requirement to deploy contracted communications personnel to Sector HQs but in the absence of a clear solution to provide them with subsistence allowances, we are unable to fully utilize TCIL personnel.

I strongly oppose replacement of the existing TCIL Technicians presently in Kinshasa, since the problem is related to the contractor's failure to make subsistence payments to his personnel. Moreover, there seems a lack of will, on the part of TCIL, to resolve the problem. The technicians indicate that the contractor has offered them an advance on their salaries (payable in India), and refused to pay subsistence allowances. Therefore TCIL appears to have absolved itself from its responsibilities regarding subsistence.

M. F. McNally

Chief Communications Officer
17 October 2000

Figure 6

71. On 23 October 2000 the Officer in Charge of Administration (OIC) in MONUC wrote to the Director of FALD in UN Headquarters in New York outlining the issue of TCIL's failure to pay MSA to its contract staff and informing him that the visit of "Mr. U.B. Singh" was "not reassuring." The OIC further requested that the Mission be allowed to pay the contract staff directly, and that the Organisation then deduct such payments from the amounts paid to TCIL, and that the Organisation require proof that TCIL was making the payments prior to any discharge of funds by the Organisation to TCIL:

Under the circumstances, and due to the fact that TCIL has not shown an intention to resolve this issue positively, MONUC administration strongly recommends FALD's concurrence to proceed locally with payment of the food portion only of the MSA to contract personnel serving in Kinshasa, and to the subsistence allowance, which is composed of the food and accommodation portion of the MSA i.e. 85 % of the private accommodation rate of the MSA to contract personnel deployed in the regions. The total amount to be deducted from contract with TCIL.

72. On 25 October 2000 the OIC further wrote to the Director of FALD, Mr. Hocine Medili, advising him of the problems associated with TCIL's failure to pay MSA and informing him that "three (3) TCIL technicians currently deployed in Kinshasa have to be lodged (makeshift arrangements) with OIC-Communications due to their lack of funds to pay for their own accommodation." Similar complaints were made by TCIL contract staff in

UNMIK and UNTAET. Further, Missions were paying short term accommodation expenses for TCIL contract staff who had been let go by TCIL and were being repatriated to India.

73. On 30 October 2000 Rudy Sanchez, Chief of FALD, wrote to John Mullen, Chief of Headquarters Procurement, advising him of the problem and attached the memos dated 23 October 2000 and 25 October 2000, referred to above.

 Michael Fletcher@UNHQ-DPKO
02/11/2000 11:45 AM

To: Kanwarjit SACHDEVA/NY/UNO@UNHQ
cc: Henry Thompson/UNMIK@UNMIK@UNITED NATIONS LOGISTICS BASE, Rudy Sanchez/United Nations@UNHQ-DPKO, Rolf Sjoberg/United Nations@UNHQ-DPKO, Phillip Cooper/UNMIK@UNMIK@UNITED NATIONS LOGISTICS BASE, Godwin Doamekpor/UNMIK@UNMIK@UNITED NATIONS LOGISTICS BASE, Carsten Jansen/UNMIK@UNMIK@UNITED NATIONS LOGISTICS BASE, Ingrid Amaya/United

The fact that the non-payment of TCIL field staff by their headquarters has, indeed, become an operational/performance issue is precisely the reason that we believe PD should take this matter up with TCIL. (Our IOM's to PD of 30/10 and 31/10 describe this ongoing problem at MONUC, UNMIK, UNTAET, and UNAMSIL; please see the .pdf file attached below).

I'd like to take issue with your comments regarding UNMIK's message below.

The fact that the non-payment of TCIL field staff by their headquarters has, indeed, become an operational/performance issue is precisely the reason that we believe PD should take this matter up with TCIL. (Our IOM's to PD of 30/10 and 31/10 describe this ongoing problem at MONUC, UNMIK, UNTAET, and UNAMSIL; please see the .pdf file attached below).

As mentioned in our correspondence, these gentlemen do not have the funds to enable them to travel within the mission areas and this immobility has rendered them incapable of performing their jobs as required by the mission--clearly to the detriment of our operations.

Would be grateful if PD could request TCIL advise us as to their intentions to solve this problem.

Regards,

Mike

Figure 7

74. The PD forwarded emails from the missions to N.Singh. However, rather than rectifying the situation, N. Singh complained of the Mission's initiative to pay contract staff directly. On 1 November 2000 N. Singh sent an email message from email account singh-gti-tcil@rcn.com to Andrew Toh, complaining that the Missions were paying TCIL staff in cash, directly, "without authorization." Mr. Singh complained about such efforts by administrative staff in the Missions stating that "Subsistence Allowance . . . is an internal matter for TCIL."
75. Mr. Singh further stated that "[b]y paying cash and now our Staff are not opening bank accounts may lead to serious violations of local laws. We will not be a party to it. It will otherwise amount to aiding and abetting our Staff to indulge in violations." The same day Mr. Toh directed Mr. Bahel to "deal with it." (As discussed below, Mr. Toh and Mr. Bahel agreed with TCIL that the matter was an internal one for TCIL, a position with which OLA agreed).

76. Nevertheless, TCIL officers continued to represent contract staff were being paid the required MSA amounts. On 3 November 2000 G.S. Chauhan, on behalf of TCIL, tried to allay the Organisation's concerns and falsely represented to Mr. Sachdeva that its personnel were Government employees. However, Mr. Chauhan failed to acknowledge that the contract had been subcontracted by TCIL to GTI, a privately held entity. As such, the contract staff was in fact not Government of India employees, and the contract between the contract staff and the sub-contractors did not provide for the benefits which Mr. Chauhan assured in his correspondence existed. Further, Mr. Chauhan falsely represented that the company was bound to pay, and in fact did pay, the workers the required subsistence allowance.
77. On 6 November 2000 Sanjaya Bahel, the then Officer-in-Charge of the Procurement Division, wrote to Mr. Phelan, the Chief of FALD and represented that he had received "confirmation" from the Contractor (TCIL) that sufficiently convinced him that MSA payments were being made. Mr. Bahel stated that in light of that fact "FALD may wish to inform its Missions to handle and manage the contract with caution. If obvious and verifiable abuse is noticed then UNHQ should rightly be informed so that the Contractor is required to rectify the same. It is suggested that TCIL staff must first be encouraged to resolve problems with the Contractor."

► Sanjaya Bahel
12/02/2001 10:14 AM

To: Rudy Sanchez/United Nations@UNHQ-DPKO
cc: Esther Stern/NY/UNO@UNHQ, Peter Phelan/United Nations@UNHQ-DPKO, Kate McBride/United Nations@UNHQ-DPKO, John Richards/United Nations@UNHQ-DPKO, Kanwarjit SACHDEVA/NY/UNO@UNHQ

Subject: Re: TCIL Contract for Supply of Manpower

proposed agreement. I do not think FALD is in a position to dictate as to what, how and how much the contractor is going to pay their employees. Fact is that unlike certain difficulties that other labour contractors have faced (e.g. Dyncorp or Serveair) where FALD acts with unusual speed, here continuous delays are being caused though some of the requirements are those that FALD wants.

Many thanks
Sanjay
Rudy Sanchez@UNHQ-DPKO

Figure 8

78. In fact, Mr. Bahel went so far as to criticize FALD for the Missions' advance of funds to the contract staff who could not afford housing. Mr. Bahel stated "this is in direct violation of the Contract . . . and it is recommended that administrative action be taken to preclude a recurrence of such payments." However, no serious criticism was voiced, or action taken, either by Mr. Bahel or at his direction, against the vendor which converted sums due and owing contract staff to their own use.
79. By that time, it was already well documented and confirmed by UN staff in the Missions that MSA had not been paid to the proper extent. Therefore, Mr.

Bahel all too quickly accepted the representations of TCIL, which the investigation has proved to be false. When asked by the PTF investigators why he did not take any action against the vendor, Mr. Bahel responded that he “is not an investigator,” and that representations that payments were being made should be accepted, and not assumed to be untrue. While Mr. Bahel may not have been required to conduct an “investigation,” nevertheless the failure to consider evidence from fellow UN staff which contradicts assertions he accepted as true, is inappropriate. Mr. Bahel *should have caused* an investigation to be launched, and supported it, rather than accept such patently questionable representations at face value. (In the interview with the PTF investigators Mr. Toh indicated he would have terminated the contract if he had been made fully aware of the problems with the contract addressed herein). In addition, Mr. Bahel’s position is tenuous in light of his close relationship with Nanak Kohli, as uncovered by the PTF investigation. This relationship will be described in much more detail below.

टेलीकम्युनिकेशन्स कंसलटेंट्स इंडिया लिमिटेड (भारत सरकार का उद्यम) Telecommunications Consultants India Ltd. (A Govt. of India Enterprise)		 IS/ISO 9001
टीसीआईएल भवन, प्रेटर कैलाश-1 नई दिल्ली-110048		TCIL Bhawan, Greater Kailash-1 New Delhi-110048
FAX: 00-1-212-963-3746		
TO: Mr Kanwarjit Sachdeva Team Co-ordinator Service support Team/HPS Procurement Division, United Nations, NEW YORK		
FM: G.S.Chauhan, GGM(TI) TCIL, NEW DELHI		
SUB: Contract PD/C0049/00- TCIL		
<p>Dear Sir,</p> <p>We are a Govt of India organisation and most of our personnel are Govt employees. They are governed by Govt of India rules and regulations. Accordingly, we are dutifully bound to provide them pay and allowances and other facilities as per statutory rules. While on deputation to UN Missions, we pay them Daily allowance and, in addition, we bear all their expenses towards full boarding, lodging, medical, insurance, transport etc. Keeping in view their security, they are accommodated in groups. With such arrangements, they are more comfortable off-duty and more efficient on the job.</p>		
<p>Besides this, we are posting our Team Leaders to the Missions at our cost to take care of their common problems and welfare. In India, we pay them full salaries and allowances for the upkeep of their families. They and their families are given all other benefits such as housing or house allowance, medical leave travel, pensionary and gratuity contribution, insurance etc in India.</p>		
<p>In summary, we spend more than the subsistence allowance we are to get, but we are responsible to ensure subsistence and welfare of our employees as per Govt of India rules and regulations. We, therefore, confirm that:-</p>		
<ol style="list-style-type: none"> 1. TCIL staff assigned to Missions are being provided necessary allowance as per contract. 2. All TCIL staff are being provided necessary local subsistence in accordance with that agreed to under the contract. As regards MONUC, issue will be resolved soon. 		
<p>With best regards,</p> <p><i>[Signature]</i> 03/11/2000 (G.S.Chauhan)</p>		

Figure 9

Before joining UN Mission in Sierra Leone in August 2000, we individually signed a contract with a private company at New Delhi called "Enkay Associates" (for the second year contract for Aug2001-Aug2002, the same group has made us to sign a new contract with "GTI Investments"). We never signed any contract with TCIL. We were advised to introduce ourselves as TCIL Staff. When we joined UNAMSIL from 24th August 2000, we got the "Hazard Pay" of US\$33/day till November 2000 from UNAMSIL. We also received food allowance and were provided with accommodation until December 2000. (This, we presume, was due to lack of proper directions from UNHQ to the mission). Please note that the amount (hazard pay & food allowance) that we received from UNAMSIL initially for four months was subsequently recovered from our monthly salaries by our Sponsor. This is evident from the presented salary statements received from the Sponsor attached for your reference.

When our Sponsor came to know about the above, consequently, TCIL communicated with UNHQ-NY through a Fax stating lies about our contract. The copy of that Fax is attached for your reference. In particular, it is totally false where they state; quote "In India, we pay them full salaries and allowances for the upkeep of their families. They and their families are given all other benefits such as housing or house allowance. Medical leave travel, pensionary and gratuity contribution, insurance etc in India" unquote. We wish to confirm that we do not receive any benefit repeat any benefit as stated in that fax. We have enough evidence that we never received anything more than salary amount averaging USD 1600 per month from our Sponsor. Whereas TCIL has fraudulently stated to UN that we are getting all perks and allowances as applicable to government of India, the biggest lie in that Fax Statement is that none of us has been ever government of India employees.

Moreover, our Sponsor pressurized us to sign two more declarations every month, one on the receipt of salary amount averaging USD 1600 per month and the other reflecting that we are getting paid for due allowances by them under the provision of contract No: PD/C0049/00 signed between UN and TCIL. Under the adverse circumstances, we had no option but to keep signing these two statements, one of which, i.e. receipt of subsistence allowance, are totally false. WE CATEGORICALLY DISCLAIM THAT WE HAVE EVER RECEIVED ANY SUBSISTENCE ALLOWANCE from our Sponsor, which the UN is supposed to be paying TCIL every month as per the attendance sheets forwarded to UNHQ, reflecting the current monthly subsistence allowance. We reiterate that the only amount we receive every month is an average of USD 1600. There was always an apprehension in our minds that if we reveal truth against them, we would lose our jobs. As TCIL has failed to abide by one of the main provisions of the UN/TCIL contract i.e. to pay us the full monthly subsistence allowances and presented a fraudulent statement to UN to reinforce their lies, we have been waiting for the right time to disclose the facts; we are hereby forwarding this petition to UNHQ/NY and earnestly request your good offices to do some fact-findings and ultimately help us in getting paid by TCIL the unpaid allowances as "Arrears".

Figure 10

80. In November 2000 the resident auditor who began to review the contract complained to Mr. Bahel that the grievances of contract staff were meritorious, and that action should be taken against TCIL for breaches of their contractual obligations. Both Mr. Bahel, and then later, Mr. Toh, criticized the auditor, and asserted that the auditor's conclusion that the failure to pay MSA and to disclose sub-contracting amounted to a breach of TCIL's obligations under the contract was erroneous. Mr. Toh even went so far as to complain to the auditor's supervisor that the auditor exceeded his authority in challenging the contractor and providing his view of the failure of the contractor to comply with its obligations under the contract. Both Mr. Toh and Mr. Bahel were of the view that the auditor acted improperly. The auditor should have been lauded, not criticized.
81. The debate continued into the next year. In a memorandum from Andrew Toh to Esther Stern of 29 January 2001 Mr. Toh had claimed that subsistence had been taken care of. Mr. Toh then falsely asserted that:

PD was not earlier informed by MONUC that contractor's personnel were not being provided with subsistence facilities. The contractor also states that they were not informed of the problem before cash advances were given to their personnel by the Mission.
.. PD has confirmed with the Contractor regarding comments on En-Kay Associates and are informed that the entity mentioned is a recruiter for the Contractor and not a sub-contractor (copy of communication attached).

Pilani Edwin Nhliziyo@MONUC



Pilani Edwin Nhliziyo@MONUC
05/02/2001 12:14 PM

To: Leocadio Diois/NY/UNO@UNHQ, Sergei Shishkin/NY/UNO@UNHQ, Gurpur Kumar/NY/UNO@UNHQ, Fatoumata Ndiaye/NY/UNO@UNHQ, Florin Postica/NY/UNO@UNHQ
cc: Esther Stern/NY/UNO@UNHQ, Dileep Nair/NY/UNO@UNHQ
Subject: TCIL Contract

As for the substance of Mr. Toh's memorandum, even though it appears well intended, it is unfortunately misleading on several points and I will discuss each in turn. Note especially items 1(c) and 1(e) below which are significant for IS. Paragraph references are to Andrew Toh's 29 January 2001 response to ES.

1(b) It is therefore a gross distortion of the facts to claim that MONUC unilaterally decided to provide cash contrary to the terms of the contract when the Contractor's own negligence created the situation that made it necessary for MONUC to give these people cash advances. Further, the contract on the face of it We also reject the argument that TCIL was not informed that their people had no money.

Falsehood #1

1(c) The claim that EN-KAY Associates were only a recruiter is false. All the contracts signed between the technicians and their employer were with EN-Kay and we have those contracts on file. If you review the

Falsehood #2

1(e) Mr. Toh argues that there was no requirement for UN driving tests in the RFP and in the contract. This is simply a distortion of the truth. The very last five words of Annex B of the contract provides that the technicians "have a valid driver's license". In MONUC alone, five of the ten technicians did not have a valid driver's license when they arrive. Four of the five failed the test and they admitted they had never

Figure 11

82. Notwithstanding this dispute, the Missions' expressions of concern of TCIL's performance continued into December 2000. On 20 December 2000 Rudy Sanchez wrote to Mr. Bahel and complained that TCIL staff was more than 50 days late in arriving in UNMEE, noting that three deadlines had passed without any staff deployments by TCIL. Mr. Sanchez stated:
4. FALD would therefore like to point out that TCIL is delinquent in the provision of their staff to UNMEE in spite of (a) their contractual obligations to do so, and (b) the assurances given to FALD to focus staffing efforts on UNMEE, a point agreed upon during the meeting held with TCIL at PD on 12 October.

Figure 12

83. On 30 January 2001 the contract staff in the Missions wrote to Andrew Toh. A staffer in UNMIK wrote:

TCIL Staff <tcils@yahoo.co.in> on 30/01/2001 04:05:29 A



To: Christopher Fathers <fathersc@un.org>, Baad Vidvei <vidvei@ur.org>, <Babynia@un.org>, Loida Madrigal <madrigal@un.org>, Alexander Yak Kanwaljit Sachdeva <sachdeva@un.org>, Sylvia Leonard <Leonard@ur <martinv@un.org>
cc: friends_of_un@usa.net
Subject:

Dear sir/s,

With due respect, we wish to draw your kind attention regarding the non-payment of MSA to the contractor's personnel. In this regard, we are giving our details hereunder.

It has been 5 months since we have joined here. Till date we are being for 5us\$ FOR FOOD, we have TO SPENT 2US\$ FOR WATER, A BASIC REQUIRED OF A HMAN BEING, REMAINING 3 US\$ ARE NOT SUFFICIENT FOR BREAKFAST, LUNCH AND DINNER. AT A NUMBER OF OCCASION ALL OF US REQUESTED TCIL PROJECT MANAGER AT KOSOVO BUT HE REFUSED TO DO ANYTHING ON THE OTHER HAND HE THREATEND US OF OUR JOB IN UN AND IN INDIA ALSO AND HE HAS ALREADY TAKEN THE JOB OF THREE PERSONS AND SEND THEM BACK TO INDIA. THE ACCOMODATION PROVIDED BY PROJECT MANAGER IS NOT SUFFICIENT, FOUR PERSONS ARE FORCED TO LIVE IN TWO ROOMS WITH ONE TOILET ONLY. AND SINCE FIVE MONTHS NO CLEANING ARRANGEMENTS MADE FOR THE HOUSES, SO OUR HEALTH CONDITION IS ALSO GOING DOWN DAY BY DAY.

Figure 13

84. Upon receipt, just one half hour later Mr. Toh forwarded this message to Messrs. Sachdeva and Bahel and stated: "TCIL has to stop this internal bleeding –NOW . . ." The PTF investigation has not revealed that any action was taken to rectify the situation.
85. On 9 January 2001 Mr. Phelan, Chief of FALD, wrote to Mr. Bahel and requested that additional vendors be solicited to supplement the contract staff currently at the Mission:

2. Given the growing operational demand for technical staff by the Missions and the current Contractor's difficulty in meeting existing requests for Personnel, it is requested that the Request for Proposal for Support Personnel submitted to PD on 24 October 2000 be issued as expeditiously as possible. The intent is to select two or three additional vendors to support Mission staffing requirements in addition to the Personnel provided for by the existing contract.

Figure 14

86. It is significant to note that contrary to his guarantees to FALD during the review process, Mr. Bahel failed to honour his pledge.

87. The PTF has identified an email message, dated 14 February 2001, from a FALD official in UNMIK reflecting efforts by DPKO to attempt to re-bid the staffing contract in the wake of these problems associated in the implementation of the TCIL contract.

its urgent (Document link: [Henry Thompson](#))

" were attempting to negotiate an amendment to the contract which would
dress these issues. This is not going well and we are today writing to PD
requesting a rebid (we had already done this back in October 2000 but PD
refused to do.). This request will not be well received by PD but will
have the support of FALD upper management. Stay tuned for more adventures
before this gets resolved.

Henry Thompson@UNMIK
14/02/2001 11:49 AM —

Figure 15

88. However, no such re-bidding exercise was ever launched, or even proposed by PD. To the contrary, the complaints of the contract staff, brought to light by both the employees and officials of FALD, reached deeper into the Organisation in 2001 without remedial action.
89. By summer 2001 the issue rose to higher levels in the Organisation. On 2 August 2001 Dileep Nair, the then Under-Secretary General of OIOS wrote to the Ambassador of India seeking the Permanent Mission's assistance in investigating the claims of the contract employees of TCIL.

Mr. Bahel

United Nations Nations Unies

DILEEP NAIR
UNDER-SECRETARY-GENERAL
FOR INTERNAL OVERSIGHT SERVICES

Reference: 18123/01 10/8 02 August 2001

Confidential

Dear Ambassador Sharma,

The United Nations' Office of Internal Oversight Services (OIOS) presents its compliments to the Permanent Mission of the Republic of India to the United Nations and has the honor to refer to it a number of serious allegations against one of the United Nations' contractors – a company named Telecommunications Consultants of India Ltd. (TCIL). This company has been contracted to provide services for a number of United Nations peacekeeping missions in the field of information technology and telecommunications. The allegations, as can be seen from the attached communication of a former employee of the company, who claims to have the necessary proof to support them, include:

- presentation of fraudulent documents,
- misrepresentation of technicians' qualifications'
- use of falsified identifications,
- submission of false invoices,
- misrepresentation of tax information,
- failure to pay staff salaries, and
- use of intimidation tactics to control employees.

OIOS audited implementation of the contract between the United Nations and TCIL, and a number of deficiencies were found in the contractor's performance. These are being addressed and rectified. However, as can be seen from the nature of allegations, there are other areas that could not be covered by the scope of our internal audit.

Log # 986923

UNSGO/CS

Action	Comments	Pls. draft response	Information	TYPED	RECEIVED
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF NSG/DCS 2001 AUG - 9 P 3

His Excellency
Mr. Kamalesh Sharma
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Republic of India
to the United Nations
New York, NY

Figure 16

90. A copy of the letter was retrieved from the office of Andrew Toh during a search by PTF investigators. The copy in Mr. Toh's office included the handwritten notation attached to the upper left hand corner of the document: "Mr. Bahel," and "confidential info" under the line. However, it appears that no sufficient action was taken despite these serious allegations, and repeated requests.

THE SUBCONTRACTS

91. The PTF's investigation has revealed that at the time TCIL received the contract award from the Organisation, it entered into a sub-contract with GTI, a company that have purported to be "headquartered" in Vienna, Austria. The PTF investigation has revealed that GTI also maintains an office in India, which is located at the En-Kay Associates address in New Delhi. As set forth above,

U.B. Singh was an officer in En-Kay, and a brother of Nanak Kohli. The PTF investigation has revealed that Nanak Kohli, a/k/a N.Singh, was associated with both companies.

92. There is a serious question whether GTI is a legitimate company. The results of the investigation cast serious doubt upon this issue. Upon learning of the assignment, on 30 August 2002 UN Procurement officer Walter Cabrera conducted a review of GTI. Mr. Cabrera accessed Dun & Bradstreet, and found no information on the company. On 12 September 2002, in connection with notice of the increase of NTE for TCIL's contract, Mr. Cabrera sent an email to Nishan Kohli, the subject heading of which read: "Urgent—Company Registration of Guru Trust Investments." Mr. Cabrera requested immediate disclosure of "registration data of the recruiter/subcontractor," referring to GTI.
93. On 27 September 2002 Nishan Kohli replied, and asserted that GTI was a limited liability company established in Curacao in 2000, had offices in New Delhi, India, and was headquartered in Vienna, Austria "courtesy of Anglo Irish Bank, c/o company trustee at Rathausstrasse 20, PO Box 306, Vienna, Austria 1011." The PTF's investigation has revealed that GTI's representation that it had been associated with Anglo Irish Bank in Austria is false. The Bank informed the PTF investigators that the Bank did not hold any relationship with GTI at any time. The Bank added "[w]e were not aware that our address is used by this company. The use of our address is not permitted and is illegal."

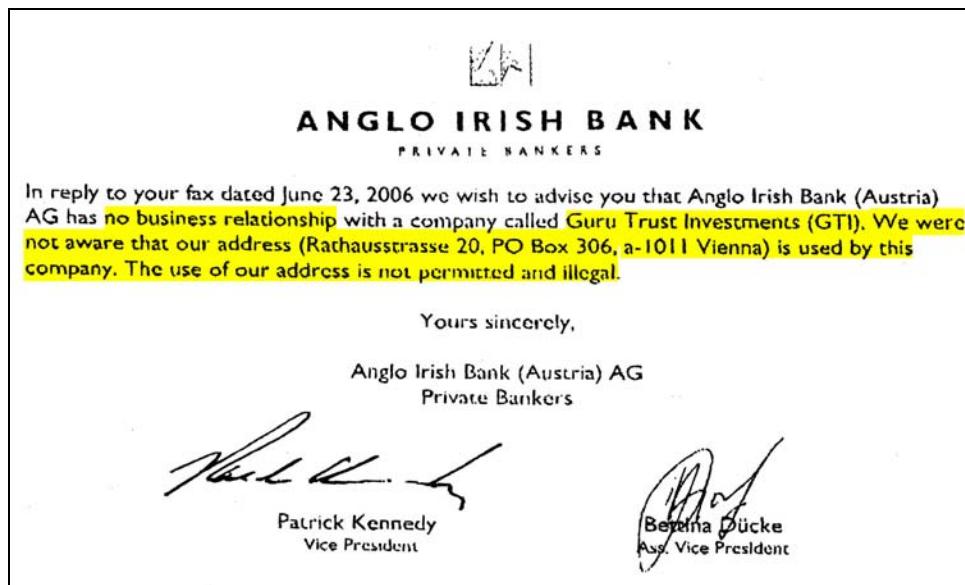
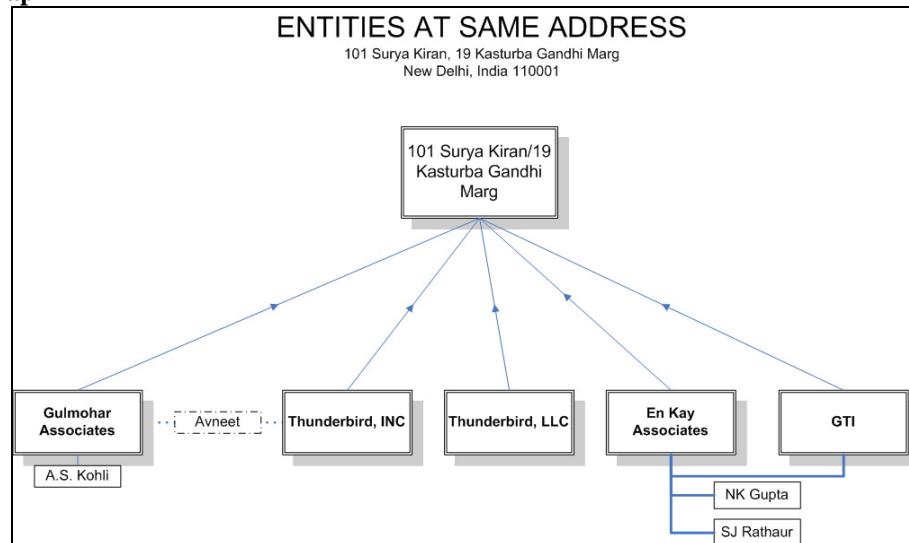


Figure 17

94. Further, the address provided to PD by GTI was the Vienna "headquarters" address of the Anglo Irish Bank. However, as set forth below, the PTF has identified that the company has an address in India at 101 Surya Kiran, 19 Kasturba Gandhi Marg, New Dehli, India 110001. This address is also shared

by En-Kay Associates, the entity to whom GTI assigned the United Nations contract to, and by Thunderbird Industries India (a subsidiary of Thunderbird Industries LLC), another Nishan Kohli company.

Graph 1



95. It is also clear from the PTF's investigation that Nanak Kohli and GTI utilised En-Kay in connection with the contract since its inception. The investigation has confirmed that TCIL failed to provide notice of this sub-contract to the Organisation until January 2002. Furthermore, TCIL never sought prior approval of the United Nations for this agreement.
96. The PTF investigation has discovered documents between En-Kay and deployed staff, which reference TCIL contract with the Organisation. In addition, the obtained agreement describes the relationship between En-Kay and TCIL as that of "associates." The precise nature of the relationship remains unclear.
97. Based on the documents obtained thus far by the PTF, GTI, first assigned the contract staff to En-Kay Associates in 2000, and then took it over in approximately mid 2001. The PTF has obtained copies of the contract staff agreements which clearly state that the obligations to perform the IT staffing services in the various UN Missions were administered by En-Kay and later on by GTI, itself.
98. The PTF has received copies of the agreements between GTI, En-Kay Associates and their contract staff, from various sources, including informants and contract staff hired by GTI to provide IT staffing to the UN Missions. Notice of the assignments was never provided to the Organisation, or was the Organisation's approval sought prior to execution.

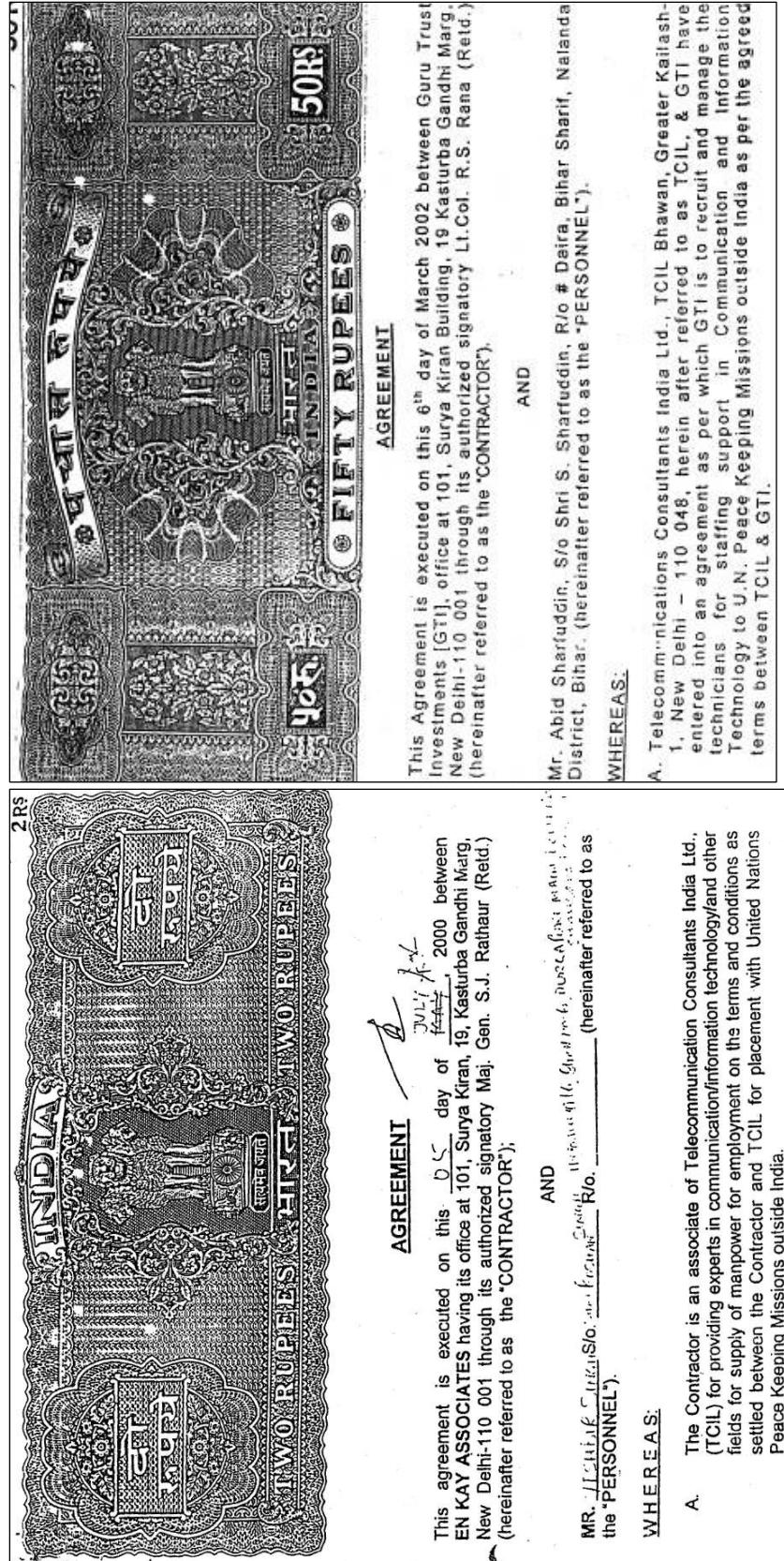


Figure 18

99. TCIL representatives have recently acknowledged to the PTF that the company entered into such an agreement with GTI because it had little experience with the UN, and was in need of guidance and direction in performing contracts for the Organisation. TCIL has further represented to the PTF that it was aware that Mr. Nanak Kohli was a principal of GTI, and believed at the time that he would be responsible for representing TCIL's interests. The company had further conceded that Nanak Kohli used the alias N. Singh when communicating with the Organisation, a fact Mr. Bahel acknowledged to the PTF as well.
100. According to TCIL, the company divested all of TCIL's authority and responsibility under the IT Staffing Contract with the Organisation to GTI, and TCIL remitted to Mr. Nanak Kohli and GTI between 80% and 90% of the sums paid to it by the Organisation. Documents provided by TCIL confirm this fact.

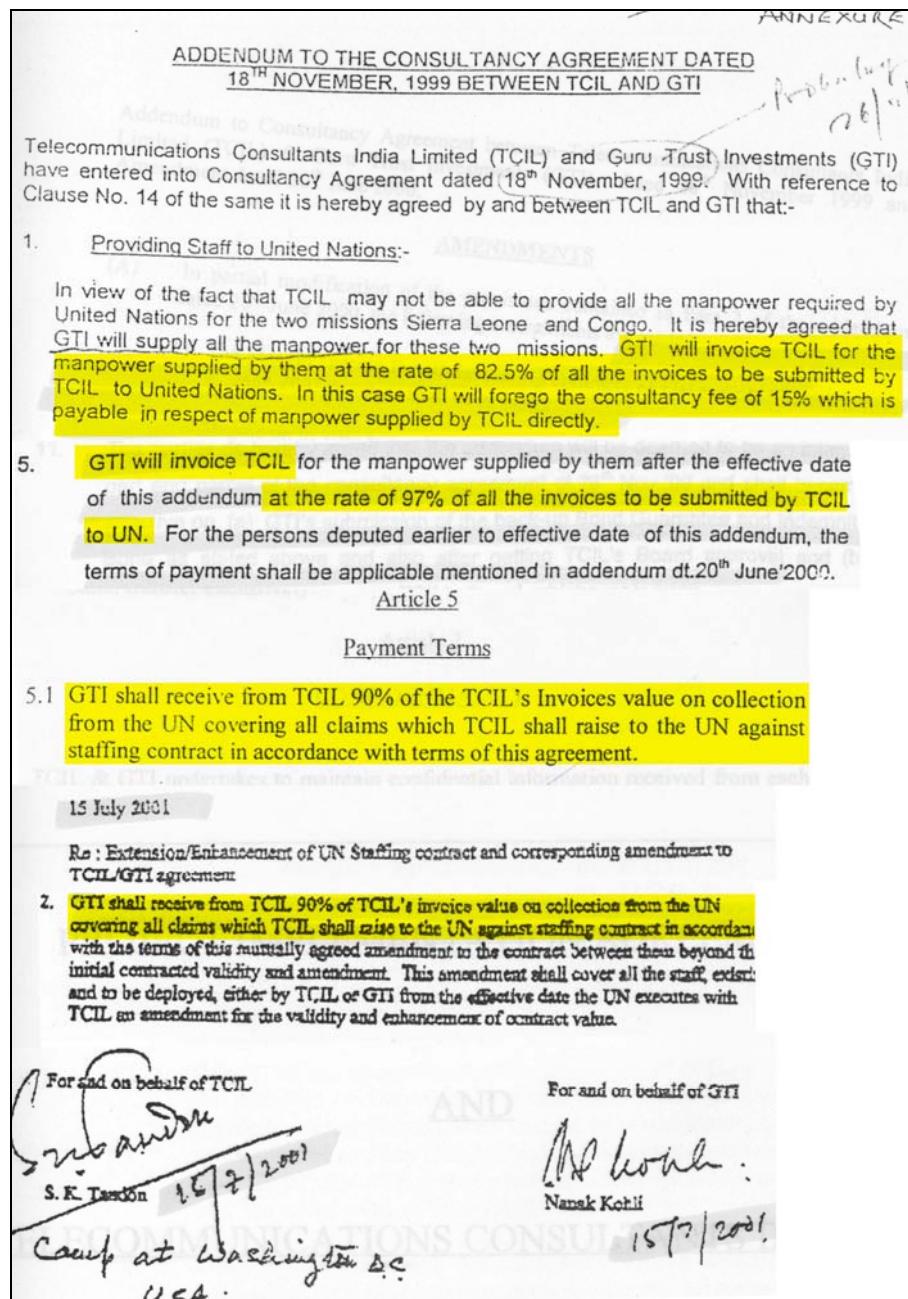


Figure 19

101. TCIL representatives were also presented with correspondence from N. Singh on TCIL letterhead utilized by him to communicate with the PD. TCIL unequivocally stated that Nanak Kohli had no authority to write to the Organisation on its letterhead, and offered that several of the letters failed to bear authentic headings.

We wish to clarify that TCIL had never authorized Mr. N. Singh / Mr. N. Kohli or his staff / associates to use TCIL's official letterhead. In this context, it is worth mentioning that letter heads can not be kept as a confidential document by a Govt. Company which works completely in a transparent manner in its transactions / communications.

Figure 20

FAILURE TO PASS ON FULL MSA PAYMENTS

102. In July 2000 En-Kay paid to TCIL contracted personnel a lump sum of 80,000 rupees, an equivalent of approximately \$1,600. According to En-Kay, this amount was inclusive of all benefits to which the contract staff was entitled. Significantly, there is no provision in this contract for the payment of subsistence allowance to the staff, and no representation that the contract staff would be paid the equivalent sum as UN international staff was receiving.

2. That the Personnel shall be paid Rs. 80,000/- (Rupees Eighty Thousand only) per month, a salary in lump sum inclusive of all the perks, benefits, conveyance, medical etc.

NOW THIS AGREEMENT WITNESSETH:

1. That the appointment of the Personnel would be for working as Technician with UN Peace Keeping Mission in ~~MONUC CONGO~~, contracted for a period of one year, initially for three months extendable for further period of nine months depending upon the demonstrated performance of the Personnel and at the sole discretion of the Contractor.
2. That the Personnel shall be paid Rs. 80,000/- (Rupees Eighty Thousand only) per month, a salary in lump sum inclusive of all the perks, benefits, conveyance, medical etc.
3. That the Contractor shall bear the cost of return journey air ticket of the Personnel to the country of posting and return to India.
4. The Contractor shall help the Personnel in procuring the VISA as quickly as possible for the country of appointment. The actual cost of the VISA shall be borne by the Contractor.
5. The Personnel shall procure and submit his passport on his sole expenses.

11. The Personnel shall not enter into any business relationship related to any Mission, whether formal or informal, with any company, entity or individual that has, or is seeking to have, a commercial relationship with the UN or any of its Missions or other subsidiary organs, without prior written agreement of the UN. This undertaking shall continue for a period of two (2) years after the demobilization of the Personnel from the Mission where they had been performing Staffing Support in connection with this Contract.
12. That if at any time during his employment, the Personnel is found guilty of misconduct or any willful neglect of the duties and/or non compliance of the instructions given to him from time to time by the Contractor or his superiors of the job hierarchy, the Contractor, without any notice may put an end to his services and the Personnel shall therefore continue to be liable for all losses/damages to the Contractor.
13. The Personnel is required to work at least forty-eight (48) hours per week and to work according to working hours that are consistent with those established for the staff members of the Mission at which the Staffing Support is being provided.

11. The Personnel shall not enter into any business relationship related to any Mission, whether formal or informal, with any company, entity or individual that has, or is seeking to have, a commercial relationship with the UN or any of its Missions or other subsidiary organs, without prior written agreement of the UN. This undertaking shall continue for a period of two (2) years after the demobilization of the Personnel from the Mission where they had been performing Staffing Support in connection with this Contract.

Figure 21

103. Importantly, when the contract was administered by GTI in late 2001, there were further reductions in the amounts paid to the contract staff, well below the amounts paid by the Organisation to TCIL. The employees received a base salary of 10,000 rupees per month (equivalent to \$200), and an additional 20,000 rupees for boarding (equivalent to \$400). The Organisation continued to pay TCIL approximately \$8,000 per worker per month.

UNITED NATIONS United Nations Organization Mission in the Democratic Republic of Congo	NATIONS UNIES Mission de l'Organisation des Nations unies en République Démocratique du Congo
MONUC FAX OUT: T-1788	MONUC FACSIMILE TRANSMISSION MOST IMMEDIATE
<p>1. MONUC HAS BEEN MADE AWARE OF THE SUB-CONTRACT BETWEEN TELECOMMUNICATIONS CONSULTANTS INDIA LTD (TCIL) AND GURU TRUST INVESTMENTS (GTI) FOR THE PROVISION OF THE EDP AND COMMUNICATIONS LABOR SERVICES TO THE UNITED NATIONS.</p> <p>2. IN THIS CONNECTION, TCIL CONTRACTUAL STAFF IN MONUC HAVE INFORMED THE MISSION THAT THEY ARE BEING PAID BY GTI A MONTHLY SALARY OF 90,000 RUPIES, THE EQUIVALENT OF US\$1,850 AND NO LIVING EXPENSES. IN ACCORDANCE WITH THE TERMS OF THE CONTRACT BETWEEN TCIL AND THE UNITED NATIONS, THE ORGANIZATION IS REIMBURSING TCIL FOR EACH EMPLOYEE THEY ARE PROVIDING A SUM RANGING FROM US\$3,345 TO US\$3,918 FOR THEIR SALARY AS WELL AS AN AMOUNT OF 143.65\$/DAY FOR THEIR LIVING EXPENSES.</p> <p>3. MONUC HAS REQUESTED TCIL ON TWO OCCASIONS TO PROVIDE CLARIFICATIONS ON THESE DISCREPANCIES BUT THEY HAVE REFUSED AND THEY INDICATED INSTEAD THAT THE MATTER WAS REFERRED TO PROCUREMENT DIVISION (COPY OF THE CORRESPONDENCE EXCHANGED IS ATTACHED). IT WOULD THEREFORE BE APPRECIATED IF A COPY OF THE TCIL SUB-CONTRACT WITH GTI COULD BE PROVIDED TO THE MISSION FOR INFORMATION AND GUIDANCE.</p>	

Figure 22

104. Further, the agreement required the contract staff to certify to the contractor each month that “Living Expenses (lodging/boarding conveyance) or equivalent benefits have been provided by the contractor.” The PTF investigation has confirmed that the amounts have not been paid to the staff. (See Paragraphs 2(b) and (e) in figure 22). Further, the contract provided that staff have “NO contact with the staff member of UN on any matter except for technical parameters pertaining to his job performance,” (emphasis in original) (paragraph 17), and that contract staff was forbidden from divulging the “contents of the agreement without the written authority of the Contractor. (Paragraph 19). (See Appendix.)
105. Even more troubling contract staff was required to provide a “Bank Guarantee” and post \$2,100 dollars prior to the commencement of work, and the contract makes clear that any breach of the contract would result of a forfeiture of guarantee. Under this provision in the contract, the bases for a forfeiture included “adverse performance” or “untimely termination” of employment.

- | |
|---|
| <p>2. That the Personnel hired in India for Overseas Assignment and shall be paid emoluments as under :-</p> <p>(a) Basic Pay :- Rs. 10,000.00 P.M.</p> |
| <p>17. The Personnel shall have NO contact with the staff member of UN on any matter except for technical parameters pertaining to his job performance.</p> |

Figure 23

106. Further, the agreement provides in paragraph 21(ii) that “any representation and or complaint to the U.N. or any other Organisation will be a breach of this Agreement.” A copy of the agreement and the performance bond is contained in the appendix.

THE KOHLI COMPANIES

107. The murky relationship between En-Kay, GTI and Thunderbird is borne out by other documents obtained by the PTF. On or about 28 August 2001 Mr. Ranjit Kohli authorized a wire transfer payment to contract staff employees in Sierra Leone from the Thunderbird’s account in First Union Bank, McLean, Virginia. The payment to TCIL contracted staff was made by Thunderbird, and not by TCIL itself. It should be noted that Thunderbird was not a party to the IT staffing contract and its existence was unknown to the UN. The UN was never notified what involvement Thunderbird had in the execution of the contract. Significantly, the document reflects that US\$11,000 payment represented the monthly salary for all seven staff combined.

To,
Mr. M. RAVINDERN NAIR,
UNAMSIL,

Sir,

Req : - Payment of Salary.

USD 11,000 is being remitted in your Account No. 0301102709351. Standard Chartered Bank Freetown, Sierra Leone, to be paid on Account of Salary for the month of JULY, 2001.

S.NO.	NAME	AMOUNT USD	DATE OF PAYMENT 2001	AMOUNT PAID USD
1	Ashok Singh	1858		
2	Jagdish Kumar	1851		
3	Javed Hussan	1684		
4	Javed Rashid	1652		
5	S. A. Khan	1652		
6	Siva Balan K	758		
7	Tarun Kumar	1376		
	Petty Cash	89		
	TOTAL :-	10900		
	Amount Remitted	10900	Petty cash (Previous)	
	Amount Received		Petty cash (July)	
	Bank Charges		Total Petty cash	

Please confirm to HQ. by e-mail after payment made to each individual. Also forward Living Allowance Certificate and duly signed money receipt with countersigned by the Team Leader by post.

With regards,

Encl Sheet 2

Figure 24

05-14-01 15:59 FIRST UNION Funds Transfer Request ID#7932883648 P81/91

FIRST UNION

Preparer's Signature _____ Authorizing Signature _____

Cashier Received (Name or No) _____ **Authorizer's Signature** _____

Telephone/Telex/Email/Credit Professional _____

Voucher Number: 618492 Date: 08/28/01 Time of Day: SUFFICIENT

Funds Transfer

Amount of International Non-Repetitive or Repetitive _____

FIRST UNION NATIONAL BANK

Code: _____ Branch or Department: _____ Request Type (Fax/Phone/Visiting) _____

INTERNATIONAL & NON-REPETITIVE

Transaction 2 (GL) _____ Execution Date: _____

Domestic Transfer Amount: \$ _____

Time Currency: _____ Value Date: 08/28/01 Foreign Amount: \$ _____

Conversion Rate: WALK-IN Exchange Rate: _____

Control Number / Reference #: 20106628 08/28/01 Int'l Transfer Amount: \$ 1.000000000000

Figure 25

108. In October 2002 Mr. Saunders, then Chief of Procurement, sought clarification from TCIL of the nature of their relationship with Thunderbird and Nanak and Nishan Kohli. The inquiry was the result of the inconsistent and conflicting information provided by Thunderbird and Nishan Kohli in another UNPD Manpower Staff Support bidding contract.

<p>United Nations</p>  <p>Nations Unies</p> <p>HEADQUARTERS - SIEGE NEW YORK, NY 10117 TEL: 1 (212) 963-1324 • FAX: 1 (212) 963-4879</p> <p>A. S. Bansal Chairman & Managing Director Telecommunications Consultants of India, Ltd. TCIL Bhawan, Greater Kailash-I New Delhi, 110048 India Fax: 91-11-624-2266</p> <p>Dear Sir:</p> <p>7 October 2002</p> <p>Please be advised that the United Nations Procurement Division is in receipt of correspondence from Mr. Nishan Kohli, expressing interest in having his privately-held company, Thunderbird Industries LLC (USA), submit bids to UNPD under several UNPD commodity codes for which Telecommunications Consultants of India, Ltd is also currently registered.</p> <p>We would appreciate if you would kindly clarify the nature of the relationship between TCIL and Thunderbird Industries, LLC, if any. Could you also kindly clarify the historical and current nature of the relationship between TCIL and any of the six partners of Thunderbird Industries LLC (including both Mr. Nishan Kohli and Mr. Nanak Kohli)?</p> <p>Your immediate response would be appreciated, specifically by COB 8 October 2002.</p>	<p>टेलीकम्युनिकेशन्स कंसलटेंट्स इंडिया लिमिटेड (एक सरकारी कंपनी)</p> <p>Telecommunications Consultants India Ltd. (A Govt. of India Enterprise)</p> <p>टेलीकम्युनिकेशन्स कंसलटेंट्स इंडिया लिमिटेड भौतिक पालन, देवर कॉलोनी-1 ग्रैंड एवेन्यू-110048 11th October, 2002</p> <p>TCIL/TX/UN-S/2002</p> <p>Mr. Christian Saunders Chief United Nations Procurement Division United Nations HQ NEW YORK</p> <p>Dear Sir,</p> <p>This has reference to your letter dated 7th October, 2002 regarding TCIL's relationship with Thunderbird Industries LLC and its partners Mr. Nishan Kohli and Mr. Neat Kohli.</p> <p>In this connection, the following is intimated.</p> <p>TCIL is transacting business with United Nations Procurement division under vendor registration No.12777 issued on 3.11.1999.</p> <p>1. Ms. Thunderbird Industries have been designated as authorized distributor by our suppliers Ms. Stogoo Digital Systems, UK in respect of our contract with UN for supply of D-400 Transceivers, in respect of our transaction with UN. Mr. Nishan Kohli and Mr. Nanak Kohli have been representing Ms. Thunderbird Industries in their dealings with TCIL. Mr. Nishan Kohli and Mr. N. Kohli of Ms. GTI / Ms. Thunderbird Industries had been helping us in organizing supplies and coordination with UN in various contracts with UN from time to time. We are not aware as to who are the partners of Ms. Thunderbird Industries.</p> <p>2. With a view to facilitating TCIL's business relationship with UN, we had engaged Ms. GTI as our associate for liaison with your Headquarters and mission office. Mr. N. Kohli of GTI has been authorized to represent us in this regard. Kindly refer our letter No. TCIL/TX/UN-S/2002 dated 24.4.2002 to Mr. Andrew Toh, Chief, Procurement Division in this connection.</p> <p>With best regards,</p> <p>Yours sincerely,</p> <p> Christian Saunders Chief United Nations Procurement Division</p> <p>CC: A. K. Sharma Group General Manager (S&TC)</p>
---	---

Figure 26

The Effort to Re-Bid the Contract

109. In 2001, after complaints of a failure to pay MSA reached officials of FALD, there was an effort to seek a rebid of the contract. When Nishan Kohli learned there might be such an effort afoot, he attempted to halt the process and exerted pressure on his contract staff to represent to the Organisation that they were being fully paid and otherwise satisfied with their employment. From his Thunderbird email address, Nishan Kohli sent an email directing the team leaders to “condemn these misguided colleagues” and requiring that the contract staff sign a petition to that effect.

From: "Nishan Kohli" <NishanKohli@TBIworld.com> | Block
ATTN ALL TCIL TEAM LEADERS:
FOLLOWING MESSAGE TO BE DISTRIBUTED TO ALL TCIL
TECHNICIANS

In order to save and salvage the situation, all of you must not only condemn the actions of these misguided colleagues, but must immediately address the attached representation. It is urgent and imperative. The following representation must be signed by all of you, giving your full name, ID number and signature. If anyone is not available, those who are must do the needful at once and the rest can follow: Please immeiately sign an fax the attached draft to my New York Numbur: 212 208 5238 -cc-

>From TCIL Staff in Mission (GIVE DETAILS)

To: Mr. AS Bansal
CMD, TCIL, New Delhi

Dear Sir,

It has been brought to our notice that some interested parties are trying to blackmail TCIL so that the UN Staffing Contract with TCIL is cancelled. These vested interests want to get the contract rebid so that they may be awarded the same. It is reliably learned that the company concerned is foreign, i.e. not Indian, therefore should these parties be successful in their attempt, all of us will lose our jobs, TCIL will lose a major contractand India will lose a large volume of foreign exchange.

We have been working very hard and have made ourselves available to theMission at any time, day or night. Further, our technical competence hasbeen fully appreciated.

Some of our misguided colleagues (it is also rumoured that they may have been bribed) have been sending representation to anybody and everybody, making false allegations and undue claims.

We, all the undersigned, hereby affirm that TCIL is providing us with all the benefits and dues as per our agreement with the company. We also state that we have no further' claim whatsoever and that we are fully satisfied. A very few misguided colleagues do not represent the hundreds of us.

We request you to please take up the matter with the United Nations through good offices of the Government of India, through India's Permanent Mission in the United Nations Secretariat.

We once again state that it is a deliberate attempt to create an atmosphere so that the Contract can be cancelled, in which case we will all lose our jobs and the benefit of this golden opportunity for ourselves and our families.

Figure 27

To: Telecommunication Consultant India Ltd. TCIL, Bhawan, Greater Kailash-1, New Delhi.	
Sub : <u>Living Allowance to Personnel.</u>	
Dear Sir,	
I have provided Technical Support to the United Nation Mission _____ in _____ from _____ to _____ on a contractual basis under the provision of Contract No : PD/C0049/00 signed between United Nations and TCIL.. As per the Terms and Conditions laid down in said Contract, I here by confirm that equivalent benefit have been paid to me by the TCIL to fully compensate for the living expense amount as admissible by the UN. I further confirm that all dues have since been paid to me and I have no claim whatsoever against the TCIL.	
Date : Place:	YOURS FAITHFULLY
	Name : Job : Passport No : ,

Figure 28

110. The investigation has revealed evidence that the contract staff were compelled to sign the document under the threat of termination. These signed representations followed Mr. Sachdeva' requests to N.Singh to provide confirmation of payments of "equivalent benefits."

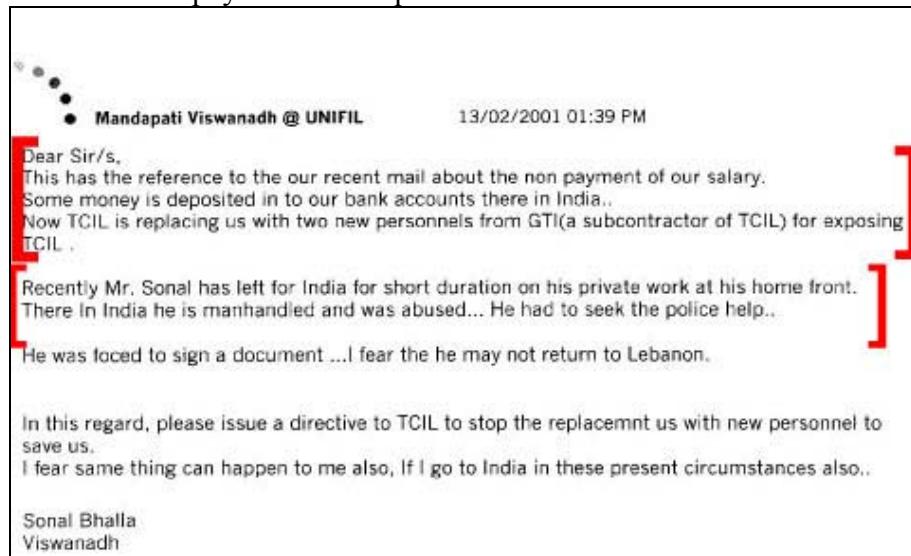


Figure 29

111. The correspondence reached numerous UN staff members, including Mr. Bahel and Mr. Andrew Toh, Chief of Procurement at that time. In a note to Mr. Bahel and Mr. Sachdeva later that same day, Mr. Toh forwarded the email from the staff members and stated: “enough is enough.” However, the investigation has not revealed any evidence that any further action was taken.

TCIL’s Current Cooperation with the PTF

112. The PTF has met with representatives of TCIL, both here in New York and in their headquarters in New Dehli. There have been several meetings between the PTF and TCIL representatives, and TCIL has acknowledged some responsibility for the severe problems in the IT staffing contract. TCIL lays principal blame for the transgressions, however, upon Nanak Kohli and GTI. TCIL officials have acknowledged that although Mr. Nanak Kohli and Mr. Nishan Kohli were authorized representatives of TCIL at the time, they nonetheless acted improperly in connection with their representation of the firm with the UN, and exceeded their authority improperly utilizing TCIL letterhead, and more seriously, failing to provide significant benefits to the contract staff, including insurance. TCIL presented the Task Force with written correspondence they claim they presented to GTI in which these assertions are memorialized in writing in 2003.
113. The PTF presented TCIL’s representative with written correspondence authored by “N. Singh,” on purported TCIL stationary, and numerous emails from N. Singh to the UN. TCIL representatives, with authority to speak on behalf of the company, have represented to the PTF that N. Singh is in fact Nanak Kohli, and his use of TCIL stationary was unauthorized. Mr. Bahel himself has conceded that N. Singh is in fact Nanak Kohli.
114. TCIL representatives assert that while they were aware of, and approved, the subcontract to GTI, they believed they had transferred all of the obligations which flowed from the contract to GTI. TCIL has presented documents to the PTF that reflects that between 80%-90% of the funds paid by the Organisation to TCIL in consideration of their performance (which includes salary and subsistence allowance) was passed on to GTI. However, the agreement between the Organisation and TCIL makes clear that TCIL could not assign those obligations.
115. TCIL asserts that in 2003 they severed their ties with GTI as a result of the failure of GTI to comply with the obligations under the contract, including the failure of GTI to pay the contract staff’s insurance as required.
116. It is evident that such a failure to pay the amounts due and owing under the contract constitutes a material breach of the contract. While TCIL reports that they were unaware of GTI’s failure to pay full MSA to the contract staff, the

company does not deny that such a failure occurred. TCIL representatives were alerted to the fact that there was official correspondence from senior TCIL officials to the Organisation representing that in fact MSA was being paid to the contract staff. TCIL asserts that it underwent a significant management change in 2003 and many of the senior officers were replaced. TCIL argues that they are now a different, much improved company, which has fully disassociated itself from Mr. Nanak Kohli and Mr. Nishan Kohli, whom they term as “unethical.” TCIL also asserts that the company had a few employees who acted improperly, but that the company as a whole is sound.

MR. SACHDEVA’S RESPONSE

117. The PTF contacted Mr. Sachdeva about these matters and his interaction with these companies and the events described above. Mr. Sachdeva informed the PTF that essentially he could not remember anything about these issues. The PTF views this statement as highly suspicious based upon Mr. Sachdeva’s deep involvement in this case over at least a 2 month period between October and November 2000, and that 76 calls were placed by Mr. Sachdeva to Mr. Kohli’s residence in Virginia.

MR. BAHEL’S RESPONSE

118. Mr. Bahel claims essentially that his actions were vetted through OLA and that he alone was not in a position to influence the process. Further, he asserts that the selection of TCIL saved the Organisation money.⁵
119. Mr. Bahel’s assertions that he vetted issues with OLA, and his actions were in the best interests of the Organisation do not survive close scrutiny. As discussed above, on a number of occasions Mr. Bahel framed the issues with OLA, and was responsible for presenting the facts. At times, Mr. Bahel either omitted material information, misrepresented information, or failed to provide the

⁵ Mr. Bahel told PTF investigators that, agreeing to the changes to the contract which compelled payments to TCIL directly, procurement division acted in the best interests of the Organisation, averting a possible law suit from the Vendor over the recall of staff who failed the UN driver’s test. The text of the RFP did not specify the need to pass a UN driver’s test. The adopted amendment required the Vendor to “undertake all reasonable measures to ensure that the Personnel conform and abide by all written and oral UN rules and regulations,... to pass the UN Driver’s test and obtain UN driver’s permit.” Other changes included the increase of the deployment period for TCIL personnel to 30 days and UN’s agreement not to offer employment to staff performing work on the contract until after six months from the demobilization date from the mission. The PTF finds it difficult to understand how these concessions, opposed by FALD, were in the best interests of the Organisation. Further, as set forth at above, the prior experience with the IRCON contract should have resulted in the avoidance of the issues of MSA payments with TCIL. The IRCON contract provided for identical terms, and similar problems arose in the performance under the contract. Mr. Bahel was perhaps the only individual who was present for both processes, including the negotiation and execution of both contracts.

requisitioner's position on important issues. Further, OLA had no role in many of the significant issues.

120. Equally meritless is Mr. Bahel's reliance upon the position of OLA that the dispute over the allegations that the contractor was failing to pay its contract staff was a matter between the contractor and its employees. While OLA did express this view, the opinion is premised upon, in part, the failure of proof that MSA was not being paid. OLA, based on representations by Mr. Bahel and PD that TCIL had denied the failure to pay MSA, concluded that the allegations were unproven. This fact affected OLA's analysis.
121. It should be noted, however, that OLA's view that any dispute was purely a contractual matter between the Contractor and its staff is difficult to understand in light of the well established principles of contract law that fraud in the inducement or execution of a contract vitiates the contract in the first instance. Further, the Organisation should have been concerned about the conditions of employment of the contract staff, its reputation, as well as the loss of funds.

PTF'S EVALUATION

122. Throughout the execution of the contract with TCIL a scheme existed to deprive the contract staff of sums of money due and owing to them. This scheme enriched Nanak Kohli and Nishan Kohli, GTI and En-Kay Associates, to the detriment not only of the contract staff, but of the Organisation as well. Mr. Bahel assisted Nanak and Nishan Kohli in acting in their interests when issues arose and challenges were made by FALD and contract staff, and suppressing the concerns of the requisitioner, FALD.
123. TCIL, Nanak Kohli and Nishan Kohli violated the terms of the contract with the Organisation by failing to advise the Organisation of the utilization of other subcontractors, explaining the nature of the use of these other entities, and failing to seek approval from the Organisation for the assignments. The use of these entities facilitated the scheme.
124. The Organisation significantly overpaid TCIL, a circumstance which could have been avoided. Paragraph 5.4 of the contract provided that “[t]he Contractor shall take all reasonable steps to keep all costs and expenses for which the UN is responsible for reimbursing the Contractor at the lowest possible level.” The actual cost to TCIL for food and lodging for the contract staff was far less than amounts they were paid by the Organisation.
125. A thorough investigation of the issues should have been allowed to proceed at that time. The Organisation had audit rights and access to the books and records of the contractor. The PD bears some responsibility for taking TCIL's representations at face value, and Mr. Toh and Mr. Bahel's challenges to the

auditors and acceptance of TCIL's representations further resulted in the failure of the Organisation to intercept the scheme. (Under paragraph 16.1 and 16.2, the books and records of the Vendor were to be sent to the offices of the PD.)

Trigyn Technologies Inc

126. On 3 March 2005 a communication and information staffing support contract, PD/C0028/05 was awarded to Trigyn Technologies Inc. USA, a subsidiary of Trigyn Technologies Limited India (Trigyn). The contract is in place today, and the vendor is currently providing manpower services to Missions in the Organisation. The PTF investigation reveals, and Trigyn has conceded, that Thunderbird is a subcontractor on this project. The PTF is currently investigating claims that GTI is also involved, and that false financial information was submitted to the Organisation to achieve the contract. Further, there are allegations that once again not all of the salary and MSA payments are being passed on to the contract staff.

Thunderbird Industries LLC Engineering Manpower Contract

127. As set forth above, in 1995 the Organisation entered into a contract with IRCON India for the provision of engineers and other technicians to DPKO missions (engineering manpower contract). As in the case of the IT Staffing Contract, the engineering manpower contract was critical to the operation of the peacekeeping mission's engineering sections. Under the contract, IRCON employees received a subsistence allowance to pay for lodging and food while in the mission. The MSA was payable to the company, and the company was then responsible for passing the funds on to the workers.
128. In 2002 the IRCON contract was due to expire. The Organisation determined to re-bid the contract. PD issued an RFP and several vendors submitted proposals. On 8 April 2002, Mr. Etsell, officer in charge of DPKO's Engineering Section (LCS/FALD/DPKO) informed the PD of DPKO's need for manpower engineering support in various UN peacekeeping missions throughout the world. Mr. Etsell provided the PD with a Statement of Work. The SOW was received by Mr. Bahel, the then acting Chief of PD.
129. Weeks later, and shortly before the Procurement Department issued an Expression of Interest (EOI) notice on its website to inform prospective vendors of the needs of the Organisation for manpower services, Thunderbird submitted a vendor registration application seeking to register to do business with the Organisation for telecommunications and related services. The application was submitted by Mr. Nishan Kohli. In connection with its application, Nishan Kohli offered a completed registration form; a copy of a purported certificate of incorporation; balance sheets which were not audited or certified by an

independent Certified Public Accountant; correspondence from the firm's accountant with the disclaimer that GAAP principles were not used in the compilation of the documents; and letters from companies purporting to be references for Thunderbird, specifically Decotec Inc. of Fairfax Virginia; Compaq Computers of India; Barrett Europe Limited of Hampshire, England.

130. The procurement rules and accepted practices require that in order to properly be registered with the Organisation , the company must provide the following:

- a) a valid copy of the certificate of incorporation
- b) the latest certified or audited financial statement (balance sheet, income statement or signed copy of income tax return)
- c) a minimum of three recommending reference sources by services rendered within the last 12 months.

131. On 3 June 2002, however, without questioning the lack of certified financials or carefully examining the offered references, PD officer Diana Mills-Ayree approved Thunderbird's vendor registration application based on the information the company had provided to date. (It should be noted that repeated efforts by the PTF to obtain the Thunderbird registration file as well as the procurement file, met with negative results. These files are currently considered missing.)
132. Mr. Bahel assigned the engineering manpower solicitation to Procurement Officer Ms. Babynina with the assistance of a procurement officer/trainee Ms. Redfern. On 23 May 2002 the procurement department posted on its website an Expression of Interest ("EOI") which ran for a total of 25 days. The intended purpose of the EOI was to advise both registered, as well as non-registered, vendors of the Organisation's need for contract services for manpower. Internet research was conducted in order to identify and supplement qualified vendors who could provide these services.
133. PD officers Ms. Babynina and Ms. Redfern prepared a list of service providers together with a draft of the Request For Proposal ("RFP"), and provided it to Mr. Bahel for his approval and signature. A witness has informed the PTF that after reviewing the RFP, Mr Bahel insisted that the publicly posted EOI include a requirement calling for interested vendors to have been fully registered prior to the bid opening. However, procurement rules Section 7.9(1), as well as common practice in the department, allowed for provisionally registered vendors to participate in the process, so long as they are fully registered prior to contract selection. The effect of requiring full registration at this stage of the process was the improper elimination of a number of competing vendors.
134. The investigation has revealed that Ms. Babynina prepared the Statement of Work ("SOW"), which was ultimately provided to Mr. Bahel for his approval and signature. Two witnesses have claimed that Mr. Bahel "re-worked" the

SOW to include another stipulation requiring interested vendors to have \$15 million in annual turnover. The result of this requirement was the further elimination of a number of vendors.

135. On 5 July 2002 the RFP was sent to 24 companies, representing 15 countries. The bid opening date was 30 July 2002 with only 5 vendors responding. On 6 August 2002 the technical evaluation was conducted by Mr. Stephen Etsell, Officer in Charge, Engineering Section LSD/DPKO who determined that all vendors were technically qualified. However, Etsell maintained concerns about Thunderbird and found their proposal to be “marginally compliant,” based upon the lack of information concerning experience in managing engineering support services. Etsell stated “[w]e have reservations that this company can support our requirements as a result of the lack of information in the RFP.” Mr. Etsell also requested that a Dun & Bradstreet (D&B) report on the company be obtained by PD. Mr. Etsell communicated this request to Mr. Bahel in his technical evaluation. On the very same day as Mr. Etsell communicated this request to PD, Nishan Kohli contacted D&B in order to self-create a record for Thunderbird LLC. The PTF does not believe this is a mere coincidence.
136. That evening, following receipt of the technical evaluation report, Mr. Bahel unsealed the envelopes containing each of the five financial proposals. Thereafter, procurement officers assigned to the matter examined the financial proposals submitted by each of the vendors. According to one of these officers, Mr. Bahel told them the financial evaluation of the firms was not required in as much as Thunderbird was the lowest bidder. According to the witness, Mr. Bahel became very upset when the officer tried to examine the other proposals comparing them against the proposal submitted by Thunderbird. According to the officer, Mr. Bahel began shouting that this was unnecessary.
137. On 13 August 2002 Mr. Etsell sent an email to Mr. Bahel again explaining concerns that Thunderbird was a very small company with a history of merely four contracts, none of which were particularly relevant to the instant solicitation. Mr. Etsell requested that Mr. Bahel arrange an in person meeting with the vendor to discuss a number of “troubling issues.” According to Mr. Etsell, Mr. Bahel never arranged the meeting; instead, Mr. Bahel furnished Etsell with additional letters of reference in support of Thunderbird’s proposal. Table 1 reflects Thunderbird’s relevant references as described in its technical proposal for RFPS

Client Name	Country	Date	Value of Contract	Synonymy to RFPS 374
Indo-Kuwait General Trading and Contracting	Kuwait	July-02	\$1,000,000	Flexible deployment of personnel as per customer's requirement
VeriSign	Worldwide	Jun-01	\$10,000,000	Hardship areas - short and long term deployments
Multi-Links Nigeria Ltd	Nigeria	Jul-02	\$5,000,000	Deployment of all levels of personnel
Marshal's Power and Telecom India, Ltd.	India & Worldwide	Jul-02	\$1,000,000	Supply of short term and long term engineering staff

Table 1

138. After a review of the documentation provided, Ms. Redfern maintained concerns about Thunderbird, which caused her to question the bona fides of the company. According to Ms. Redfern, she was prevented from closely examining the company by Mr. Bahel who told her she “was not an investigator” and would not allow her access to the vendor registration file.
139. The PTF investigation has revealed that further scrutiny was clearly warranted. The accounting information provided in Thunderbird’s financial statements \$0.1 million, \$2.5 million and \$38 million revenue for fiscal year 1999, 2000 and 2001, respectively, claimed by Thunderbird LLC were not reasonably substantiated considering income tax returns could not be produced.

	1999	2000	2001
Revenue	\$ 100,000.00	\$ 2,500,000.00	\$ 38,000,000.00

Table 2

When asked to provide tax returns, Nishan Kohli first stated that it had insufficient income to require such a filing. However, Nishan Kohli later submitted inconsistent figures about Thunderbird’s revenue and income. As table 2 reflects, Thunderbird reported different amounts of income on the three separate occasions it submitted financials in response to PD’s requests.

Comparative Analysis of three sets of P/L statements for year ending 2001 submitted by Thunderbird Industries LLC, re: RFPS-374			
	Submission Date 4 June 2002	Submission Date 30 July 2002	Submission Date 31 October 2002*
Income			
Total net Sales	\$38,417,720.00	\$38,417,720.00	\$33,639,297.00
Costs of Sales	37,389,437.00	\$36,789,437.00	32,889,471
Gross Profit	\$1,028,283.00	\$1,628,283.00	\$749,826.00
Total Fixed Expenses	\$285,602.00	\$285,602.00	\$335,461.00
Total Controllable Expenses	288,050.00	\$288,050.00	97,410.00
Total Expenses	\$573,652.00	\$573,652.00	\$432,871.00
Net Profit (Loss)	\$454,631.00	\$1,054,631.00	\$316,955.00
Taxes		(\$307,635.86)	5,916.00
Net Profit (Loss) After Taxes	\$454,631.00	\$746,995.14	\$322,871.00

* Financial statements prepared by Roth & Company, CPA
Other financial statements prepared by TBI, LLC

Table 3

140. A procurement officer ran a Dunn & Bradstreet report on Thunderbird LLC, which failed to reflect any information. However, the officer learned of the existence of a company named Thunderbird Industries Inc. (Thunderbird Inc.) which was located at the same Virginia address as Thunderbird LLC and which also listed Nishan Kohli as its Chief Executive Officer. An examination of Thunderbird Inc. at the time reflected that the company's operations ceased in 1999 and that its charter was also revoked that year. However, the procurement officer identified a news article which related to Thunderbird Inc.'s effort in 2000 to supply the Government of India with portable frequency jammers which were ultimately found to be defective. Included in Thunderbird LLC's application with the United Nations, is a note claiming credit for the provision of Portable Frequency Jammers to the Government of India in 1999 (US \$85,000) and 2000 (US \$165,000).
141. The inclusion of these transactions which had apparently been accomplished by Thunderbird Inc., as opposed to Thunderbird LLC, improperly boosted Thunderbird LLC's financial image which was premised upon inaccurate information. On the one hand Mr. Kohli sought to enjoy the benefit of relaxed financial reporting requirements afforded to privately held limited liability companies ("LLC"), and at the same time claimed benefits of the financial transactions of Thunderbird Inc. to fictitiously demonstrate greater revenue for the company.

142. In the interview with the PTF investigators, Mr. Etsell, Officer in Charge of the Engineering Section, DPKO, stated that dissatisfaction with TCIL's performance was widely known, and frequently discussed amongst DPKO staff. According to Mr. Etsell, he was aware at the time the TCIL contract had "problems" and wanted to avoid similar issues with the engineering manpower contract. Particularly troubling to him was the fact that the UN had been paying living expense subsistence monies to TCIL, which TCIL had apparently failed to pass on to their workers. Further, according to Mr. Etsell, Mr. Bahel never informed him that Nishan Kohli represented both TCIL and Thunderbird. According to Mr. Etsell this would have been an important fact given what he had heard about the performance of TCIL.
143. Mr. Etsell has informed PTF that he had growing concerns that Thunderbird was incapable of performing satisfactorily, and that he had learned that Thunderbird had not submitted the financial statements as required by the RFP. Mr. Etsell stated that if these facts were true, Thunderbird should have been disqualified from the process. Mr. Etsell further stated that Mr. Bahel assured him that the PD could approach this vendor (Thunderbird) and obtain all the necessary information. Mr. Etsell stated that it appeared to him that Mr. Bahel "was trying to keep Thunderbird in the running," while at the same time waiting for their financial statements and other information to be submitted.
144. On 27 August 2002 Mr. Bahel held a meeting in his office with Ms. Redfern and Mr. Etsell to inform them the PD would be recommending the award of this contract to Thunderbird. According to these witnesses, Mr. Bahel also explained that Thunderbird was considered a Limited Liability Company ("LLC") and as such they were not required to provide audited financial statements. However, according to these witnesses, Mr. Bahel stated that notwithstanding this fact, the company represented a US \$15 million turnover in 2001. Mr. Bahel requested that Mr. Etsell send him an email stating that the references provided by Thunderbird seemed to satisfy their concerns about the ability of Thunderbird to perform. On the following day, Mr. Bahel telephoned Mr. Etsell to remind him to send the requested email, which he did. Mr. Etsell stated that he recalled one of the letter of references to be from VeriSign, a well-known company, which he considered an important element in giving his support to Thunderbird. Mr. Etsell stated that in his view, without this reference, this award would not have gone to the HCC.
145. A number of witnesses have informed the PTF that Thunderbird and TCIL's representatives, Nanak Kohli and Nishan Kohli, frequently visited the PD and were often in Mr. Bahel's office. According to Angela Sinon, a former assistant to Mr. Bahel, she was introduced at one point in 2002 to an older Indian gentleman whom she understood was from TCIL, sometimes accompanied by a younger Indian male, but could not remember their names. Ms. Sinon said it seemed to her to be improper for a procurement official to be meeting with a

vendor as often as they did, especially without other vendors, or their representatives, being present.

146. On 4 September 2002 Mr. Bahel, the Section Chief, rather than the procurement officer who was absent, presented the case before the HCC and recommended the award of the contract to Thunderbird. Although present for the HCC presentation, Ms. Redfern stated that she never spoke, but took contemporaneous notes. The official HCC minutes reflect Mr. Etsell as saying on behalf of DPKO that he found, “unequivocally,” that Thunderbird was capable of meeting the UN’s requirements. However, Mr. Etsell has informed PTF investigators that notwithstanding his general support for Thunderbird at the time, he never used the term “unequivocally” in the HCC presentation, nor held such a strong view. It is also clear that Mr. Etsell left midway through the presentation as he had another pressing appointment.
147. The HCC minutes did reflect concerns on the part of some of the HCC members with Thunderbird’s financial soundness and capability to perform. The Committee stated that “[a]s Thunderbird was a newly registered entity with the Organisation, PD, as a matter of due diligence, conducted a detailed review of Thunderbird’s proposal....” It is evident that the HCC relied upon representations that due diligence of the company was conducted. Based upon the facts learned thereafter and during the course of this investigation, PTF considers insufficient inquiry was made into the bona fides of the company.
148. It is also clear that expedited approval for the award was sought. The PTF has interviewed numerous witnesses involved in the process, and no one has accepted responsibility for seeking the expedited approval, including either the case officer, or Mr. Bahel. However, it is clear that either the procurement officer, or a supervisor, must make the request of the HCC in the first instance. PTF investigators have identified an email, dated 28 April 2003, from Joao Marcedo, the Secretary of HCC, which confirms this fact. Mr. Marcedo stated:

As a matter of policy, we only provide expedited approvals with a written or verbal request from PD. It is not uncommon that after the deliberation of a particular item, the Procurement Officer/s might make a verbal request for an expedited approval that we have accommodated without insisting for a written request. Our records indicate that the Procurement Officers present for that item at the meeting were Mr. Bahel and Ms. Redfern.”
149. Ms. Redfern has denied requesting expedited approval, a position which seems credible in light of her repeated concerns about the company at the time. Ms. Redfern also said that she never spoke to the HCC meeting, and that Mr. Bahel spoke on behalf of the PD throughout the entire presentation. Both Ms. Babynina, and Procurement Officer Walter Cabrera, who had become involved in this matter peripherally after the HCC meeting, denied making the request. The file also reflects an email from Christian Saunders, the then Chief of the

Procurement Department, to Ms. Redfern, dated 28 April 2003 stating that: "I also spoke with both Sanjay and Walter who inform me that they did not request a rubber stamp approval."

150. Mr. Bahel told PTF investigators that he first learned of the expedited approval from Ms. Redfern on or about 10 September 2002 prior to his departure on extended leave. Mr. Bahel said he never questioned Ms. Redfern regarding the need or justification for expedited approval in this case even though he was her supervisor and was well-acquainted with the facts of the case as he personally presented the matter before the HCC. Mr. Bahel's response lacks credibility. The PTF has interviewed various witnesses, examined numerous emails and documents which contradict Mr. Bahel's statement that he learned of the expedited approval from Ms. Redfern. Further, to the extent that Mr. Bahel's Bahel assertion that Ms. Redfern asked for the expedited approval and learned of it from her is not credible in light of the facts and reasonable inferences to be drawn therefrom. Mr. Bahel was the individual who pressed on behalf of Thunderbird for the contract.
151. In the first instance, the need for expedited approval is questionable in light of the fact that an extension of the contract in place at the time was also sought, and granted. In addition, Thunderbird had yet to provide audited financial statements, and the HCC had directed that Thunderbird produce these documents in four weeks. In fact, it took Nishan Kohli more than eight weeks to ultimately provide the documents. Further, the current contractor was being extended for an additional eight weeks.
152. The HCC minutes reflect other troubling facts. Originally, Mr. Etsell in his submission of the Statement of Work (SOW) of 8 April 2002, had requested a contract to be established for an initial period of one year with the option to extend the same for two additional periods of one year each. However, a review of the HCC minutes and the HCC Award Recommendation cover page reflect a handwritten change in the award from one year to three years with the option of extending up to two additional years. Ms. Redfern confirms the handwriting is Mr. Bahel's. She also contends that Mr. Bahel was responsible for replacing the concept of "Mission Subsistence Allowance" with "Living Expense Amount" in the contract, a contention Mr. Bahel denies and attributes to the Office of Legal Affairs.
153. The procurement rules provide that an award is not final until the Assistant Secretary-General for Department of Management (ASG/DM) reviews the HCC minutes and expresses his concurrence through signing the HCC cover page. While the minutes of the HCC meeting were pending and not yet finalized, a one page form had been issued by the HCC granting expedited approval for both the continuation of the current contract, and for its replacement by Thunderbird.

154. After the HCC presentation, on 10 September 2002 Mr. Bahel, who was scheduled to leave New York on annual leave, convened a meeting with Ms. Redfern and Mr. Cabrera prior to his departure. In this meeting, Mr. Bahel instructed them to notify Thunderbird of the recommendation to award the contract to them. According to Mr. Cabrera, he understood that he was not able to provide a Letter of Intent (LOI) to Thunderbird, but was able to give verbal notification of the HCC's action based upon the document issued by the HCC. Mr. Cabrera's understanding that this action was permissible was based upon the fact that his supervisor, Mr. Bahel, directed him to do it, as well as his own understanding of the rules at the time. According to Ms. Redfern, Mr. Bahel further instructed them upon receipt of the HCC minutes confirming that no additional requirements had been imposed by the Committee they should begin to prepare an award letter to Thunderbird.
155. At the direction of Mr. Bahel, Mr. Cabrera did in fact notify Mr. Nishan Kohli that the HCC had recommended that the contract be awarded to Thunderbird and that Thunderbird would likely receive the contract. Mr. Cabrera asserts that he further notified Mr. Kohli that PD could not issue an LOI prior to receiving the approved HCC minutes and formal award of the contract.
156. Mr. Cabrera concedes that he provided notice to Nishan Kohli at the express direction of Mr. Bahel after the HCC had issued a notice of expedited approval. According to Mr. Cabrera, Mr. Bahel left instructions to await a copy of the approval in his inbox in the procurement office. Further, according to Mr. Cabrera, Mr. Bahel told Mr. Cabrera that he would be out of the office and requested that Mr. Cabrera should retrieve the document and notify the vendor of the likely award. Mr. Cabrera acknowledges that he followed the direction, and in the course of contact with Mr. Kohli, he provided the notification.
157. In preparing the ultimate contract for the award, according to Ms. Redfern, Mr. Bahel further instructed Mr. Cabrera to obtain the latest electronic version of the TCIL IT staffing contract, including Amendments 1 and 3, together with its terms and conditions, as a model for use in the preparation of the Thunderbird contract. Mr. Cabrera indicated that this request came from Ms. Babynina or Ms. Redfern. All concede that the TCIL contract was to be used as a model in preparation for the Thunderbird contract.
158. However, as set forth above, the TCIL contract was found to be deficient and ambiguous in material respects. The effect of this provision resulted in the ability of the contractor to receive payments intended for the contract staff directly, without providing proof that the amounts had been paid.
159. Mr. Etsell told investigators he did not want to have a "morale problem" with the contract employees and therefore sought Mr. Bahel's assurance that the workers would receive the full subsistence payment. According to Mr. Etsell, Mr. Bahel told him that if Thunderbird failed to pay the subsistence to its

workers, he would “call in” the performance bond and pay the employees directly.

160. In early September 2002 Mr. Etsell says he met with Nishan Kohli, Thunderbird’s representative, at the request of Mr. Bahel. Mr. Etsell was suspicious and concerned about meeting with a vendor prior to any official announcement of the contract award. As a result of this concern, Mr. Etsell urged his assistant, Gaynor Cote, to attend the meeting with him, and take notes. At the meeting, according to Mr. Etsell, Mr. Kohli stated that he was the lowest bidder, and understood he would be receiving the contract. Mr. Etsell expressed to PTF investigators that he was surprised by this statement because he did not realize this information was publicly known. According to Mr. Etsell, Nishan Kohli further gave notice of his plans to travel to the Congo to meet with some of the current IRCON employees. According to Mr. Etsell, he told Mr. Kohli in no uncertain terms that Mr. Kohli was absolutely forbidden to do this because it would be very disruptive to the current operations of the UN Mission. Nevertheless, and despite the admonition from Mr. Etsell and Mr. Cabrera as well to the same effect, on or about 21 September 2002 Mr. Kohli travelled to the Mission and met a number of IRCON employees, offering them employment opportunities with Thunderbird. According to IRCON employees senior managers with whom the PTF spoke, this act caused major disruption amongst IRCON’s contract staff.
161. On 21 September 2002 IRCON representatives delivered a letter to Christian Saunders, then the Chief of the Procurement Division, complaining of Nishan Kohli and TCIL’s attempt to “raid their staff.” A Note to the File, dated 26 September 2002 from Ms. Cote further disclosed that TCIL was offering IRCON personnel lower wages, and that there was no mention of living expense subsistence pay.

References

162. The PTF has investigated the bona fides of Thunderbird’s representations to the Organisation in connection with its submissions of references in support of the contract award.
163. In connection with their effort to register with the Organisation, Thunderbird LLC, through Mr. Kohli, offered the following companies as references: 1) Decotec Inc; 2) Compaq Computers India; and 3) Barrett Europe Limited.
164. PTF investigators contacted Decotec Inc on 12 May 2006 and spoke with Dr. William Weisenberger Jr. Mr. Weisenberger confirmed he wrote the letter for “Thunderbird.” Mr. Weisenberger could not recall if he wrote the letter for Thunderbird Inc. or Thunderbird LLC. Rather, Mr. Weisenberger stated that the letter was for the elder Kohli, the father, with whom his father had done

business for more than 20 years. Dr. Weisenberger confirmed that his father had done business with Nanak Kohli, and he was currently “doing business” with Nishan Kohli. Dr. Weisenberger added that the letter was written on behalf of the Kohlis, and not Thunderbird as a company.

165. Efforts to contact Compaq Computers India have met with resistance. The company has referred the PTF to corporate counsel, and PTF investigators were not allowed to speak with employees associated with the reference letter. The PTF has concerns about the authenticity of correspondence provided by the company.
166. PTF investigators contacted Mr. David Peaty of Barrett Europe Limited (Barrett). Mr. Peaty informed the investigators that the letter in question was in fact written by him, but it was not intended as a “recommendation” letter. The letter memorialized an agreement between Barrett and Thunderbird allowing Thunderbird to bid on Barrett’s behalf for UN projects. Mr. Barrett confirmed that he has not engaged in business with either Thunderbird LLC or Thunderbird Inc.

References in support of the RFP

167. Thunderbird supplied four letters in support of their proposal for the engineering manpower contract, to include 1) Indo-Kuwait General Trading & Contracting Company; 2) Marshals Power and Telecom India Ltd; 3) Multi-Links, Nigeria; and 4) VeriSign.

Multi-Links

168. H.R. Singh was the author of the letter submitted to the Organisation on behalf of Multi-Links Nigeria (Multi-Links). Mr. Singh was contacted, and could not locate a copy of the letter he wrote. Mr. Singh could not, and did not, verify that Thunderbird LLC had indeed performed the services stated in the correspondence, nor could he determine whether Thunderbird had conducted any business with the company. A further investigation of Multi-Links reveals an association with TCIL. PTF investigators went to the Multi-Links website which at the time of the search listed TCIL under the “Group Associates” icon, and provided a link to TCIL’s website. Following the PTF’s contact of Multi-Links, the reference and link to TCIL are no longer there.

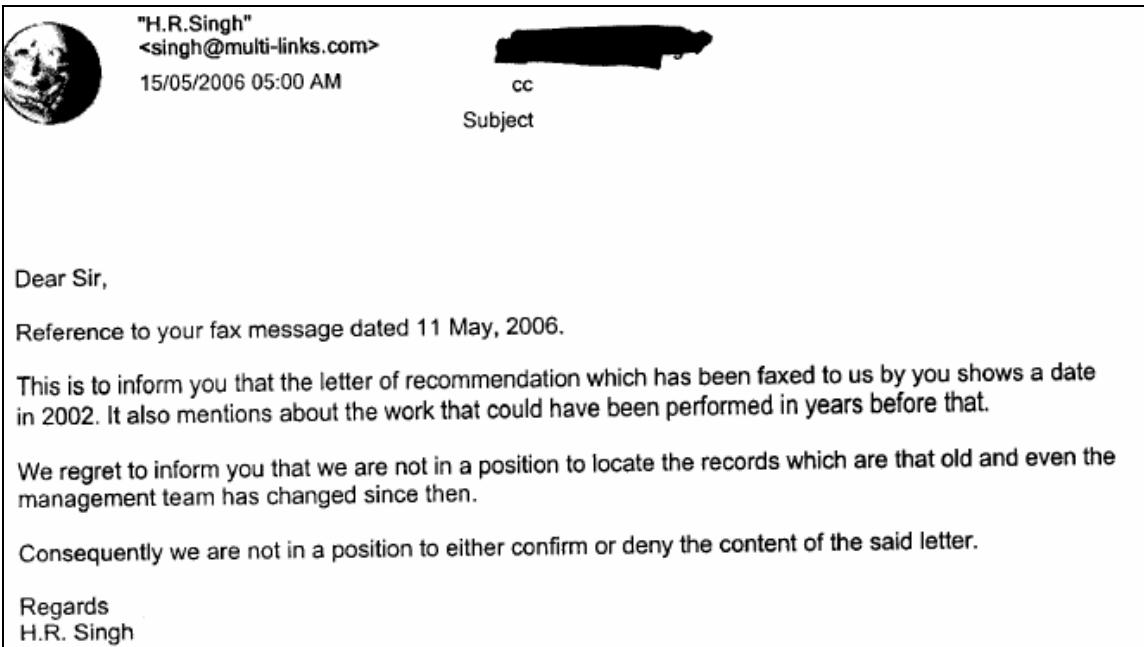


Figure 30

Indo-Kuwait General Trading & Contracting Company

169. The PTF investigation has revealed that Indo-Kuwait General Trading & Contracting Company (Indo-Kuwait) is part of Ahmed Yousef Behbehani & Partner W.L.L. group in Kuwait. Mr. Behbehani is TCIL's local agent in Kuwait as verified by several tenders offered by TCIL. The letter on behalf of Thunderbird, purportedly authored by R. Krishnamoorthy, has not been verified. Mr. Krishnamoorthy has been contacted and he has informed PTF investigators that he could not locate a copy of the letter, or identify any records relating to Thunderbird Industries LLC in the company's files. Mr. Krishnamoorthy has further informed investigators that "Thunderbird Industries was keen to associate with our company, but the situation did not arise."

>Dear [REDACTED]
>
>Thanks for your fax dated 9th May, 2006 sent to Indo-Kuwait General
>Trading and Contracting Company, we are pleased to mention:
>
>1. As per our records we could not find any recommendations sent in
>favor of Thunderbird Industries.
>
>2. Thunderbird Industries were keen to associate with our work, but the
>situation did not arise. Thus no comments can be offered.
>
>3. Details not available about the name of the contact person of
>Thunderbird.
>
>Best Regards,
>
>Krishnamoorthy

Figure 31

VeriSign

170. Despite repeated requests, VeriSign has not provided documents or allowed investigators to fully interview relevant witnesses. Their corporate counsel has referred investigators to prosecutors from the Southern District of New York who have apparently contacted the company. Prior to being referred to corporate counsel, a PTF investigator spoke with Leonard Johnson, the author of the letter to the Organisation on behalf of Thunderbird. Mr. Johnson confirmed he wrote the letter but could not verify that Thunderbird had performed any work for VeriSign. Mr. Johnson referred the investigator to the Federal Bureau of Investigation and provided the investigator with the name of VeriSign's in house counsel, for further information.
171. The investigation has also revealed that Ranjit Kohli, Nishan Kohli's brother, was a Practice Manager for VeriSign during the relevant time period, and is now the Managing Director of Acusign, a company which holds a close relationship with VeriSign in India. The fact that Ranjit Kohli was a Manager with VeriSign at the time of the reference was not revealed to the PD.

Marshals Power and Telecom India

172. The PTF made efforts to contact the management. No response has been received to date.

Laptop Computer Contract Awarded to TCIL

173. In February 2002 DPKO Communications and Information Technology Services (CITS) sought to obtain a new systems contract for laptop computers.

Mr. Cabrera was the procurement officer in the procurement department (PD) assigned to this matter, and reported to Mr. Bahel who participated in this contract award as well. On 25 February 2002 an expression of interest was issued by PD. An invitation to bid followed on 15 April 2002 which was transmitted to 36 vendors from nine countries.

- CITS advised PD that they desired only “IBM, Dell and Compaq” computers on the basis of ITSD standards for computers. On the other hand, through the Chief of the Information Technology Services Division (ITSD), Mr. Eduardo Blinder, who became involved in the process by the request of Mr. Bahel, recommended adding Toshiba, Sony, Fujitsu and NEC to the list. In a subsequent exchange of emails between PD and the requisitioner (CITS and ITSD), CITS continued to assert that they sought only the three major brands of computers to avoid “inferior products,” laptops from “questionable manufacturers,” “clones” and “home built computers.” Ultimately, however, CITS agreed that they were amenable to expanding the field to include other major brands of computer manufacturers who were recognized industry leaders. As a result, on 24 April 2002, the case officer, Mr. Cabrera, issued a bid amendment notification to the vendors correcting the anticipated quantity of the computers sought, and clarifying that only “Compaq, Dell, IBM, Toshiba, Sony, Fujitsu and NEC” brands would be considered for solicitation.
174. On 15 May 2002 the bids were read publicly. La Cresta Communications of California submitted the lowest priced bid based upon a Pentium III Toshiba model. TCIL was the next lowest bidder offering a Compaq model, followed by Dell, and then SSDI with an IBM, and finally Manchester Technologies offering a Fujitsu model. On 30 May 2002 Mr. Cabrera notified La Cresta that the company needed to resubmit the specifications for the Toshiba model they were offering as the table of compliance with the bid technical terms was absent, and specification pages from La Cresta’s submission were contrary to the proper format. Nevertheless, Mr. Cabrera allowed La Cresta to resubmit the pages.
175. In its response, La Cresta informed PD that Toshiba was discontinuing the Pentium III model offered in its original submission, but that they would upgrade the model proposed to a Pentium IV and provide the upgraded model to the Organisation at no extra cost. La Cresta informed PD that because of the discontinuation of the Pentium III model, they therefore could not provide the anticipated quantity of Pentium III laptops called for in the RFP, but informed PD of its ability to fill the order for the guaranteed quantity with the currently proposed model, and of their readiness to fill the remainder with the upgraded model.
176. The investigation has revealed that Mr. Cabrera forwarded La Cresta’s offer of an upgraded model to CITS personnel, by email. Subsequent email communication reflects that Mr. Cabrera’s dialogue with DPKO about the

upgraded model continued. The PTF has expended considerable effort to reconstruct the sequence of events that followed. A three week lapse existed between the time of the finding that La Cresta was determined to be compliant, and the initiation of the re-bidding exercise. In the interim period, email correspondence confirms that DPKO found La Cresta to be technically compliant even after the offer of an upgrade. Mr. Cabrera was further in the midst of preparing the presentation to the HCC.

Subject:	PC Standards
From:	Sanjaya Bahel
Date:	6/25/2002 10:27:16 AM
To:	Eduardo Blinder
CC:	Walter Cabrera; Brian Streb
Message Body	
Ed, Thanks.	
Walter/Brian, For urgent HCC presentation please. Sanjay	
----- Forwarded by Sanjaya Bahel/NY/UNO on 25/06/2002 10:28 AM -----	
Eduardo Blinder 25/06/2002 10:14 AM	
To: Sanjaya Bahel/NY/UNO@UNHQ cc: Subject: PC Standards	
Mr. Bahel,	
Following testing and subsequent analysis of the results and taking into account the nature of LAN operations at Headquarters, we have concluded that both computers (Dell's and Compaq's) are technically acceptable and may be used on the Headquarters LAN.	
Thank you	
E. Blinder	

Figure 32

177. Procurement Department officials, including Mr. Cabrera and Mr. Bahel, concede that at this point there was no further issue, and no justification not to award the contract to La Cresta. No correspondence exists in the case file from procurement to the vendor notifying them of the cancellation. Recently, PTF investigators reached the officials in La Cresta responsible for the submission and the representative who interacted with the Organisation in connection with this contract. The official remembered the event well, and informed PTF investigators that he was told by Mr. Cabrera that the bid was being cancelled, and that "they" wanted to do it, as they didn't want to have another model

because of maintenance issues. He believed “they” was a reference to Mr. Cabrera’s supervisor since the official asserted that he spoke with the DPKO official who indicated to him that DPKO was satisfied with La Cresta’s renewed offer.

178. Further, a DPKO official involved in the process has informed the PTF that in conversations first with Mr. Cabrera and Mr. Streb, and then later with Mr. Bahel in this interim period, it was represented to him that PD had expressed a view that there was an “issue” with La Cresta’s submission. According to the official, both Mr. Cabrera and Mr. Bahel suggested a re-bid because of a “technicality.” While the official objected, he was told by both Mr. Cabrera and Mr. Bahel that because the matter is a commercial one it is within the exclusive prerogative of PD to cancel the bid on the basis of commercial non-compliance. The PTF finds that, based on these circumstances, this act was improper.
179. The assertions by the DPKO official appear to be corroborated by statements made by the vendor, La Cresta, that the motivating entity to cancel the bid was officials in the Procurement Department. The explanation attributed to PD that there were commercial issues with La Cresta’s bid is not persuasive. DPKO had found La Cresta to be compliant and the firm was the lowest bidder, a fact confirmed by the DPKO official and an email uncovered by the PTF. Furthermore, it was conveyed to the La Cresta official that the procurement department was preparing a presentation to the HCC.

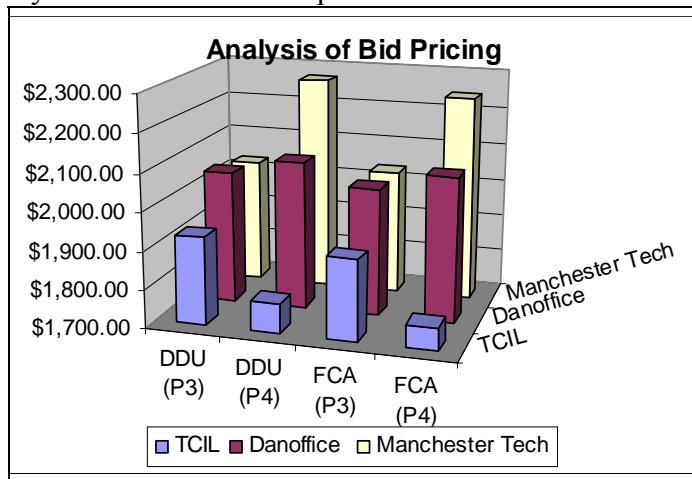
Subject:	Re: Office Laptops ITBG-916
From:	Cesare Dieni
Date:	6/5/2002 3:25:49 PM
To:	Walter Cabrera
CC:	Jason Mayordomo
Message Body	
Walter,	
thank you. I can now confirm that La Crest is fully compliant with the technical specifications.	
Regards,	
Cesare	

Figure 33

180. It is further clear that the cancellation of a bid must be approved by a supervisor in PD, a fact that Mr. Bahel concedes. Therefore, a reasonable and logical inference to be drawn from the undisputed facts compels the conclusion that Mr. Bahel was involved in the process to cancel the bid, and held responsibility for the cancellation. There is no evidence brought to the attention of the PTF justifying the cancellation. During his interview, Mr. Bahel could not provide

an explanation. Therefore, based upon the above, the PTF finds that Mr. Bahel was remiss in his responsibilities and violated the procurement rules.

181. It is clear that a new invitation to bid (ITB) was issued in early July. The supplemental ITB ultimately limited the solicitation to the three brands of computers originally requested by CITS.
182. The ITB was based upon the upgraded specifications, the Pentium IV model. Ten companies responded, and two companies, TCIL and Danoffice, were the most competitive both offering the same Compaq model. TCIL offered the lowest price, followed by Danoffice. Of the initial bidders, TCIL was the only company to propose a lower price for the computer model it offered. All other vendors raised their prices from the initial bid. Although La Cresta offered a Compaq brand, and the second lowest bid, the model it was offering was inferior to the models offered by TCIL and Danoffice, and was in fact determined by CITS to be non-compliant.



Graph 2

183. On 18 July 2002 Mr. Bahel, the Officer in Charge of Procurement at the time, recommended the award to TCIL for a systems contract in the amount of US\$5,340,000. In the presentation of the matter to the HCC, officials questioned the basis for limiting the bidding exercise to the three specified brands and intimated that the PD violated UN rules and regulations by the use of brand names in its ITB. Email communication after the event describes a circumstance in which DPKO officials are questioned about the limitation of the re-solicitation to the three preferred brands. The HCC stated that “were it not for the imminent loss of funds, the Committee would have recommended that a re-bidding exercise be conducted inviting all brands of laptops that met the UN’s requirement.” Nevertheless, the proposed contract award to TCIL was ultimately approved, and signed. (It also should be noted that Mr. Blinder chaired the HCC meeting. It appears Mr. Blinder suffered from a conflict serving as the Chair as well as having involvement in the process on behalf of the requisitioner).

184. The impropriety of the cancellation of the first bid, and the invitation for vendors to re-submit further bids in light of the cancellation, allowed the other vendors a second opportunity to bid on the laptop contract. As set forth above, the re-bidding exercise is questionable in light of the fact that La Cresta was held to be technically compliant by DPKO, and offered the lowest bid. On that basis, it appears that they should have been awarded the contract in the absence of objection by the requisitioner, a fact that both Mr. Cabrera and Mr. Bahel now concede. Nevertheless, the conclusion of the PTF is that Mr. Bahel cancelled the bid. He was the PD official involved in the matter who had the authority to do it, and past practice suggests that such a decision could only come from a supervisor. Mr. Cabrera did not have the seniority or position to authorize that act.
185. Absent a clear explanation supporting the cancellation of the bid, the decision to cancel the contract and ultimately award it to TCIL is not justified. The PTF finds that Mr. Bahel cancelled the bid without justification, and violated procurement rules.
186. The failure to award the contract to La Cresta caused the Organisation to lose 8.9% of the executed contract value on a support-cost adjusted basis, based on calculations by PTF investigators. This calculation is a conservative estimate.

OTHER TCIL CONTRACT AWARDS

Radio Trunking Systems – PD/C0209/00 & PD/C0055/00

187. The audit report included an analysis of a systems contract for Radio trunking systems, case number PD/C0209/00/RFP and found a lack of impartiality by Mr. Bahel in the procurement process. The \$36 million contract was ultimately awarded to TCIL.
188. By way of background, prior to the systems contract there was a single purchase bidding exercise for trunking systems for the mission in Kosovo. This procurement exercise took place in 1999, case # PD/C0055/00.
189. In that procurement exercise, TCIL was one of four companies to submit bids for this proposal, the others being Ericsson, Nortel (Cogent) and Motorola. After this evaluation, Cogent was the highest rated vendor with a 70% compliance rating, and TCIL was the lowest, considered just 12.5% compliant. Ericsson was determined to be 57.28% compliant, and Motorola 48.05%.
190. According to CITS officials interviewed by the PTF investigators, this rating should have disqualified TCIL. However, according to several CITS staff members, Mr. Bahel asked them to speak with Cogent and TCIL, and to re-evaluate TCIL's bid and make the TCIL proposal compliant. According to these witnesses, the reason given by Mr. Bahel to conduct such a re-evaluation

was that TCIL submitted a bid that was significantly lower in cost than the remaining bids. Mr. Bahel recently confirmed to PTF investigators that he held this position at the time. The flagrant disregard to defer to the experts, and not take into account the severe lack of technical acceptability, is not justified. It is evident that Mr. Bahel exceeded his authority by this action.

191. At the same time, while CITS staff members stated that Mr. Bahel had initiated the meetings with TCIL; the presentation to the HCC, signed by Mr. Bahel, read that CITS had requested to meet with Cogent and TCIL. Witnesses interviewed by PTF investigators have informed that Mr. Bahel's statements in this regard were false. No CITS staff member with whom PTF investigators spoke has confirmed Mr. Bahel's statement. In fact, all who have been interviewed stated that Mr. Bahel forced the issue, and insisted that CITS discuss the evaluations with TCIL. Further, there is no evidence of a direction to re-evaluate the other bidders, or to include them later in the process.
192. In the interview with PTF investigators, Mr. Bahel has stated that the other bidders were not invited as Cogent and TCIL were the lowest bidders. Mr. Bahel defended his decision, and conceded that he had challenged the technical evaluation by CITS because the price difference was so dramatic. Mr. Bahel stated that he believed that a substantial savings to the Organisation could have been achieved if TCIL's proposal had been made compliant.
193. Mr. Bahel's reasoning appears shallow. Surely, there is more to the analysis of the qualification of a vendor than mere cost. Such narrow reasoning calls into question the need for a technical evaluation in the first instance, and appears to render the reasoned opinion of the experts unnecessary. Further, in consideration of his association with the representatives of TCIL discussed more fully below, the validity of his reasoning is even more questionable.
194. The next year, CITS sought solicitations for a new digital trunking radio systems contract for its Missions in MONUC and UNTAET. An expression of interest was posted by PD on its website in early May and a RFP 86 followed by the end of May. Forty vendors registered with the PD were invited to submit their proposals by 7 July 2000. By the bid-opening deadline, proposals were received from CICCI, TCIL, Motorola, Ericsson, and Cogent. Thirty days later CITS found all five submissions to be technically non-compliant.
195. The vendors' non-compliance, however, turned out to be erroneous, and a mistake on the part of the requisitioner. In subsequent discussions between PD and DPKO, it was agreed that the systems offered by the bidders (with the exception of CICCI) were representative of the technology then available in the market and that the specification requested by CITS may have been too high. In the face of an Immediate Operational Requirement, Mr. Bahel proposed to request the original bidders to submit a "Best and Final Offer" (BAFO). On 8

August 2000 case officer Grace Montelibano issued a request for BAFO to TCIL, Motorola, Ericson, and Cogent, with an opening date of 10 August 2000.

196. Again, PTF faced challenges in reconstructing the facts and circumstances of the case due to lack of the condition of the procurement file. Consequently, the PTF has had to rely on the memory of procurement officers involved. Whereas the investigation discovered a draft and a final presentation to the HCC of 10 August 2000, prepared by the case officer and signed by Mr. Bahel, PTF investigators have not been able to locate any documents supporting BAFO quotes submitted by the companies, other than the price matrix prepared by PD for the presentation to the HCC.
197. While the case was assigned to Ms. Montelibano, the HCC minutes reflect the presence of Messrs. Bahel and Streb only. Interviews with the PD officials failed to reveal the reasons for the absence of the buyer in the presentation, or the identity of the actual presenter of the case to the HCC. Neither Mr. Streb, nor Ms. Montelibano could recall the reasons for her absence. The Review of personnel records has shown that Ms. Montelibano was in the office during the dates in question.
198. Mr. Bahel told PTF that he could have “complemented the junior procurement officer, but would have never supplemented him or her” in the HCC presentation. In response to the question regarding the discount offered by TCIL following its submission of BAFO, Mr. Bahel confirmed to PTF investigators he contacted the vendor in the presence of another officer. The purpose of the contact was to try to obtain another reduction in price from the vendor. Moreover, Mr. Bahel asserted this price negotiation was done in full compliance with the Procurement Manual and in light of the fact that TCIL was then already the lowest bidder.
199. The HCC criticized Mr. Bahel for approaching the Vendor for a second time without its specific instruction. Nevertheless, the HCC recommended the award of a 3-year fixed price systems contract to TCIL. Based on the record before it, the PTF cannot conclude that contacting the vendor a second time before the HCC deliberation was in and of itself improper.

Mr. Bahel's Personal Relationship with the Kohlis

200. The investigation reveals that Mr. Bahel's relationship with the Kohlis runs deep, and dates back to the 1980s. Mr. Bahel acknowledged that he met Nanak Kohli at a gathering associated with an Indian civic Organisation in Washington, D.C. when he was stationed there at the Indian Embassy.⁶ Further, a search of Mr. Bahel's computer reveals a wedding invitation list. From the

⁶ According to his personnel file, Bahel was employed by the Indian Government in Washington, D.C. between 1980 and 1984.

list, it appears that Mr. Bahel invited Nanak Kohli and Nishan Kohli to his son's wedding in India in June 2002, at the same time the Kohlis were acting on behalf of vendors performing contractual services for the UN.

201. Mr. Bahel acknowledged sporadic contact with the Kohlis, but represented to investigators in April 2006 that he had not spoken with the Kohlis in 18 months. The PTF has proven this assertion to be false.
202. Further, numerous witnesses have described circumstances in which Nishan Kohli was a frequent visitor to the UN Procurement Department, and to Mr. Bahel's office, at times when the Kohlis were acting on behalf of company's efforts to do business with the Organisation. Witnesses state that the Kohlis would visit Mr. Bahel in his office, more than once a month. Multiple witnesses have indicated that the frequency of such visits was improper.

THE NEW YORK CONDOMINIUM UNITS

203. Most significantly, however, the Kohlis provided Mr. Bahel with tangible and intangible benefits during the relevant time period, including the purchase and lease of two expensive New York condominium apartments on behalf of Mr. Bahel. Prior to May 2003 Sanjaya Bahel was residing at 300 East 34 Street in New York. In May 2003 Acumen International, a New York based company incorporated by Nishan Kohli, sought to purchase two condominium apartment units at 240 East 47th Street, Units 17E and 17F. Acumen International's incorporation papers bore Nishan Kohli's accountant's address at the time, and reflect that the company was incorporated in 2002. According to a representative of the then owner of the East 47th Street units, Nanak and Nishan Kohli viewed the apartment prior to purchase, as did Sanjaya Bahel. The owner volunteered it was evident to him that the purchase of the units was to allow Bahel to occupy them.
204. Indeed, the "Information Regarding Applicant" Form which accompanied the purchase application submitted to the condominium Board reflected that Mr. Sanjaya Bahel and Mrs. Neera Bahel were the prospective immediate occupants of the units. Perhaps most significantly, the form requested the purchaser to identify the nature of the relationship between the occupant and the prospective owner, to which Mr. Bahel is listed by Nishan Kohli as a "**business consultant**".

If Purchaser is a corporation, name or describe the individual(s) to be the occupant(s) of the apartment unit and date for how long a term. New information and references must be provided each time occupancy changes.	
2.	Name(s) of designated occupant(s): SANJAYA BAHEL / NEERA BAHEL / NIKHIL BAHEL / ANVITA BAHEL
3.	Relative to Purchaser: BUSINESS CONSULTANT
4.	Length of occupancy: 5 YEARS
Will there be any business or profession conducted at this Unit?	
1. If so, describe the nature of the business or profession:	

Figure 34

205. A representative of the company that owned the property informed PTF investigators that the Kohlis made it clear to him that they intended to immediately provide the units to Mr. Bahel for him to occupy. The representative used the name “**Bahel**” even before PTF investigators asked the identity of the individual.
206. It is clear from the documentation and the owner’s description of the individual that the intended occupant was Mr. Bahel. Indeed, a photocopy of Mr. Bahel’s driver’s license is contained in the application file. The investigation has revealed that neither Nanak, nor Nishan Kohli sought to occupy or, in fact, lived in these condominium units. It is evident that the individuals intended at the inception of the transaction to occupy the units were Mr. Bahel and his family.
207. Incredibly, fees associated with the occupancy of the units were paid by Acumen from the Thunderbird Industries bank account in Virginia.

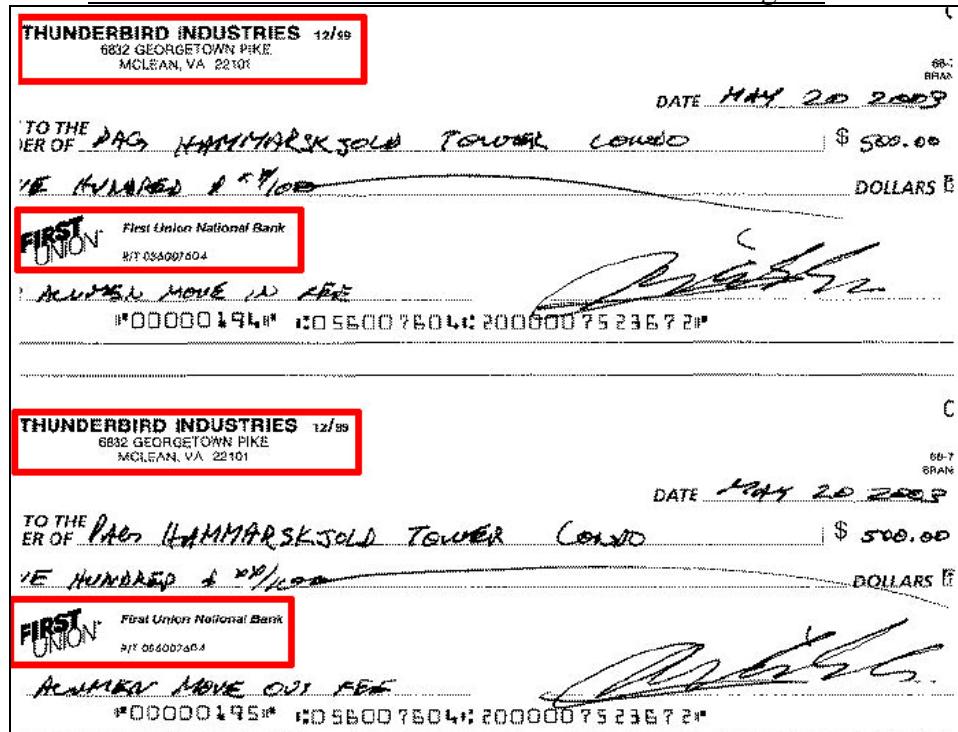


Figure 35

208. According to the representative from Ammar, N.V., the entity which owned the property, these fees were for the purposes of providing revenue for the condominium board and were required whenever tenants or owners moved in or out of the apartment. In the representative’s experience, these fees were typically paid by the individuals occupying the units, and were non-refundable.
209. When asked about the circumstances of his occupancy of these units, Mr. Bahel failed to provide any of the aforementioned information. Rather, Mr. Bahel

stated to investigators that he did not know the owner of the unit and that he negotiated for both the lease and ultimate purchase of the property with “a lawyer” and, when pressed further, he stated that he understood the lawyer to be acting on behalf of a “mortgage company.” Mr. Bahel was asked several times whether he knew the owner of the units. However, Mr. Bahel never mentioned Acumen or the Kohlis. Bahel asserted further that he paid \$5000 a month in rent for both of the units, and maintained an understanding with the lawyer that he could purchase the units for a set amount at a later date. In effect, Mr. Bahel asserted that a lease-purchase agreement was codified in separate correspondence. However, Mr. Bahel has failed to produce any documentation to support these assertions despite repeated requests of the PTF to produce the information and records reflecting the lease payments. Based upon such a failure to cooperate, the false assertions made by Mr. Bahel, and the facts and circumstances of this case, there is serious question whether Mr. Bahel paid any rent at all.

210. Even assuming for a moment that these assertions are accurate, it is evident that Mr. Bahel nonetheless received a substantial benefit from the Kohlis. The lease of these premises for a mere \$5000 per month was well below the then prevailing rates. In fact, the previous owner has provided documentation to the PTF that he rented the units in 2000-01 for \$8600 per month.

February 16, 2000

United Arab Emirates Mission to UN
747 Third Avenue, 36th Floor
New York, New York 10017

Att: Mr. Mohamed Ibrahim

RE: Extension of lease dated February 9, 1998
between Ammar, N.V. (Landlord) and
United Arab Emirates Mission to UN (Tenant) for Apt. 17E/F located at 240
East 47th Street, New York, NY. 10017

In reference to the above captioned lease, it is agreed to by Landlord and Tenant that, said lease is extended from March 1, 2000 to February 28, 2001 at a monthly rate of \$ 8,600.00.

Figure 36

211. Further, Bahel was provided the units directly and was not required to compete with any prospective lessees or purchasers. Contrary to his assertion that his son learned of the availability of the property through an advertisement, it is clear that he was involved in the Kohlis purchase from the inception, and even viewed the apartments prior to the purchase by Mr. Kohli. In addition, real estate professionals have informed the PTF that a lease purchase agreement in 2003 with a fixed purchase price at a future date in time is a substantial benefit to the purchaser. Real estate values were increasing rapidly at the time, and certainly had the potential to increase substantially over a two year period.

212. Bahel ultimately “purchased” the units from the Kohlis in May 2005. The properties were not listed with a broker for sale, and were not advertised. Again, in connection with the purchase, Mr. Bahel claimed that he did not know the owner, and dealt with the lawyer for the mortgage company. However, this assertion is false. A review of the computer Mr. Bahel utilized at the time reflects that he accessed a document about Acumen and the Kohlis. Further, Nishan Kohli’s name appears on the original deeds filed in May 2005 as does an address of 600 NE 36 Street, PH11 Miami, Florida. Mr. Bahel’s name is prominently identified as the grantee. Further, the investigation has revealed that the real property at the Florida address is owned by Hend Shuaib, who is believed to be Nishan Kohli’s wife. The investigation has further revealed that Nishan Kohli and Hend Shuaib own a single family residence together as well as a business, HN Projects, LLC, both located at 3820 Stuart Avenue, Miami, Florida. (It is unclear what business this corporation engages in.)

THIS INDENTURE , made the	16th	day of	May	,	2005	and
BETWEEN						
Acumen International Inc., a New York Corp.						
Residing at: c/o Kohli, 600 Northeast 36th Street, PH 11, Miami, Florida 33137						
party of the first part, and						
Sanjaya Bahel & Aman Bahel						
Residing at: 240 East 47th Street, Apt. 17F, New York, NY 10017						
THIS INDENTURE , made the	16th	day of	May	,	2005	and
BETWEEN						
Acumen International Inc., a New York Corp.						
Residing at: c/o Kohli, 600 Northeast 36th Street, PH 11, Miami, Florida 33137						

Figure 37

213. According to the real estate deed, the purchase price for these units together was \$1,500,000. Mr. Bahel presented records which he claimed supported his contention that he personally made a down payment of \$135,000 towards the purchase price. His UNFCU bank account statements reflect a \$135,000 withdrawal in May 2005. Mr. Bahel claims that his sons provided the remainder of the down payment. However, Mr. Bahel has not provided supporting documentation for this contention. The investigation has revealed that Mr. Bahel secured two separate mortgages in May 2005 from the UNFCU in the amounts of \$495,000, and \$375,000, respectively. Proof has not been provided concerning the source of the remaining \$495,000 difference (between the combined mortgage amounts, Bahel’s down payment, and remaining balance). Mr. Bahel contends that this amount was provided by his sons.

214. Mr. Bahel's claim that he was unaware of the owner of the property is further undermined by other investigative efforts of the PTF. A forensic examination of Mr. Bahel's computer reveals that on 12 July 2005 Mr. Bahel accessed the New York City property records system and researched the property deeds for his residence. At this time, the Kohli name appeared on the deed. A subsequent deed which removed Mr. Kohli's name was filed on 29 July 2005.
215. Regardless of the bona fides of Mr. Bahel's contentions, it is clear that the Kohlis provided tangible benefit to Mr. Bahel, which he not only failed to disclose but intentionally made false statements to PTF investigators about these transactions. Certainly, an adverse inference can be drawn that Mr. Bahel knew his actions were improper, and the representations were an attempt to disguise the true circumstances of these transactions. This transaction is not only a direct violation of several rules of the Organisation, but it also constitutes evidence that Mr. Bahel participated in the efforts by Nanak and Nishan Kohli to achieve UN contracts.
216. According to several DPKO officials who attended a function with Nishan Kohli in late 2000 in Brindisi, Nishan Kohli stated words to the effect that he had a procurement officer in his pocket and could achieve any UN contract he wanted.

Bahel's Sons Wedding

217. Ms. Angela Sinon added she was tasked by Mr. Bahel to prepare a printout of invitees who would be attending his son's wedding. PTF investigators located the computer formerly used by Sinon while at PD, successfully obtaining a copy of the described wedding list. Both Nanak's and Nishan Kohli's names with their addresses were included as invited guests of Mr. Bahel. As set forth herein, the Kohlis were included on the guest list found on Mr. Bahel's computer.

PCP International and the Procurement of Generators

218. PCP International (PCP) is an India based engineering company which became a registered vendor with the UN in 1998. In 2001 and again in 2002 PCP sought to obtain contracts with the UN to provide generators to its Missions. While PCP became a registered vendor for the UN in 1998⁷, it had previously provided goods to the United Nations Oil For Food Program (OFFP) in 1996. Further, while PCP was registered with the Organisation to provide various commodities, it was not registered to provide generators until 16 August 2003, almost two months after PCP was awarded the generator contract on 20 June

⁷ PCP International Vendor Registration File

2003. (RFP #118).⁸ Under procurement rules, it is clear that a company must be registered for the commodity prior to the contract award.⁹

219. The investigation has revealed that despite the fact that PCP was not registered to bid on generator contracts, PCP was invited to submit a proposal in March 2001 for RFP #86, and again in April 2002 for RPF #118. Peter Staples, the procurement officer responsible for the generator procurement exercise, offered that while he could not recall this particular case, an invitation to bid could not be made without supervisory approval. At this time, Mr. Bahel was Mr. Staples' supervisor. According to Mr. Staples, Mr. Bahel would at times review the list and verbally add companies for various reasons, none of which would be documented.¹⁰

RFP 86

220. On 28 December 2000 Peter Phelan, Chief DPKO/FALD sent a letter to Sanjaya Bahel, Chief of PD, requesting that PD seek a systems contract for generators. The submission of FALD included a stipulation that only generators from large and reputable generating set manufacturers be invited to bid, based upon a perceived lack of ability of small companies to supply generators within required delivery periods¹¹. DPKO sought 4 specific types of engines and alternators: Cummins, Volvo, Lister-Petter, Perkins, and Newage.¹²
221. On 18 January 2001 PD posted an Expression of Interest (EOI) on the UN website.¹³ The EOI outlined the requirements for the generators. On 1 February 2001 a PCP International director, Mr. Arvind Sarin authored an email to Peter Staples requesting inclusion in the RFP#86 bidding exercise in response to the EOI.¹⁴ As a result of the responses to the EOI, Peter Staples prepared an invitee list comprising of 31 companies including PCP and TCIL, neither of which were, as of the date of the issuance of the RFP (2 March 2001), registered vendors to supply generators.¹⁵ On 14 March 2001 Mr. Staples prepared the RFP with a closing date of 16 April 2001. The RFP was subsequently reviewed and approved by Mr. Bahel. Between 15-17 March 2001 the RFP was faxed to 31 companies from 15 different countries.¹⁶ Despite the fact that Kanwarjit

⁸ PCP International Vendor Registration File PCP Letter Dated 16 August 2003

⁹ Christian Saunders ROC- 27 June 2006 and Joe Bornales ROC – 25 May 2006; A PTF investigator requested from the UNPD, a list of all registered vendors for the generator commodity codes, 461100 *Electric Motors, Generators and Transformers and Parts Thereof* and 461130 *Generating Sets*, for the period prior to 1 January 2003⁹. PCP International was not listed on this report and therefore should have been considered not to be registered for this commodity of generators.

¹⁰ Peter Staples ROC 6 June 2006

¹¹ Memo P. Phelan to S. Bahel December 28, 2000 pg 1

¹² RFP #86 SOW pg. 3

¹³ Expression of Interest PCS1168

¹⁴ PCP Email to Peter Staples 1 February 2001

¹⁵ RFP #86 2 March 2001 invitee list

¹⁶ PO Peter Staples leaves the PD to go work in a UN mission in March 2001.

Sachdeva was at the time responsible for IT procurement, he served as the procurement officer for the solicitation for these generators. When asked by PTF investigators why he had the case, Mr. Sachdeva responded that he could not recall.¹⁷

222. On 21 March 2001 PCP sent an email to Mr. Bahel and then, on 30 March 2001, to Mr. Sachdeva requesting the opportunity to submit an “alternate generator brand called Kirloskar.” Mr. Sarin represented that the Kirloskar brand could meet the requirements of the SOW that he would like the opportunity to bid for this RFP.¹⁸ On 2 April 2001 Mr. Sachdeva requested approval from Mr. Etsell Chief of FALD/DPKO at the time for the Kirloskar brand, to which Mr. Etsell replied “we have standardized these types of engines and alternators (sic) do not intend to change the RFP to include another engine maker.”¹⁹ Approximately one hour later Mr. Sachdeva forwarded the email to Mr. Bahel.
223. On 4 April 2001 Mr. Sachdeva sent an email to Mr. Bahel and Mr. Etsell stating that Mr. Sachdeva and Mr. Bahel had spoken, and they had indicated that there was agreement that the PCP could be included in the bid. The email read: “Gentlemen, as mutually agreed by you telephonically day before yesterday, an amendment has been issued for the generator requirement. An amendment is sent to all 31 vendors on the list on 3 April 2001 stating the following.²⁰

Subject: Request for Proposal No. RFPG-86 - Opening Date: 16 April 2001

ONLY FOR GENERATOR ENGINES, PLEASE NOTE THAT THE UNITED NATIONS (UN) MAY CONSIDER ALTERNATIVE ENGINES OF MANUFACTURERS OTHER THAN THOSE SPECIFIED IN THE REQUEST FOR PROPOSAL (RFP) AS LONG AS THESE ARE CONSIDERED EQUIVALENT IN SPECIFICATIONS BY THE UN. IN CASE AN ALTERNATIVE ENGINE IS OF OTHER THAN THE SPECIFIED MAKE IDENTIFIED IN THE RFP, THEN VENDORS MUST PROVIDE ALL WRITTEN INFORMATION ON THE SPECIFICATION AS ALSO MANUFACTURING AND QUALITY CONTROL STANDARDS INCLUDING ALL RELEVANT INTERNATIONAL STANDARDS THAT THE ALTERNATIVE ENGINES COMPLY WITH. PLEASE NOTE THAT THE UN RESERVES THE RIGHT AT ITS SOLE DISCRETION TO REJECT ANY ALTERNATIVE ENGINES PROPOSED THAT ARE OTHER THAN THOSE INDICATED IN THE RFP WITHOUT ASSIGNING ANY REASONS THEREOF.

Figure 38

224. According to Mr. Sarin, with whom the PTF spoke, the amendment was issued based on his request to Mr. Bahel and Mr. Staples²¹. This act seems to contravene procurement department practice which requires several vendors requesting a similar change that would result in an amendment as well as the approval of the requisitioner be sought.

¹⁷ Kanwarjit Sachdeva 18 May 2006

¹⁸ Sarin PCP email to Sanjay Bahel 21 March 2001, Provision of sound-proof and weather proof generating sets for the UNPK missions

¹⁹ Stephen Etsell email to Kanwar Sachdeva- 2 April 2001 3:08pm Re RFP 86 Urgent Clarification Requested

²⁰ RFPG-118 Amendment issued 3 April 2001

²¹ Sarin, PCP Director, ROC 4 July 2006; Note: Mr. Staples was no longer with PD at this time.

225. On 16 April 2001 eight companies submitted bids, including PCP which offered Kirloskar generators. Thereafter, the technical proposals were sent to DPKO for review and evaluation. DPKO's evaluation report was sent to PD on 24 May 2001, which concluded that TCIL and PCP had each offered the same non-specified diesel engines – Kirloskar generators, and neither can meet the required delivery schedule.²² Although DPKO had provided an evaluation finding that PCP did not meet the delivery schedule, Mr. Sachdeva, in consultation with Mr. Bahel, requested that DPKO re-evaluate these bids which were “alternate proposals in accordance with their previous agreement to allow vendors to propose alternative equipment.”²³ At first, DPKO refused to re-evaluate the bid from PCP on the basis that PCP was offering an alternate brand that was not specified in the RFP.²⁴ From April through June 2001, multiple emails and memoranda were exchanged between DPKO and PD over this issue, and the debate reached the level of the Assistant Secretary General.
226. Further, email messages were exchanged between ASG Toh on behalf of PD, and ASG Sheehan on behalf of DPKO, concerning the inclusion and evaluation of these “alternate brands” by PCP²⁵. A review of the file reflects a Note to the File of 11 June 2001 from Mr. Chaudhary, an Engineer with DPKO, memorializing the fact that Mr. Etsell of DPKO/FALD did not accept alternate brand of generators, and opposed any amendments which stated otherwise.²⁶ A further 11 June 2001 email from DPKO to Mr. Sachdeva confirms DPKO’s position:

“If the requirement for alternate engines was added by PD without the prior agreement of the requisitioner then it will not be evaluated until it is clarified.... Etsell has stated that he as the section chief never agreed to any such proposal from Mr. Bahel.²⁷

²² Memo from Stephen Etsell to Larisa Babynina dated 24 May 2001 RFPG-86 Requirement for Generating Sets

²³ Sachdeva email to Etsell dated 29 May 2001, Sachdeva email to Sinha dated 9 June 2001 (note – Bahel is currently away on annual leave in India during this time but email reflects that Sachdeva has spoken with him in India)

²⁴ Sachdeva and Chaudhary emails dated 29 May 2001, 6 June and 10 June 2001

²⁵ RFPG-86 file emails dated 24 May 2001 – 18 June 2001

²⁶ DPKO file - Sheel Chaudhary Note to File 11 June 2001

²⁷ Girish Sinha email to Sachdeva dated 11 June 2001

 Girish Sinha@UNHQ-DPKO
 11/06/2001 08:29 PM

To: Kanwarjit SACHDEVA/NY/UNO@UNHQ
cc: Stephen Etsell/Office of Planning & Support/United Nations@UNHQ-DPKO@UNHQ, Sanjaya Bahel/NY/UNO@UNHQ, Sheel Chaudhary/United Nations@UNHQ-DPKO@UNHQ, Patricia Useche/United Nations@UNHQ-DPKO@UNHQ, Larisa Babynina/NY/UNO@UNHQ

Subject: Re: RFPS 86 - Requirement for Generating Sets

No that is not correct, if the requirement for alternate engines were added by PD without the prior agreement of the requisitioners then it will not be evaluated till the matter has finally been clarified. However, this will be clear only after Mr. Etsel and Mr. Bahel return next week, as Mr. Etsel has stated that he as the section chief never agreed to any such proposal from Mr. Bahel. Please send all your communications on this subject addressed to Mr. Chaudhary only, who has vast experience with ESCWA, DAM and DPKO for past several years dealing with generators. Thanks,
Girish

Figure 39

227. Mr. Bahel thereafter responded:

FALD's argument to reject all other makes of engines outright ... on the grounds of logistical issues thus does not appear to be totally valid. (sic) The amendment PD issued was in full consultation with FALD on the premise as brought out above.²⁸

 Sanjaya Bahel @ UNHQ
 18/06/2001 11:21 AM

To: Girish Sinha/United Nations@UNHQ-DPKO
 cc: Kanwarjit SACHDEVA/NY/UNO@UNHQ, Stephen Etsell/Office of Planning & Support/United Nations@UNHQ-DPKO, Sheel Chaudhary/United Nations@UNHQ-DPKO, Patricia Useche/United Nations@UNHQ-DPKO, Larisa Babynina/NY/UNO@UNHQ

Subject: Re: RFPS 86 - Requirement for Generating Sets

The envisioned contract is for 3 to 5 years. This period is long enough for avoiding multiplicity of products that leads to logistical and support nightmares. FALD's argument to reject all other makes of engines outright without evaluation on the grounds of logistical issues thus does not appear to be totally valid. To PD's mind considerations other than technical should come in only after a true technical appreciation of the varying products offered.

The above having been said, please note that the amendment PD issued was in full consultation with FALD on the premise as brought out above. UN still reserves the right to reject alternate offers without assigning reasons, but then that is for the vendors not for the Organisational units.

Request FALD review their position.

Regards
Sanjay

Figure 40

228. Mr. Etsell confirmed to PTF investigators that it was his responsibility to ensure DPKO had dependable and quality generators as it was their "lifeline," and accordingly they wanted the top 4 brands with which they were already fully

²⁸ Sanjaya Bahel email to Girish Sinha dated 18 June 2001

familiar. Mr. Etsell further explained that in the event of a failure, the Mission already had replacement parts for these models from the major manufacturers. This argument did not sway Mr. Bahel or the PD. On 5 July 2001 on behalf of DPKO, Mr. Sheehan complained to Mr. Toh, the then acting officer in charge of PD, about PD's position on the matter. Mr. Sheehan stated that DPKO/FALD found PD's position unacceptable, and maintained their desire for the four specified brands.²⁹ Mr. Toh forwarded the email to Mr. Bahel, with the reference: "Mr. Bahel – Sanjay please prepare draft response (illegible)."³⁰ As a result, Mr. Bahel sent a memo dated 17 July 2001 to Mr. Toh purporting to explain PD's position:

FALD's request to require vendors to only quote for generators with four specified makes ...was questioned by us. On their insistence (sic) due to pressing urgency expressed, PD agreed to issue the RFP with the specifications as requested. . . vendor represented that they were in a position to offer generators with other makes that meet . . . specifications required. PD did not do amendment unilaterally. Irrespective at whose behest the RFP permitted offers ... Organisation cannot decline to consider the offer."³¹

Note to Mr. Andrew Toh

Subject: Generators for Peacekeeping Operations

1. Reference is invited to Mr. Sheehan, ASG/DPKO memorandum dated 5 July 2001 on the above subject. In brief, FALD's request to require vendors to only quote for generators that had specified makes of engines (4) was questioned by us. On their insistence for reasons enumerated in the memorandum under reply and more so due to pressing urgency expressed, PD agreed to issue the RFP with the specifications as requested. However, some vendor represented that they were in a position to offer generators with engines of other makes that meet or beat the specifications of the requested makes and were being manufactured under ISO certified standards. I personally revisited this issue with Mr. Etsell and Mr. Chaudhary. It was put across to them that specifying engines when the UN was doing repeated spot purchases may have been logical from logistical support and service point of view, but now for establishing a systems contract for 3+ years the same reasoning may not apply. Finally, it was agreed to that we will permit equivalent specification engines being offered while reserving the right to reject the alternates without assigning any reasons (the said agreement stands reflected in the e:mail exchanges enclosed with the memorandum). Thus, PD did not do amendment of the RFP unilaterally.

Figure 41

Use of the London Apartment

229. On 11 July 2001 in the midst of the procurement exercise in which PCP was a participating vendor, PCP's executive officer, Mr. Sarin sent an email message

²⁹ Memo from Michael Sheehan ASG to Andrew Toh OIC 5 July 2001

³⁰ Ibid

³¹ Memo from Sanjaya Bahel to Andrew Toh, 17 July 2001

to Mr. Bahel referencing Mr. Bahel's request to use his London apartment while on vacation there with his family. According to documents and various correspondence obtained through the PTF's investigation, it is evident that Mr. Bahel sought to use Mr. Sarin's apartment while in London during this period, 26 July 2001 through 11 August 2001.

11 July 2001

Dear Sanjay Sahib,

Further to our telecon of date regarding arrival of your family in London from 26 July-11 Aug. Please note following are the details and address of Mr. Mejie's apartment in London.

Flat 15
2nd Floor
Grey Stoke Court
Hanger lane
Ealing W5 1EN
London
Tel: +44-20 8932 6953

The key are with a very close friend of ours Mr. S. S. Rai, who could be contacted on tel: +44-20-8570-8282 (office) +44-7956-281-720 (Cell). Mr. Mejie shall inform him about the arrival of your family. Suggest you younger son collects the key from Mr. Rai the evening before the arrival of your family. The apartment is on hanger Lane five minutes walking from Hanger Lane tube station on central line. The exit to be taken from the tube station is "Buses to Golders Green".

Thanks and best regards
Arvind Sarin

CC: Mr. H. S. Mejie-Chairman PCPIL Camp Amman for information and necessary

Figure 42

230. PTF investigators interviewed Mr. Sarin. Mr. Sarin confirmed that PCP owns a "corporate apartment/house" in London,³² and that in previous conversations with Mr. Bahel the issue about the apartment had arisen. According to Mr. Sarin, Mr. Bahel had asked him if his son, who was working as an intern in London, could use PCP's apartment. According to Mr. Sarin, Mr. Bahel's son picked up the keys but he did not know if Mr. Bahel had used the apartment.³³

³² Mr. Sarin was contacted at the London apartment telephone# – 44-20-8932-6953 and confirmed that PCP did own the apartment in London which was used as corporate housing for guests and employees.

³³ Sarin ROC 4 July 2006

231. However, the investigation has revealed that Mr. Bahel did indeed travel to London with his family during this time, and that the records from the Organisation confirm that Mr. Bahel was on annual leave between 29 July and 4 August 2001.³⁴ Further, prior to departure, Mr. Bahel's son wrote to him and inquired if he would be travelling to London:

To: "bahel@un.org" <bahel@un.org>
cc:

Subject: London

Are you coming to London?
when?
Let me know...
~Aman

Figure 43

232. A review of Mr. Bahel's August 2001 UNFCU Visa statement reflects various purchases in London, including charges for a rental car, and in-flight services during the period of 29 July 2001 and 4 August 2001. While there are food and rental car charges contained on the credit card statement, there is an absence of hotel expenses. None of Mr. Bahel's 2001 statements in the possession of the PTF reflect any such charge.³⁵ Mr. Bahel confirmed that he was in London but denied that he used this apartment during his visit stating he stayed with his sister who lived in Manchester. However, he confirmed that his son had used the apartment for several days while interning in London. Mr. Bahel stated that his son only used this apartment as a "final resort" as there was no longer any room available at the B&B where his son was staying and his son could not afford the hotel rates of over 150£ per night. However, the email sent by Mr. Bahel's son did not include such an explanation.
233. Mr. Bahel stated that he asked Mr. Sarin if he could pay him for the use of the apartment which Mr. Sarin refused, however, he provided Mr. Sarin with a bottle of whisky as a token of thanks for his assistance with his son. Mr. Bahel stated that he had never received anything of value or any gift from PCP. However, it would appear that the use of the PCP apartment would be considered a gift. (See Annex-Timeline for Detailed Information.)

³⁴ Sanjay Bahel annual leave records – Monday, 30 July - Thursday, 2 August

³⁵ Sanjay Bahel UNFCU Visa Statements August 2001 - November 2001

 UNFCU		STATEMENT OF ACCOUNT				
SEND INQUIRIES TO: UNITED NATIONS FEDERAL CREDIT UNION 820 SECOND AVENUE, 12TH FLOOR NEW YORK, NY 10017-4504 USA TEL (212) 338-8100 - FAX (212) 682-5569 email@unfcu.com - http://www.unfcu.org						
MEMBER NUMBER/CARD NUMBER 40371-0		AMOUNT PAST DUE 0.00	CURRENT PAYMENT DUE 25.00	REQUIRED PAYMENT DUE 25.00	AMOUNT PAID	6703
		NEW BALANCE 994.82	AMOUNT OVER CREDIT LIMIT 0.00	PAYMENT DUE DATE 08-28-01	STATEMENT DATE 08-03-01	Duplicate Copy MEMBER NUMBER 40371-0
PAGE 1						
SANJAYA BAHEL 300 EAST 34TH ST #18D NEW YORK NY 10016						P STATEMENT DATE 08-03-01 CREDIT LIMIT 15000.00 UNUSED CREDIT 14005.18
233 AVIS 480270814 HAYES 0729 0801 113.58 198 ROCK GARDEN LTD LONDON 0730 0801 154.75 530 MARKS & SPENCER MARBLE ARCH 0 0730 0801 299.23 241 TM WYNDHAMS THEATR LONDON WC2H 0801 0803 43.25 277 MARKS & SPENCER MARBLE ARCH 0 0801 0803 85.05 1050 AEROBOUTIQUE INFIL LONDON TW6 3X 0804 0808 34.36						

Figure 44

RFP 118 – Procurement of Generators

234. Months later, in April 2002, the DPKO sought another generator contract, and PCP submitted a bid. Mr. Sarin was also involved in that exercise on behalf of PCP. Previously, on 20 February 2002 Stephen Etsell- Chief, DPKO, again requested that PD issue a tender for a systems contract for generators for the various peacekeeping missions³⁶. An EOI was placed on the UN website on 4 March 2002 which lasted for ten days. Again, PCP was included on the invitee list despite failing to be registered with the Organisation for the provision of generators.³⁷
235. On 28 March 2002 the RFP was issued to 45 vendors, including PCP, with a closing date of 30 April 2002.³⁸ Three additional vendors were added in the next several weeks resulting in 48 total recipients.³⁹ On 17 April 2002, Mr. Sarin, on behalf of PCP, sent an email message to Mr Bahel requesting a meeting with him. Mr. Sarin stated “Mr. Kirloskar, Chairman of Kirloskar Limited (manufacturer of the generators in PCP’s bid) would like to meet as they will be in town on April 22 and 23 [2002].”⁴⁰ Mr. Bahel replied confirming the

³⁶ Stephen Etsell memo to Christian Saunders (Chief, PD) 20 February 2002

³⁷ RFP#118 file – INCO, Ingersoll Rand, Guangxi Yuchai and K. Arano & Co faxes. Four of the others vendors added to the invitee list were requested to register indicating that there registry information may have been checked, however, PCPs was not

³⁸ RFP #118 Invitee List dated 28 March 2002

³⁹ RFP #118 Invitee List dated 17 April 2002

⁴⁰ Sarin email to Bahel dated 17 April 2002

meeting on 23 April 2002 at 11:30am,⁴¹ seven days prior to the closing of the RFP. The RFP closed on 30 April 2002 with eight vendors submitting proposals, PCP being one of them.⁴² DPKO thereafter received all 8 company technical proposals for their review and evaluation, and in May and June 2002 subsequently sent emails requesting further clarification from PCP and several other vendors on their technical proposals. DPKO concluded that PCP was technically compliant but offered an unknown brand of generator, Kirloskar, and found that it did not meet other important criteria essential to the bid including delivery timeframe, warranty and spare parts. DPKO stated:

SUMMARY:

The Vendor has presented a comprehensive technical portion of the bid that meets many of our specifications. However, certain important key specifications has not been met, especially: **a)**. The Guaranteed Delivery Period, (total delivery time 10 months). **b)**. The maintenance of Minimum Stockholding (cannot meet). **c)**. The Generating Set Warranty (excludes "Electricals, Instruments, Gauges and Belts" as well as "Transportation, Labor Charges, and Freight of Spare-Parts"). The vendor has also proposed that asbestos used in heat-insulating the exhaust system; the use of ASBESTOS is dangerous and rejected. Technical brochures for Alternators in all ranges were not included as requested. The vendor did not quote for generating sets in the 750 kVA capacity range.

Figure 45

236. DPKO again expressed their preference for other more well known brands of generators.⁴³ On 15 July 2002 Mr. Sarin of PCP sent Mr. Bahel an email referencing the RFP and sought a meeting with Mr. Bahel and the General Manager of Kirloskar on 29 July 2002."⁴⁴

 Arvind Sarin
<asarin@emirates.net.a>
e> To: Sanjay Bahel <bahel@un.org>
cc:
Subject: Appointment

15/07/2002 04:39 AM
Please respond to
Arvind Sarin

15 July 2002
Dear Mr. Bahel,

This is in reference to our offer submitted for RFPG 118 for supply of Generating sets for Peacekeeping Missions and clarifications submitted thereafter.

Kindly note that self and Mr. Varinder Singh Dhoot General Manager, of Kirloskar Group of Companies shall be visiting New York around July 29, 2002. We would appreciate if you could confirm an appointment to meet with your self on 29 July 2002.

Figure 46

237. Officials within PD have informed the PTF that such a meeting with a vendor during the evaluation period is inappropriate. It is also suspicious that the request for the meeting was not routed through the case officer, and was

⁴¹ Bahel email to Sarin dated 17 April 2002

⁴² Request for Proposal RFP#118 dated 28 March 2002;

⁴³ Ibid

⁴⁴ Sarin email to Bahel dated 15 July 2002 (source Bahel's hard-drive)

directed to Mr. Bahel himself. On 16 July 2002 Mr. Bahel responded: “*evaluation is currently under way ...expected completion of the same negotiations will be required with Mr. Dhoot*” and then confirms an appointment on 29 July 2002⁴⁵.

Sanjaya Bahel/NY/UNO	To Arvind Sarin <asarin@emirates.net.ae>
07/16/2002 10:24 AM	cc
	bcc
	Subject Re: Appointment
M. Sarin,	
The evaluation is currently under way and the United Nations expects to be able to complete the same shortly. It is expected that on completion of the same negotiations will be required that may take place at an earlier date, where presence of Mr. V.S. Dhoot will be essential. For the present I confirm appointment for both of you at 11:30 AM on 29 July 2002 in our office.	
Regards	
Sanjay Bahel	

Figure 47

238. However, the final determination had not been made by the requisitioner and the Procurement Department, and between 17 July and 26 July 2002 procurement officers were still communicating with vendors, including PCP, requesting further clarification of technical proposals.
239. The investigation has not been able to confirm that a 29 July meeting was held, however the case officer informed the PTF that she does not recall attending this meeting, or being aware of it. However, the officer did relate to investigators that there was an 1 August 2002 meeting with Mr. Chaudhary of DPKO and Mr. Sarin of PCP wherein they discussed some of the commercial issues of performance bonds.⁴⁶
240. Well into August 2002 DPKO continued to express concerns about the generators PCP was offering. Mr. Etsell stated:

Since PCP is a new vendor for the supply of generators, and the offered Kirloskar make generators will be used for the first time, their performance is unknown.... Necessary their performance bond of at least 15% (sic).⁴⁷

⁴⁵ Bahel email to Sarin dated 16 July 2003

⁴⁶ Babynina ROC 6 July 2006; There are emails, letters and faxes that indicate that a meeting was held on August 1st between Chaudhary-DPKO, Babynina- PD, Sarin-PCP and Mr. Dhoot – Kirloskar, were the various concerns of DPKO regarding delivery schedule, minimum stock, site inspection and performance bond issues were discussed and finalized⁴⁶

⁴⁷ Chaudhary email to Etsell dated 2 August 2002; Etsell email to Bahel dated 5 August 2002

241. In response, Mr. Bahel challenged DPKO's standing to address these issues and expressed the view that commercial matters are within the province of the procurement department. DPKO disagreed, and represented to Mr. Bahel that these issues should be "discussed and decided between DPKO and PD since the vendor is being considered for the supply of a large quantity of generators for the first time and the performance of the generators is unknown."⁴⁸ The debate continued. Mr. Bahel responded to Chaudhary on 5 August 2002:

Sheel/Steve

Regarding the points made below, I am sure you will agree that Sheel's concerns, which were also articulated by Steve were duly taken into account by us prior to meeting with the firm PCP where both of you were present and actively participated. Consequently, it was PD that proposed to double the Liquidated damages from .5% to 1% and asked for increased Performance Bond from the \$100,000 required in the RFP (and that too for the full requirement). Now you are coming back as if it is requisitioner's requirement that PD had neither considered nor taken into account. I am sure you will agree that this is far from true.

Incidentally, I wish to clarify with the Engineering Section as to whether this concern with NO PAST EXPERIENCE OR NEW SUPPLIER applies to only some selected vendors or is it a universal and standard concern. As you are well aware Coelmo, who has the 2.5/5.00 KV generator contract and is being considered for this bid (in fact, 3x750KV generators have already been ordered), was registered in 2000 and has no history with the UN not to mention in supplying generators. In that case Engineering Section seem to have had no concern that they will be supplying for the first time and their generators are new, untested and with peacekeeping having no prior experience. In their case, not even a visit to the factory was considered appropriate leave alone all other conditions with PCP + factory visit + inspection by an independent agency. Incidentally, Coelma is yet to supply any generators and for the last order, where substitution of engine was accepted without verification, they are already asking for extension of delivery. Could PD please be enlightened for record on this conflicting stance being taken by your Section in exact similar circumstances.

Regards
Sanjay

Figure 48

242. The view of a number of procurement officers present at the time was that DPKO was trying to "kill the contract" and the procurement department was doing its best to protect this company, some of whom opined that they thought the support was premised upon the fact that it was significantly less expensive.⁴⁹ As procurement chief, Mr. Bahel's responsibility was to protect the Organisation's interest. The Organisation's best interest should not be limited to merely achieving the lowest cost, but also offering the contract to the most qualified vendor. Further, protecting the integrity of the process is also in the best interests of the Organisation. In light of concerns, it seemed prudent, rather than unnecessary, to require higher performance bonds and site inspections.
243. As a result of DPKO's concerns about the reliability of the generators, a site inspection did occur between 13 September and 16 September 2001 in Pune,

⁴⁸ Chaudhary email to Bahel dated 5 August 2002; Bahel email to Etsell and Chaudhary dated August 5, 2002

⁴⁹ Brian Streb, ROC

India which was attended by Mr. Bahel along with DPKO and Kirloskar officials. Senior procurement officials have informed the PTF that typically the line procurement officer would attend the site inspections.⁵⁰ In this case, Christian Saunders approved Bahel's request to travel to participate in the site inspection. During the inspection, Mr. Chaudhary refused PCP's offer to pay his hotel expenses.⁵¹ According to Mr. Sarin, PCP had made the hotel arrangements but denied paying for Mr. Bahel or Mr. Chaudhary.⁵² Mr. Chaudhary confirmed that Mr. Bahel had stayed in the same hotel for the three nights, but could not shed any light concerning the payment for Mr. Bahel's occupancy.⁵³ Mr. Bahel confirmed he stayed in the hotel. He however stated that he paid for the room for all of his stay.⁵⁴ Upon review of Mr. Bahel's UNFCU Visa Statement, there is a charge for a hotel Taj Blue Diamond for \$188 on 16 September 2002. Current hotel rates at the Taj Blue Diamond are \$230 per night. Although requested from the hotel, the investigators were unable to obtain the final invoice statement from the hotel for Mr. Bahel's stay in 2002.

244. After the first inspection, DPKO felt that these generators would no longer be considered as the inspection report listed many deficiencies in the workmanship and quality.⁵⁵ Mr. Chaudhary of DPKO stated that he did not believe that PCP/Kirloskar should be awarded the contract because the quality of the generators was substandard to the other European brands that they had been using, and that they had submitted proposals for the current contract. In addition, Mr. Chaudhary did not believe that the Kirloskar model would be as reliable, a concern which later proved valid as many of problems occurred in the field.⁵⁶
245. Mr. Etsell, OIC – Engineering Section, DPKO recalled that he informed the procurement department that he did not think the generators would last, and stated that they "were not value for money." Mr. Etsell also recalled sending the first inspection report with a cover memo informing PD that DPKO did not want these generators. This cover sheet was not located in the file.⁵⁷ According to DPKO officers, typically when DPKO voiced complaints of other systems' contracts, the contracts did not survive. Such was not the case here. Mr. Clemens Adams, Chief of DPKO, told PTF investigators that he would not normally get involved with these types of contracts, but because of the stalemates and delays he interceded. In his view, Mr. Adams believed that there was pressure from Mr. Bahel as he had accused DPKO of racism for opposing PCP. According to Mr. Adams, Mr Bahel accused DPKO of not wanting to grant the contract to an Indian manufacturer. To the contrary, DPKO officials

⁵⁰ Saunders ROC 27 June 2006

⁵¹ Chaudhary ROC 28 May 2006 and 14 June 2006

⁵² Sarin ROC 4 July 2006

⁵³ Chaudhary email 19 July 2006

⁵⁴ Bahel ROC 26 July 2006

⁵⁵ Stephen Etsell ROC 22 June 2006

⁵⁶ Chaudhary ROC 28 May 2006 and 14 June 2006

⁵⁷ Stephen Etsell ROC 22 June 2006; Note – This cover memo was not found in the RFP or DPKO files

expressed concerns about the quality of the proposed generators, which was well documented in the files.

246. Mr. Etsell expressed the view that PCP was given a second chance to improve the generators. In a memorandum from Stephen Etsell to Christian Saunders on 2 December 2002, Mr. Etsell wrote that “based on Mr. Chaudhary’s attached report PD is recommending PCP be given a second opportunity to improve the workmanship and design of the generators.”⁵⁸ Mr. Saunders confirmed that he suggested the second inspection. Mr. Etsell stated that he felt DPKO was pushed by PD to provide PCP a second opportunity.⁵⁹ Mr. Adams further offered that it was unusual for a contractor to receive a second chance to fix or make modifications to the prototype. Mr. Adams agreed with Mr. Etsell and stated that they were “under pressure” to get the generators as this procurement exercise had taken a long time.⁶⁰ Both Mr. Adams and Etsell stated that they felt frustrated and were desperate to get generators due to critical operational needs in the missions for these generators.⁶¹
247. Upon review of the generator bids, PCP was the lowest bidder, ahead of FG Wilson and Coelmo.⁶² PCP was awarded the contract for a not to exceed value of \$3.5 million over 3 years.⁶³ On 20 June 2003 the initial contract was signed by Mr. Sarin of PCP and Mr. Saunders on behalf of the Organisation.⁶⁴ One month later, on 19 July 2003, Mr. Sarin sent Mr. Bahel an email referring to a prior telephone conversation and providing the requested route information for flights to Dublin and Istanbul. Mr. Sarin requests “Mr Bahel to advise of the dates.”⁶⁵ According to Mr. Sarin, he provided Mr. Bahel with information regarding flights on KLM as he was previously a travel agent for KLM. He confirmed that he obtained special excursion fares for Mr. Bahel, made the bookings and gave the contact name to Mr. Bahel for confirmation. However, Mr. Sarin denied paying for the flights.⁶⁶ A review of Mr. Bahel’s visa statements reflects rental car charges and purchases in Dublin and Istanbul during the period of 30 August – 5 September 2003. The statements do not reflect purchases for KLM airline tickets during this time period. According to Mr. Bahel, he may have received flight information but tickets were purchased

⁵⁸ Etsell memo to Saunders through Adams dated 2 December 2002

⁵⁹ Stephen Etsell ROC 22 June 2006

⁶⁰ Clem Adams, ROC 9 May 2006

⁶¹ Clem Adams, ROC May 9, 2006; Stephen Etsell ROC 22 June 2006

⁶² RFP#118 PCP’s bids for the prior RFP #86 and the current RFP#118 indicate that the prices decreased from the early bid RFP #86 in 2001 to the current RFP #118 in 2002. If PCP had submitted in the 2001 prices as seen in their RFP#86 bid they would not have been the lowest bidder and would not have been granted the contract award. It is curious that their bid prices significantly drop from 2001 to 2002 on average of \$1,600 - \$3,800 while the other companies prices had increased on average of \$500.⁶²

⁶³ Lars Dahlo ROC 24 May 2006; HCC Meeting Minutes 6 May 2003

⁶⁴ PD/CO0098/03 Contract dated 20 June 2003

⁶⁵ Sarin email to Bahel dated 19 July 2003

⁶⁶ Sarin ROC 4 July 2006

by his wife through a travel agent she used in India. Mr. Bahel's version seems to contradict facts Mr. Sarin conceded.

248. After the contract was issued in June 2003 the first generators were delivered in September 2003. Some of the generators arrived damaged, and problems thereafter continued to occur. The contract was ultimately cancelled in December 2003. The contract was subsequently reinstated several months later, and thereafter amended twice. Ultimately, the amount of the award increased from the original \$3.5 million to \$9.9 million.

Bahel's Relationship with the Indian Government

249. Documents obtained from a search of Mr. Bahel's computer reveal that he communicated with the Government of India and requested an extension of his position. In the correspondence, he argued that his position should be continued because he was well placed to further the interests of the Government. Further, Mr. Bahel expressed his intention to assist companies from his country. In March 2004 Mr. Bahel wrote to his Government, and represented the following:

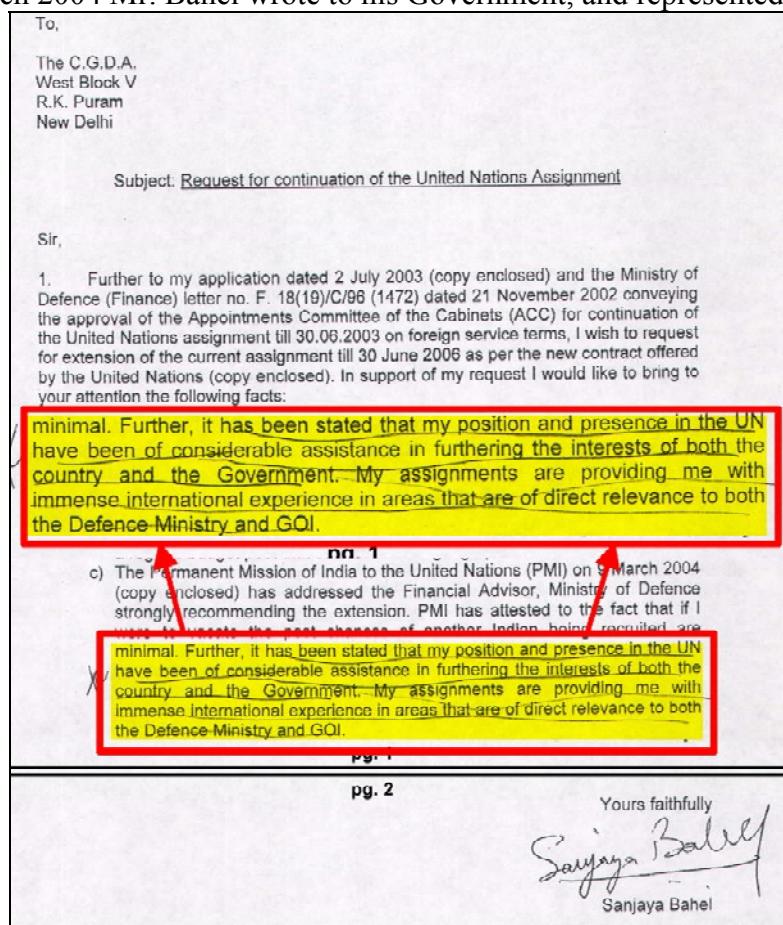


Figure 48

250. Mr. Bahel principally asserts two claims in response to allegations that he purposely favored, or steered contracts to, certain vendors or individuals. First, Mr. Bahel asserts that a single procurement officer simply could not sufficiently influence the process to achieve a certain outcome. Further, he asserts, contested issues and complaints of requisitioners and vendors were routinely vetted through OLA and input and guidance was regularly sought from OLA lawyers. Mr. Bahel contends that he followed the guidance he ultimately received.
251. Mr. Bahel's arguments are flawed. First, Mr. Bahel was a supervisory officer in the PD, and often acted in an interim or acting capacity as the Chief. As such, he wielded a great deal of authority within the department. While certainly Mr. Bahel could not on each and every occasion guarantee a certain outcome, he nevertheless was in a position to influence it. Further, it is not only the degree of success which is achieved, but the effort to influence the process which also is at issue.
252. Equally without merit is Mr. Bahel's claims that OLA approved his ultimate actions or that he simply was carrying out instructions and guidance from OLA. The quality of the advice rendered was dependent upon the facts provided to OLA. It is evident that on numerous occasions, OLA did not have a clear picture of the circumstances because they relied on representations by Mr. Bahel concerning the facts and circumstances of the matter. Mr. Bahel's representations were often coloured. Further, OLA was principally asked to provide advice and guidance on existing contract provisions. They did not investigate matters, but relied upon the facts and circumstances presented to them.

FINDINGS

The PTF concludes the following:

253. That TCIL was represented by Nanak and Nishan Kohli in its bid to achieve substantial contracts from the Organisation, including IT manpower staffing, laptop computers, desktop computers, trunking systems, and satellite equipment. TCIL deferred to Nanak and Nishan Kohli to execute the contract with the Organisation, and sub-contracted with GTI without notifying or seeking approval from the Organisation for this assignment, in violation of the contract. Nanak and Nishan Kohli, and GTI, further violated the terms of the contract by failing to pay contract staff the full amounts due and owing to them under the terms of the contract with the Organisation. Through these acts, Nanak and Nishan Kohli, and GTI, improperly enriched themselves.

254. That a scheme to defraud the Organisation existed between in or about 1999 to 2004, approximately. The scheme included the effort to achieve and maintain valuable UN contracts, referred to throughout this report, through seeking to improperly influence a UN procurement official, and achieving and converting sums of money to the use of the participants of the scheme which were provided to them by the Organisation pursuant to the contract. The participants of the scheme included, but were not limited to, Mr. Nanak Kohli, Mr. Nishan Kohli, GTI, En-Kay Associates, TCIL, PCP, Acumen International, Mr. Arvind Sarin, and UN Staff Member Mr. Sanjaya Bahel.
255. That UN Staff Member Mr. Sanjaya Bahel participated in the scheme through assisting the efforts of TCIL, PCP, Nanak and Nishan Kohli in the Organisation's procurement process and exercises, defending these entities in the wake of criticism and opposition from other branches of the Organisation, making false statements to personnel in the Organisation, omitting critical facts to such personnel, and improperly receiving tangible and intangible benefits from Mr. Nanak Kohli, Mr. Nishan Kohli, TCIL, PCP, and Mr. Arvind Sarin.
256. That TCIL, GTI, Mr. Nanak Kohli and Mr. Nishan Kohli failed to provide the required amount of subsistence payments (MSA) to its contract staff in violation of the IT Staffing Contract, and improperly converted such funds to their own benefit. Nanak Kohli and Nishan Kohli falsely represented to the Organisation that such sums were in fact paid. These false statements were made in furtherance of the scheme to defraud the Organisation.
257. That Mr. Nanak Kohli and Mr. Nishan Kohli, both agents of TCIL, and Mr. Nishan Kohli, a principal of Thunderbird, participated in the scheme by unlawfully seeking to influence and corrupt the procurement process by making false statements, submitting false and fraudulent documents, and bestowing tangible and intangible benefits upon UN Staff Member Mr. Sanjaya Bahel, a supervisory procurement officer. The benefits bestowed upon Mr. Bahel included, at the very least: a reduced rental fee for the premises located at 240 East 47th Street, Units 17E and F (condominiums); the discharge of moving expenses which were otherwise required to be paid by the tenant occupying the unit; a significantly reduced rental amount; and a favourable advantage in the purchase of the unit, including a fixed and reduced price.
258. That based upon the totality of the circumstances, reasonable inferences to be drawn therefrom, and in consideration of all the facts of the cases set forth herein, the PTF concludes that UN Staff Member Mr. Sanjaya Bahel improperly favoured, and assisted, Mr. Nanak Kohli and Mr. Nishan Kohli as well as Mr. Arvind Sarin in their efforts to achieve valuable UN contracts, and thereby compromised the integrity of the procurement process.

259. That UN Staff Member Mr. Sanjaya Bahel knowingly made false statements to PTF investigators concerning the circumstances of his occupancy, lease and purchase of the premises located at 240 East 47th Street, Unit 17E and F.
260. That TCIL representatives Mr. Nanak Kohli and Mr. Nishan Kohli, and TCIL employee Mr. G.S. Chauhan, made knowing materially false statements to the Organisation that the firm was complying with the terms of the IT Staffing Contract, and omitted informing the Organisation of material facts, namely that multiple assignments of the contracts were made.
261. That UN Staff Member Mr. Sanjaya Bahel suffered from a conflict of interest by participating in a procurement exercise involving a company owned by the Government of India when he continued an association with, and owed his continued employment with the United Nations to, the Government of India.
262. That UN Staff Member Mr. Sanjaya Bahel suffered from a conflict of interest in that he participated in procurement exercises in which his personal friends, Nanak and Nishan Kohli, and Arvind Sarin, represented the interests of the vendors in the procurement exercises.
263. That UN Staff Member Mr. Sanjaya Bahel did not influence the vendor registration process of Thunderbird.

CONCLUSIONS

264. UN Staff Member Mr. Sanjaya Bahel violated United Nations Staff Regulation 1.2(b) which requires staff members to uphold the highest standards of integrity and impartiality.
265. UN Staff Member Mr. Sanjaya Bahel violated United Nations Staff Regulation 1.2(d) that prohibits staff members from accepting any instructions from any Government;
266. UN Staff Member Mr. Sanjaya Bahel violated United Nations Staff Regulation 1.2(e) which requires staff members to pledge themselves to discharge their functions with the interests of the Organisation only in view;
267. UN Staff Member Mr. Sanjaya Bahel violated United Nations Staff Regulation 1.2(g) which prohibits staff members from using their official office for private gain, or the private gain of any third party, including family, friends and those they favour;
268. UN Staff Member Mr. Sanjaya Bahel violated United Nations Staff Regulation 1.2(i) which requires staff members to exercise discretion with regard to all matters of official business, and not communicate to others outside the

Organisation any information known to them by reason of their position, except as appropriate in the course of their duties;

269. UN Staff Member Mr. Sanjaya Bahel violated UN Staff Regulation 1.2(m) which provides that staff members shall not be actively associated with a management of any business or other concern, where they may benefit from such association by reason of his or her position;
270. UN Staff Member Mr. Sanjaya Bahel suffered from a conflict of interest by participating in procurement exercises involving his personal friends, and a company owned by a government with which he had a past, as well as present, association.
271. UN Staff Member Mr. Sanjaya Bahel participated in, and aided and abetted, a scheme to defraud the Organisation in violation of Title 18, United States Code, Sections 1343 and 2.
272. UN Staff Member Mr. Sanjaya Bahel improperly and unlawfully accepted tangible and intangible benefits in consideration for advancing the interests of vendors seeking to obtain contracts from the Organisation.
273. The company TCIL breached the IT Staffing Contract in failing to advise, and seek the Organisation's approval, when assigning the IT Staffing Contract.
274. Mr. Nanak Kohli and Mr. Nishan Kohli, both agents of TCIL, and Mr. Nishan Kohli, a principal of Thunderbird, unlawfully conferred tangible and intangible benefits upon UN Staff Member Mr. Sanjaya Bahel. These benefits were fully accepted by UN Staff Member Mr. Sanjaya Bahel, improperly, and unlawfully.

RECOMMENDATIONS

275. The PTF recommends this matter be referred to the appropriate departments in the Organisation for action against UN Staff Member Mr. Sanjaya Bahel for violations of the Staff Rules and Regulations.
276. The PTF recommends that the matter be referred to prosecutorial authorities in the host country as well as in India for further investigation of the commission of criminal offences.
277. The PTF recommends that appropriate action to be taken to recover the financial losses to the Organisation occurred as a result of the matters detailed in this report.
278. The PTF recommends that appropriate consideration should be given to whether the actions of the various UN registered vendors warrant their removal from the vendor registration list.