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

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

**REPORT  
ON THE GROUND FUEL  
PROCUREMENTS AT  
MINUSTAH**

**Report no. PTF-R010/07**

**Case no. PTF/11/06**

This Investigation Report of the Procurement Task Force of the United Nations Office of Internal Oversight Services is provided upon your request pursuant to paragraph 1(c) of General Assembly resolution A/RES/59/272. The Report has been redacted in part pursuant to paragraph 2 of this resolution to protect confidential and sensitive information. OIOS' transmission of this Report does not constitute its publication. OIOS does not bear any responsibility for any further dissemination of the Report.

**16 July 2007**

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## I. INTRODUCTION

1. The Procurement Task Force (the Task Force) was created on 12 January 2006 to address all procurement matters referred to the Office of Internal Oversight Services (OIOS). The creation of the Task Force was the result of perceived problems in procurement identified by the Independent Inquiry Committee into the Oil-for-Food Programme, and the arrest and conviction of United Nations Procurement Officer Alexander Yakovlev.

2. Under its Terms of Reference, the Task Force operates as part of OIOS, and reports directly to the Under-Secretary-General for OIOS. The remit of the Task Force is to investigate all procurement cases, including all matters involving procurement bidding exercises, procurement staff and vendors doing business with the United Nations (the UN or the Organisation). The mandate of the Task Force also includes a review of certain procurement matters which have been closed, but it nevertheless has been determined that further investigation is warranted.

3. The Task Force investigations have focused upon numerous 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 United Nations missions and the United Nations Headquarters have been referred to the Task Force.

4. On 20 January 2006, the Internal Audit Division (IAD) of the Office of Internal Oversight Services issued an Audit Review (Audit Review) (See AP2005/600/20) addressing particular concerns regarding fuel procurements at the United Nations Stabilization Mission in Haiti (MINUSTAH) expressed in Recommendations 18 and 19. A subsequent audit (AP/2005/683/11) of fuel management in missions was issued and also made findings regarding the procurement of ground fuel at MINUSTAH, which included both breaches of the procurement rules and the procurement exercise overall.

5. This Report addresses two competitive bidding exercises which were held to procure a short-term and then long-term supply of ground fuel for MINUSTAH. The first procurement exercise for the short-term supply of fuel was conducted collectively by the Mission with UN Headquarters in June 2004. The second exercise took place in the spring of 2005 and was performed solely by the Mission.

6. In particular, this Report will address whether the winning bidder, Distributeurs Nationaux S.A. (Dinasa), should have been awarded the initial contract in June 2004 and whether the exercise was properly conducted. The Task Force determined, as will be discussed in greater detail below, that the exercise was not conducted in a fair and transparent manner, and therefore Dinasa was improperly awarded the contract.

7. Similarly, the Task Force investigated the second procurement exercise, which, too, had initially been awarded to Dinasa. The Task Force subsequently concluded that this exercise also was not conducted in a fair and transparent manner. In fact, the investigation revealed that several individuals at the Mission improperly favoured

Dinasa. The Task Force discovered that these individuals rigged both the technical and commercial evaluations to make sure Dinasa won the contract. The primary individuals involved in this scheme were Subject 1, Subject 2, Subject 6, Subject 3, Subject 4 and Subject 5.

8. Finally, as part of its investigation, the Task Force also investigated a complaint filed with OIOS which alleged that Subject 4 attempted to solicit a bribe from another local vendor during this procurement exercise.

## II. APPLICABLE UNITED NATIONS STAFF REGULATIONS AND RULES

9. The following provisions of the **Staff Regulations and Rules of the United Nations** are relevant:

(i) **Regulation 1.2(b):** “Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.”<sup>1</sup>

(ii) **Regulation 1.2(g):** “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.”

(iii) **Regulation 1.2(r):** “Staff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate possible misuse of funds, waste or abuse.”

(iv) **Regulation 1.3(a):** Staff members are “accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions.”

(v) **Rule 112.3:** “Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member’s negligence or of his or her having violated any regulation, rule or administrative instruction.”<sup>2</sup>

10. The following provisions of the **Financial Regulations and Rules of the United Nations** are relevant:

(i) **Rule 101.2:** all “United Nations staff are obligated to comply with the Financial Regulations and Rules and with administrative instructions issued in connection

<sup>1</sup> Regulation 1.2(b) of the UN Staff Regulations (1 January 2002) (ST/SGB/2002/1). All subsequent citations of the UN Staff Regulations and Rules refer to the 2002 version which was in effect at the time.

<sup>2</sup> *Id.*, amended by ST/SGB/2005/1 (1 January 2005) (defining negligence).

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with those Regulations and Rules. Any staff member who contravenes the Financial Regulations and Rules or corresponding administrative instructions may be held personally accountable and financially liable for his or her actions.”<sup>3</sup>

(ii) **Rule 105.15(b):** which provides that “[w]hen a formal request for proposal has been issued, the procurement contract shall be awarded to the qualified proposer whose proposal, all factors considered, is the most responsive to the requirements set forth in the solicitation documents.”

(iii) **Regulation 5.12(b):** which states that the general principles governing procurement activities, “[f]airness, integrity and transparency,” shall be given due consideration when exercising the procurement functions of the United Nations.

11. The following provisions of the **United Nations Procurement Manual** are relevant:

(i) **Section 10.1.1(3):** which provides that the members of the Tender Opening Committee “shall be staff members not part of the local Procurement Section or requisitioning office.”<sup>4</sup>

(ii) **Section 10.8.4(4):** which states that for requests for proposals, “only the technical proposals shall be opened at the public opening. The financial details of the proposals shall normally remain unopened, and the contents shall remain unread, until the Procurement Officer has received the competed technical evaluation. However, under exceptional circumstance as approved by the Chief, UN/PD, the financial details of the proposals may be opened and evaluated by the Procurement Officer prior to his or her receipt of the technical evaluation, provided that all measures will be taken to ensure the confidentiality of the financial details and that they are not shared with anyone until receipt of the technical evaluation.”

(iii) **Section 11.1(1)(b):** which explains that “[t]he purpose of the source selection process is to identify the Vendor(s) to whom the contract(s) is to be awarded, i.e. the process from the receipt of Solicitation Submission, through the evaluation of such submission to the decision to award the contract.” It also states that “[i]n order to ensure that the procurement process is fair, objective and transparent, the source selection process shall also give due consideration to,” *inter alia*, the principles of “[f]airness, integrity and transparency.”

(iv) **Section 11.1(2):** which states that “[t]he Source Selection process shall be objective and documented throughout all its steps in order to verify that the Selection has been conducted in accordance with the above principles.”

(v) **Section 11.3(2):** which requires UN staff members to take an “objective, non-discretionary determination” in evaluating the proposals to determine whether such

<sup>3</sup> Rule 101.2 of the UN Financial Regulations and Rules (9 May 2003) (ST/SGB/2003/7). All citations to the Financial Regulations and Rules refer to the 2003 version which was in effect at the time.

<sup>4</sup> Section 10.1.1 (3) of the UN Procurement Manual (January 2004, rev. 02). All citations to the Procurement Manual refer to the 2004 version which was in effect at the time.

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bids are responsive. It further defines responsiveness as requiring “substantive, objective analysis of the bids or proposal in accordance with the actual . . . RFP duly prepared in accordance with this Manual.”

(vi) **Section 11.6.1(1)**: which states that the source selection process “shall be open and transparent, and the evaluation of the received Submissions shall at all times be fair, reasonable and objective.”

(vii) **Section 11.6.1(3)**: which states that “[i]f the submission is the result of an RFP, the best value for money shall consist in issuing an award ‘to the qualified proposer whose proposal, all factors considered, is the most responsive to the requirements set forth in the solicitation documents’ (Financial Rule 105.15(b)).”

(viii) **Section 11.6.2(2)**: which dictates that the “technical assessment shall be in writing (and is independent of the commercial evaluations), and shall be performed without prior knowledge of cost. . . Under no circumstance shall any cost data furnished by the Vendors be released to the requisitioner prior to the finalization of the technical evaluation.”

(ix) **Section 11.6.6(5)**: which states that “only the technical proposal shall be opened during the Public Bid Opening. (The price/cost proposal shall remain sealed until completion and submittal of the technical evaluation and shall only then be opened).”

(x) **Section 11.6.7(4)**: which requires that “[t]he evaluation committee shall devise the rating system in a manner that is consistent and fair to all prospective Vendors.”

(xi) **Section 12.1.3(4)**: which provides that procurement officers “shall ensure that submissions to the Committee on Contracts are comprehensive, factually accurate and clear” and contain “sufficient detail to enable the Committee on Contracts to obtain an accurate and complete description of procurement actions taken and the basis of the proposed award.”

(xii) **Sections 12.1.4(a)(d)**: which states that procurement officers shall ensure “accurate, timely and comprehensive presentations to the HCC/LCC,” and “that procurement action is undertaken in accordance with the FRR, established procurement practices and procedures, and applicable SGBs and AIs.”

### **III. RELEVANT CONCEPTS OF CRIMINAL LAW**

12. The following well-established common law concepts are applicable to this Report:

(i) **Bribery**: Commonly, bribery is defined as an act of a public official to corruptly solicit, demand, accept or agree to accept anything of value from any person, in return for being influenced in the performance of any official act or being induced to do or omit to do any act in violation of the official duty of such official;

(ii) **Perjury:** Commonly, perjury is defined as having taken an oath before a competent tribunal or in any case in which the law authorizes an oath to be administered, that he will testify and declare truly, and then wilfully and contrary to such oath states any material matter which he does not believe to be true.

## IV. METHODOLOGY

13. As stated elsewhere in the Report, it is important to emphasize that the Task Force has limited coercive powers. Cooperation with vendors and other third parties is entirely voluntary and the Task Force must therefore depend upon an individual's consent when seeking assistance.

14. Investigators visited Haiti and interviewed United Nations staff members, former employees, vendors and other witnesses. A written record of conversation was prepared after each such meeting which the interviewee was invited to review for accuracy, and then sign. The Task Force reviewed numerous documents with each witness and staff member, and subsequently offered staff the opportunity to further review additional material the Task Force collected.

15. Although the Task Force conducted extensive witness interviews in this case, certain staff members were no longer with the Mission and thus unavailable. This included both Mr. Alex Maisuradze, a member of the overall evaluation team for the long-term ground fuel procurement and Staff Member 1, another witness. Likewise, although investigators located other former employees, some refused to be interviewed. These included Ms. Judi Shane and Mr. Philip Taylorson.

16. In addition to testimonial evidence, the Task Force also examined and analyzed documentary evidence, both hard-copies as well as electronic evidence. The Task Force made significant efforts to locate and obtain all relevant files. However, the short-term procurement file was incomplete and missing significant documents. The use of forensic tools has been invaluable in this investigation.

17. The Task Force investigators collected and reviewed extensive documentation, to include:

- (i) Procurement files;
- (ii) Relevant bids and requisitions for the contracts involved;
- (iii) Vendor registration files;
- (iv) Local and Headquarters Committee minutes;
- (v) Background material;
- (vi) Personnel files;
- (vii) Correspondence files; and
- (viii) Electronic evidence.

## V. DUE PROCESS

18. As for the individuals who were involved in the procurement exercise, the Task Force went to great lengths to accord them their due process rights. The Task Force spoke with the six members that are subject of this Report at great lengths. Each was interviewed on more than one occasion. During the interviews, the Task Force reviewed an abundance of documentary evidence with each witness. Further, each was afforded the opportunity to review further material collected by the Task Force. Each person subject to Task Force recommendations below was sent a letter informing him of the proposed findings and invited to comment and provide any further information they so chose.

19. Specifically, Subject 1 was interviewed on 30 March 2006, 30 June 2006, 7 July 2006 and 7 March 2007. He also reviewed additional documents collected by the Task Force on 25 June and 28 June 2007.

20. In early June 2007, the Task Force sent Subject 1 a letter inviting him to comment or respond to its proposed findings against him. After he did not respond, the Task Force re-sent the letter to make sure he received it. He acknowledged receiving the first letter, but nevertheless requested additional time to respond. The Task Force thus granted him an extension until 6 July 2007. His Response is attached as Annex G.

21. Subject 2 was interviewed on 23 February 2007 and 1 June 2007. He also had been invited to come to New York for a further interview and to review additional documents, but he said he was unable to do so. Nevertheless, investigators reviewed a substantial amount of material with him during his interview. In early June 2007, the Task Force sent Subject 2 a draft of its proposed findings against him for his review and comment. His Response is attached as Annex A.

22. Subject 6 was interviewed on 28 March 2006, 7 February 2007 and 14 May 2007. Subject 6 chose not to review and sign his records of conversations because OIOS's policy prevented the Task Force from providing him with a copy.<sup>5</sup> During his most recent interview, Subject 6 vehemently described the Task Force's investigation as a "witch hunt" and "fishing expedition."<sup>6</sup>

23. In early June 2007, Subject 6 was advised of the Task Force's proposed findings and invited him to comment or provide any further information. On 22 June 2007, his legal counsel reviewed Subject 6's statements and further material collected by the Task Force. His Response is attached as Annex B.

24. Subject 3 was interviewed on 14 December 2006 and 10 January 2007. He also was invited to come to New York for a final interview in June 2007, but declined the Task Force's offer.

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<sup>5</sup> Subject 6 interview (18 May 2007).

<sup>6</sup> Subject 6 interview (14 May 2007).

25. Subject 3, did, however, come to New York and reviewed material collected by the Task Force on 20 June and 21 June 2007. In early June, the Task Force sent Subject 3 a letter with its proposed findings, and invited him to comment and provide additional material. He was granted an extension to respond until 29 June 2007. His Response is attached as Annex D.

26. Subject 4 was interviewed on 30 March 2006, 23 May 2007 and 24 May 2007. Subject 4 chose not to review and sign his latest records of conversations because OIOS's policy prevented the Task Force from providing him with a copy.

27. In early June 2007, Subject 4 received a letter from the Task Force advising him of its proposed findings, and inviting him to comment and provide further material. After—and only after—Subject 4 received this letter, he recanted much of his statements and complained that investigators were “unprofessional.” His Response is attached as Annex C. He nevertheless came to New York to review the Task Force notes from his interview on 18 June 2007.

28. Subject 5 was interviewed on 22 May 2007 and 29 May 2007, and had an opportunity to review his records of conversations. During his interviews, the Task Force reviewed a substantial amount of material with Subject 5. Subject 5 did not receive a letter from the Task Force advising him of its findings because, as explained in its Recommendation Section below, the Task Force finds that no action should be taken against him.

## **VI. BACKGROUND**

### **A. MINUSTAH**

29. United Nations involvement in Haiti began in February 1993 when the joint United Nations-OAS (Organization of American States) International Civilian Mission in Haiti was deployed.<sup>7</sup> In September 1993, the Security Council established the first United Nations peacekeeping operation in the country. Unfortunately, the Mission could not be fully deployed at that time because the Haitian military authorities were uncooperative. Over the next few years, there were a number of positive developments, including the restoration of some measure of democracy. Serious reform, however, never took hold because of a continuing political crisis and a lack of stability in the country.

30. In early February 2004, armed conflict broke out in the city of Gonaives and, in the following days, spread to other cities. On 29 February 2004, then-President Jean-Bertrand Aristide tendered his resignation and left the country. The same day, Mr. Boniface Alexandre, the President of the Supreme Court, was sworn in as interim President of Haiti. One of his first actions was to request United Nations assistance, including the authorization for international troops to enter Haiti.

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<sup>7</sup> The following information was obtained from the UN's website ([www.un.org/depts/dpkosmissions/minustah](http://www.un.org/depts/dpkosmissions/minustah)).

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31. Pursuant to this request, the Security Council adopted Resolution 1529 (2004) which authorized the deployment of a Multinational Interim Force (MIF). In addition, the Council expressed its readiness to establish a stabilization force to support the continuation of a peaceful and constitutional process and the maintenance of a secure and stable environment. The MIF immediately started deploying to Haiti pursuant to that resolution. On 30 April 2004, the Security Council then established the United Nations Stabilization Mission in Haiti (MINUSTAH) and requested that authority be transferred from the MIF, to MINUSTAH, on 1 June 2004.<sup>8</sup>

**B. MINUSTAH PROCUREMENT SECTION**

32. At MINUSTAH, the Chief Procurement Officer (CPO) supervises the Procurement Section. The CPO reports directly to the Chief, Administrative Services (CAS).

33. At mission start-up in the spring of 2004, Staff Member 2 was the first procurement officer to arrive. At that time, there was no one else assigned to the Procurement Section; therefore, Staff Member 2 also functioned as its Officer-in-Charge (OIC).<sup>9</sup> Staff Member 2 conducted the first short-term procurement exercise for the Mission's ground fuel supply.

34. In early June 2004, Ms. Judi Shane arrived and took over as Chief Procurement Officer.<sup>10</sup>

35. Shortly thereafter, other procurement officers arrived, including Subject 4 and Staff Member 3.<sup>11</sup>

36. In September 2004, UN Headquarters (UNHQ) asked Subject 1 to travel to MINUSTAH and help with its Procurement Section. Initially, he went there for two weeks, but eventually returned in early October for a permanent position. On 22 October 2004, Subject 1 assumed the role of CPO, which he held until May 2005.<sup>12</sup>

37. During the entire time he was at MINUSTAH (October 2004 to December 2006), Subject 1 also served as the CAS for the Mission. He left his position as CAS in December 2006 to join the Mission in Democratic Republic of Congo where he currently serves as the CAS today.<sup>13</sup>

38. On 2 May 2005, Subject 2 joined the Mission and replaced Subject 1 temporarily as Officer-in-Charge of Procurement. Subject 2 served in this role until 22 June 2005, when the permanent CPO arrived, Mr. Amirthalingam Balakrishnan.<sup>14</sup>

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<sup>8</sup> S/Res/1542 (30 April 2004) (recalling Resolution 1529).

<sup>9</sup> Staff Member 2 interview (23 May 2007).

<sup>10</sup> Staff Member 3 interview (21 May 2007).

<sup>11</sup> *Id.* and Subject 4 interview (30 March 2006).

<sup>12</sup> See Subject 1 email from Subject 4's computer to James Center (22 October 2004).

<sup>13</sup> Subject 1 interview (7 March 2007).

<sup>14</sup> *Id.*

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39. Subject 6 was assigned to MINUSTAH as a team leader in Procurement and supervised others, including Subject 4. Subject 4 was a Procurement Assistant who was assigned to the long-term ground fuel procurement.<sup>15</sup>

**C. MINUSTAH FUEL UNIT**

40. Subject 3 arrived at the Mission on 10 August 2004.<sup>16</sup> He became Chief of the Fuel Unit, the requisitioner in the long-term procurement exercise. The Fuel Unit reported to Ms. Ellen Aamodt, who was head of the Supply Section for the Mission.

41. Subject 3 supervised several staff members in the Fuel Unit, all of whom were new to the Mission.<sup>17</sup> These included Ms. Cassandra Palanyk and Mr. David Carter, who arrived in September 2004 and Subject 5, who joined the Mission in January 2005.<sup>18</sup>

**D. DINASA**

42. In 2003, after seventy-five years in the market, Shell, the Dutch multinational energy company, sold its service stations and sales operation in Haiti to Distributeurs Nationaux SA (Dinasa), a local consortium, which re-branded the former Shell stations under the name “National.” In 2004, Dinasa owned and operated a significant portion of the petroleum installations in Haiti and supplied fuel to government, and private, power generation companies.<sup>19</sup>

**VII. SHORT-TERM GROUND FUEL PROCUREMENT**

43. In June 2004, MINUSTAH and UN Headquarters conducted a competitive bidding exercise to procure a short-term supply of ground fuel for the Mission. The contract was eventually awarded to Dinasa.

44. The procurement exercise, however, was not conducted in a fair and transparent manner. After the initial evaluation, the technical evaluation team requested clarifications from vendors, including Dinasa, which initially had been ranked as non-compliant. Although the vendors provided the requested information, no final technical evaluation was completed. Thus, it was unclear which, if any vendors were in fact fully compliant. Moreover, UN Procurement Service failed to complete a formal commercial evaluation, and merely recommended the award to Dinasa without providing any supporting documentation. In fact, Dinasa had not been the lowest, technically qualified vendor and therefore should not have been awarded the contract.

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<sup>15</sup> Subject 6 interview (7 February 2007).

<sup>16</sup> Subject 3 email to Ian Divers (6 May 2006).

<sup>17</sup> Staff Member 4 interview (24 May 2007) and Staff Member 5 (26 April 2007).

<sup>18</sup> Subject 5 interview (22 May 2007).

<sup>19</sup> Dinasa Proposal to RFP/TEN/MIN/04/001 (3 June 2004); Dinasa website:

[www.gbggroup.net/pages/Dinasa.html](http://www.gbggroup.net/pages/Dinasa.html) (23 April 2007); and United States Department of State Report on Climate of Investment in Haiti in 2003, para. 16 (7 September 2004).

## A. STATEMENT OF WORK

45. At the start-up of the Mission, several commodities were urgently needed, including a reliable source of fuel.<sup>20</sup> In order to procure the fuel as quickly as possible, and due to a lack of experienced fuel staff at MINUSTAH, it was decided that a quick procurement exercise would be done conjunctively by the Mission and UN Headquarters.<sup>21</sup> The expected mobilization date was 1 June 2004.<sup>22</sup> The Department of Peacekeeping Organization (DPKO) therefore requested a Delegation of Authority for the Mission on 10 May 2004 in the amount of US\$200,000. The Delegation was not authorized until 11 June 2004.<sup>23</sup>

46. On 18 May 2004, Staff Member 7, an officer in UNHQ's Supply Section, submitted a draft Statement of Works (SOW) for the short-term procurement of aviation and ground fuel.<sup>24</sup> Since he had no background in fuel, he relied heavily upon Mr. Philip Taylorson, another officer in UNHQ's Supply Section.<sup>25</sup> In order to prepare the SOW, the Supply Section used a generic template and then added specific details, such as civilian and troop distribution and troop quantities, based on information from the Headquarters Military Planning Service in order to tailor it for MINUSTAH.<sup>26</sup>

## B. REQUEST FOR PROPOSAL

47. Initially, the UN Procurement Section at Headquarters (UNPS) intended to issue the Request for Proposal (RFP) "in order not to waste valuable time."<sup>27</sup> All subsequent procurement actions, however, such as the evaluations and committee presentations, would take place at MINUSTAH.<sup>28</sup> Accordingly, on 17 May 2004, UNPS Procurement Officer Mr. Alexander Yakovlev issued a Request for Proposal for the Mission's supply of POL (petrol, oil and lubricants) and aviation fuel.<sup>29</sup>

48. Shortly thereafter, however, it was decided that the Mission itself would issue the RFP and the buyer would be Procurement Assistant Simone Trudo.<sup>30</sup> UN Headquarters agreed to perform both the technical and commercial evaluations because the Mission still did not have a fuel specialist capable of performing such an evaluation.<sup>31</sup>

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<sup>20</sup> Haiti Support Concept, Section 14 (8 April 2004).

<sup>21</sup> Per Verwohlt email to Inamullah Siddiqui (11 May 2004); Ellen Aamodt email to Christian Saunders (20 May 2004); and Staff Member 6 interview (13 April 2007).

<sup>22</sup> Ellen Aamodt email to Christian Saunders (20 May 2004).

<sup>23</sup> Luiz Carlos da Costa memorandum to Jean-Pierre Halbwachs, *et al.* (10 May 2004) and Andrew Toh's Delegation of Procurement Authority to MINUSTAH (11 June 2004).

<sup>24</sup> Andrei Vesselov email to Philip Taylorson (18 May 2004).

<sup>25</sup> Staff Member 7 interview (18 April 2007).

<sup>26</sup> Staff Member 6 interview (13 April 2007).

<sup>27</sup> Per Verwohlt email to Inamullah Siddiqui (11 May 2004).

<sup>28</sup> *Id.*

<sup>29</sup> Request for Proposal, RFPS-654, "Supply of POL products to MINUSTAH" (17 May 2004).

<sup>30</sup> Christian Saunders email to Ellen Aamodt (17 May 2004); Christian Saunders email to Simone Trudo (20 May 2004); and Simone Trudo email to Christian Saunders (22 May 2004).

<sup>31</sup> Staff Member 6 interview (13 April 2007) and Staff Member 2 interview (23 May 2007).

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49. On 31 May 2004, Ms. Trudo sent out a Request for Proposal to four companies on behalf of the Mission: Total Haiti Texaco, National (Dinasa) and Esso.<sup>32</sup> Ms. Trudo advised that these four vendors were the only reliable companies capable of supplying fuel in Haiti.<sup>33</sup> The RFP required financial proposals and technical proposals to be “submitted simultaneously in two (2) separate and sealed envelopes/packages.”<sup>34</sup>

50. The fuel contract was for an initial one-month period, with an option for the Mission to extend it two additional one-month periods.<sup>35</sup> The Mission expected that the three-month period would give it time to organise a procurement exercise for a long-term contract.<sup>36</sup>

51. The RFP solicited bids for aviation fuel, needed for UN aircraft located in Port-au-Prince, as well as ground fuel for UN generators, and oil and lubricants for vehicles and equipment.<sup>37</sup> The Mission estimated it would need 286,440 litres of diesel (ground) fuel for the first month.<sup>38</sup>

52. Among other things, the RFP specifically requested the bidders to include a detailed mobilization plan demonstrating “the related actions and activities required by the Contractor for mobilization and the time required by each, for mobilization of staff, equipment and facilities at each final delivery location from date of award of contract up to start of contract.”<sup>39</sup> The contractor would be expected to deliver fuel to a variety of locations.

53. Vendors also were asked to separate costs into two separate components: delivery costs and variable costs. Delivery costs, once approved, would remain fixed throughout the duration of the contract; variable costs, on the other hand, could vary because those were based upon the Area Platt Register.<sup>40</sup> Unless otherwise specified, all unit prices were to be quoted in US dollars per litre. The SOW specifically asked the suppliers to quote pricing for vehicle refuelling at three locations: Port-au-Prince, Cap Haitien and Gonaives, and pricing for the delivery of fuel to generators at locations not yet determined. However, the SOW did not specifically request that fuel be based on bulk prices or service station prices.

54. Proposals were due on 3 June 2004, only three days after the RFP had been issued.<sup>41</sup> This was an unusually short time period. Staff Member 2 believed three days

<sup>32</sup> Simone Trudo email to Christian Saunders (22 May 2004) and Staff Member 2 interview, para. 27 (11 April 2006).

<sup>33</sup> Simone Trudo email to Christian Saunders (22 May 2004).

<sup>34</sup> Request for Proposal, RFP/TEN/MIN/04/001, para. 5 (31 May 2004).

<sup>35</sup> *Id.*, Annex A, para. 3 (31 May 2004) and Alex Yakovlev email to Staff Member 9 (17 June 2004).

<sup>36</sup> Request for Proposal, RFP/TEN/MIN/04/001 (31 May 2004).

<sup>37</sup> *Id.*, Annex A, para. 4 (31 May 2004).

<sup>38</sup> *Id.*, Annex A, para. 5a (31 May 2004).

<sup>39</sup> *Id.*, Annex E, IIA (31 May 2004).

<sup>40</sup> *Id.*, Annex A, para. 10 (31 May 2004). Platts has been the world’s leading energy information provider for nearly a century and offers price benchmarks for the industry known as the Platts Register. PR Newswire (10 February 2006).

<sup>41</sup> Request for Proposal, RFP/TEN/MIN/04/001, para. 1 (31 May 2004).

was more than sufficient since the Mission needed the fuel urgently, and because fuel suppliers usually were able to respond to such a request within one day.<sup>42</sup> Per the RFP, vendors sent the bids to Procurement, which then forwarded them immediately to Finance for safekeeping.<sup>43</sup>

## C. BID OPENING

55. On 4 June 2004, the tender opening was held at the Mission.<sup>44</sup> The Chief Procurement Officer, Ms. Judi Shane, asked Staff Member 3 to attend the opening on behalf of Procurement.<sup>45</sup> Staff Member 3, along with Ms. Trudo and Ms. Shane, were present.<sup>46</sup>

56. Due to the shortage of staff at the start up of the Mission, the Tender Opening Committee (TOC) was an ad hoc committee.<sup>47</sup> At the tender opening, Ms. Braima Jamanca, Chair of the Committee and Officer-in-Charge of Finance, chaired the committee, which was also comprised of Ms. Aleksandra Maksimovic, Ms. Bridgith Jacob, Mr. Mohamed Karbous and Ms. Suraya Abedraboh.<sup>48</sup>

57. Four companies had responded to the RFP: Esso, Total, Texaco and Dinasa. Each vendor sent a representative to witness the opening.<sup>49</sup> Texaco was the only vendor that bid on the aviation fuel portion of the RFP. For ground fuel, Texaco, Dinasa, Esso and Total Haiti submitted bids.

58. During the bid opening, the members of the TOC signed each page of the proposals opened as proof of receipt. Someone in Procurement—possibly Ms. Trudo—requested that the vendors also initial each proposal.<sup>50</sup> This was highly unusual and caused a great deal of chaos.<sup>51</sup>

59. Although the vendors were supposed to submit two separate proposals—one financial and one technical—it appears that one vendor sent both bids in a single envelope.<sup>52</sup> Another complication was that Total Haiti submitted a bid with hand-written corrections, which had not been certified.<sup>53</sup>

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<sup>42</sup> Staff Member 2 interview (23 May 2007).

<sup>43</sup> *Id.*

<sup>44</sup> The Task Force has been unable to determine when or why the closing date changed as indicated on the Bid Opening Sheet.

<sup>45</sup> Staff Member 3 interview (21 May 2007).

<sup>46</sup> *Id.* and Staff Member 8 (14 June 2007). Staff Member 2 did not recall being present for the opening, but admits she may have been, and it appears she was not out of the Mission on that date. See Staff Member 2 interview (23 May 2007) and Staff Member 2 email to Task Force (4 June 2007).

<sup>47</sup> Staff Member 2 interview (23 May 2007).

<sup>48</sup> Bid Opening Sheet (4 June 2004) and Staff Member 3 interview (21 May 2007).

<sup>49</sup> Staff Member 3 interview (21 May 2007).

<sup>50</sup> *Id.* Staff Member 8 also recalled the vendors being asked to sign, but did not recall who from Procurement made the request. Staff Member 8 interview (14 June 2007).

<sup>51</sup> Staff Member 3 interview (21 May 2007).

<sup>52</sup> Staff Member 2 (23 May 2007) and Staff Member 3 interview (21 May 2007).

<sup>53</sup> Alexandre Kislanski email to Task Force (26 May 2007).

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60. After the technical proposals were opened, the TOC opened the financial proposals. The financial bids should have remained sealed until a technical evaluation was completed and sent to the Mission.<sup>54</sup> There was no explanation as to why this was done except for a note by Ms. Shane regarding one vendor. She wrote on the bid opening sheet that Texaco only sent one copy of its proposals, as demonstrated below in the figure. Since she had to send a copy to New York, she therefore opened the financial proposal to make an extra copy for the Mission's files.<sup>55</sup>

MINUSTAH				
Tender Opening Committee				
Bid No. <u>JEN/MIN/04/001</u>	Bid Closing Date: <u>04/06/2004</u>			
Subject: <u>AZL</u>	Bid Opening Date: <u>04/06/2004</u>			
<b>INVITEES</b>	Technical Proposal	Financial Proposal	Remarks	
1 ESSO ✓	✓	✓		
2 TOTAL	✓	✓		
3 TEXACO	✓	✓	financial proposal opened by MINUSTAH to make photocopies our files.	
4 DINASA ✓	✓	✓	Johane/CPO 4 June 2004	

Committee Members Present: [Redacted]  
 Date delivered to the Procurement Section: 04/06/2004  
 Received by: [Redacted]

**Figure: Bid Opening Sheet (4 June 2004)**

61. On 7 June 2004, Ms. Shane packed the bids in a sealed envelope and sent them via DHL to UN Headquarters in New York for the technical and commercial evaluations.<sup>56</sup> Mr. Dmitri Dovgopoly initially had been assigned the case, but since he was not in the office, it was reassigned to Mr. Alexander Yakovlev.<sup>57</sup>

62. When Mr. Yakovlev received the proposals, he noticed there were irregularities with the financial proposals. On 9 June 2004, he contacted Mr. Christian Saunders, Chief of UNPS, and Ms. Shane regarding this matter.<sup>58</sup> In response, Ms. Shane explained that because the "RFP did NOT indicate that two originals of each proposal were required,"

<sup>54</sup> Bid Opening Sheet (4 June 2004); Staff Member 2 interview (23 May 2007) (recalled seeing the prices when she packaged the bids and sent them to New York); and Staff Member 8 interview (14 June 2007) (financial and technical proposals opened at same time).

<sup>55</sup> Judi Shane email to Alex Yakovlev, *et al.* (9 June 2004).

<sup>56</sup> Suraya Abedraboh email to Dmitri Dovgopoly (7 June 2004).

<sup>57</sup> Christian Saunders email to Alex Yakovlev (8 June 2004) and Judi Shane email to Christian Saunders (8 June 2004).

<sup>58</sup> Alex Yakovlev email to Christian Saunders, *et al.* (9 June 2004).

she “had to open one of them in order to make a photocopy for our files.” She claimed, however, that only one vendor’s financial bid had been opened.<sup>59</sup>

## D. EVALUATION OF BIDS

### 1. Technical Evaluation

63. Mr. Yakovlev then forwarded the technical proposals to the Supply Section for its review.<sup>60</sup> Mr. Vesselov and Mr. Taylorson comprised the Technical Evaluation Committee assigned to assess the technical proposals.<sup>61</sup> They reported to Ms. Ellen Aamodt, who was at that time the Chief of UNHQ’s Supply Section.<sup>62</sup>

64. After Ms. Vesselov’s and Mr. Taylorson’s initial review, they determined that none of the proposals met all of the requirements of the SOW for ground fuel.<sup>63</sup> However, the Committee found Texaco’s proposal to be compliant, even though there were some outstanding issues that needed to be addressed. Texaco had not indicated whether it had service stations in the three locations mentioned in the RFP. It also needed to confirm whether it would be able to deliver fuel to “generators in as yet unspecified locations.”

65. The second supplier, Total Haiti, was deemed to be partially compliant. Before it could be ranked fully compliant, the Committee needed to know whether Total Haiti could deliver fuel to generators.

66. Esso was completely eliminated from the exercise because it offered only bulk fuel, and did quote prices for service station fuel. The evaluators therefore found Esso to be completely non-compliant.<sup>64</sup>

67. The final supplier, Dinasa, too, was found to be non-compliant. Despite this characterization, the Committee nonetheless asked Procurement to clarify Dinasa’s proposal. In particular, Procurement needed to clarify whether Dinasa had service stations in the three specified locations and whether it would be able to deliver fuel to generators.<sup>65</sup>

68. In response, the Mission’s Procurement Section contacted each of the three vendors to obtain the requested information.<sup>66</sup>

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<sup>59</sup> Judi Shane email to Alex Yakovlev, *et al.* (9 June 2004).

<sup>60</sup> Staff Member 7 interview (18 April 2007).

<sup>61</sup> Staff Member 6 interview (13 April 2007).

<sup>62</sup> *Id* and Staff Member 7 interview (18 April 2007).

<sup>63</sup> Andrei Vesselov email to James Boynton (14 June 2004) with attached Technical Evaluation for RFP TEN/MIN/04-01 (draft).

<sup>64</sup> Philip Taylorson email to Judi Shane (9 June 2004).

<sup>65</sup> Philip Taylorson email to Judi Shane (9 June 2004) and (draft) Technical Evaluation for RFP TEN/MIN/04-01 (14 June 2004).

<sup>66</sup> Judi Shane letter to Carl Boisson (Dinasa) (11 June 2004); Judi Shane letter to Donald Emerant (Texaco) (11 June 2004); and Total Haiti letter to Simone Trudo (16 June 2004).

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69. On 14 June 2004, the Technical Evaluation Committee had not yet received the responses back, but forwarded a copy of its draft evaluation to UNPS to help expedite the commercial evaluation. In order to determine the cost of the contracts, the Technical Evaluation Committee also provided an updated estimate of the Mission's monthly fuel requirement. This amount (325,000 litres) was greater than that which had been previously stated in the RFP (286,440 litres).<sup>67</sup>

## **2. Commercial Evaluation**

70. Mr. Yakovlev was assigned to evaluate the commercial offers.<sup>68</sup> On 15 June 2004, he complained to Ms. Shane that the financial proposals had already been opened. He was concerned because he was missing Texaco's financial proposal for aviation fuel and another set of financial proposals had been opened and re-sealed. He also referred to hand-written changes on Total Haiti's prices which were not initialled by the vendor; he found this highly unusual since they came with "no explanation or signatures certifying those corrections."<sup>69</sup>

71. The next day, Ms. Shane wrote to Mr. Yakovlev and denied opening the financial proposals, except for Texaco's.<sup>70</sup> She claimed that Texaco had submitted only one proposal and MINUSTAH needed to make a copy for their records, which she noted on the bid summary sheet.<sup>71</sup> (See above Figure) She surmised that "the proposals must have been opened between us and you."<sup>72</sup>

72. Significantly, all financial proposals had been opened at the Mission and therefore, Ms. Shane misrepresented this fact to Mr. Yakovlev.<sup>73</sup>

73. Ms. Shane added that the Mission noticed the same hand-written price changes to Total Haiti's bid.<sup>74</sup> Total Haiti later confirmed the company made those changes, but had never been required to certify the new prices.<sup>75</sup>

74. There is no evidence that a commercial evaluation or an abstract of bids was ever completed. Instead, on 17 June 2004, Mr. Yakovlev sent Staff Member 9 an email recommending two vendors for a split award.<sup>76</sup> Staff Member 9 did not recall Mr.

<sup>67</sup> Andrei Vesselov email to Alex Yakovlev (14 June 2004); James Boynton email to Andrei Vesselov (14 June 2004); and Request for Proposal, RFP TEN/MIN/04/001, Annex A. para. 5 (31 May 2004)

<sup>68</sup> Judi Shane email to Alex Yakovlev, *et al.* (9 June 2004); Ellen Aamodt email to Christian Saunders (9 June 2004); Christian Saunders email to Alex Yakovlev (9 June 2004); and Andrei Vesselov email to Alex Yakovlev (14 June 2004).

<sup>69</sup> Alex Yakovlev email to Judi Shane, *et al.* (15 June 2004). See also Staff Member 3 interview (21 May 2007) (requesting she prepare a draft response stating the same).

<sup>70</sup> Judi Shane email to Alex Yakovlev (16 June 2004).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Staff Member 2 interview (23 May 2007) and Staff Member 8 interview (14 June 2007).

<sup>74</sup> Suraya Abedraboh email to Judi Shane (15 June 2004) and Judi Shane e-mail to Alex Yakovlev (16 June 2004).

<sup>75</sup> Alexandre Kislanski email to Task Force (26 May 2007) and Total Haiti's Proposal to RFP/TEN/MIN/004/001, Annex B-I (a), B-I (b), and B-II (b) (2 June 2004).

<sup>76</sup> Alex Yakovlev email to Staff Member 9 (17 June 2004).

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Yakovlev providing him with any financial evaluation.<sup>77</sup> There also does not appear to be any document attached to Mr. Yakovlev's email.

75. Instead, Mr. Yakovlev simply told Staff Member 9 that he received four proposals from MINUSTAH, only two of which were technically compliant: Texaco and Dinasa. Staff Member 9 did not recall Mr. Yakovlev informing him that the technical team previously ruled Dinasa as non-compliant or explaining how it suddenly became qualified.<sup>78</sup>

76. Mr. Yakovlev then recommended a split award. Since Texaco was the sole bidder for aviation fuel, he recommended that it be awarded that part of the contract. He suggested a one-month contract with Texaco for aviation fuel, valued at US\$190,000.

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<sup>77</sup> Staff Member 9 interview (1 March 2006).

<sup>78</sup> *Id.*

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Alex Yakovlev To: [REDACTED]  
17/06/2004 09:33 AM cc:  
Subject: [REDACTED]

This message serves as Note to the File on the subject matter.

Facts:

- Services must commence on 21 June 2004.
- We have proposals from 4 local sources in Haiti obtained by MINUSTAH (copies on file) through a formal RFP.
- We have Technical Evaluation performed by LSD (copy on file) assessing 2 companies as technically compliant.
- Split award (Jet and diesel fuels) is obvious as Texaco, based on the information from LSD, being one of the compliant companies, is the sole provider of JET A-1 aviation fuel in the area of operation.
- LSD confirmed availability of funds.
- There is no time and no sufficient data in the proposals to pass a long -term contract through the HCC.

Proposed solution:

- We can process short-term contract (1+1month), for which we have enough information.
- Short-term would result in the following NTEs:
  - Jet - \$ 190,000, Texaco.
  - Diesel - \$ 115,440, Dinasa.
- None of the above require the HCC as both fall within PD's authority.
- During the short-term contract MINUSTAH must complete all necessary action to present the case to the HCC for a long-term contract.

This approach allows the mission to get fuel on 21 June 2004, and is in full compliance with the FR and Rules and procurement procedures.

Suggested action:

- PD sends Letters of Award to the above 2 suppliers authorising them to commence services on 21 June 2004.
- Contracts would follow to them later today by e-mail, cc: Judi Shane.

This is the only solution we have to this problem.  
Trust it meets your support

Thank you,

alex yakovlev 

**Figure: Alex Yakovlev email to Staff Member 9 (17 June 2004)**

77. As for ground fuel, Mr. Yakovlev recommended the contract be awarded to Dinasa for one-month, valued at US\$115,440. It appears from the suggested value of the contract—US\$115,440—that Mr. Yakovlev based his recommendations on Dinasa’s offer for bulk fuel, not service stations, though he did not specifically state this. It appears Mr. Yakovlev reached this figure by multiplying Dinasa’s unit prices for bulk fuel by the monthly consumption estimates, which amounted to US\$115,440.

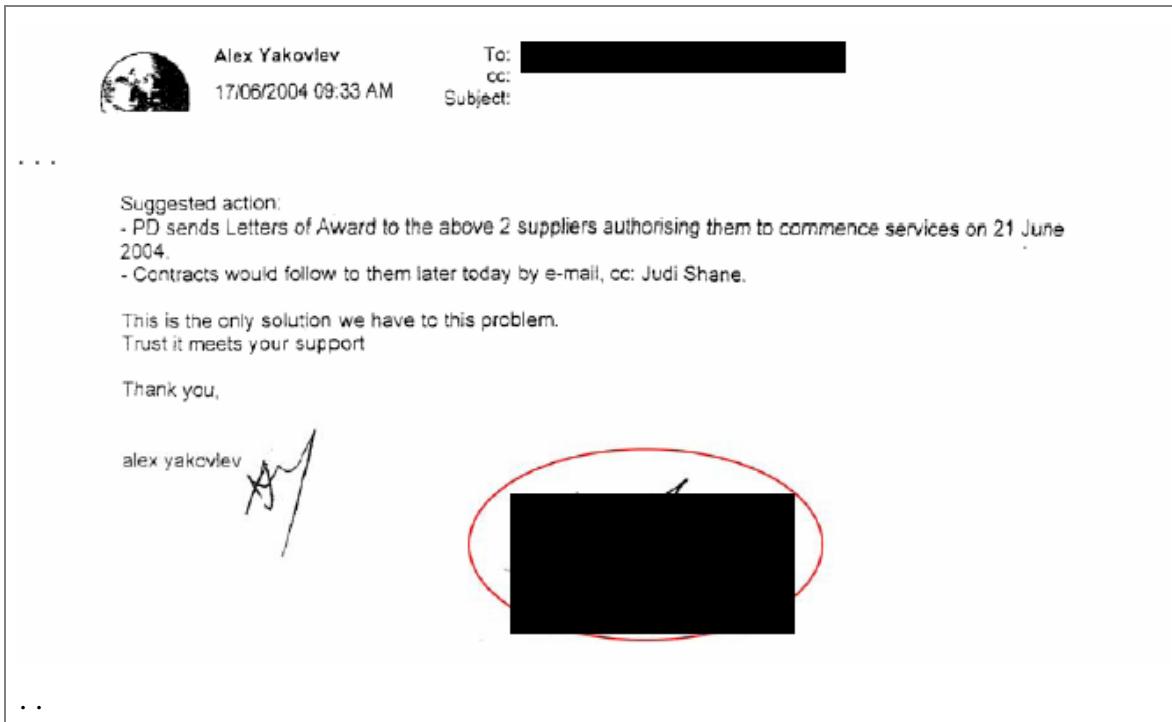
78. Since the amount of both contracts fell within Staff Member 9’s Delegation of Authority, they did not have to be presented to any Committee on Contracts, which would expedite their execution.<sup>79</sup> Mr. Yakovlev expected the Mission to be able to obtain the fuel by the needed date of 21 June 2004. Finally, Mr. Yakovlev stated that the

<sup>79</sup> Procurement Manual Section 3.2.3 (2) (a) and Alex Yakovlev email to Staff Member 9 (17 June 2004).

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procurement exercise had been completed in full compliance with the financial rules and procurement practice.<sup>80</sup>

79. That very same day, Staff Member 9 approved Mr. Yakovlev's recommendation.<sup>81</sup> Staff Member 9 did not appear to ask for any documentation, and relied solely on this informal email communication.



**Figure: Staff Member 9's notation on Alex Yakovlev email (17 June 2004)**

80. The Mission apparently never received a copy of any financial evaluation, which was both highly unusual and not proper practice.<sup>83</sup>

81. As the Task Force will discuss in greater detail below, UNPS should not have awarded the contract based on Mr. Yakovlev's email alone.<sup>84</sup> Instead, Mr. Yakovlev should have been required to produce a formal commercial evaluation to demonstrate the facts upon which his opinion was based. Upon further investigation, the Task Force discovered that Dinasa was not the lowest bidder.

<sup>80</sup> Alex Yakovlev email to Staff Member 9 (17 June 2004).

<sup>81</sup> Handwritten notation on the bottom of Alex Yakovlev email to Staff Member 9 (17 June 2004) and Alex Yakovlev facsimile to Dinasa (17 June 2004).

<sup>82</sup> Staff Member 9 did not recall Mr. Yakovlev showing him any evaluation or notifying him of Dinasa's earlier non-compliance status. Staff Member 9 interview (1 March 2006).

<sup>83</sup> Subject 4 interview (23 May 2007) and Staff Member 2 interview (23 May 2007) (highly unusual for file to contain no bid abstract).

<sup>84</sup> Staff Member 2 interview (23 May 2007).

## E. PROBLEMS WITH TECHNICAL AND COMMERCIAL EVALUATIONS

### 1. Technical Evaluation

82. As stated above, on 9 June 2004, the Technical Evaluation Committee advised that certain clarifications were needed from the three remaining vendors before it could determine whether some of the proposals were compliant. On 14 June 2004, Mr. Vesselov forwarded a copy to the Mission, but specifically cautioned that this was merely a draft which could only be “finalized pending receipt of clarifications from vendors.”<sup>85</sup>

83. On 15 June 2005, the vendors responded and provided the requested information. The Task Force found no evidence that this information was conveyed to Mr. Yakovlev. As a result, his commercial evaluation and recommendation of award was premature.

84. On 15 June 2004, Dinasa confirmed that it indeed had service stations in the three areas mentioned.<sup>86</sup> Dinasa added, however, that the Mission would have to pay higher prices if it sought to use these stations (an additional US\$.0360 per litre) because of third-party operational costs.<sup>87</sup> Dinasa further confirmed it would be able to deliver fuel to generators with its own fleet of delivery trucks or by sub-contracting the work.<sup>88</sup>

85. Even though Texaco had been ranked compliant, the technical evaluators still requested further information.<sup>89</sup> Texaco responded and sent a chart indicating it had service stations in two of the three requested locations, Gonaives and Cap Haitien; it did not appear to clarify any availability in Port-au-Prince. Although Texaco agreed to deliver fuel to generators located in most of Haiti, it was unable to transport fuel to Jeremie, and noted that delivery to Port-de-Paix was “very difficult.”<sup>90</sup>

86. Total Haiti, deemed partially compliant, had only been asked whether it could deliver fuel to generators. In its 16 June 2004 response, it confirmed that it could meet this requirement.<sup>91</sup>

87. Based on the information provided, all three vendors should have been found technically compliant. Total Haiti initially had been ranked as “conditionally compliant,” pending clarification of generator fuel.<sup>92</sup> Its response confirmed this information and as a result, Total Haiti should have been deemed fully compliant.<sup>93</sup>

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<sup>85</sup> Andrei Vesselov email to James Boynton (14 June 2004) (requiring verification before they could state whether some vendors were compliant) and Philip Taylorson email to Judi Shane (9 June 2004).

<sup>86</sup> Carl Boisson letter to Judy [sic] Shane, para.1 (15 June 2004).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Philip Taylorson email to Judi Shane (9 June 2004) and (draft) Technical Evaluation for RFP TEN/MIN/04-01 (14 June 2004).

<sup>90</sup> Texaco Haiti letter to Simone Trudo (15 June 2004).

<sup>91</sup> Philip Taylorson email to Judi Shane (9 June 2004) and Total Haiti letter to Simone Trudo (16 June 2004).

<sup>92</sup> (draft) Technical Evaluation for RFP TEN/MIN/04-01 (14 June 2004).

<sup>93</sup> Staff Member 7 interview (18 April 2007).

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88. Similarly, it appears that Dinasa also would have been compliant based on its responses to the clarifications.<sup>94</sup> Finally, Texaco had already been deemed fully compliant before the request for clarifications was issued.<sup>95</sup>

89. No final technical evaluation, however, was completed.<sup>96</sup> The Technical Evaluation Committee never drafted a final written assessment summarizing this information, and indicating which vendors were compliant.<sup>97</sup>

90. Staff Member 7, in a subsequent interview, confirmed that, in light of the vendors' responses to the request for clarifications, he would have considered all three proposals (Texaco, Dinasa and Total Haiti) to be technically compliant to supply ground fuel.<sup>98</sup>

91. Nonetheless, Mr. Yakovlev claimed that only Dinasa was technically compliant for ground fuel. Since he wrote that the "Technical Evaluation performed by LSD (copy on file) assess[ed] 2 companies as technically compliant" and then recommended the award to Texaco and Dinasa, it follows that he meant only Texaco (aviation) and Dinasa (ground) were compliant.<sup>99</sup>

92. There was no reason for Mr. Yakovlev to conclude that Dinasa was the only compliant supplier of ground fuel. In fact, Total Haiti's initial proposal had been technically superior to Dinasa's. Since it had initially been rated as partially compliant, there was "no way that additional information could turn [Total Haiti] from partially compliant to non compliant."<sup>100</sup> It is entirely implausible that by providing missing information, Total Haiti suddenly went from "conditionally" compliant to "non-compliant."<sup>101</sup>

93. In fact, Mr. Yakovlev later contradicted his own conclusion in a subsequent correspondence. In May 2005, Mr. Yakovlev was reviewing the Mission's presentation to the Committee on Contracts for an extension of the Dinasa contract. He noted that "in the original bidding there were 4 bidders: Texaco, Total, Dinasa and Esso. Out of the 4, the first 3 were found compliant and 2 (DINASA and TEXACO) were awarded the contracts."<sup>102</sup>

94. Mr. Yakovlev's recommendation that the ground fuel contract be awarded to Dinasa was therefore based upon a material misrepresentation. It is unclear whether this was intentional or inadvertent due to a complete lack of proper documentation in the files.

<sup>94</sup> *Id.*

<sup>95</sup> (draft) Technical Evaluation for RFP TEN/MIN/04-01 (14 June 2004).

<sup>96</sup> Alex Yakovlev email to Staff Member 9 (17 June 2004).

<sup>97</sup> Staff Member 7 interview (18 April 2007).

<sup>98</sup> *Id.*

<sup>99</sup> Alex Yakovlev email to Staff Member 9 (17 June 2004).

<sup>100</sup> Philip Taylorson email to Judi Shane (9 June 2004); (draft) Technical Evaluation for RFP TEN/MIN/04-01 (14 June 2004); and Staff Member 7 interview (18 April 2007).

<sup>101</sup> See, e.g., Staff Member 7 interview (18 April 2007).

<sup>102</sup> Alex Yakovlev email to Subject 2 (26 May 2005).

## 2. Commercial Evaluation

95. Had Total Haiti been properly included in the commercial evaluation, Mr. Yakovlev would have realised that it was the lowest bidder for ground fuel.

96. After an exhaustive review of Procurement and DPKO records, the Task Force has been unable to locate a bid abstract or formal commercial evaluation. MINUSTAH also did not have a copy of anything resembling a bid abstract.<sup>103</sup> When Ms. Shane later assigned the fuel case to Subject 4, he noticed that the case file was disorganized and he did not recall seeing either a technical or commercial evaluation.<sup>104</sup>

97. Therefore, it appears that the only documentation supporting Mr. Yakovlev's recommendation was his single e-mail to Staff Member 9 in which he merely concluded that a split award should be given to Texaco for aviation fuel and Dinasa for ground fuel. He supplied no back-up information, such as a financial spreadsheet or a final technical evaluation.

98. While the Mission likely needed bulk fuel and fuel delivered from service stations, the RFP did not specify the quantities it would need. It also did not specify which type of fuel would be used to evaluate the financial proposals.<sup>105</sup>

99. Even without proper back-up documentation, it appears that Mr. Yakovlev reached the contract value of US\$115,440 by using Dinasa's prices for bulk fuel.<sup>106</sup> In an ex-post facto presentation to the Local Committee on Contracts regarding a later extension of the contract with Dinasa, MINUSTAH advised that "the pricing structure agreed to is based on bulk fuel."<sup>107</sup>

100. Dinasa's bulk fuel prices, however, were not the lowest. On the contrary, Dinasa was in fact more expensive than Total Haiti and Texaco (excluding taxes).<sup>108</sup>

<sup>103</sup> Subject 4 interview (23 May 2007). Subject 4 that MINUSTAH's file was disorganized and contained very few documents. *Id.*

<sup>104</sup> *Id.* and Staff Member 2 interview (23 May 2007).

<sup>105</sup> Staff Member 7 interview (18 April 2007).

<sup>106</sup> Dinasa's Proposal to RFP/TEN/MIN/04/001 (3 June 2004) and James Boynton email to Andrei Vesselov (14 June 2004). In its financial proposal, Dinasa indicated that the Platt unit price was US\$.3552 per liter. This amount, multiplied by the updated monthly estimate of MINUSTAH diesel fuel consumption (325,000 liters) stated in Mr. Boynton's email, totals US\$115,440.

<sup>107</sup> MINUSTAH Presentation to the HCC (LCC Case No. MIN/2005/48), para. 7 (27 April 2005). The Presentation stated that "[t]he original contract awarded with the help of Procurement Service, New York, included three regions-Port-au-Prince, Gonaives, and Cap Haitien...The pricing structure agreed to is based on bulk fuel [and] the unit price at the signing was based on the May 31 published price of \$.3552 per liter." *Id.*, para. 7-8.

<sup>108</sup> Total Haiti's Proposal to RFP/TEN/MIN/04/001 (2 June 2004); Dinasa's Proposal to RFP/TEN/MIN/04/001 (3 June 2004); and Texaco Haiti's Proposal to RFP/TEN/MIN/04/001 (4 June 2004).

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RFP TEN/MIN/04/001  
PTF COMMERCIAL EVALUATION

**BULK FUEL**

Vendor	Variable	Fuel Estimate	Unit Prices	Cost
DINASA	Platt Register	325,000	\$ 0.3552	\$ 115,440.00
	Caribbean Posting	325,000	\$ 0.3296	\$ 107,120.00
TOTAL HAITI	Caribbean Posting			
	Port-au-Prince	325,000	\$ 0.3038	\$ 98,735.00
	Cap Haitien	325,000	\$ 0.3138	\$ 101,985.00
TEXACO	Gonaives	325,000	\$ 0.3091	\$ 100,457.50
	including taxes	325,000	\$ 0.4145	\$ 134,712.50
	minus taxes	325,000	\$ 0.3168	\$ 102,960.00

**SERVICE STATIONS**

Vendor	Variable	Fuel Estimate	Unit Prices	Cost
DINASA		325,000	\$ 0.3912	\$ 127,140.00
TOTAL HAITI	Port-au-Prince	325,000	\$ 0.4132	\$ 134,290.00
	Cap Haitien	325,000	\$ 0.4232	\$ 137,540.00
	Gonaives	325,000	\$ 0.4184	\$ 135,980.00
TEXACO		325,000	\$ 0.4289	\$ 139,392.50

**Figure: Task Force Commercial Evaluation of Bids**

101. Therefore, based on the lack of documents for both the commercial and technical evaluations, the procurement was not conducted in a transparent manner, nor was the contract awarded to the lowest-priced, technically compliant vendor.

## F. DINASA PERFORMANCE UNDER THE CONTRACT

102. Dinasa continued to supply ground fuel to the Mission after the expiration of its initial contract on 20 July 2004.<sup>109</sup> Indeed, Dinasa continues to be the Mission's current supplier for this fuel, as discussed below.

103. Dinasa's performance was inconsistent and "fraught with problems."<sup>110</sup> In fact, when the Fuel Unit rated Dinasa's performance for the period of January through March 2005, it found Dinasa to be "marginal" or completely "unsatisfactory" for several sections, which posed a "serious problem" because it failed to meet certain contractual requirements.<sup>111</sup>

<sup>109</sup> UN Contract Number PD/C0153/04.

<sup>110</sup> Subject 3 interview (14 December 2006, 10 January 2007).

<sup>111</sup> Contractor Performance Appraisal Report for Contract No. PD/CO1053/04, p. 4 (April 2005) (for period of 1 January 2005 to 31 March 2005).

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104. The two areas in which Dinasa had the most problems was with its invoicing system and the delivery of fuel outside Port-au-Prince. As for its invoicing, “[t]housands of transactions [were] carried out monthly and [were] recorded in hand writing making this accounting prone to mistakes.”<sup>112</sup> The Mission received long lists of inaccurate (“funny numbers”) billing from Dinasa.<sup>113</sup> As a result, Dinasa was not maintaining timely, accurate and complete records for billing.<sup>114</sup> When the UN was late or did not pay its bills, Dinasa threatened to stop supplying the Mission with fuel.<sup>115</sup> The Mission had requested that Dinasa implement an electronic data capturing system to record the retail and generator fuel, instead of relying on hand-written business records, but it was never done.<sup>116</sup>

105. Second, Dinasa had major logistical problems in delivering fuel to locations outside the capital, Port-au-Prince.<sup>117</sup> It was using substandard fuel tankers, and even more troubling was the fact that staff reported discrepancies between the reported amount of fuel Dinasa billed the UN and the amount of fuel it actually delivered.<sup>118</sup> On more than one occasion, Dinasa delivered the wrong quantity of fuel, and at any given time, thousands of gallons might be missing at a delivery.<sup>119</sup> As a result, Dinasa had “failed to rise to the challenge and support MINUSTAH with the increasing demands for fuel—even after problems have been identified and flagged.”<sup>120</sup>

106. Dinasa’s initial one-month contract was extended repeatedly over the next three years. Since the contract far exceeded the original US\$115,440, the Mission later had to submit the contract to the Local Committee on Contracts (LCC) and Headquarters Committee on Contracts (HCC) on an ex-post facto basis. To date, over US\$21 million has been authorized under this initial short-term contract with Dinasa (Attached as Annex E).<sup>121</sup>

## **VIII. LONG-TERM GROUND FUEL PROCUREMENT**

107. In the spring 2005, MINUSTAH conducted a procurement exercise for the long-term supply of ground fuel. The initial technical evaluation concluded that the current supplier, Dinasa, was technically non-compliant. The contract therefore should have been awarded to the lowest, technically compliant vendor, which was Total Haiti.

<sup>112</sup> See Section F, Contractor Performance Appraisal Report for Contract No. PD/CO1053/04 (April 2005).

<sup>113</sup> Subject 3 interview, para. 23 (14 December 2006, 10 January 2007).

<sup>114</sup> See Sections A, B of Contractor Performance Appraisal Report for Contract No. PD/CO1053/04 (April 2005).

<sup>115</sup> Subject 5 interview (22 May 2007).

<sup>116</sup> HCC Meeting Minutes, HCC/05/45 (HCC Minutes), para. 17. 12 (19 July 2005) and Technical Evaluation Committee memorandum to Subject 1, p. 3 (3 May 2005).

<sup>117</sup> Technical Evaluation Committee memorandum to Subject 1, p. 3 (3 May 2005).

<sup>118</sup> Section F, Contractor Performance Appraisal Report for Contract No. PD/CO1053/04 (April 2005).

<sup>119</sup> Subject 3 interview (14 December 2006, 10 January 2007).

<sup>120</sup> See Sections D, F Contractor Performance Appraisal Report for Contract No. PD/CO1053/04 (April 2005).

<sup>121</sup> Balakrishnan Amirthalingam email to Task Force (21 June 2007) (with attached value of ground fuel procurements from Dinasa, approved until 31 December 2007).

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However, staff members in the Fuel Unit and Procurement Section decided to hold a Best and Final Offer exercise in order to allow Dinasa the opportunity to correct its proposal and resubmit omitted information. A subsequent technical evaluation of the responses was not fairly undertaken and in fact had been purposefully skewed so Dinasa became the most technically qualified supplier. Similarly, although Dinasa had not submitted the lowest prices, the commercial evaluation was rigged in its favour; staff members manipulated fuel estimates to ensure that Dinasa became the least expensive bidder. Finally, staff members made numerous misrepresentations to conceal the favouritism shown to Dinasa.

**A. BACKGROUND**

108. Since the contract with Dinasa was a temporary solution—set to expire in two months—MINUSTAH had to undertake another procurement exercise for a longer term supply of ground fuel.<sup>122</sup> This procurement would be purely a local exercise. The Supply Section at UNHQ told the Mission to hire a “turnkey operation” for the supply of ground fuel.<sup>123</sup> The supplier would have to construct and then manage fuel sites, hire and train local staff, establish a distribution system and provide other associated POL services, such as waste disposal.<sup>124</sup>

109. On 27 August 2004, Subject 3, Chief of the Mission’s Fuel Unit, developed the Scope of Works for this exercise.<sup>125</sup> Subject 3 calculated the estimated fuel consumptions for the Mission need based in part on information received from UNHQ’s Supply Section.<sup>126</sup> He determined that the Mission would consume approximately 32.4 million litres of ground fuel a year.<sup>127</sup>

110. After receiving the SOW, the Mission’s Procurement Section issued an Expression of Interest (EOI) on the UN’s web-site in October 2004.<sup>128</sup> The EOI notified vendors of the commencement of a Request for Proposal for a turn-key fuel operation for a variety of fuel, including bulk fuel, diesel and petrol, and aviation fuel.<sup>129</sup> One local and ten international companies responded, but three were deemed unqualified. The Procurement Section then conducted a local and international market survey and identified an additional 20 potential vendors.<sup>130</sup>

<sup>122</sup> RFP/TEN/MIN/04/01, p. 4 (31 May 2004).

<sup>123</sup> Subject 3 interview (14 December 2006, 10 January 2007).

<sup>124</sup> RFP/05/027/RP, p. 15 (29 January 2005).

<sup>125</sup> Subject 3 email to Subject 1, *et al.* (27 September 2004) with attached Scope of Work (SOW) for the Provision of Petroleum, Oils & Lubricants (POL) and Associated Support Services to the Mission Nations Unies Pour la Stabilization a Haiti (MINUSTAH).

<sup>126</sup> Subject 3 emails to Subject 4, *et al.* (1 and 9 September 2004).

<sup>127</sup> Scope of Work (SOW) for the Provision of Petroleum, Oils & Lubricants (POL) and Associated Support Services to the Mission Nations Unies Pour la Stabilization a Haiti (MINUSTAH).

<sup>128</sup> Sean Porter email to Subject 4 (30 September 2004) with attached Expression of Interest (EOI/FUEL-00001/AK) (1 October 2004).

<sup>129</sup> Expression of Interest (EOI/FUEL-00001/AK) (1 October 2004).

<sup>130</sup> MINUSTAH Presentation for the HCC for LCC Case No: MIN/2005/92, para. 2 (8 June 2005).

## B. REQUEST FOR PROPOSAL

111. Although the SOW had been submitted in 2004, the Procurement Section did not initiate a competitive bidding exercise for several months. During this time, Dinaso continued to supply fuel to the Mission without a written contract. The Task Force has been unable to determine why this delay occurred.

112. Subject 4 was assigned to the case, even though he had no experience in fuel procurements.<sup>131</sup> Subject 6, a team leader in the Section, was Subject 4's supervising officer, which is why the Request went out under his name (RFP Number 05/027/RP) (emphasis added).<sup>132</sup>

113. On 29 January 2005, Subject 4 and Subject 6 issued the RFP, which had been approved by Subject 1, the Chief Procurement Officer.<sup>133</sup> The RFP solicited bids for the supply, delivery and distribution of Jet Aviation Fuel, Petrol, Diesel, LPG and Lubricants.<sup>134</sup>

114. The proposed contract was for a period of one year, with the option of extending it for two additional one-year periods.<sup>135</sup> Vendors were asked to "provide all requisite information under this RFP and clearly and concisely respond to all points set out" in the Request.<sup>136</sup> It further cautioned that any "proposal which does not fully and comprehensively address this RFP will be disqualified."<sup>137</sup> Additionally, it emphasized that the technical proposals must demonstrate an "understanding" of the required tasks" and were required to provide a "**mobilization plan and time**" for the commencement of services.<sup>138</sup>

115. Procurement sent the proposal to 28 companies, including Dinaso and Total Haiti.<sup>139</sup> On 21 February 2005, five vendors attended a pre-bidding conference to review the RFP.<sup>140</sup> After the conference, the Procurement Section prepared a list of clarifications in response to questions raised at the conference, and distributed it to all vendors.<sup>141</sup> In addition to the questions raised at the conference, Dinaso asked the Mission to clarify other areas, including the timeline for mobilization.<sup>142</sup>

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<sup>131</sup> Subject 4 interview (23 May 2007).

<sup>132</sup> Staff Member 10 interview (21 May 2007).

<sup>133</sup> Subject 1 interview (7 March 2007).

<sup>134</sup> Request for Proposal, RFP/05/027/RP (29 January 2005).

<sup>135</sup> *Id.*, para. 5.

<sup>136</sup> *Id.*, para. 7.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*, para. 8.1 (emphasis in the original).

<sup>139</sup> List of Invitees for RFP/05/027/RP.

<sup>140</sup> Attendance Report and Minutes of Pre-Bidding Conference for RFP/05/027/RP (21 February 2005).

<sup>141</sup> Questions and Answers Related to RFP/05/027/RP and Subject 4 interview (23 May 2007).

<sup>142</sup> Subject 4 email to Subject 3, *et al.* (1 March 2005) with attached Questions regarding Minustah Bid, para. 10 (28 February 2005).

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116. On 21 March 2005, the RFP closed. A public bid opening was held by the Tender Opening Committee the next day, 22 March 2005.<sup>143</sup> At that time, the TOC was chaired by Ms. Kaltouma N'Guessan, from the Finance Department. The TOC had been established at Mission start-up by the initial Chief Administrative Officer.<sup>144</sup> Pursuant to the Procurement Manual and Financial Rules, the Committee was chaired by the Chief of the Finance Section, and was comprised of various staff members who were not part of the local Procurement Section or requisitioning office.<sup>145</sup>

117. Accordingly, numerous individuals were invited to the bid opening, including members of the TOC.<sup>146</sup> Only two members appeared at the bid opening: Mr. Goeran Biller and Mr. Joseph Brent, who chaired the committee on behalf of the Finance Department.<sup>147</sup> Subject 4 attended as a witness on behalf of Procurement.<sup>148</sup> Once Mr. Brent realized he needed a third member, he asked that Subject 3 participate.<sup>149</sup> Although Mr. Brent and Mr. Biller were suitable members since they were not involved in the exercise, Subject 3, as requisitioner and an evaluator, should not have participated.<sup>150</sup> Subject 4 knew this was improper and violated the Procurement Manual, but he did not say anything because he did not believe it was his place to “interfere.”<sup>151</sup>

118. As requested in the RFP, the vendors submitted separate envelopes for the financial and technical proposals. Consequently, the TOC should have only opened the technical proposals at the bid opening, and forwarded the sealed financial bids to Procurement.<sup>152</sup> In this case, the TOC nevertheless opened the financial proposals at the same time.<sup>153</sup> Subject 4 knew this practice violated Procurement rules, but did nothing.<sup>154</sup>

119. Six vendors replied to the RFP, but only three submitted proposals for the ground fuel portion: Dinasa, Total Haiti and SkyLink.<sup>155</sup> Subject 4 took custody of the bids; he

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<sup>143</sup> The original closing date was set for 28 February, but was rescheduled after questions were raised at the pre-proposal conference. Subject 2 memorandum to Chairman of Headquarters Committee on Contracts for LCC Case No. MIN/2005/92 (dated 8 June 2005) (HCC Presentation); Subject 4 email to Subject 1, *et al.* (10 March 2005); and Subject 1 memorandum to All Invited Proposers (10 March 2005).

<sup>144</sup> Antonio Gomez de la Torre memorandum to All MINUSTAH Personnel (20 June 2004).

<sup>145</sup> Procurement Manual Section 10.1.1 (3).

<sup>146</sup> Subject 4 email to MINUSTAH-TOC (10 March 2005) and Esperance Guirline email to Adama Fadika, *et al.* (11 March 2005).

<sup>147</sup> Subject 4 interview (23 May 2007).

<sup>148</sup> Bid Opening Sheet for RFP No. 05/027 (22 March 2005).

<sup>149</sup> Subject 4 interview (23 May 2007).

<sup>150</sup> Procurement Manual Section 10.1.1 (3).

<sup>151</sup> Subject 4 interview (23 May 2007).

<sup>152</sup> Procurement Manual Section 10.8.4 (4) and HCC Minutes, para. 17.04.

<sup>153</sup> See, e.g., Bid Opening Sheet for RFP No. 05/027 (“T&F opened”) (22 March 2005); HCC Minutes, para. 17.02; and Subject 4 interview (23 May 2007).

<sup>154</sup> Subject 4 interview (23 May 2007). See also Subject 4 email to Subject 2 (17 May 2005) (explaining that “the technical proposal [will be] completed prior to any price proposal being opened and compared and pricing “will be opened only for submissions that passed the minimum technical score of 60%””).

<sup>155</sup> Dinasa’s Proposal to RFP/05/027/RP (21 March 2005); SkyLink’s Proposal to RFPS/05/027/RP (21 March 2005); and Total Haiti’s Proposal to RFP/05/027/RP (17 March 2005). The Mission eventually split the award into three separate contracts, aviation; ground fuel; and oil and lubricants. Since this Report

kept the technical proposals, but gave the financial proposals to the head of the Procurement Section, who stored them in a desk in his office.<sup>156</sup>

## C. THE EVALUATION COMMITTEES

### 1. Technical Evaluation

120. Since Subject 3 was Chief of the Fuel Unit, he created and chaired the team responsible for evaluating the technical proposals.<sup>157</sup> He asked everyone in the Fuel Unit who was present at the time to participate. This included Mr. David Carter, Subject 5, Ms. Freweini Elias and Ms. Cassandra Palanyk.

### 2. Overall Evaluation Committee

121. Subject 1 created a committee to perform the overall evaluation, which he titled the “Tender Evaluation Committee.”<sup>158</sup> Subject 6, with Subject 1’s approval, announced that the team would be comprised of two members from the Fuel Unit, Subject 3 and Subject 5; the buyer, Subject 4; and a member of the Contracts Management Unit (CMU), Mr. Alexander Maisuradze.<sup>159</sup>

122. The purpose of the Tender Evaluation Committee was to perform an overall evaluation of the proposals.<sup>160</sup> Its decision would be based upon the technical evaluation, and the Committee’s own analysis of the vendors’ pricing information. After the committee determined which proposal best met the requirements of the RFP, it would report to the CPO.<sup>161</sup>

## D. ORIGINAL TECHNICAL EVALUATION

### 1. Initial Technical Evaluations (12 April and 18 April 2005)

123. Although Procurement had all of the vendors’ responses on 22 March 2005, Subject 1 did not request that a technical evaluation be performed until over a week later, 1 April 2005.<sup>162</sup> Notably, the Supply Section did not receive the request and

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relates solely to ground fuel, the other two sections will not be discussed. Subject 1 memorandum to Technical Evaluation Committee (1 April 2005) and Matrix for Technical Evaluation (12 April 2005).

<sup>156</sup> Bid Opening Sheet for RFP/05/027 (22 March 2005) and Subject 4 interview (23 May 2007). Subject 4 recalled giving the financial proposals to either the CPO or the OIC at the time. Since Subject 2 had not yet joined the Mission, it likely was Subject 1 since he was the acting CPO. Subject 2 interview (23 February 2007) (joined Mission on 2 May 2005).

<sup>157</sup> Subject 3 email to Subject 4 *et al.* (8 April 2005). Subject 3 announced this decision at an earlier meeting and then memorialized it in the 8 April 2005 memorandum. Staff Member 5 interview, (26 April 2007).

<sup>158</sup> Subject 4 interview (23 May 2007).

<sup>159</sup> Subject 6 memorandum to Subject 1 (19 March 2005).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Subject 1 memorandum to Technical Evaluation Committee (1 April 2005).

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accompanying proposals until 7 April 2005—almost two weeks after the opening.<sup>163</sup> The Task Force could find no definitive explanation for this lengthy delay, which was highly unusual, particularly in light of the urgency of this procurement.<sup>164</sup>

124. A few days after the Fuel Unit received the technical proposals, Subject 3 contacted Subject 4 and asked for the vendors' financial proposals.<sup>165</sup> Subject 3 claimed that he over-estimated the fuel consumption, and needed the pricing information to determine his budget.<sup>166</sup>

125. Since the vendors' financial bids had been kept in a secure place in one of his supervisor's offices, Subject 4 informed Subject 6 of Subject 3's request.<sup>167</sup> Subject 6 agreed with Subject 4 to turn over the pricing information even though the technical evaluation had not been completed.<sup>168</sup> At some point, Subject 4 and Subject 6 spoke to Subject 1 and told him about Procurement's disclosure of the financial bids. Subject 4 did not recall whether this conversation took place before he delivered the financial bids, or after.<sup>169</sup> Either way, his supervisor handed over the financial bids to Subject 4 in order for him to forward them to Subject 3.<sup>170</sup> Subject 4 then gave a copy of the financial bids to Subject 3 and Subject 5.<sup>171</sup> Subsequently, the entire Technical Evaluation Committee saw the vendors' pricing information.<sup>172</sup>

126. On 12 April 2005, Subject 5 prepared an initial draft of the technical team's findings, which he placed on a spreadsheet.<sup>173</sup> He then sent it Subject 3 for his review.<sup>174</sup>

127. The team found that SkyLink scored the highest and was technically compliant with a score of 97 points out of 100. Total Haiti was deemed "conditionally compliant," with a passing score of 68 points. Dinaso, however, was technically non-compliant since it had a failing score of 52 (60 was required for passing); it was given no points for several areas because it failed to provide any mobilization plan.<sup>175</sup>

<sup>163</sup> Ellen Aamodt's handwritten note on Subject 1's 1 April 2005 memorandum to Technical Evaluation Committee (dated 7 April 2005) and Subject 3 email to Subject 4, *et al.* (8 April 2005).

<sup>164</sup> Staff Member 10 interview (21 May 2007) and Subject 4 interview (23 May 2007).

<sup>165</sup> Subject 4 interview (23 May 2007).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* (23 May 2007). Although Subject 4 recalled having this conversation with Subject 2 and Subject 6, as stated earlier, Subject 2 was not yet at the Mission (see *supra* paragraph 38) and therefore, Subject 4 likely confused his participation with Subject 1's.

<sup>168</sup> Subject 4 interview. (23 May 2007).

<sup>169</sup> *Id.* Although Subject 4 recalled having this conversation with Subject 2 and Subject 6, as stated earlier, Subject 2 was not yet at the Mission (see *supra* paragraph 38) and therefore, Subject 4 likely confused his participation with Subject 1's, but he clearly recalled speaking to someone above Subject 6.

<sup>170</sup> *Id.* (23 May 2007).

<sup>171</sup> *Id.*; Subject 5 interview (22 May 2007); and Subject 3 email to Subject 4, *et al* (8 April 2005) (informing him of composition of Technical Evaluation Committee).

<sup>172</sup> Subject 5 interview (22 May 2007).

<sup>173</sup> *Id.* and Matrix for Technical Evaluation (12 April 2005).

<sup>174</sup> Subject 5 interview (22 May 2007) and Staff Member 5 interview (26 April 2007).

<sup>175</sup> Matrix for Technical Evaluation (12 April 2005). A score of 60 points indicated whether or not the proposal was technically compliant, unless it was missing a substantive requirement to the RFP. Subject 4 understood that a score of below 60 meant it was a failing score. Subject 4 interview (23 May 2007).

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128. Significantly, the team referred to pricing information on its technical evaluation. In particular, the Technical Evaluation Committee had scored SkyLink's prices for mobilization and products costs.<sup>176</sup>

129. After composing the spreadsheet, the Technical Evaluation Committee drafted a memorandum summarizing its initial findings which was sent to the Tender Evaluation Committee, the team responsible for the overall evaluation.<sup>177</sup> The Technical Evaluation Committee explained that it found SkyLink technically compliant, with a score of 97.<sup>178</sup> Total Haiti addressed "most requirements...except the Staffing Plan which in itself [was] not a substantial part of the RFP."<sup>179</sup> Since Total Haiti had only presented a mobilization plan in "broad strokes," the Committee wanted clarifications on this issue before it gave it a final rating. As a result, Total Haiti was "**Conditionally Technically Compliant**" with a score of 68 until such confirmation was received.<sup>180</sup>

130. Finally, Dinasa had received a failing score of 52 out of 100 and therefore was found to be "**Technically Non Compliant**" because it did "not address all the requirements of the RFP."<sup>181</sup> Dinasa had failed to "present a distribution and mobilization plan which not only represents a lack of understanding of MINUSTAH's requirements, but affects directly the installation of the Contractor Managed Sites which are a substantive requirement of the RFP."<sup>182</sup>

- c. The proposal received from **Distributeurs Nationaux SA (DINASA)** from Port au Prince Haiti, does not address all the requirements of the RFP. DINASA has presented very good plans for the strategic fuel reserve and staffing, as well as acceptable bulk storage, equipment plan, and they operate the biggest network of fuel stations in Haiti. However DINASA failed to present a distribution and mobilization plan which not only represents a lack of understanding of MINUSTAH's requirements, but affects directly the installation of the Contractor Managed Sites which are a substantive requirement of the RFP. A score of 52 out of 100 is the total result for DINASA's proposal. The proposal is considered **Technically Non Compliant**. It is important to note that

**Figure: Technical Evaluation Committee memorandum to Tender Evaluation Committee (18 April 2005)**

131. The Committee also referred to the problems the Mission was experiencing with Dinasa as its current supplier. For example, the team pointed to the "major logistical problems in [Dinasa's] delivery of fuel to areas outside Port-au-Prince," the discrepancies

<sup>176</sup> Matrix for Technical Evaluation (12 April 2005) and Subject 5 interview (22 May 2007).

<sup>177</sup> Technical Evaluation Committee memorandum to Tender Evaluation Committee for RFP/05/027/PM (18 April 2005).

<sup>178</sup> *Id.*, para. 2(a).

<sup>179</sup> *Id.*, para. 2(b).

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*, p. 1.

<sup>182</sup> *Id.*, para. 2(c).

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between the fuel it claimed it delivered and what the Mission actually received, and the company's failure to implement an electronic system for invoicing.<sup>183</sup>

132. The Technical Evaluation Committee therefore sought further information from Total Haiti and SkyLink, which it considered to be "small, non-critical clarifications."<sup>184</sup> Since Dinasa was non-compliant, the Technical Evaluation Committee did not seek any clarifications from the company.<sup>185</sup>

133. Unlike SkyLink and Total Haiti, Dinasa was missing critical information in its proposal. Indeed, the failure to provide a mobilization plan was so significant that it would not have been appropriate to allow the company to resubmit this information at this stage since this would have given Dinasa a second chance to bid.<sup>186</sup> Accordingly, the team considered that Dinasa to be eliminated from the competition.<sup>187</sup> At this stage, Dinasa was considered "out of the running" and only Total Haiti and SkyLink were eligible for the contract.<sup>188</sup>

## **2. Request for Clarifications (25 April 2005)**

134. After the Technical Evaluation Committee issued its request for clarifications, the four members of the Tender Evaluation Committee met to discuss the situation.<sup>189</sup> Subject 3, Subject 5, Subject 4, and Mr. Maisuradze reviewed the technical evaluation as well as the financial proposals.<sup>190</sup> They discussed why certain vendors were conditionally compliant and what those vendors needed to provide in order to become fully compliant.<sup>191</sup> Since Subject 3 and Subject 5 were the fuel experts, the two other members deferred to their judgment.<sup>192</sup>

135. The Tender Evaluation Committee relied upon the earlier technical evaluation, and agreed that certain clarifications were needed before a final overall evaluation could take place. All four members also agreed, however, that no information would be sought from Dinasa because it was considered non-compliant, and therefore disqualified from the exercise.<sup>193</sup> Dinasa was missing such a large portion of the response that it was not included in this request for clarifications.<sup>194</sup>

<sup>183</sup> *Id.*

<sup>184</sup> Subject 5 interview(22 May 2007).

<sup>185</sup> Technical Evaluation Committee memorandum to Tender Evaluation Committee for RFP/05/027/PM, para. 2(c) (18 April 2005).

<sup>186</sup> Subject 5 interview (22 May 2007)

<sup>187</sup> *Id.*; Staff Member 5 interview (26 April 2007); and Staff Member 4 interview (24 May 2007). See also Subject 4 interview (23 May 2007) (Dinasa lacked a mobilization plan, which was a "very important part of the proposal").

<sup>188</sup> Subject 5 interview (22 May 2007).

<sup>189</sup> Subject 4 interview (23 May 2007).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* See also Staff Member 10 interview (21 May 2007) (no reason to continue including a non-compliant company in any further procurement activity).

<sup>194</sup> Subject 4 interview (23 May 2007).

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136. On 25 April 2005, the Tender Evaluation Committee informed the OIC of Procurement, Mr. Alejandro Arigon, that the Mission needed to obtain further information from SkyLink and Total Haiti.<sup>195</sup> Mr. Arigon was acting for Subject 1, who was out of the office at that time.<sup>196</sup> When he returned, Subject 4 briefed Subject 1 and informed him that the Technical Evaluation Committee found Dinasa to be non-compliant.<sup>197</sup>

137. Mr. Arigon approved the request and told Subject 4 to proceed.<sup>198</sup> Accordingly, Subject 4 contacted the various vendors and requested the additional information.<sup>199</sup> The vendors all responded by deadline of 29 April 2005.<sup>200</sup> Mr. Arigon forwarded the vendors' responses to the Tender Evaluation Committee and requested that it complete a final evaluation as soon as possible.<sup>201</sup>

138. The four members of the Tender Evaluation Committee met again to review the new information and decide which of the remaining vendors were qualified.<sup>202</sup> Subject 3 and Subject 5 made the final decision as to which was technically compliant or not.<sup>203</sup>

139. Total Haiti and SkyLink were both now technically compliant. However, the issue of Dinasa was raised at this meeting. Subject 3 now mentioned that he knew Dinasa had the capabilities to perform, but that it merely "forgot" to include the requisite information.<sup>204</sup> He insisted that he knew the company could perform under the contract.<sup>205</sup>

140. Despite chairing the earlier Technical Evaluation Committee that unequivocally found Dinasa non-compliant, Subject 3 now claimed that they had made a mistake: Dinasa should have been rated conditionally compliant, not non-compliant.<sup>206</sup> It is unclear why Subject 3 suddenly changed his position.

141. He then purportedly came up with the idea of declaring that Dinasa, though "Not Technically Compliant" could "be made acceptable if the company demonstrates Mobilization details at no additional cost to MINUSTAH."<sup>207</sup> Subject 4 said that Subject 3 insisted that Dinasa be given another chance. Subject 3 said he did not want the

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<sup>195</sup> Tender Evaluation Committee memorandum for RFP/05/027/RP to Alejandra Arigon (25 April 2005). The Committee sought information from other vendors, which was unrelated to the ground fuel portion of the contract and therefore will not be discussed.

<sup>196</sup> Subject 1 interview 5 (7 March 2007) and Staff Member 10 interview (21 May 2007).

<sup>197</sup> Subject 4 interview (23 May 2007).

<sup>198</sup> Staff Member 10 interview (21 May 2007).

<sup>199</sup> See, e.g., Subject 4 email to Alexander Kislanski (Total Haiti) (26 April 2005); Subject 4 email to Jan Ottens (26 April 2005) (SkyLink); and Subject 4 email to Yvan Deas (26 April 2005) (Sodigaz).

<sup>200</sup> See, e.g., Philippe Nicolas email to Subject 4 (28 April 2005); Ivan Deas email to Subject 4 (28 April 2005) and Richard Gelder email to Subject 4, *et al.* (28 April 2005).

<sup>201</sup> Alejandro Arigon Memorandum to Tender Evaluation Committee (29 April 2005)

<sup>202</sup> Subject 4 interview (23 May 2007).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.* and Tender Evaluation Committee memorandum to Subject 1, p. 5 (3 May 2005).

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contract to be awarded to Total Haiti because he did not want to switch vendors.<sup>208</sup> The other members eventually agreed with him.<sup>209</sup>

### 3. Overall Commercial Evaluation (3 May 2005)

142. After the meeting, the Tender Evaluation Committee issued a second report to Procurement summarizing its findings on 3 May 2005.<sup>210</sup> Subject 5 drafted the initial report.<sup>211</sup> In his draft, the team did not change the scores given in the initial evaluation. SkyLink was “**Technically Compliant**,” with the highest score of 97.<sup>212</sup> Total Haiti, still scored at 68, was now “**Technically Compliant**” (rather than merely conditionally) in light of the new information provided.<sup>213</sup> Dinaso still failed with a score of 52 points; the committee also repeated its earlier statements regarding Dinaso’s proposal.<sup>214</sup> As a result, the team still declared Dinaso to be “**Technically Non Compliant**.<sup>215</sup> The technical scores were summarized on a spreadsheet.

MATRIX FOR TECHNICAL EVALUATION									Date Finalized: 03/05/2005	
Provision of Ground Fuel (Diesel, Gasoline & Kerosene), to MINUSTAH in Haiti RFP 05/027/RP										
S/N	Evaluation Criteria	Weighting Factor	TECHNICALLY COMPLIANT			TECHNICALLY NON COMPLIANT		NO BID P		
			SKYLINK	TOTAL HAITI	DINASA	SODIGAZ	JAMA			
<b>1</b>	<b>Technical Proposal</b>		Rating	Total	Rating	Total	Rating	Total		
	(a) Supply Chain / Overall Plan	20.00	5.0	20.0	3.0	12.0	2.0	8.0		
	(b) Mobilization plan	10.00	5.0	10.0	3.0	6.0		0.0		
	(c) Equipment plan, Bulk Storage	10.00	5.0	10.0	4.0	8.0	3.0	6.0		
	(d) Distribution Plan & Capacity	5.00	5.0	5.0	3.0	3.0		0.0		
	(e) Operation of Installations	10.00	5.0	10.0	4.0	8.0	3.0	6.0		
	(f) Strategic Fuel Reserve (SFR)	10.00	5.0	10.0	4.0	8.0	4.0	8.0		
	(g) QC & QA	5.00	4.0	4.0	3.0	3.0	3.0	3.0		
	<b>Sub-Total</b>	<b>70.0</b>	<b>69.0</b>		<b>48.0</b>			<b>31.0</b>		
<b>2</b>	<b>Corporate/Management Capability</b>									
	(a) Corporate capability	10.00	5.0	10.0	5.0	10.0	4.0	8.0		
	(b) Project Management	10.00	5.0	10.0	3.0	6.0	3.0	6.0		
	(c) Experience with Similar Projects	5.00	4.0	4.0	4.0	4.0	3.0	3.0		
	(a) Staffing Plan	5.00	4.0	4.0		0.0	4.0	4.0		
	<b>Sub-Total</b>	<b>30.00</b>	<b>28.0</b>		<b>20.0</b>			<b>21.0</b>		
	<b>TOTAL Points over 100</b>	<b>100.00</b>	<b>97.00</b>		<b>68.00</b>			<b>52.00</b>		
	<b>Technical Evaluation Points over 60</b>	<b>60.00</b>	<b>58.20</b>		<b>40.80</b>			<b>31.20</b>		

Figure: Attached Matrix to Tender Evaluation Committee memorandum to Subject 1 (3 May 2005)

<sup>208</sup> Subject 5 interview (22 May 2007).

<sup>209</sup> Subject 4 interview (23 May 2007).

<sup>210</sup> Tender Evaluation Committee memorandum to Subject 1 (3 May 2005).

<sup>211</sup> Subject 5 interview (22 May 2007).

<sup>212</sup> Tender Evaluation Committee memorandum to Subject 1, para. 2(a) (3 May 2005).

<sup>213</sup> *Id.*, para. 2(b).

<sup>214</sup> *Id.*, para. 2(c) (Dinaso did “not address all the requirements of the RFP,” failed “to present a distribution and mobilization plan” which “not only represents a lack of understanding of MINUSTAH’s requirements,” but also affected “a substantive requirement of the RFP”).

<sup>215</sup> *Id.* (emphasis in the original).

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143. Under his version, only SkyLink and Total Haiti were ranked as compliant and Dinasa had been disqualified. Subject 5 then forwarded the evaluation to Subject 3 and Subject 4 for their review.<sup>216</sup>

144. A final version was then circulated to the four members of the team. The first four pages had been left unedited from Subject 5' version; the fifth page, however, was new and included a conclusion section. Subject 5 told the Task Force that he did not write these recommendations; in fact, had never seen the conclusions before because the memorandum he signed did not include such a section.<sup>217</sup> Subject 4 said Subject 3 drafted this portion of the document.<sup>218</sup>

145. The new section now concluded that Dinasa's proposal could become compliant:

2.2 The proposal of **Dinasa** is considered as **Not Technically Compliant**. However, the proposal could reasonably be made acceptable if the company demonstrates Mobilization details at no additional cost to MINUSTAH.

**Figure: Technical Evaluation Committee memorandum to Subject 1 (3 May 2005)**

146. At this stage, the Mission had two technically compliant vendors from which to chose, Total Haiti and SkyLink. The procurement exercise could have been completed at this stage and a contract immediately awarded. Since Total Haiti's bid was much lower, Total Haiti should have won the contract.<sup>219</sup>

147. Instead, staff members in Fuel and Procurement, including senior management, took several steps to keep Dinasa in the procurement, and eventually steered the bidding exercise to favour Dinasa, thereby violating staff, financial and procurement rules as discussed below.

## **E. DECISION TO CONTINUE PROCUREMENT FOR DINASA**

148. After Procurement received the memorandum which contained conflicting information, Subject 2 (OIC of Procurement) called a meeting between Procurement and Fuel to determine how best to proceed.<sup>220</sup> Subject 3, Subject 6 and Subject 4 attended the meeting which was held in Subject 2's office.<sup>221</sup>

149. According to Subject 4, Subject 2 asked why Dinasa was being given a second chance.<sup>222</sup> Subject 6 acknowledged that this was a novel idea—giving a non-compliant

<sup>216</sup> Subject 5 interview (22 May 2007).

<sup>217</sup> *Id.* (22 May 2007).

<sup>218</sup> Subject 4 interview (23 May 2007).

<sup>219</sup> Indeed, the HCC reached the same conclusion which is why it later awarded the contract to Total Haiti. HCC Minutes, para. 17.13.

<sup>220</sup> Subject 4 interview (23 May 2007).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

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vendor a second chance to bid.<sup>223</sup> However, Subject 4 claimed that Subject 3 forcefully argued at the meeting that Dinasa was currently performing the work and he knew it was capable of continuing to supply the Mission.<sup>224</sup> As he pounded the desk, he argued that he knew Dinasa had the capacity to meet the requirements and the vendor simply “forgot” to include a mobilization plan.<sup>225</sup> Subject 3 told Subject 2 that “we must give them another chance.”<sup>226</sup>

150. They all then agreed to give Dinasa a second chance to submit a mobilization plan. If Dinasa failed to include this information for a second time, the contract would then be awarded to Total Haiti.<sup>227</sup>

151. After the decision was made, the group now had to find a way to allow Dinasa to “submit the missing information” and keep it in the procurement exercise.<sup>228</sup> They considered re-bidding the contract and starting a new procurement exercise. This approach also would have allowed MINUSTAH to incorporate more recent and accurate fuel estimates.<sup>229</sup> This issue later posed significant problems for the Mission, which will be discussed below. However, Subject 6 pointed out that the Mission did not have time to re-bid the procurement and that they should proceed as planned.<sup>230</sup> The group all agreed that a re-bid was out of the question.<sup>231</sup>

152. Subject 1 raised the idea of a Best and Final Offer (BAFO).<sup>232</sup> Subject 6 then announced that he would contact “New York” for guidance.<sup>233</sup> After he spoke with Mr. Yakovlev, Subject 6 met with Subject 2 and Subject 4. He told them that Mr. Yakovlev informed him that the Mission could use a BAFO exercise to address the situation.<sup>234</sup>

153. The three Procurement staff members then met with Subject 1 to let him know what was going on.<sup>235</sup> There was no doubt at this meeting that the sole purpose of holding a BAFO was to allow Dinasa another chance to correct its proposal.<sup>236</sup> Subject 1

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<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> See, e.g., Staff Member 4 interview (24 May 2007).

<sup>229</sup> Subject 4 interview (23 May 2007) (recalling Subject 2 raising this option) and Subject 5 interview (22 May 2007) (recalled Subject 1 raising the issue of a re-bid, which he later said was not feasible).

<sup>230</sup> Subject 4 interview (23 May 2007).

<sup>231</sup> *Id.*

<sup>232</sup> Subject 5 interview (29 May 2007) and Subject 6 interview (14 May 2007).

<sup>233</sup> Subject 4 interview (23 May 2007).

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> Subject 4 interview (23 May 2007). See also Subject 6 interview (14 May 2007) (admitted discussing notion of BAFO with Mr. Yakovlev in order to confirm with Dinasa that it had a mobilization plan at no cost to the Mission).

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had been briefed “at every step” of this procurement exercise as the scheme unfolded.<sup>237</sup> Subject 1—the most senior member of the group—agreed to proceed with the BAFO.<sup>238</sup>

154. Subject 4 researched the Procurement Manual and found a section which discussed BAFOs.<sup>239</sup> He brought the section to Subject 6, Subject 2 and Subject 1.<sup>240</sup> He referred to the section in the Manual which allowed “competitive negotiations with a sufficient number of qualified proposers that have a reasonable chance for award” and which permitted vendors to “revise their proposals.”<sup>241</sup>

155. Procurement then called a meeting with the Fuel Unit. Subject 2, Subject 6 and Subject 4 met again with Subject 3 in Subject 2’s office.<sup>242</sup> Subject 6 summarized his telephone call with Mr. Yakovlev and the approach the team would be taking.<sup>243</sup> Subject 2 announced that they would pursue a BAFO and invite Dinasa to participate.<sup>244</sup> By issuing a BAFO, they would be able to give Dinasa a chance to submit a mobilization plan and qualify for the contract.<sup>245</sup> Subject 3 was pleased, agreed to the plan and the meeting was concluded.<sup>246</sup>

156. Subject 4 later met with Subject 5 to tell him what they had decided. He sat down with Subject 5 and pointed out the section in the Procurement Manual justifying their actions.<sup>247</sup> The section indicated that a vendor could be given a second chance if it was believed that it had the capacity to do the job.<sup>248</sup> In Subject 5’ experience, however, he never saw a technically non-compliant vendor invited to a BAFO.<sup>249</sup>

## F. INITIAL OVERALL EVALUATION

157. Based on these discussions, Subject 5 drafted the overall evaluation, which combined both the technical and commercial analysis.<sup>250</sup> He summarized the Technical Evaluation Committee’s earlier findings that SkyLink and Total Haiti were compliant, but Dinasa was “**Technically Non Compliant**” and “therefore no commercial evaluation may take place.”<sup>251</sup> Subject 5 recommended that a BAFO “be requested from SkyLink and TOTAL Haiti,” but not Dinasa.<sup>252</sup>

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<sup>237</sup> Subject 4 interview (23 May 2007).

<sup>238</sup> *Id.*

<sup>239</sup> Procurement Section 11.6.8 and Subject 4 interview (23 May 2007).

<sup>240</sup> Subject 4 interview (23 May 2007).

<sup>241</sup> Procurement Manual Section 11.6.8 (1)(2).

<sup>242</sup> Subject 3 interview (23 May 2007).

<sup>243</sup> Subject 6 email to Subject 2 (9 May 2005) and Subject 4 interview (23 May 2007).

<sup>244</sup> Subject 4 interview (23 May 2007).

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> Subject 5 interview (22 May 2007) and Subject 4 interview (23 May 2007) (admits he may have done this).

<sup>248</sup> Subject 5 interview (22 May 2007).

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> Draft Memorandum from Tender Evaluation Committee to Subject 1, Section 2.3 (16 May 2005).

<sup>252</sup> *Id.*, Section 2.3.

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158. Subject 5 then conducted a commercial assessment of all three vendors' prices.<sup>253</sup> In order to compare the vendors' prices, he used the fuel estimates contained in the RFP, the total of which was approximately 32 million litres per year.<sup>254</sup> He then multiplied the vendors' prices to each of the 12 categories of fuel needed as seen below:

<u>Request for Proposal No. RFP/05/027/RP for the provision of POL FINANCIAL EVALUATION</u>						
Ground Fuel		Estimated Quantities Liters/Year	TOTAL HAITI			
Financial Evaluation			Price Jan	Price Feb	Average Price	Total
1	Mobilization Costs					\$373,900.00
2	Diesel Bulk PAP	3,884,074.80	\$0.4287	\$0.4128	\$0.4208	\$1,634,224.47
3	Diesel Bulk Outside PAP	2,013,595.80	\$0.4537	\$0.4378	\$0.4458	\$897,560.33
4	Diesel Generators PAP	16,647,205.00	\$0.4287	\$0.4128	\$0.4208	\$7,004,311.50
5	Diesel Generators Outside PAP	5,443,415.00	\$0.4537	\$0.4378	\$0.4458	\$2,426,402.24
6	Diesel Retail PAP	2,589,383.20	\$0.4287	\$0.4128	\$0.4208	\$1,089,482.98
7	Diesel Retail Outside PAP	1,342,397.20	\$0.4537	\$0.4378	\$0.4458	\$598,373.55
8	Gasoline Bulk PAP	70,872.60	\$0.3667	\$0.3667	\$0.3667	\$25,988.98
9	Gasoline Bulk Outside PAP	187,902.00	\$0.3917	\$0.3917	\$0.3917	\$73,601.21
10	Gasoline Retail PAP	47,248.40	\$0.3667	\$0.3667	\$0.3667	\$17,325.99
11	Gasoline Retail Outside PAP	125,268.00	\$0.3917	\$0.3917	\$0.3917	\$49,067.48
12	Kerosene Retail PAP	44,530.00	\$0.4405	\$0.4405	\$0.4405	\$19,615.47
13	Kerosene Retail Outside PAP	12,000.00	\$0.4655	\$0.4655	\$0.4655	\$5,586.00
14					Total Estimated Expenditures	\$14,215,440.20
15					Points to Price	40.00

Ground Fuel		Estimated Quantities Liters/Year	SKYLINK			
Financial Evaluation			Price Jan	Price Feb	Average Price	Total
1	Mobilization Costs					\$21,031,000.00
2	Diesel Bulk PAP	3,884,074.80	\$0.7000	\$0.7000	\$0.7000	\$2,718,852.36
3	Diesel Bulk Outside PAP	2,013,595.80	\$0.7000	\$0.7000	\$0.7000	\$1,409,517.06
4	Diesel Generators PAP	16,647,205.00	\$0.7100	\$0.7100	\$0.7100	\$11,819,515.55
5	Diesel Generators Outside PAP	5,443,415.00	\$0.7100	\$0.7100	\$0.7100	\$3,864,824.65
6	Diesel Retail PAP	2,589,383.20	\$0.7100	\$0.7100	\$0.7100	\$1,838,462.07
7	Diesel Retail Outside PAP	1,342,397.20	\$0.7100	\$0.7100	\$0.7100	\$953,102.01
8	Gasoline Bulk PAP	70,872.60	\$0.7100	\$0.7100	\$0.7100	\$50,319.55
9	Gasoline Bulk Outside PAP	187,902.00	\$0.7100	\$0.7100	\$0.7100	\$133,410.42
10	Gasoline Retail PAP	47,248.40	\$0.7100	\$0.7100	\$0.7100	\$33,546.36
11	Gasoline Retail Outside PAP	125,268.00	\$0.7100	\$0.7100	\$0.7100	\$88,940.28
12	Kerosene Retail PAP	44,530.00	\$0.7100	\$0.7100	\$0.7100	\$31,616.30
13	Kerosene Retail Outside PAP	12,000.00	\$0.7100	\$0.7100	\$0.7100	\$8,520.00
14					Total Estimated Expenditures	\$43,981,626.61
15					Points to Price	12.93

Ground Fuel		Estimated Quantities Liters/Year	DINASA			
Financial Evaluation			Price Jan	Price Feb	Average Price	Total
1	Mobilization Costs					\$0.00
2	Diesel Bulk PAP	3,884,074.80	\$0.4137	\$0.3966	\$0.4052	\$1,573,632.91
3	Diesel Bulk Outside PAP	2,013,595.80	\$0.4439	\$0.4555	\$0.4497	\$905,514.03
4	Diesel Generators PAP	16,647,205.00	\$0.4681	\$0.4510	\$0.4596	\$7,650,223.06
5	Diesel Generators Outside PAP	5,443,415.00	\$0.4982	\$0.4811	\$0.4897	\$2,665,368.15
6	Diesel Retail PAP	2,589,383.20	\$0.4497	\$0.4326	\$0.4412	\$1,142,306.40
7	Diesel Retail Outside PAP	1,342,397.20	\$0.4799	\$0.4627	\$0.4713	\$632,651.66
8	Gasoline Bulk PAP	70,872.60	\$0.4169	\$0.3997	\$0.4083	\$28,937.28
9	Gasoline Bulk Outside PAP	187,902.00	\$0.4325	\$0.4153	\$0.4239	\$79,651.66
10	Gasoline Retail PAP	47,248.40	\$0.4624	\$0.4452	\$0.4538	\$21,441.32
11	Gasoline Retail Outside PAP	125,268.00	\$0.4730	\$0.4608	\$0.4669	\$58,487.63
12	Kerosene Retail PAP	44,530.00	\$0.4967	\$0.4742	\$0.4855	\$21,617.09
13	Kerosene Retail Outside PAP	12,000.00	\$0.5076	\$0.4852	\$0.4964	\$5,956.80
14					Total Estimated Expenditures	\$14,785,787.99
15					Points to Price	38.46

**Figure: Financial Evaluation attached to Subject 4 memorandum to Subject 2 (20 May 2005)**

<sup>253</sup> Subject 4 interview (23 May 2007).

<sup>254</sup> Subject 4 memorandum to Subject 2 (20 May 2005) with attached Request for Proposal No. RFP/05/027/RP for the provision of POL, FINANCIAL EVALUATION, p. 1.

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159. Based on the financial evaluation, Total Haiti offered the lowest prices and was technically compliant.<sup>255</sup> SkyLink was ranked the highest technically, but its prices were much higher than Total Haiti's.<sup>256</sup> He then circulated the draft to, *inter alia*, Subject 6 and Subject 3.

160. A second draft of the overall evaluation was distributed; this time, it incorporated the comments of Subject 6, Subject 2 and possibly Subject 1, regarding Dinasa's participation in the BAFO.<sup>257</sup> This time, Subject 5' earlier language was still included -- Dinasa was found to be non-compliant and thus no commercial evaluation may take place. However, Dinasa had been added to the list of BAFO participants, possibly by either Subject 6 or Subject 4.<sup>258</sup> The new version now read that the BAFO would include all three vendors, Dinasa, Total Haiti and SkyLink.<sup>259</sup>

161. The memorandum was re-written for a third time; this time, Procurement wrote the final version. Subject 2 asked Subject 4 to draft the memorandum and send it from himself (Subject 4) rather than the Tender Evaluation Committee.<sup>260</sup> Subject 4 drafted both the official "overall evaluation," which combined the technical and commercial aspects. He then sent it to Subject 1 (CAS), Subject 2 (acting CPO), and Subject 6 (supervisor) for their review.<sup>261</sup>

162. On 20 May 2005, Subject 4 created the final evaluation stating that the Tender Evaluation Committee completed its overall evaluation of the proposals, which included both the financial and technical assessments.<sup>262</sup> As for its pricing, Dinasa had not provided mobilization costs. Despite this, Total Haiti's prices were still lower than Dinasa's even without factoring in Dinasa's mobilization costs. SkyLink's prices were the highest.<sup>263</sup>

163. Subject 4 attached both the technical and commercial evaluation to the memorandum. In this version, Subject 6 drafted creative language to explain why Dinasa would continue to participate in this exercise. This version intentionally omitted Subject 5's language that Dinasa's financial proposal would not be evaluated since it was non-compliant. Instead, Subject 6 drafted a new paragraph; referring to Subject 3's earlier section, he wrote that despite its failure to comply with the RFP, Dinasa nevertheless "could reasonably be made acceptable" if the company demonstrated "[m]obilization details at no additional cost."<sup>264</sup> This approach, he claimed, "would be in the interest of the Organization."<sup>265</sup>

<sup>255</sup> *Id.*, para. 2.1.

<sup>256</sup> *Id.*, para. 2.2.

<sup>257</sup> Subject 4 interview (23 May 2007).

<sup>258</sup> Subject 5 interview (22 May 2007).

<sup>259</sup> Draft Memorandum from Tender Evaluation Committee to Subject 1 (17 May 2005), Section 2.3.

<sup>260</sup> Subject 4 interview (23 May 2007).

<sup>261</sup> Subject 4 email to Subject 1, *et al.* (29 May 2005) (attached copy of overall evaluation and draft BAFO).

<sup>262</sup> Subject 4 memorandum to Subject 2 (20 May 2005).

<sup>263</sup> *Id.*, para. 2.3.2.2.

<sup>264</sup> *Id.* and Subject 4 interview (23 May 2007).

<sup>265</sup> Subject 4 memorandum to Subject 2, para. 2.3.2 (20 May 2005).

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**2.3 Distributeurs Nationaux SA (DINASA):**

**2.3.1 Technical Evaluation:** The proposal received from DINASA, in Port-au-Prince, Haiti, does not address all the requirements of the RFP and is considered Technically Non Compliant (*Annex1*).

**2.3.2 Financial Evaluation:** The cost analysis is as follows:

**2.3.2.1 Mobilization:** The Mobilization costs were not included in the proposal, therefore no assessment is made.

**2.3.2.2 Ground Fuel:** The financial proposal is the second lowest; their grading is 38.46 out of 40 points.

**Note:** Considering the above, it is to be noted that the proposal of DINASA could reasonably be made acceptable and would be in the interest of the Organization if the company demonstrates Mobilization details at no additional cost to MINUSTAH, as stated in the technical evaluation of the TEC – *Summary of the findings (Annex 1)*.

Ground Fuel	Total Haiti	SkyLink	Dinasa
Technical Points	40.80	58.20	31.20
Price Points	40.00	12.93	38.46
Total Evaluation Points	80.80	71.13	69.66

**Recommendation:** In view of the above, it is recommended to seek Best and Final Offer (BAFO) for the Ground Fuel requirement from SkyLink, Total Haiti and Dinasa.

**Figure: Subject 4 memorandum to Subject 2 (20 May 2005)**

164. Notably, the request for mobilization details “at no additional cost” had no logical relationship to a technical evaluation. In order to be considered technically compliant, Dinasa had to submit a mobilization plan; the cost of any such plan should have been irrelevant since the only issue was whether or not it provided the missing information.<sup>266</sup>

165. The summary then recommended the Mission seek a Best and Final Offer from all three vendors for the ground fuel portion.<sup>267</sup>

<sup>266</sup> Subject 5 interview (22 May 2007).

<sup>267</sup> Subject 4 memorandum to Subject 2, para. 2.3 and Summary of Findings, p. 6, para. 2 (20 May 2005).

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**SUMMARY OF THE FINDINGS:**

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In light of the above, it is recommended splitting of the award in accordance with the provision of the RFP and as per the below summarized overall evaluation.

1. **Aviation Fuel:** The only proposal received by **Skylink Aviation Inc.** was considered excellent from the technical point of view; however the financial proposal is high-priced. Therefore, it is recommended to seek **Best and Final Offer (BAFO)**.
2. **Ground Fuel:** The overall proposals of **Skylink Aviation Inc.** and **Total Haiti** are considered acceptable. The proposal of **Dinasa** could reasonably be made acceptable if the requirements of the RFP are met at no additional cost to MINUSTAH. Therefore, and in order to obtain fair competition between proposers, it is recommended to seek **Best and Final Offer (BAFO)**, which would be in the interest of the Organization.

**Figure: Subject 4 memorandum to Subject 2 (20 May 2005)**

166. Interestingly, Subject 4l added a Financial Evaluation Annex to the memorandum, which he obtained from another procurement exercise.<sup>268</sup> The Annex claimed that proposals had only been opened for submissions that passed the minimum technical threshold.<sup>269</sup>

167. An exception obviously was being made for Dinasa. In complete contrast to the ground fuel, however, was the Mission's treatment of Total Haiti. In the same memorandum, Subject 4 eliminated Total Haiti from the procurement in the oil and lubricant portion of the contract because it was deemed non-compliant. He noted that since the technical evaluation revealed that Total Haiti was non-compliant for not addressing all the requirements in the RFP, "no commercial evaluation may take place" and another vendor should be awarded the contract.<sup>270</sup> Subject 4 later admitted that he "did it wrong."<sup>271</sup>

## G. MEETING WITH VENDORS

168. As part of the plan to issue a BAFO, Subject 6 wanted to meet with each of the vendors to discuss how they could improve their proposals.<sup>272</sup> He told Subject 3, Subject 5, Subject 4, and Subject 2 that they would meet individually with each vendor to discuss how to improve the technical aspects of the proposals.<sup>273</sup> After the meetings, the Mission would issue a BAFO.<sup>274</sup>

<sup>268</sup> Subject 4 interview (23 May 2007) (referring to page 7).

<sup>269</sup> Subject 4 memorandum to Subject 2 (20 May 2005).

<sup>270</sup> *Id.* para 4.7 and Summary of Findings, p. 6, para. 4.

<sup>271</sup> Subject 4 interview (23 May 2007).

<sup>272</sup> *Id.*

<sup>273</sup> Subject 6 email to Subject 2 (9 May 2005).

<sup>274</sup> *Id.*

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<b>Subject:</b>	Ground Fuel - The Diesel component of the Solicitation
<b>From:</b>	[REDACTED]
<b>Date:</b>	5/9/2005 4:37:02 PM
<b>To:</b>	[REDACTED]
<b>CC:</b>	[REDACTED]
<b>Message Body</b>	
<p>Gentlemen:</p> <p>I had discussed the issue with PS NY (Mr. Alex Yakovlev). As I proposed last Saturday, we can discuss individually with Dinasa, and Total, about the difficulties in the technical issue involving mobilization in their respective proposals. Thereafter issue a Request for Best and Final Offer.</p> <p>With Skylink we simply have to say that their mobilization costs are unrealistic and that they have an opportunity to re-consider in the BAFO.</p> <p>During discussion we should not be talking about pricing. The only issue to be discussed is the mobilization component as defined in the vendor's proposals.</p> <p>Regards,</p> <p>[REDACTED]</p>	

**Figure: Subject 6 email to Subject 2 (9 May 2005)**

169. All of the individuals involved met with one or both of the vendors “in order to let them know what we want.”<sup>275</sup>

170. During the meeting, Subject 6 and Subject 1 took the lead with the contractors.<sup>276</sup> With Dinasa, the Mission told the company about the BAFO and that it must include a mobilization plan, but it could not add any additional costs for this section.<sup>277</sup> Significantly, the MINUSTAH team knew it should not be discussing prices.<sup>278</sup> If Dinasa was simply missing a plan, the cost of such a plan should not have been related whatsoever to whether or not it was compliant. Dinasa may have been told to eliminate these costs as an attempt by the Mission to make sure that it would be the lowest bidder, thereby helping Dinasa with win the contract.

<sup>275</sup> Dinasa interview (24 May 2007); Subject 5 interview (22 May 2007); Total Haiti interview (22 May 2007); and Subject 5 email to Subject 3 (10 May 2005). Subject 4 initially told the Task Force that he did not meet with the vendors, but eventually admitted his participation in these meetings. Subject 4 interview (23 May 2007).

<sup>276</sup> Subject 5 interview (29 May 2007).

<sup>277</sup> Dinasa interview (24 May 2007). When later interviewed by the Task Force, Dinasa was not entirely forthcoming with Task Force. It initially denied meeting with MINUSTAH personnel before the BAFO, but eventually admitted that it had been told not to add mobilization costs to the BAFO response. Dinasa interview (24 May 2007).

<sup>278</sup> Subject 6 email to Subject 2 (9 May 2005).

171. After the meeting, Dinasa indeed improved its technical proposal. In fact, as a result of the new information, Dinasa hired a civil engineer to help the company prepare its BAFO response.<sup>279</sup> As directed, it did not include any costs for mobilization.<sup>280</sup>

172. A meeting was then held with Total Haiti. From the Mission, Subject 2, Subject 6, Subject 3 and Subject 5 were present, but it is unclear if anyone else attended.<sup>281</sup> The Mission discussed Total Haiti's mobilization plan. During this meeting, the Mission told the company that its proposal was weak in some areas and therefore needed to improve this aspect to better address the RFP.<sup>282</sup> For example, Total needed to address how it would reach difficult locations like Jeremie and Hinche.<sup>283</sup>

173. As for its pricing, however, a staff member—it is unclear whom—told Total Haiti that its prices were not a problem and implied that it did not need to lower them; Total Haiti was instructed “just keep the same price, don’t change anything.”<sup>284</sup> Total Haiti therefore believed the BAFO was simply a formality and did not lower its prices.<sup>285</sup>

## H. THE BEST AND FINAL OFFER EXERCISE

### 1. Emphasis of Mobilization Plan

174. Subject 1 provided Subject 4 with a template to draft the BAFO.<sup>286</sup> In the original template, there was no mention, highlighted or otherwise, of requiring vendors to submit a separate a mobilization plan.<sup>287</sup>

175. Subject 4 sent the draft to Subject 2 and Subject 6 for their comments.<sup>288</sup> Subject 6 added a paragraph which blatantly specified that vendors must provide a mobilization plan; he even asked Subject 4 to highlight the words so the “vendors” (Dinasa) would not miss it.<sup>289</sup> The only reason this paragraph was written was to benefit Dinasa.<sup>290</sup> It emphasized that proposers who previously did not submit a mobilization plan now must do so, but that it could not add any mobilization costs.<sup>291</sup> The BAFO also reminded vendors that **“price increases will not be accepted.”**<sup>292</sup>

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<sup>279</sup> Dinasa interview (24 May 2007).

<sup>280</sup> *Id.*

<sup>281</sup> Subject 5 interview (22 May 2007) and Total Haiti interview (22 May 2007).

<sup>282</sup> Total Haiti interview (22 May 2007).

<sup>283</sup> *Id.*

<sup>284</sup> *Id.* and Subject 5 telephone interview (29 May 2007).

<sup>285</sup> Total Haiti interview (22 May 2007).

<sup>286</sup> Subject 4 interview (23 May 2007) and Subject 4 email to Elisabeth N’Guessan (12 May 2005) with attached Best and Final Officer for RFP/4/OCI/002/ak (14 October 2004).

<sup>287</sup> Cf. Subject 4 email to Elisabeth N’Guessan (12 May 2005) with attached Best and Final Officer for RFP/4/OCI/002/ak (14 October 2004) with Best and Final Offer With regards to the Request for Proposal No. RFP/05/027/RP, para. 4.2 (24 May 2005) (BAFO).

<sup>288</sup> Subject 4 interview (23 May 2007).

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> BAFO, para. 4.2 (emphasis in the original).

<sup>292</sup> *Id.*

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4.2 Proposers, submitting prices for the Aviation A1 Jet Fuel and Ground fuel parts of this BAFO, shall also submit mobilization costs for the complete requirement **but may not increase the originally offered individual prices for Tanks, Pumps, Meter and Equipment required.**

Proposers who did not submit separately the mobilization costs in their original offer must:

- a) indicate if the offered prices for Fuel include mobilization costs, and
- b) may not submit a separate costing for mobilization which would result to price increases.

The request for BAFO's shall only allow the Proposers to lower their price, prolong warranties, give additional discount, shorten delivery time and offer other benefits to the Organization. The Proposers should note that price increases will not be accepted, other than those related to increased costs of base fuel price (eg. Platts or another industry recognized indices increases). Proposers may decline to alter the price included in the original submission and this will not render the offer unacceptable. Your offer may include any other benefits to the Organization that you may feel appropriate.

**Figure: BAFO (24 May 2005)**

176. A second important part of the BAFO was the announcement that "the original Statement of Work remains the same and unchanged."<sup>293</sup> Accordingly, all bidders were to rely on the original fuel consumptions based in the RFP. As discussed below, the Procurement Section and the Fuel Unit were aware at this stage that the fuel consumption figures had changed substantially. However, these new numbers were not included in the BAFO.

177. On 24 May 2005, Subject 4 issued the BAFO to SkyLink, Dinasa and Total Haiti.<sup>294</sup> The closing date was set for 31 May 2005, and the Tender Opening Committee was scheduled to open the bids publicly on 1 June 2005.<sup>295</sup>

## 2. Vendors' BAFO Responses

178. On 1 June 2005, the TOC opened the BAFO proposals. Mr. Brent again chaired the committee. He, along with Subject 4, and Mr. Jean Marc Koumoue, opened the three bids. Subject 4 served as a witness from the Procurement Section.<sup>296</sup>

179. After Subject 4 copied and distributed the responses, he again met with Subject 3, Subject 5 and Mr. Maisuradze for a further evaluation.<sup>297</sup> During these discussions,

<sup>293</sup> BAFO, Annex C, para. 1.2 (emphasis in the original).

<sup>294</sup> BAFO and Subject 4 email to Subject 1, *et al.* (24 May 2005).

<sup>295</sup> Subject 4 email to MINUSTAH-TOC (24 May 2005).

<sup>296</sup> BAFO/2005/MINUSTAH/001/PM Bid Opening Sheet (1 June 2005).

<sup>297</sup> Subject 4 interview (23 May 2007).

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Subject 3 informed the group that they had to change the quantities of fuel because the actual consumption figures were different from those stated in the SOW.<sup>298</sup>

180. Subject 3 and Subject 5 were in charge of analyzing the financial proposals.<sup>299</sup> After a brief review, they met again with Subject 4 and Mr. Maisuradze to compare the BAFO prices with the original prices offered.<sup>300</sup> SkyLink and Total Haiti offered the same prices as before, and had made no changes.<sup>301</sup>

181. Dinasa, however, had changed its prices.<sup>302</sup> While some unit prices were significantly lower, there was one area in which Dinasa in fact raised its prices: generator fuel for Port-au-Prince. Significantly, this was the one area in which the Mission was dramatically reducing its consumption: from over 16 million litres per year, to just over 2 million litres.<sup>303</sup> Dinasa's price increase violated the BAFO and the Procurement Manual, both of which prohibited any increase in costs. It also raises the question as to whether someone at the Mission provided the company with inside information regarding the Mission's consumption of generator fuel (discussed *infra* in paragraphs 271 *et seq.*).

182. In spite of Dinasa's violation, the evaluators did not disqualify Dinasa from the BAFO exercise. They later justified their decision on the fact that Dinasa's overall prices were lower than its original bid.<sup>304</sup>

## **IX. MANIPULATION OF THE EVALUATIONS**

### **A. THE TECHNICAL EVALUATION**

183. The Tender Evaluation Committee was set to meet formally and compose a final overall evaluation of the BAFO responses. Prior to this meeting, Subject 6 and Subject 2 told Subject 4 that they had discussed the technical evaluation with Subject 1. They wanted to see it before it was issued to make sure the "figures were okay" and he was to show them the technical evaluation before the Committee made it official.<sup>305</sup> Based on their earlier discussions where it was clear that Dinasa was "the way to go," Subject 4 inferred that they wanted to see the evaluation before it was finalized to make sure Dinasa was scored the highest.<sup>306</sup>

184. At the meeting with the other members of the Tender Evaluation Committee, Subject 4 informed the group that Subject 6 and Subject 2 wanted to review the

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> Total Haiti's Response to the BAFO (31 May 2005) and SkyLink's Response to the BAFO (31 May 2005).

<sup>302</sup> Dinasa's Response to the BAFO (31 May 2005) and Subject 4 interview (23 May 2007).

<sup>303</sup> Cf. Financial Evaluation attached to Subject 4 memorandum to Subject 2 (20 May 2005) with Financial Evaluation attached to Tender Evaluation Committee memorandum to Subject 2 (6 June 2005).

<sup>304</sup> Subject 4 interview (23 May 2007).

<sup>305</sup> Subject 4 interview (24 May 2007).

<sup>306</sup> *Id.*

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evaluation before it was completed.<sup>307</sup> The four sat down to review the new bids. For guidance, they used the earlier technical evaluation drafted in May and compared those scores with the new bids submitted.<sup>308</sup> Subject 3 and Subject 5 (according to Subject 4) took the lead on this.<sup>309</sup>

185. The Committee agreed to make sure Dinasa was scored the highest for technical compliance.<sup>310</sup> Indeed, they gave Dinasa extra points in every single category; Dinasa's score jumped from 52 points to 98 points, intentionally one point ahead of SkyLink's.<sup>311</sup> This score was completely unfair; while Dinasa certainly improved its proposal, the scoring was not done on merit but simply to make it the highest.<sup>312</sup>

186. After the meeting, Subject 4 shared the draft with Subject 1, Subject 2 and Subject 6 for their review, after which they allowed it to be officially submitted on 6 June 2005.<sup>313</sup> The report noted that all proposals remained the same "except the one presented by DINASA" which presented "a much more comprehensive Technical Proposal for Ground Fuels requirement;" the proposal "now address[ed] all of the requirements of the RFP in a very realistic manner" and "now demonstrated a complete understanding of the requirements."<sup>314</sup>

**2.3 Distributeurs Nationaux SA (DINASA):**

**2.3.1 Technical Evaluation:** The BAFO received from **Distributeurs Nationaux SA (DINASA)** in Port-au-Prince, Haiti, now addresses all of the requirements of the RFP in a very realistic manner. As per the Technical Evaluation Matrix (**Annex 1**), DINASA has now demonstrated a complete understanding of the requirements of the RFP and BAFO; they have addressed all technical difficulties and found feasible solutions. The revised ratings for each evaluation point were mostly exceptional and very good. The technical proposal is now compliant with a 98 out of a 100 grading equalling to 58.8 out of 60 Technical Evaluation points and considered the highest **Technically Compliant** of the three proposals presented.

**Figure: Tender Evaluation Committee memorandum to Subject 2 (6 June 2005)**

<sup>307</sup> *Id*

<sup>308</sup> *Id*

<sup>309</sup> *Id.*

<sup>310</sup> *Id.* and Subject 5 interview (29 May 2007) (recalled that Tender Evaluation Committee discussed the issue that Dinasa's technical score should be the highest, although he claimed he felt the score was deserved).

<sup>311</sup> Tender Evaluation Committee memorandum to Subject 1 (6 June 2005).

<sup>312</sup> Subject 4 interview (24 May 2007).

<sup>313</sup> Tender Evaluation Committee memorandum to Subject 1 (6 June 2005) and Subject 4 interview (24 May 2007).

<sup>314</sup> Tender Evaluation Committee memorandum to Subject 1, para. 2 and 2(a) (6 June 2005) (emphasis added).

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187. Although the technical scores for SkyLink and Total remained the same, Dinasa was now scored at "98 out of 100."<sup>315</sup> Dinasa was now the highest technically compliant vendor.

Provision of Ground Fuel (Diesel, Gasoline & Kerosene), to MINUSTAH in Haiti RFP 05/027/RP & BAFO/2005/MINUSTAH/001/PM									
TECHNICALLY COMPLIANT									
S/N	Evaluation Criteria	Weighting Factor	DINASA	SKYLINK	TOTAL HAITI				
1	<b>Technical Proposal</b>								
	(a) Supply Chain / Overall Plan	20.00	5.0	20.0	5.0	3.0	12.0		
	(b) Mobilization plan	10.00	5.0	10.0	5.0	3.0	6.0		
	(c) Equipment plan, Bulk Storage	10.00	5.0	10.0	5.0	4.0	8.0		
	(d) Distribution Plan & Capacity	5.00	5.0	5.0	5.0	3.0	3.0		
	(e) Operation of installations	10.00	5.0	10.0	5.0	4.0	8.0		
	(f) Strategic Fuel Reserve (SFR)	10.00	5.0	10.0	5.0	4.0	8.0		
	(g) QC & QA	5.00	4.0	4.0	4.0	3.0	3.0		
	Sub-Total	70.00	69.0	69.0	69.0	24.0	48.0		
2	<b>Corporate/Management Capability</b>								
	(a) Corporate capability	10.00	5.0	10.0	5.0	5.0	10.0		
	(b) Project Management	10.00	5.0	10.0	5.0	3.0	6.0		
	(c) Experience with Similar Projects	5.00	4.0	4.0	4.0	4.0	4.0		
	(d) Staffing Plan	5.00	5.0	4.0	4.0	4.0	0.0		
	Sub-Total	30.00	28.0	28.0	28.0	12.0	20.0		
	TOTAL Points over 100	100.00	98.00	97.00	97.00	60.00	60.00		
	Technical Evaluation Points over 60	60.00	60.00	60.00	60.00	40.80	40.80		
<b>RATING LEGEND</b>									
5	Provided, exceptional								
4	Provided, very good								
3	Provided, acceptable								
2	Provided, marginal								
1	Provided, not acceptable								
Blank	Not provided								
<b>SCORE AWARDED</b>									
1. The Total Score and Technical Evaluation Points . The Total Score is based on 100 points for ease of reference. But in order to complete the Overall Evaluation the Total Points were multiplied by 60%.									
2. Acceptability An 'across-the-board' acceptable rating of 3 for each sub-criteria will result in a total scoring of 60. Accordingly, the acceptability of an offer will be determined by achieving a Total Score of 60 equivalent to 36 Technical Evaluation Points.									
Acceptance of Evaluation									
Alexander Maisuradze									

Figure: Attached Technical Evaluation to Tender Evaluation Committee memorandum to Subject 2 (6 June 2005)

## B. THE COMMERCIAL EVALUATION

188. Although Dinasa was now scored the highest technically, its prices were still slightly higher than Total Haiti's. Dinasa reduced some of its prices, but raised them in one area (generator fuel). Under the original fuel estimates, Total Haiti had offered lower prices than Dinasa. Dinasa's total estimated expenditures were US\$14,785.788.<sup>316</sup> In contrast, Total Haiti's estimated costs, including mobilization costs, were lower, at US\$14,215.440.<sup>317</sup>

189. The original estimates were as follows:<sup>318</sup>

<sup>315</sup> Tender Evaluation Committee memorandum to Subject 1, para. 2(a)(b)(c) (6 June 2005) (emphasis added).

<sup>316</sup> This figures is derived from multiplying Dinasa's BAFO prices with the original fuel estimates, and then adding to that Dinasa's UN Managed site fee of US\$1,209,000.

<sup>317</sup> See attached Financial Evaluation to Subject 4 memorandum to Subject 2 (20 May 2005).

<sup>318</sup> Subject 4 memorandum to Subject 2 (20 May 2004) (Overall Evaluation of Proposals).

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Ground Fuel		Estimated Quantities Liters/Year
Financial Evaluation		
1	Mobilization Costs	
2	Diesel Bulk PAP	3,884,074.80
3	Diesel Bulk Outside PAP	2,013,595.80
4	Diesel Generators PAP	16,647,205.00
5	Diesel Generators Outside PAP	5,443,415.00
6	Diesel Retail PAP	2,589,383.20
7	Diesel Retail Outside PAP	1,342,397.20
8	Gasoline Bulk PAP	70,872.60
9	Gasoline Bulk Outside PAP	187,902.00
10	Gasoline Retail PAP	47,248.40
11	Gasoline Retail Outside PAP	125,268.00
12	Kerosene Retail PAP	44,530.00
13	Kerosene Retail Outside PAP	12,000.00
14		
15		

**Figure: Financial Evaluation Attached to Subject 4 memorandum to Subject 2 (20 May 2006)(original fuel estimates)**

190. At this time, the Fuel Unit had more accurate information regarding actual fuel consumption estimates, which were much lower than earlier anticipated. Subject 5 therefore prepared a new commercial analysis using the new consumption figures. He then forwarded the updated evaluation to Subject 4 on 7 June 2007.<sup>319</sup> The total consumption figures dropped from over 32 million litres per year, to just over 21.8 million litres per year.<sup>320</sup> He also drafted an initial financial analysis applying these new fuel estimates with the prices submitted by the vendors in response to the BAFO.

191. The spreadsheet indicated the following new estimates:<sup>321</sup>

<sup>319</sup> Subject 5 email to Subject 4 (7 June 2005).

<sup>320</sup> Attached “Costing Proposal” to Subject 5 email to Subject 4 (7 June 2005).

<sup>321</sup> Subject 1 email to Subject 4 (7 June 2005).

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	<b>Ground Fuel</b>	<b>Estimated Quantities Litters / Year</b>
<b>Overall Evaluation</b>		
1	Mobilization Costs	
2	Diesel Bulk PAP	3,000,000.00
3	Diesel Bulk Outside PAP	2,800,000.00
4	Diesel Generators PAP	2,500,000.00
5	Diesel Generators Outside PAP	3,000,000.00
6	Diesel Retail PAP	7,000,000.00
7	Diesel Retail Outside PAP	3,000,000.00
8	Gasoline Bulk PAP	70,000.00
9	Gasoline Bulk Outside PAP	190,000.00
10	Gasoline Retail PAP	50,000.00
11	Gasoline Retail Outside PAP	130,000.00
12	Kerosene Retail PAP	50,000.00
13	Kerosene Retail Outside PAP	12,000.00
<b>Total Estimated Expenditures per Year</b>		<b>21,802,000.00</b>
<b>Points to Price</b>		

**Figure: Attached Costing Proposal to Subject 5 email to Subject 4 (7 June 2005) (revised fuel estimates)**

192. Under Subject 5's revised estimates, Dinasa's overall costs were still higher than Total Haiti. While Dinasa had not charged for mobilization costs, it included a fee for UN Managed sites of US\$1,209,000.<sup>322</sup> Total Haiti charged US\$351,000 for mobilization costs, plus an additional US\$1,080,000 for UN Managed sites, which totalled US\$1,431,000.<sup>323</sup> However, adding Dinasa's site fee to its costs still amounted to US\$10,833,885; on the other hand, Total Haiti was priced at US\$10,809,934.<sup>324</sup>

193. When Subject 5 told Subject 3 that Dinasa was not the lowest, Subject 3 forcefully responded that he did not want to change vendors because it would be a "nightmare."<sup>325</sup>

194. At the same time, Subject 4 experienced a similar response when he raised this issue with his own supervisors in Procurement.<sup>326</sup> When Subject 4 pointed out that Dinasa was not the lowest bidder, Subject 2 commented that "we need to discuss" and

<sup>322</sup> See Dinasa BAFO Response to the BAFO, para. L (31 May 2005) and Attached Overall Financial Evaluation Chart to Tender Evaluation Committee memorandum to Subject 2 (6 June 2005).

<sup>323</sup> Total Haiti Response to the BAFO, p. 4 (31 May 2005) and Attached Overall Financial Evaluation Chart to Tender Evaluation Committee memorandum to Subject 2 (6 June 2005).

<sup>324</sup> Attached "Costing Proposal" to Subject 5 email to Subject 4 (7 June 2005). The total amounts listed above were reached by multiplying the new estimated quantities to Dinasa's new unit prices, and then adding in its UN Managed Site fee. Like, the total amount for Total Haiti was derived by multiplying the new estimates to its unit prices, then adding in both the mobilization costs as well as its UN Managed Site fee.

<sup>325</sup> Subject 5 interview (22 May 2007).

<sup>326</sup> Subject 4 interview (24 May 2007).

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called him into a meeting with Subject 6.<sup>327</sup> Subject 6 and Subject 2 instructed Subject 4 to “do whatever needs to be done to make sure Dinasa is the cheapest.”<sup>328</sup> A second meeting was later held with Subject 1 in his office, which lasted over an hour. There, they tried to figure out what to do since Dinasa was still not the lowest bidder.<sup>329</sup> They all agreed to do what they could to make Dinasa the cheapest and have Dinasa win the contract.<sup>330</sup> After the meeting, Subject 1 told Subject 4, they had “to help Subject 3 on this issue.”<sup>331</sup>

195. Subject 6 then called a meeting with the Fuel Unit.<sup>332</sup> By this point, it was clear that Subject 1, Subject 6 and Subject 3 were all aware that Total Haiti was the least expensive vendor under the revised estimates.<sup>333</sup>

196. At the meeting, Subject 4 explained that Procurement could nonetheless recommend Dinasa for the award because it now had the highest technical score, and its prices were close enough that it would meet the “best value for money” standard.<sup>334</sup> Subject 6, however, did not want to take any chances of Dinasa losing the award. He said they had to make a “solid case” for selecting Dinasa.<sup>335</sup> In order for make sure Dinasa won, Subject 6 added, they had to make sure that Dinasa offered the lowest prices.<sup>336</sup>

197. Since the prices could not be changed, they came up with alternative solution. Subject 3 suggested that since Dinasa had better prices for bulk fuel, they could increase the Mission’s consumption of fuel in this area.<sup>337</sup> By changing the fuel estimate calculations, Dinasa could become the lowest bidder.<sup>338</sup>

198. Subject 3 subsequently sat down with Subject 5 and together they adjusted the fuel estimate figures until Dinasa became the overall cheapest supplier.<sup>339</sup> They then came up with new fuel estimates for the BAFO evaluation:

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<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> Subject 5 interview (22 May 2007).

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

<sup>336</sup> *Id.* When asked about the new BAFO evaluation estimates, Subject 6 said Subject 4 had been instructed by Subject 1, Subject 2, and possibly himself to use numbers which differed from the original RFP.

Subject 6 interview (18 May 2007).

<sup>337</sup> Subject 5 interview (22 May 2007).

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

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	<b>Ground Fuel</b>	<b>Estimated Quantities Liters / Year</b>
<b>Overall Evaluation</b>		
1	Mobilization Costs	
2	UN Managed Sites	
3	Diesel Bulk PAP	6,850,000.00
4	Diesel Bulk Outside PAP	3,900,000.00
5	Diesel Generators PAP	2,200,000.00
6	Diesel Generators Outside PAP	2,000,000.00
7	Diesel Retail PAP	3,250,000.00
8	Diesel Retail Outside PAP	2,000,000.00
9	Gasoline Bulk PAP	70,000.00
10	Gasoline Bulk Outside PAP	190,000.00
11	Gasoline Retail PAP	50,000.00
12	Gasoline Retail Outside PAP	130,000.00
13	Kerosene Retail PAP	50,000.00
14	Kerosene Retail Outside PAP	12,000.00
	<b>Total Estimated Expenditures First Year</b>	<b>20,702,000.00</b>
	<b>Total Estimated Expenditures for 3 Years</b>	
	<b>Points to Price</b>	

**Figure: Tender Evaluation Committee memorandum to Subject 2 (6 June 2005) (fuel estimates used for BAFO evaluation)**

199. Under the new fuel estimates, now and only now was Dinasa lower than Total Haiti: Dinasa's total cost was US\$10,148,320.01 whereas Total Haiti's total cost at US\$10,324,609 (\$176,289 difference per year).<sup>340</sup>

200. Subject 5 then informed Subject 4 that he had the new numbers.<sup>341</sup> Subject 4 collected the newly revised commercial analysis and brought the evaluation to Subject 2 and Subject 6.<sup>342</sup> They reviewed the evaluation and agreed it was fine.<sup>343</sup> Dinasa was now the lowest priced and highest technically scored vendor.<sup>344</sup>

201. Since the contract had not yet been approved by the Committees on Contracts, no official award had been given. Nonetheless, on 10 June 2005, Subject 3 contacted Mr. Ronald Jean, the General Director of Dinasa. He told him that "we hope that DINASA is the successful candidate for the long-term contract."<sup>345</sup>

<sup>340</sup> Tender Evaluation Committee memorandum to Subject 2 (6 June 2005) with attached Overall Financial Evaluation Chart.

<sup>341</sup> Subject 4 interview (24 May 2007).

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> Subject 3 email to Ronald Jean (10 June 2005).

# OIOS PROCUREMENT TASK FORCE



## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

STRICTLY CONFIDENTIAL

**Subject:** Re: Fwd: Fw: JEREMIE FUEL SUPPLY  
**From:** [REDACTED]  
**Date:** 6/10/2005 3:20:16 PM  
**To:** Ronald Jean  
<ronaldj18@yahoo.com>@UN-MAILHUB@UNHQ-DPKO@UNITED  
NATIONS LOGISTICS BASE  
**CC:** "Carl Boisson" <cboisson2000@yahoo.com>; keke Belizaire  
<keke83@hotmail.com>; [REDACTED]; Michel  
Guerrier <michelguerrier@yahoo.com>  
**BCC:** [REDACTED]

### Message Body

Ronald,

We have 2 small tankers awaiting shipment (approx 20,000 litres) on a UN chartered barge which should have left last weekend but still has not. This diesel is in addition to any diesel supplied via DINASA. These tankers will remain in Jeremie to act as storage. We have additional storage of 20,000 litre there we need to fill.

We are required to build up 90 Days of Supply for all MINUSTAH elements in Jeremie - this will equate to some 90,000 litres. We are deploying additional bladders to accommodate this (hopefully next week).

In the long term we hope that DINASA is the successful candidate for the long-term contract and the first task will be to build a 60,000 litre vehicle point facility for diesel at the Uruguayan camp in Jeremie.

The 2,000 litres we sent by air will run out on Sunday. Tomorrow we are having to send another 2,000 litres by air.

Kind regards,

Figure: Subject 3 email to Ronald Jean (10 June 2005)

## C. THE COVER-UP

202. Subject 4 drafted the final overall evaluation on behalf of the Tender Evaluation Committee. Although he dated it 6 June 2007, it was not in fact drafted until after he received the rigged commercial evaluation.<sup>346</sup> He, and the other Tender Committee members, signed the official overall evaluation and sent it to Subject 2.<sup>347</sup> In sum, the

<sup>346</sup> Subject 5 interview (22 May 2005); Subject 4 interview (24 May 2007); and Subject 5 email to Subject 4 (8 June 2005) (with attached overall evaluation which was dated 6 June 2005).

<sup>347</sup> Tender Evaluation Committee for RFP/05/027/RP memorandum to Subject 2 (dated 6 June 2005).

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Committee concluded that Dinasa scored the highest technically—98 out of 100 points—and with its new prices, Dinasa was now “the lowest of the three proposals” being “**1% lower** than Total Haiti.”<sup>348</sup> Thus, the Committee recommended that the ground fuel contract be awarded to Dinasa for a NTE amount of US \$10,148,320.01, plus two optional one-year periods, for a total NTE of US\$30,859,716.65.<sup>349</sup>

203. Subject 2, in order to protect himself and Procurement, asked Subject 3 to “send [him] something” for the file.<sup>350</sup> Subject 2 sent Subject 3 a request that the Fuel Unit determine whether Dinasa or Total Haiti would perform better in light of the fact that the two companies now were competitively placed.<sup>351</sup> He deliberately misdated the document to read as 6 June 2005.<sup>352</sup>

204. Subject 3 responded and sent a memorandum recommending Dinasa for the award based. He claimed that Dinasa was “better placed in the market to support MINUSTAH’s current and expanding requirements.”<sup>353</sup> Subject 3 also misdated his memorandum. Upon receipt, Subject 2 told Subject 4 to place both documents in Procurement’s file.<sup>354</sup>

## **D. COMMITTEES ON CONTRACTS**

205. Procurement’s presentation to both the LCC and HCC contained a series of misrepresentations in order to conceal the scheme.

### **1. Procurement Presentations**

206. Subject 4 began to draft Procurement’s presentation for the Local and Headquarters Committees on Contracts, but Subject 6 soon took charge as he had with other presentations because of his ability to get cases through the Committees.<sup>355</sup> After Subject 6 drafted the final version, Subject 2 reviewed the presentation.<sup>356</sup>

207. The presentation recommended Dinasa be awarded the contract for ground fuel pursuant to Financial Rule 105.15(b), the Qualified Most Responsive Proposal (lowest cost).<sup>357</sup> Procurement reiterated many of the earlier evaluations. It explained that the initial evaluation found that Dinasa did “not address all of the requirements of the RFP,” and failed to present a distribution and mobilization plan which reflected a lack of

<sup>348</sup> *Id.*, para. 2.3.

<sup>349</sup> *Id.*

<sup>350</sup> Subject 4 interview (24 May 2007).

<sup>351</sup> Subject 2 memorandum to Subject 3 (7 June 2005).

<sup>352</sup> Subject 4 interview (24 May 2007).

<sup>353</sup> Subject 3 and Subject 5 memorandum to Subject 2 (7 June 2005).

<sup>354</sup> Subject 4 interview (24 May 2007).

<sup>355</sup> *Id.* Staff Member 10 interview (21 May 2007) (Subject 6 generally took over other buyers’ files and prepared the Committee presentations because of his experience with it.). Subject 6 admitted to reviewing it for accuracy and approving it. Subject 6 interview (18 May 2007).

<sup>356</sup> Subject 4 interview (24 May 2007).

<sup>357</sup> Subject 2 memorandum to Chairman of Headquarters Committee on Contracts for LCC Case No. MIN/2005/92 (dated 8 June 2005) (HCC Presentation).

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understanding of the Mission's requirements.<sup>358</sup> Although Dinasa was technically non-compliant, the Tender Evaluation Committee nevertheless "opined that the proposal from Dinasa could reasonably be made acceptable if the company demonstrates mobilization details at no additional cost to MINUSTAH, as it did not present the mobilization plan in their proposal."<sup>359</sup> As a result, the Mission decided to hold a BAFO. After the BAFO, Dinasa submitted a mobilization plan at no additional cost and was found to be the lowest provider. Consequently, Procurement and Supply Sections reached "a joint conclusion" that Dinasa should be awarded the contract.<sup>360</sup>

208. The presentation did not explain that the technical team unconditionally found Dinasa to be non-compliant and hence, disqualified. It also did not disclose the fact that they held the BAFO solely to enable Dinasa to correct its material omission. More importantly, the presentation did not reveal that both the technical and commercial evaluations were rigged in order to make sure Dinasa won the award.

## **2. Material Misrepresentations to the LCC**

209. On 15 June 2005, Procurement made its presentation for the award to Dinasa to the Local Committee on Contracts.<sup>361</sup> Subject 2 and Subject 6 presented the case.<sup>362</sup>

210. At the meeting, the LCC asked whether it was appropriate to invite a technically non-compliant bidder to participate in a BAFO. Procurement asserted that it indeed was permitted because clarifications, including those involving technical issues, could be an element of a BAFO.<sup>363</sup> Dinasa initially was deemed non-compliant due to "its failure to submit the information on this infrastructure and mobilization plan, however, it was a known factor that DINASA's infrastructure in Haiti is superior to that of its competitors. Therefore it was deemed to be in the best interest of the Organization to include DINASA in the list for BAFO."<sup>364</sup>

211. Notably, Procurement did not explain that the technical evaluators considered Dinasa's lack of a mobilization plan to be a material omission, not merely a minor deficiency.<sup>365</sup>

212. The LCC then asked why Procurement simply did not request a clarification instead of issuing a BAFO. In response, Procurement opaquely answered that a "request for clarifications as well as clarifications from the Mission were included in the BAFO

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<sup>358</sup> Technical Evaluation Committee memorandum to Tender Evaluation Committee (18 April 2005) and Tender Evaluation Committee memorandum to Subject 1 (3 May 2005).

<sup>359</sup> HCC Presentation, p. 3.

<sup>360</sup> HCC Presentation, p. 4.

<sup>361</sup> LCC Meeting No. MIN/34/2005 (15 June 2005) (LCC Minutes).

<sup>362</sup> Subject 6 interview (18 May 2007).

<sup>363</sup> LCC Minutes, para. 89.

<sup>364</sup> *Id.*

<sup>365</sup> Subject 5 interview (22 May 2007).

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document as it was discovered that many bidders had difficulty understanding the requirement of the RFP.”<sup>366</sup>

213. Procurement did not explain that it had requested clarifications from SkyLink and Total Haiti, but not Dinasa because Dinasa had omitted too much critical information for it to be considered responsive.

214. Procurement then claimed that there were three reasons for issuing the BAFO. Specifically, it said SkyLink’s prices were excessive, DINASA was missing information, and the Mission hoped Total Haiti would lower its prices.<sup>367</sup> It did not elaborate that the sole purpose was to give Dinasa a second chance to become compliant.

215. As for pricing, Procurement confirmed that vendors had been told not to increase their prices, and in fact “none of the bidders reduced their initial price proposals.”<sup>368</sup> Procurement did not disclose the fact that the Mission told Total Haiti not to change its prices, that Dinasa in fact changed its prices, and that the fuel consumption figures were manipulated so Dinasa’s prices became the lowest.

216. Based upon the presentation, the LCC recommended that the ground fuel contract be awarded to Dinasa for one year, with option to extend for two additional one-year periods, with the estimated value to be NTE \$30,859,716.65.<sup>369</sup>

### **3. Material Misrepresentations to the HCC**

217. On 24 June 2005, MINUSTAH submitted the presentation and a copy of the LCC Meeting Minutes to Mr. Saunders, Chief of UNPS, for review and presentation to the HCC.<sup>370</sup>

218. After the HCC received the presentation, it had numerous questions regarding the procurement and award, which it sent to the Mission.<sup>371</sup> First, the HCC queried as to whether it was appropriate for a vendor’s financial proposal to be opened if it did not meet the minimum technical threshold.<sup>372</sup> Second, it asked whether it was proper procedure to invite a technically non-compliant vendor to participate in a BAFO, particularly one who “lacked an understanding of the RFP.”<sup>373</sup> Third, UNPS asked the Mission to reconcile its statement that no vendor lowered prices with the fact that Dinasa suddenly became the lowest bidder after the BAFO.<sup>374</sup> Fourth, it inquired into the change in fuel estimates, and whether the BAFO evaluation figures were different from the initial

<sup>366</sup> LCC Minutes, para. 89-90.

<sup>367</sup> *Id.*, para. 91.

<sup>368</sup> *Id.*, para. 94.

<sup>369</sup> *Id.*, para. 99.

<sup>370</sup> Balakrishnan Amirthalingam facsimile to Christian Saunders (24 June 2005). At that time, the HCC was comprised of Frank Eppert (Chair), Jun Hee Lee (Member, OLA), Seou Soumahoro (Alt. Member, DESA), and Joao Marcedo (Secretary, HCC).

<sup>371</sup> Staff Member 11 interview (21 March 2007).

<sup>372</sup> Joao Marcedo (HCC Secretary) email to Diana Mills-Aryee, *et al.*, para. 1 (15 July 2005).

<sup>373</sup> *Id.*, para. 2, 6.

<sup>374</sup> *Id.*, para. 5.

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commercial evaluation.<sup>375</sup> Finally, it asked whether the two originally technically qualified vendors were in fact treated fairly in the procurement.<sup>376</sup>

***a. Opening the Financial Proposals***

219. The Procurement Section and Fuel Unit at the Mission worked collectively on the answers for the HCC. In its response, the Mission confirmed that both the financial and technical evaluations were opened at the same time on the date of the bid opening.<sup>377</sup> Procurement then referred to a December 2004 correspondence from the then-Chief of Procurement Services in UNHQ, who had authorized such a procedure.<sup>378</sup>

220. Notably, the Mission did not disclose the fact that Procurement intentionally turned over the financial bids to the technical evaluators before they completed their evaluation.

***b. Reason for BAFO***

221. The Mission claimed it invited Dinasa to participate in the BAFO “to ensure fair competition” and because it was “in the UN’s interest” to do so.<sup>379</sup> The Mission opined that the “purpose of the BAFO [was] to give a chance to qualified vendors to strengthen identified weaknesses in their original proposal.”<sup>380</sup> Dinasa has been a qualified contractor in the past, and its BAFO proposal demonstrated that they understood the RFP and BAFO requirements.<sup>381</sup>

222. Similarly, the Mission asserted that SkyLink and Total Haiti were indeed treated fairly because all vendors received the same documents for the RFP and the BAFO. Moreover, all “vendors who submitted proposals were invited to submit a BAFO” and thus “had the chance to reconsider their offer.”<sup>382</sup>

***c. Price/Fuel Consumption Changes***

223. Finally, the Mission asserted—incorrectly—that “[u]nit Prices did not change.” Rather, the Mission changed the estimated quantities of fuel in its analysis.<sup>383</sup> When the Tender Evaluation Committee evaluated the BAFO responses, it used the figure of 20.4 million litres per year in consumption, rather than the originally stated 32.4 million litres found in the SOW and RFP.

224. Subject 4 explained that when the SOW was prepared in September 2004, the troops were not fully deployed. The estimated quantities were thus based on a DPKO

<sup>375</sup> Natalia Nedel email to Subject 4 (15 July 2005).

<sup>376</sup> Joao Marcedo (HCC Secretary) email to Diana Mills-Aryee, *et al.*, para. 4 (15 July 2005).

<sup>377</sup> Subject 5 email to Ellen Aamodt and Subject 4, para. 1 (18 July 2005).

<sup>378</sup> *Id.*

<sup>379</sup> *Id.*, para. 2.

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*, para. 4.

<sup>383</sup> *Id.*, para. 5.

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tool, assuming the total number of troops would be deployed. Under this theory, the Mission would have needed approximately 32 million litres of fuel per year. However, the Mission realized in June 2005, after more troops had been deployed, that the originally estimated quantities were “excessive” and thus reduced the estimation to approximately 20 million litres per year.<sup>384</sup>

#### 4. HCC Meeting

225. On 19 July 2005, the HCC heard the presentation regarding MINUSTAH’s procurement of fuel.<sup>385</sup> Ms. Natalia Nedel from UNPS attended the meeting. Subject 6, who was in New York at the time, was asked to attend as a representative of MINUSTAH.<sup>386</sup>

226. At the meeting, Ms. Nedel and Subject 6 answered more questions posed by the HCC. They admitted that it was not the “correct procedure” for technical and financials to be opened by TOC at same time. However, they felt there was no problem here because Subject 6 “confirmed that pricing information was not revealed when the proposals were opened” and that the technical evaluation was conducted independent of financial evaluation.<sup>387</sup> Notably, he misrepresented this fact to the HCC. Subject 6 knew Subject 4 had intentionally turned over the financial bids to Subject 3 before his team completed a technical evaluation.

227. As for the BAFO, they claimed that the purpose of the BAFO was to give all vendors a chance “to reduce their prices.”<sup>388</sup> When asked whether it was appropriate to invite a non-compliant vendor to participate in a BAFO, Subject 6 replied that it not routinely done, but here it was done on an “exceptional” basis. When the HCC asked what was so “exceptional” in this case, he had no answer.<sup>389</sup>

228. With respect to pricing, Total Haiti originally had been the lowest priced supplier. After BAFO, however, Dinasa submitted the lowest prices. Subject 6 confirmed that Dinasa had changed its pricing based on the BAFO.<sup>390</sup>

229. As for fuel estimates, they told the HCC that the fuel estimates used to evaluate the BAFO responses were based on revised quantities. These new quantities combined with Dinasa’s BAFO prices led to “a change in the ranking with Dinasa emerging as the lowest proposer.”<sup>391</sup> They did not disclose the fact that the numbers used for the BAFO evaluation had been manipulated to favour Dinasa.

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<sup>384</sup> Subject 4 email to Natalia Nedel (15 July 2005).

<sup>385</sup> HCC Meeting Minutes HCC/05/45 (19 July 2005) (HCC Minutes).

<sup>386</sup> Staff Member 11 interview (21 March 2007).

<sup>387</sup> HCC Minutes, para. 17.04.

<sup>388</sup> *Id.*, para. 17.07.

<sup>389</sup> *Id.*, para. 17.11.

<sup>390</sup> *Id.*, para. 17.08.

<sup>391</sup> *Id.*, para. 17.03.

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## 5. HCC Findings

230. After extensive review, the HCC found that the Mission violated several sections of the Procurement Manual during this procurement.

231. First, the proposed fuel contract was valued at approximately NTE US\$30 million, and thus exceeded the Mission's financial threshold under its Local Procurement Authority (LPA).<sup>392</sup> Consequently, the Mission should have requested an LPA from UNHQ before it engaged in any procurement exercise.<sup>393</sup> Subject 6 conceded this had not been done and UNPS never granted MINUSTAH the appropriate authority for the exercise.<sup>394</sup>

232. Second, the technical and financial proposals were opened simultaneously by the Tender Opening Committee, in violation of the Procurement Manual ("irrespective of compliance").<sup>395</sup>

233. Third, the HCC found that the procurement process was not conducted in a fair manner because the Mission should never have invited a non-compliant vendor to participate in the BAFO. By doing so, the Mission gave Dinasa a "second bite at the apple."<sup>396</sup> The Committee noted that Dinasa did not simply fail to submit a distribution plan, but that the initial evaluation found other deficiencies as well. The earlier technical evaluation graded Dinasa low due to logistical problems in delivering fuel to areas outside Port-au-Prince, discrepancies in reported versus actual deliveries of bulk fuel, and its failure to implement an Electronic Data Capturing System.<sup>397</sup>

234. The Committee did not accept the Mission's explanation for the BAFO, an exercise it found to be "unnecessary." It concluded that the BAFO was "likely issued with a view to leaving the present contracting arrangement in place."<sup>398</sup>

235. In light of the deficiencies in the procurement process, and UNPS' "serious reservations about how the procurement had been conducted," the Committee rejected the contract with Dinasa.<sup>399</sup> Instead, it recommended that the contract be awarded to Total Haiti, the vendor which submitted the lowest, pre-BAFO, qualified submission.<sup>400</sup>

236. When Assistant Secretary-General for Central Support Services Andrew Toh adopted the HCC minutes (and the award to Total Haiti), he directed the Chair of the HCC to draft a letter to the CPO of MINUSTAH. The letter was to advise the CPO of the HCC's findings, notify him that he was to ensure that the Mission complied with the

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<sup>392</sup> Staff Member 11 interview (21 March 2007).

<sup>393</sup> *Id.*

<sup>394</sup> *Id.* and HCC Minutes, para. 17.05.

<sup>395</sup> HCC Minutes, para. 17.02 and 17.04 and Staff Member 11 interview (21 March 2007). See, e.g., Procurement Manual Sections 10.8.4 and 11.6.6(5).

<sup>396</sup> HCC Minutes para. 17.12.

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*, para. 17.13.

<sup>399</sup> *Id.*, para. 17.04, 17.13.

<sup>400</sup> *Id.*

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procurement rules, and instructed him that no vendor should be given preferential treatment.<sup>401</sup>

## E. POST-AWARD COMPLICATIONS

237. After the announcement was made that Total Haiti won the award, Subject 3 contacted Dinasa. He wrote “[t]o say that I have a heavy heart is an understatement. To have come so far and to have to commence the process with another company all over again is very difficult. All I can say is thank [] you for all the wonderful work you have done and all the support you have given us over the past months.”<sup>402</sup>

<b>Subject:</b>	THANK YOU!
<b>From:</b>	[REDACTED]
<b>Date:</b>	8/25/2005 11:39:51 AM
<b>To:</b>	#-28ALL FUEL UNIT STAFF; cboisson2000@hotmail.com; gsaint_dic@yahoo.com; krlitoantoinet@hotmail.com; ronaldj18@yahoo.com

**Message Body**

Dear Ronald, Gael, Carl,

I have just arrived back after a lengthy time away on family matters to discover that the HCC in New York overturned the LCC recommendation for DINASA to be awarded the Long term ground fuels contract.

To say that I have a heavy heart is an understatement. To have come so far and to have to commence the process with another company all over again is very difficult. All I can say is thankyou for all the wonderful work you have done and all the support you have given us over the past months. I know that we will continue to work well and professionally together in the coming weeks.

It has been a tremendous experience working with you all and you have my assurance that I will do everything in my power to ensure that payments are made promptly and you get the support you need from our end over the final months.

Yours sincerely,

[REDACTED]

**Figure: Subject 3 email to #28 All Fuel Staff (25 August 2005)**

238. Dinasa, however, did not simply acquiesce to losing the contract. On the contrary, on 27 July 2005, Dinasa met with two staff members of OIOS to complain about the procurement.<sup>403</sup> Dinasa told OIOS that it did not win even though its offer was

<sup>401</sup> Staff Member 11 interview (21 March 2007).

<sup>402</sup> Subject 3 email to Carl Boisson, *et al.* (25 August 2005).

<sup>403</sup> Carl Boisson interview (27 July 2005).

“much more realistic for MINUSTAH.”<sup>404</sup> After the meeting, Dinasa filed a formal grievance with the Mission.<sup>405</sup> Dinasa complained that Total Haiti “won the Ground Fuel Contract for MINUSTAH, despite having a higher price than Dinasa.”<sup>406</sup>

239. In response, the Mission informed Dinasa that the contract was awarded on the Mission’s assessment of best value for money and was in compliance with the Financial Rules and Regulations, as well as established procurement procedures.<sup>407</sup>

240. After Total Haiti was awarded the contract, the Mission entered into prolonged contractual negotiations with the company.<sup>408</sup> One of the hotly contested issues was the change in fuel consumption figures—an issue both the Fuel Unit and Procurement knew about well before the award. The amount of the award, 20.7 million litres, was far below the estimated fuel consumption from the Request for Proposal, 32.4 million litres.<sup>409</sup> Total Haiti viewed the 30% decrease as significant and insisted that its original prices were tied to the original volumes.<sup>410</sup>

241. Despite extensive meetings and lengthy negotiations, MINSTAH never reached a final agreement with Total Haiti. As a result, since July 2004, the UN has been purchasing ground fuel from Dinasa without a long-term written contract in place.

## X. THE TASK FORCE EVALUATION

### A. FAVOURITISM TO DINASA

#### 1. BAFO Exercise

242. The BAFO in this case was not conducted in a fair and transparent manner, but rather as a means to award Dinasa the contract.

243. After the initial evaluations, the Mission had two technically compliant vendors from which to choose. Dinasa, as a non-compliant vendor, should not have been invited to the BAFO.<sup>411</sup> In light of the vast price difference between SkyLink and Total Haiti, a BAFO was never even necessary. As the HCC later concluded, Total Haiti should have been awarded the contract after the initial technical and commercial evaluations. The only reason a BAFO was held was to keep Dinasa in the procurement exercise.

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<sup>404</sup> *Id.*

<sup>405</sup> Carl-Auguste Boisson letter to Willi Scholl (11 August 2005) and Carl Boisson interview (29 March 2006).

<sup>406</sup> Carl-Auguste Boisson letter to Willi Scholl (11 August 2005).

<sup>407</sup> Willi Scholl letter to Carl Boisson (16 August 2005).

<sup>408</sup> Subject 1 interview (7 March 2007).

<sup>409</sup> Minutes of Meeting between MINUSTAH and Total Haiti, pp. 1-2 (14 October 2005).

<sup>410</sup> Total Haiti interview (22 May 2007) and LCC Meeting Minutes, Case No. MIN/014/FY2006, para. 23 (27 October 2005).

<sup>411</sup> Staff Member 11 interview (21 March 2007).

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244. Subject 1 and Subject 6 argued that Dinasa's failure to provide a mobilization plan was not so substantial that it should have been considered non-compliant. Subject 1 reasoned that Dinasa, as incumbent, may have believed it did not need to provide this information because the Mission already had it.<sup>412</sup> He believed Dinasa should have been asked to clarify this aspect of its proposal.<sup>413</sup> Likewise, Subject 6 claimed that Dinasa should not have been characterized as non-compliant because the Procurement Manual allows for opportunities to correct a deficiency.<sup>414</sup>

245. It was clear that Dinasa's proposal did not merely need to be clarified; it was missing important information and did not respond to an essential part of the RFP.<sup>415</sup> Even Subject 1 conceded that Dinasa may not have been asked for clarifications because it would be "too huge" and essentially it would be giving Dinasa a second shot to respond.<sup>416</sup> For this reason, the Technical Evaluation Committee consistently ranked it "non-compliant" and did not believe it was appropriate to request a clarification from the company.<sup>417</sup> Once Dinasa was deemed non-compliant, its financial bid should not have been opened and it should have been disqualified from the procurement. The Procurement Manual indeed permits "competitive negotiations with a sufficient number of qualified proposers that have a reasonable chance for award;" it also allows Procurement to point out the "deficiencies in the proposals" and vendors to "revise" their proposals.<sup>418</sup> The purpose of BAFO, however is to "**ensure effective competition.**"<sup>419</sup>

246. Here, Dinasa did not have a "reasonable chance for award," nor was the lack of a mobilization plan a mere "deficiency." More importantly, the Fuel Unit and Procurement did not conduct the BAFO to ensure effective competition. They held it only so Dinasa could have a second opportunity to remain in the procurement exercise and continue as the Mission's supplier.<sup>420</sup>

247. Despite Subject 1's claim that the BAFO was "well-intentioned," the Task Force finds that a procurement exercise which failed to be undertaken fairly, and which was intentionally conducted to favour one vendor is never in the UN's best interest.<sup>421</sup> As a

<sup>412</sup> Subject 1 interview (7 March 2007) and Subject 6 interview (14 May 2007).

<sup>413</sup> Subject 1 interview (7 March 207).

<sup>414</sup> Subject 6 interview (28 March 2006).

<sup>415</sup> Staff Member 11 interview (21 March 2007).

<sup>416</sup> Subject 1 interview (7 March 2007).

<sup>417</sup> Dinasa's omission "not only represents a lack of understanding of MINUSTAH's requirements, but affects directly the installation of the Contractor Managed Sites which are a substantive requirement of the RFP." Technical Evaluation Committee memorandum to Tender Evaluation Committee for RFP/05/027/PM, para. 2(e) (18 April 2005).

<sup>418</sup> Procurement Manual Section 11.6.8(1)(2).

<sup>419</sup> Procurement Manual Section 11.6.8(1). The purpose of BAFO is to get the best deal for the UN. Staff Member 11 interview (21 March 2007).

<sup>420</sup> Staff Member 11 interview (21 March 2007) (BAFO conducted to continue Dinasa's contract) and HCC Meeting Minutes, 17.13 (BAFO "likely issued with a view to leaving the present contracting arrangement in place").

<sup>421</sup> Subject 1 interview (30 March 2006). See also, Subject 4 memorandum to Subject 1 para. 2, p. 6 (20 May 2005) and Subject 4 email to Balakrishnan Amirthalingam (18 July 2005).

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result, the procurement lacked fairness, integrity and transparency and therefore was not conducted in the best interests of the UN.<sup>422</sup>

## 2. Manipulation of the Technical and Commercial Evaluations

248. The Procurement Section and Fuel Unit together colluded to manipulate both the technical and commercial evaluations for the BAFO responses in order to make sure Dinaso won the contract. Senior management was involved and in fact directed or at least approved of the bid-rigging. They included the CAS, Subject 1, the OIC of Procurement, Subject 2, a team leader in Procurement, Subject 6, and the Chief of the Fuel Unit, Subject 3.

249. It began with the technical evaluation, which senior procurement officials wanted to review before it was issued to make sure the “figures were okay.”<sup>423</sup> Since Subject 4 and Subject 5 had been told Dinaso was to win the contract, they knew Dinaso’s technical score had to be the highest. Accordingly, when the Tender Evaluation Committee assessed Dinaso’s response to the BAFO, they increased Dinaso’s score for each category, and made sure it was higher than SkyLink’s. This was no small feat: SkyLink had previously been ranked at 97 points, so Dinaso’s score had to jump from 52 points to 98 points. The rigged evaluation was then presented to senior managers prior to its release for their approval.

250. Rigging the technical evaluation, however, was not enough. Since Dinaso’s prices were still higher than Total Haiti’s, senior staff members directed and instructed their employees, Subject 4 and Subject 5, to “do whatever needs to be done to make sure Dinaso is the highest in score.”<sup>424</sup> Specifically, Subject 4 and Subject 5 had to make a “solid case” for selecting Dinaso so Dinaso’s prices had to be lower.<sup>425</sup>

251. Consequently, Subject 3 sat down with Subject 5 and helped him adjust the fuel quantities in a way that favoured Dinaso. Together, they increased the requirement for bulk fuel since Dinaso offered lower prices in that category. By manipulating the fuel estimates, they were finally able to make Dinaso the lowest priced vendor. Once again, the new figures were presented to senior staff members for their approval.

252. As Subject 4 admitted, “[w]e favoured Dinaso, that’s true.”<sup>426</sup> Even Subject 1, who did not admit to any manipulation, nonetheless conceded that Dinaso should have been given “a little bit” of a second shot to correct its proposal despite the deficiencies.<sup>427</sup> He justified this by claiming that since Dinaso was the incumbent, if the UN disqualified the company for a failure to provide a mobilization plan, Dinaso would have complained.<sup>428</sup>

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<sup>422</sup> Staff Member 11 interview (21 March 2007).

<sup>423</sup> Subject 4 interview (24 May 2007).

<sup>424</sup> *Id.*

<sup>425</sup> Subject 5 interview (22 May 2007).

<sup>426</sup> Subject 4 interview (23 May 2007).

<sup>427</sup> Subject 1 interview (7 March 2007).

<sup>428</sup> *Id.*

### 3. Possible Release of Confidential Information

253. The Task Force has uncovered evidence that suggests Dinasa may have been provided confidential information during the procurement exercise. First, the initial technical evaluation stated that Dinasa would be technically compliant if it included a mobilization plan “at no additional cost.” Since a technical assessment is completely unrelated to costs or pricing, this statement is highly suspect. The technical evaluation should have merely requested that a plan be submitted, irrespective of its cost.

254. Dinasa confirmed that the Mission told the company to submit a mobilization plan in response to the BAFO, and it had to do so without any costs.<sup>429</sup> At this time, a commercial evaluation had already been completed and everyone was aware that Dinasa was not the lowest bidder. Consequently, the fact that they told Dinasa to submit a plan at no cost may have been an attempt to signal to Dinasa to keep its prices down in order to bid lower Total Haiti.

255. A second troubling aspect was that Dinasa increased pricing for one specific area.<sup>430</sup> While it lowered certain unit prices, Dinasa raised its price in one area: generator fuel for Port-au-Prince. Significantly, this was the category of fuel that the Mission dramatically reduced its consumption, from over 16 million litres per year, to just over 2 million litres.<sup>431</sup> Subject 6 later told the Task Force that other vendors decreased prices “because the revised quantities changed,” but he did not elaborate as to whether this meant Dinasa learned of the revised quantities.<sup>432</sup>

256. Dinasa’s price increase raises the question as to whether someone at the Mission provided the company with confidential information. Dinasa denied having any inside information regarding the substantial reduction in generator fuel. Instead, it claimed that any increase in prices was a miscalculation by the computer; that the Excel spreadsheet rounded up numbers after a certain number of decimal points and as a result, certain prices increased slightly.<sup>433</sup>

257. Finally, Dinasa learned that under the final evaluation, Total Haiti was higher than Dinasa. When Dinasa met with staff members of OIOS, it complained that Dinasa did not win even though its offer was “much more realistic for MINUSTAH.”<sup>434</sup> In its formal complaint, Dinasa again referred to the fact that Total Haiti “won the Ground Fuel Contract for MINUSTAH, despite having a higher price than Dinasa.”<sup>435</sup> When later questioned about this, Mr. Carl Boisson, General Manager of Dinasa, denied obtaining

<sup>429</sup> Dinasa interview (24 May 2007).

<sup>430</sup> Staff Member 11 interview (21 March 2007).

<sup>431</sup> Cf. Financial Evaluation attached to Subject 4 memorandum to Subject 2 (20 May 2005) with Financial Evaluation attached to Tender Evaluation Committee memorandum to Subject 2 (6 June 2005). One reason for this reduction was the procurement of a separate procurement for generator fuel, as discussed later. See *infra* paragraphs 271 *et seq.*

<sup>432</sup> Subject 6 interview (28 March 2006).

<sup>433</sup> Dinasa interview (24 May 2007).

<sup>434</sup> Carl Boisson interview (27 July 2005).

<sup>435</sup> Carl-Auguste Boisson letter to Willi Scholl, p. 1 (11 August 2005).

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this information from a UN staff member. He defended that Total Haiti told him its prices had been more expensive.<sup>436</sup>

258. Subject 4 admitted that it was obvious Dinasa had inside information because it only increased the price for that one area.<sup>437</sup> Indeed, Subject 1, Subject 2 and Subject 6 all commented to him that there had to be a leak in the Mission.<sup>438</sup>

259. Furthermore, during the procurement exercise, certain staff members appeared to have a closer than usual relationship with certain employees at Dinasa. For example, Subject 3 stated that he hoped Dinasa would win the contract.<sup>439</sup> Similarly, when he later learned that Dinasa did not win the long-term contract, he wrote “[t]o say that I have heavy heart is an understatement.”<sup>440</sup> At the same time, Subject 4 was looking into renting a house from Mr. Ronald Jean, a representative of Dinasa.<sup>441</sup>

260. The Task Force has been unable to corroborate any disclosure of confidential information. Nonetheless, in light of the way the overall procurement exercise was conducted to favour Dinasa, the Task Force has a difficult time believing this was merely coincidental.

261. Similarly, the Task Force has been unable to determine whether the favouritism shown to Dinasa was due to criminal conduct or bribery. Dinasa denied that any UN staff member ever solicited a bribe.<sup>442</sup> Since the Task Force does not have subpoena power, and only one staff member partially complied with the financial disclosure request, the Task Force is unable to reach any definitive conclusion.

## **B. PROCUREMENT VIOLATIONS**

### **1. The Tender Opening**

262. Subject 3 should not have been part of the Tender Opening Committee since he was both the requisitioner and the Chief of the Fuel Unit, responsible for leading the technical evaluation of the proposals.<sup>443</sup> His participation therefore violated Procurement Manual 10.1.1(3), which prohibits requisitioners from serving on the TOC.<sup>444</sup> The purpose of this rule is to prevent a technical evaluator from being “influenced by the pricing element.”<sup>445</sup>

<sup>436</sup> Carl Boisson interview (29 March 2006).

<sup>437</sup> Subject 4 interview (24 May 2007).

<sup>438</sup> *Id.*

<sup>439</sup> Subject 3 email to Ronald Jean, *et al.* (10 August 2005).

<sup>440</sup> Subject 3 email to #28 All Fuel Staff, *et al.*, including Dinasa (25 August 2005).

<sup>441</sup> Ronald Jean emails to Subject 4 (2 March 2005); Subject 4 email to Ronald Jean (3 March 2005); and Ronald Jean email to Subject 4 (3 March 2005).

<sup>442</sup> Carl Boisson interview (29 March 2006).

<sup>443</sup> Procurement Manual Section 10.1.1(3) and Staff Member 11 interview (21 March 2007).

<sup>444</sup> Procurement Manual Section 10.1.1 (3).

<sup>445</sup> Christian Saunders email to Task Force (4 June 2007).

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263. Subject 4 knew Subject 3 was the requisitioner and admitted that he “should never have been there.”<sup>446</sup> As the Procurement representative, Subject 4 therefore should have requested that someone else participate in the bid opening.

264. Both Subject 1 and Subject 6 would have discovered this violation after seeing Subject 3’s signature on the bid opening sheet.<sup>447</sup> Neither Subject 1 nor Subject 6 appears to have taken any steps to determine whether Subject 3 saw the pricing information, or investigated any compromise of the procurement exercise.<sup>448</sup>

265. Second, the financial proposals should not have been opened before a final technical evaluation had been completed and received. The Tender Opening Committee violated Procurement Manual Section 10.8.4 when it opened both sets of proposals at the same time absent any “exceptional circumstances.”<sup>449</sup>

266. Even if MINUSTAH was following a policy that permitted bids to be opened simultaneously, the HCC found that this practice was done irrespective of compliance. Further, Subject 1 admitted to the Task Force that the both sets of evaluations should not have been opened at the same time.<sup>450</sup>

## **2. Disclosure of Financial Proposals**

267. Subject 3 should not have requested—and Subject 4 should not have provided—the vendors’ pricing proposals prior to the completion of a technical evaluation. Accordingly to Subject 4, Subject 6 explicitly and the CPO (at the time, Subject 1) implicitly approved of his actions.<sup>451</sup> Regardless of any claim by Subject 3 that he needed this information for budgetary purposes, pricing is not supposed to be considered when performing a technical evaluation.

268. The financial proposals should not have been opened with the technical bids absent exceptional circumstances. Moreover, the financial bids especially should not have been released to the technical evaluators until a final technical evaluation had been completed and received by Procurement.<sup>452</sup> Consequently, the disclosure and approval of such disclosure violated the Procurement Manual.

269. First, these individuals violated Section 10.8.4 of the Procurement Manual because they did not take the appropriate steps “to ensure the confidentiality of the financial details” were not “shared with anyone until the receipt of the technical

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<sup>446</sup> Subject 4 interviews (30 March 2006, 23 May 2007).

<sup>447</sup> Subject 4 interview (23 May 2007).

<sup>448</sup> *Id.*

<sup>449</sup> Procurement Manual Section 10.8.4 (4) and HCC Meeting Minutes, para. 17.04.

<sup>450</sup> Subject 1 interview (7 March 2007).

<sup>451</sup> As stated earlier, Subject 4 believed Subject 2 was already serving as the OIC of Procurement at this time, but Subject 2 had not yet arrived. See *supra* paragraph 38. Since Subject 4 firmly recalled a supervisor above Subject 6 and did make a reference to Subject 1, he likely meant Subject 1 in this instance.

<sup>452</sup> Staff Member 4 interview (24 May 2007) (recalling that they discussed the prices for each of the three ground fuel vendors). See Procurement Manual Section 10.8.4 (4).

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evaluation.”<sup>453</sup> On the contrary, Procurement actually provided the technical evaluators with copies of the financial proposals.

270. They also violated Section 11.6.2(2) of the Procurement Manual because the technical assessment was not “performed without prior knowledge of cost” which expressly dictates that “[u]nder no circumstance shall any cost data furnished by the Vendors be released to the requisitioner prior to the finalization of the technical evaluation.”<sup>454</sup>

### **3. Material Change in the RFP**

271. The Fuel Unit and Procurement discovered during the bidding exercise that the fuel estimates had changed dramatically, and yet this information was not disclosed to the vendors. A reduction of fuel by 30% was a material change in the RFP.<sup>455</sup> Whenever there is a significant change in the requirements, the procurement should be re-bid.<sup>456</sup> Accordingly, the procurement likely should have been terminated and a new one commenced. At the very least, Procurement should have notified the vendors of this material change during the BAFO.<sup>457</sup>

272. When the original fuel quantities were developed in the fall of 2004, the Mission’s troop strength was not fully deployed. At that time, the troop strength was less than 50%.<sup>458</sup> However, by the time of the evaluations and subsequent BAFO in May 2005, troop strength had reached 95% and the Supply Section had been able to provide better estimates of actual consumption.<sup>459</sup> The Mission therefore needed less fuel in light of the new troop strength.<sup>460</sup> The new fuel estimates had thus changed significantly and they learned that the Fuel Unit had grossly overestimated the consumption figures in the RFP.<sup>461</sup>

273. Another reason for the delay in determining actual consumption was attributable to Dinasa. Dinasa’s late submission of invoices made it difficult for the Fuel Unit to know the actual consumption figures.<sup>462</sup> In fact, Dinasa did not start submitting invoices on a regular basis until February, March and April 2005.<sup>463</sup>

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<sup>453</sup> Procurement Manual Section 10.8.4 (4).

<sup>454</sup> Procurement Manual Section 11.6.2(2). See also Section 11.6.5(3) (the procurement officer adds the price information for an RFP “only after the technical evaluation has been completed”).

<sup>455</sup> Subject 1 interview (30 June and 7 July 2006).

<sup>456</sup> Staff Member 11 interview (21 March 2007).

<sup>457</sup> Subject 2 interview (23 Feb. 2007). Section 9.11.2(3) of the Procurement Manual clearly states that any significant change of information related to the solicitation process prior to Bid Closure shall be appended to the official Solicitation Document and shall constitute part of the solicitation process.

<sup>458</sup> Balakrishnan Amirthalingam email to Natalia Nedel (15 December 2005) (attached response, p. 1).

<sup>459</sup> *Id.*

<sup>460</sup> *Id.*

<sup>461</sup> Subject 6 interview (28 March 2006).

<sup>462</sup> Subject 3 interview (14 December 2006, 10 January 2007).

<sup>463</sup> Subject 5 interview (22 May 2007).

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274. At the same time, the Engineering Section was in the process of finalizing a new contract for generators which would have included the provision of generator fuel—a commodity requested in the original ground fuel RFP.<sup>464</sup> This contract would have drastically reduced the amount of generator fuel needed in Port-au-Prince under the long-term ground fuel contract.<sup>465</sup> As discussed above, this was the one category of fuel in which Dinasa raised its prices.

275. Accordingly, the Fuel Unit knew about the decrease in consumption as early as April 2005.<sup>466</sup> By this point, they knew actual consumption was approximately 30% less than anticipated.<sup>467</sup> Such a large decrease constituted a material change to the SOW which vendors would want to know.<sup>468</sup> However, the Fuel Unit did not update this information in the BAFO.

276. Similarly, even after Procurement learned the fuel estimates were much lower than originally stated in the RFP, it did not disclose this information in the BAFO.<sup>469</sup> Subject 6 later claimed that the “major reason for the BAFO” was the change in fuel estimates, a fact the Fuel Unit orally informed Procurement about “several weeks” before it was issued.<sup>470</sup> He added that Subject 1 or Subject 2 told him about the new numbers.<sup>471</sup> Yet Procurement took no steps to inform vendors of this “major reason.” As a result, the vendors purportedly were not given an opportunity to bid on the new fuel estimates.

277. Subject 4 discussed this issue with Subject 6 and Subject 2, who decided that they could not mention the fuel reductions in the BAFO.<sup>472</sup> Pursuant to the Procurement Manual, a BAFO could not materially change the SOW; a BAFO only allowed a vendor to lower its prices, reduce warranties, or provide other benefits to the UN.<sup>473</sup> If Procurement had substantially changed the fuel consumptions, it would not have been able to issue the BAFO.<sup>474</sup> Such a material change to the RFP would have required a re-bidding of the procurement. Subject 1 insisted, and the others agreed, that a re-bid was out of the question.<sup>475</sup> They claimed that the Mission simply did not have time to recommence a lengthy bidding exercise.<sup>476</sup>

278. Nevertheless, two years have passed since Total Haiti was awarded the contract, and yet no contract has been executed between the parties. The failure of the parties to successfully negotiate the terms of the contract was due, in good part, to the material

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<sup>464</sup> *Id.*

<sup>465</sup> *Id.*

<sup>466</sup> *Id.*

<sup>467</sup> *Id.*

<sup>468</sup> *Id.*

<sup>469</sup> Subject 4 interview (23 May 2007) and Subject 6 interview (18 May 2007).

<sup>470</sup> Subject 6 interview (7 February 2007).

<sup>471</sup> *Id.*

<sup>472</sup> Subject 4 interview (23 May 2007).

<sup>473</sup> See Procurement Manual Section 11.6.8 (6).

<sup>474</sup> Subject 4 interview (23 May 2007).

<sup>475</sup> Subject 6 interview, (18 May 2007).

<sup>476</sup> Staff Member 11 interview, (21 March 2007).

change to the RFP with the substantial reduction in fuel.<sup>477</sup> Consequently, perhaps re-bidding may have been the prudent course of action.

## C. MATERIAL MISREPRESENTATIONS TO TASK FORCE

### 1. Subject 1

279. Subject 1 was interviewed on 30 March 2006, 30 June 2006, 7 July 2006 and 7 March 2007. He also was given an opportunity to review additional documents collected by the Task Force, which he did on 25 June and 28 June 2007. His Response is attached as Annex G.

280. Subject 1 claimed he was not involved in the technical evaluation of the bids, which had been done by a committee.<sup>478</sup> When advised by investigators that it appeared the technical evaluation team indeed had pricing information, Subject 1 replied that he disagreed.<sup>479</sup> He never disclosed to the Task Force that he learned Subject 4 had in fact provided the financial bids to Subject 3.

281. He also opined that the Technical Evaluation Committee should not have disqualified Dinasa, but rather stated that it did not have enough information to assess the bid.<sup>480</sup> He believed Dinasa should have been given an opportunity to better its technical offer.<sup>481</sup> He characterized his staff's handling of this as "well intentioned."<sup>482</sup>

282. Subject 1 did not disclose the fact that the BAFO was designed to keep Dinasa in the procurement, by essentially allowing it to have another chance to re-submit a proposal, so it could win the contract. On the contrary, when investigators asked whether it was fair to invite a non-compliant vendor to participate in the BAFO, he claimed the process was indeed fair since the other vendors were also invited to participate.<sup>483</sup>

283. As for favouritism, Subject 1 admitted some degree of special treatment because Dinasa was the incumbent. He commented that if Dinasa had not been the current contractor, this would not have been an issue.<sup>484</sup> Procurement knew it was giving Dinasa another bite at the apple (as the HCC commented), which is why it did this in such a "roundabout way."<sup>485</sup> His "guys cut corners a little" by holding the BAFO, and giving "Dinasa an opportunity to say [it had] no mobilization costs."<sup>486</sup> Further, he believed

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<sup>477</sup> Balakrishnan Amirthalingam email to Subject 1 (20 December 2005) ("fundamental reason why Total had asked for the change in the contract duration is because of the substantial reduction in the quantities of fuel from the one stated in the RFP document") and Minutes from Meetings between MINUSTAH and Total Haiti (14 October, 22 October 2005).

<sup>478</sup> Subject 1 interview (30 June, 7 July 2006).

<sup>479</sup> Subject 1 interview (7 March 2007).

<sup>480</sup> Subject 1 interview (30 March 2006).

<sup>481</sup> *Id.*

<sup>482</sup> *Id.*

<sup>483</sup> Subject 1 interview (7 March 2007).

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> *Id.*

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they should have said “we understand we’re pushing the envelope but it’s the incumbent.”<sup>487</sup> However, he denied Dinasa was favoured and pointed to the fact that it was initially ranked technically non-compliant.<sup>488</sup>

284. Subject 1 was given the opportunity to admit his participation in the manipulation of the technical evaluation, with Dinasa purposefully being ranked higher than the other two vendors. He also had the opportunity to tell investigators about the manipulation of the commercial evaluation. When the Task Force asked about the BAFO fuel estimates, he firmly denied knowing how Dinasa’s costs suddenly became 1% lower than Total’s after the BAFO.<sup>489</sup> He intentionally and purposefully did not disclose his knowledge of the rigged evaluations.

## **2. Subject 2**

285. Subject 2 was interviewed on 23 February 2007 and 1 June 2007. He had been sent numerous documents prior to the interviews and was given the opportunity to review further material collected by the Task Force. Subject 2 also was invited to come to New York for a final interview in June 2007, but declined the Task Force’s offer. Attached as Annex A is his Response to the Task Force’s letter notifying him of its proposed findings.

286. Subject 2 claimed that, since he was only placed at the Mission temporarily, he was not informed of the details of the procurement exercise, which was planned by Subject 6 and Subject 4.<sup>490</sup> He added that they primarily consulted Subject 1 on this exercise.<sup>491</sup> He denied participating in any meetings regarding the procurement or evaluation of the fuel contract, nor was he informed about the discussions from those meetings.<sup>492</sup>

287. With respect to the BAFO, he purported that he did not know whose idea it was to invite Dinasa. He said he did not believe Dinasa had been “wholly disqualified,” but that it could become compliant if it provided certain clarifications.<sup>493</sup> Accordingly, he felt that a BAFO was a legitimate way to obtain such information.<sup>494</sup> He did not disclose the fact that the BAFO was designed to keep Dinasa in the procurement, so it could win the contract.

288. Subject 2 was given the opportunity to admit his participation in the manipulation of the technical evaluation, with Dinasa purposefully being ranked higher than the other two vendors. He also had the opportunity to tell investigators about the manipulation of the commercial evaluation and why new fuel estimates were used. He failed to disclose any such information. Instead, he said he was not aware of any problems or inaccuracies

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<sup>487</sup> *Id.*

<sup>488</sup> *Id.*

<sup>489</sup> *Id.*

<sup>490</sup> Subject 2 interview (23 February 2007).

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

<sup>494</sup> *Id.*

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that took place in the evaluation of the financial bids submitted by Total Haiti and Dinasa.<sup>495</sup> He claimed he never discussed the procurement with Subject 1, and had no idea whether Subject 1 checked the evaluations or numbers.<sup>496</sup>

289. With regard to the Committee Presentation, Subject 2 said he “briefly” read it and that he did not ask any questions of the case officer.<sup>497</sup> He claimed that he knew it had been extensively discussed and if there was a misrepresentation in the presentation, he expected the requisitioner to point it out.<sup>498</sup> He later claimed his staff did not properly keep him informed.<sup>499</sup>

290. Finally, Subject 2 denied meeting with any vendor during the procurement exercise, and said he had no reason to suspect that any staff member took any action to favour Dinasa.<sup>500</sup> Even when the Task Force informed Subject 2 that it was aware of the scheme to favour Dinasa, he continued to deny seeing documents and claimed he could not recall meeting with the Fuel Unit about the procurement.<sup>501</sup> He intimated that he may have “gone along” with or observed, but did not “consciously” “participate” in any scheme to favour a vendor.<sup>502</sup> He then concluded that he felt “victimized” and maintained that he was not aware of what was going on.<sup>503</sup>

### **3. Subject 6**

291. Subject 6 was interviewed on 28 March 2006, 7 February 2007 and 14 May 2007. Subject 6 chose not to review and sign his records of conversations because OIOS’s policy prevented the Task Force from providing his with a copy of it.<sup>504</sup> However, on 22 June 2007, Subject 6’s legal counsel reviewed the Task Force’s notes from Subject 6’s last interview, as well as additional material collected during the investigation. During his last interview, Subject 6 vehemently described the Task Force’s investigation into this matter as a “witch hunt” and “fishing expedition.”<sup>505</sup> Attached as Annex B is his Response to the Task Force’s letter notifying him of its proposed findings.

292. The Task Force asked Subject 6 whether or not the technical evaluation team saw pricing information before it completed its report. He said he had “no idea” how they received the pricing information.<sup>506</sup> The Task Force also asked, based on his experience at MINUSTAH and the HCC, whether he had ever seen another case where a technically non-compliant vendor had its pricing information opened. Subject 6 responded that he

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<sup>495</sup> *Id.*

<sup>496</sup> *Id.*

<sup>497</sup> *Id.*

<sup>498</sup> *Id*

<sup>499</sup> *Id.*

<sup>500</sup> *Id.*

<sup>501</sup> Subject 2 interview (1 June 2007).

<sup>502</sup> *Id.*

<sup>503</sup> *Id*

<sup>504</sup> Subject 6 interview (18 May 2007).

<sup>505</sup> Subject 6 interview (14 May 2007).

<sup>506</sup> *Id.*

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saw this happen “quite often” at MINUSTAH and at UNHQ.<sup>507</sup> He had “no problem” with opening a commercial bid for a non-compliant company.<sup>508</sup>

293. Subject 6 believed that Dinasa should not have been considered “technically non-compliant,” because the Procurement Manual provided an opportunity for a vendor to correct its deficiency.<sup>509</sup> He criticized the Committee (the “stupidity” of the team calling Dinasa non-compliant) and said its technical evaluation was “biased and invalid.”<sup>510</sup>

294. Subject 6 claimed the decision to hold the BAFO was a “collective decision” taken by the Supply Section and Procurement.<sup>511</sup> From Procurement, this included Subject 6, Subject 2 and Subject 1.<sup>512</sup> He did not agree with investigators that the BAFO was designed to help Dinasa remain in procurement exercise and win.<sup>513</sup> Yet he conceded that he, along with Subject 1 and Subject 2, supported the BAFO to “correct Dinasa’s bid.”<sup>514</sup>

295. Subject 6 did not accurately explain the purpose of the BAFO. In fact, he provided contradicting reasons for the exercise. In the Procurement presentation to the Committees on Contracts, he claimed the reason for the BAFO was threefold, which included SkyLink’s excessive costs, Total Haiti’s prices and Dinasa’s missing mobilization plan. However, during an interview with the Task Force, he later asserted that the major reason for the BAFO was the change in the estimated fuel consumptions.<sup>515</sup>

296. Subject 6 also defended that Subject 4 drafted the BAFO and denied drafting this section on mobilization. He said he simply approved the document, along with Subject 2 and Subject 1.<sup>516</sup> He claimed to have no idea why material information about the reduced fuel consumption was omitted. He also said it was the Fuel Unit’s responsibility to offer such updates.<sup>517</sup>

297. Subject 6 never disclosed his conversation with Mr. Yakovlev, and that the purpose of the BAFO was to favour Dinasa by preventing it from being disqualified. He also denied having any knowledge that the Fuel Unit met with the vendors to discuss the proposed BAFO exercise.<sup>518</sup>

<sup>507</sup> *Id*

<sup>508</sup> Subject 6 interview (18 May 2007).

<sup>509</sup> Subject 6 interview (28 March 2006).

<sup>510</sup> Subject 6 interview (14 May 2007) and (18 May 2007). He added made several derogatory comments about the competence of UN staff members in general, including senior staff. Subject 6 interview (18 May 2007).

<sup>511</sup> Subject 6 interview (28 March 2006).

<sup>512</sup> Subject 6 interview (7 February 2007).

<sup>513</sup> *Id.*

<sup>514</sup> Subject 6 interview (18 May 2007).

<sup>515</sup> Subject 6 interview (7 February 2007).

<sup>516</sup> *Id. Cf.* Subject 4 interview (23 May 2007) (Subject 6’s idea and language for mobilization requirement for the vendors to see).

<sup>517</sup> Subject 6 interview (7 February 2007).

<sup>518</sup> Subject 6 interview (14 May 2007).

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298. Subject 6 was given the opportunity to admit his participation in the manipulation of the technical evaluation, with Dinasa purposefully being ranked higher than the other two vendors. He also had the chance to admit his participation in the manipulation of the commercial evaluation and explain why they used new fuel consumption numbers for the financial assessment. He intentionally and purposefully did not disclose his knowledge as to where these numbers came from, or the reason behind the new estimates.

299. Instead, even when presented with evidence that Total Haiti had been lower than Dinasa at every stage of the procurement prior to the final evaluation, Subject 6 refused to comment and just said he would consider the matter and respond later.<sup>519</sup> He later claimed it was Subject 4 who changed the quantities for the commercial evaluation following the BAFO.<sup>520</sup> He added that Procurement was unable to change the fuel quantities, which would have been done by the Supply Section. Subject 1 and “senior management” decided to use the new estimates for the BAFO evaluation.<sup>521</sup> Further, he did not disclose the reason for the new numbers was to lower Dinasa’s total costs, but instead claimed that these were the correct fuel consumption figures.<sup>522</sup> He also denied ever seeing Subject 5’s 7 June 2007 email to Subject 4 with the attached fuel consumption figures (under which Total Haiti was lower than Dinasa).<sup>523</sup> When asked why new estimates were used in the final BAFO financial evaluation, Subject 6 merely defended that the consumption figures were “changing by the hour” and it was impossible for everyone to know what happened.<sup>524</sup>

300. While Subject 6 made some statements demonstrating an underlying favouritism, he flatly denied any improper conduct to favour Dinasa. For example, he commented that “no one wanted SkyLink” and the Fuel Unit did not want Total Haiti because it did not have facilities in certain locations.<sup>525</sup> He admitted that they wanted Dinasa because it already had existing stations that the UN could use. Conversely, if Total Haiti won the award, the Mission would have to rely on the vendor to build gas stations.<sup>526</sup>

301. When asked about Subject 2’s memorandum to the Fuel Unit asking which vendor it preferred, Subject 6 did not disclose the fact that this document was written to conceal the scheme. Instead, he claimed it was drafted in response to security issues and which vendor would be better able to import fuel into Haiti.<sup>527</sup>

302. Moreover, Subject 6 may have attempted to obstruct the investigation. After he was interviewed by the Task Force—in which he adamantly denied any wrongdoing—he

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<sup>519</sup> Subject 6 interview (7 February 2007).

<sup>520</sup> Subject 6 interview (18 May 2007).

<sup>521</sup> *Id.* (admits Subject 4 had been instructed by Subject 1, Subject 2, and possibly himself to use the new numbers). *Id.*

<sup>522</sup> *Id.*

<sup>523</sup> *Id*

<sup>524</sup> *Id.*

<sup>525</sup> *Id.* (14 May 2007).

<sup>526</sup> *Id.* (18 May 2007).

<sup>527</sup> *Id.*

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contacted Subject 4 in Haiti and told him to call him right away.<sup>528</sup> When Subject 4 spoke to him, Subject 6 told Subject 4 that the Task Force was going to ask him questions regarding the bid opening and the fact that the financial evaluations were given to the technical team (before they completed the evaluation).<sup>529</sup> Subject 6 reminded Subject 4 that “you know what to say.” Subject 6 then asked Subject 4 to call him once he finished his interview with the Task Force.<sup>530</sup>

303. Finally, Subject 6 testified in a criminal trial at which he made several denials under oath which appear to constitute perjury. On 4 June 2007, Subject 6 testified in a United States federal court for the Southern District of New York at the criminal trial of Mr. Sanjaya Bahel. Mr Bahel, a former Section Chief at UNPS, had been charged with accepting valuable New York City real estate in exchange for assisting a vendor in obtaining valuable UN contracts.

304. During Subject 6’s testimony, on behalf of Mr. Bahel, the Prosecution asked him if he had ever shown favouritism to a particular vendor. Subject 6 testified that he had not. The Prosecution then asked whether he had ever asked a subordinate to adjust a rating for a particular vendor; he again denied this. When asked whether he had ever done anything to assist Dinasa, he once again denied this. In light of Subject 6’s active participation in rigging both the technical and commercial evaluation, and his encouragement and direction to Subject 4 and others, Subject 6 did not appear to testify truthfully and honestly at the trial. Accordingly, his material misstatements under oath appear to violate the U.S. criminal code.<sup>531</sup> His testimony is attached as Annex F.

#### **4. Subject 3**

305. Subject 3 was interviewed on 14 December 2006 and 10 January 2007. Subject 3 was invited to come to New York for a final interview in June 2007, but declined the Task Force’s offer. He was, however, able to review additional material collected by the Task Force at its office on 21 and 22 June 2007.

306. Although Subject 3 admitted he participated in the financial evaluation, he claims he did not recall using new fuel estimates.<sup>532</sup> He also said he could not recall why they used these new figures for the BAFO commercial evaluation.<sup>533</sup> He believed these numbers were generated by Subject 5, Mr. Albert Munipi or Ms. Freweini Elias and then someone in the Fuel Unit forwarded them to Procurement on his or her own initiative.<sup>534</sup>

307. Subject 3 was given the opportunity to admit his participation in the manipulation of the technical evaluation, with Dinasa purposefully being ranked higher than the other two vendors. Similarly, he had the chance to disclose the rigging of the commercial

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<sup>528</sup> Subject 6 email to Subject 4 (21 May 2007).

<sup>529</sup> Subject 4 interview (23 May 2007).

<sup>530</sup> *Id.*

<sup>531</sup> See Title 18 U.S.C. § 1621.

<sup>532</sup> *Id.*, para. 39.

<sup>533</sup> *Id.*, para. 36.

<sup>534</sup> *Id.*, para. 36, 38.

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evaluation and explain why they used new fuel consumption numbers for the financial assessment. He had an opportunity to explain how he directed and helped Subject 5 change the fuel numbers so Dinasra became the lowest bidder. He intentionally and purposefully did not disclose his knowledge of where these numbers came from, or the reason behind the new estimates.<sup>535</sup>

## **5. Subject 4**

308. Subject 4 was interviewed on 30 March 2006, 23 May 2007 and 24 May 2007. Subject 4 chose not to review his May 2007 record of conversation because OIOS policy prevented the Task Force from providing him with a copy. He nevertheless reviewed the Task Force's notes from the interview on 18 June 2007. Attached as Annex C is his Response to the Task Force's letter notifying him of its proposed findings.

309. Subject 4 initially was not forthcoming with the Task Force and did not disclose the scheme or his role. At his second interview, after being presented with evidence of the manipulation, he finally cooperated with the Task Force and confirmed this information. However, after – and only after – he received the Task Force's letter with its proposed findings, he recanted much of his statements and accused investigators of being unprofessional and coercive, as explained in his Response.

310. For example, Subject 4 initially asserted that he never spoke to his colleagues regarding the decision to offer a BAFO.<sup>536</sup> He later admitted that he had, and the decision for the BAFO was a mutual one, taken by Subject 6 and Subject 2, in consultation with Subject 1, who said it was the best way to go.<sup>537</sup> Likewise, Subject 4 initially denied meeting with Total Haiti and Dinasra to discuss their responses for the BAFO.<sup>538</sup> After being shown Subject 5's email referring to such a meeting, he conceded that he did in fact meet with a vendor during this time.<sup>539</sup>

311. Similarly, he initially claimed that he did not know about the change in fuel quantities and simply relied on the Supply Section.<sup>540</sup> It was not until his last interview, after being presented with several drafts of the technical and commercial evaluations, where he finally disclosed to investigators that the sole purpose of BAFO was to keep

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<sup>535</sup> In addition, Subject 3 was not fully forthcoming about when his Unit learned of the change in fuel consumptions. He admitted that the initial fuel estimates, which he said had been calculated by UNHQ, were inaccurate and off by 30%. *Id.*, para. 31. However, he claimed that it was not until June or July 2005 that he realized MINUSTAH was using a lot less fuel than projected. *Id.*, para. 33. He is directly contradicted by Subject 5 and Subject 6, both of whom confirmed they knew before this date—possibly as early as April—about the new fuel estimates. Subject 6 interview (14 May 2007) (fuel reductions well known in Mission as early as initial technical evaluation) and Subject 5 interview (22 May 2007) (new fuel numbers known in April or May).

<sup>536</sup> Subject 4 interview (30 March 2006).

<sup>537</sup> *Id.*

<sup>538</sup> Subject 4 interview (23 May 2007).

<sup>539</sup> *Id*

<sup>540</sup> Subject 4 interview (30 March 2006).

Dinasa in the exercise, and that both the technical and commercial evaluations were rigged to ensure that Dinasa won the award.<sup>541</sup>

## D. THE ROLE OF SENIOR MANAGEMENT

312. Another troubling aspect of this procurement was the conduct of supervisors and senior managers regarding influence over junior staff members. From drafting documents, to requiring approval of evaluations before they were completed, senior management placed a great deal of pressure upon their employees, and therefore hold the most responsibility.

313. Subject 6 would “impose himself on other colleagues” and he “liked pushing in and taking over,” he had developed a lot of “unexpected power” in Procurement.<sup>542</sup> He did not seem to “know the limitations” or appropriate conduct of a procurement officer.<sup>543</sup> When another staff member pointed out there were ethics that procurement officers had to follow, he responded that “yes, but sometimes” one has to “push to get things done.”<sup>544</sup>

314. Interestingly, although Subject 6 liked to take over cases, he rarely took official responsibility for the file.<sup>545</sup> For example, Subject 6 helped Subject 4 draft the overall evaluation for the procurement of ground fuel, and creatively came up with language to permit Dinasa to remain in the exercise, however, the memorandum still went out under Subject 4’s name.<sup>546</sup> He also gave Subject 4 the language for the mobilization section in the BAFO, which had been written for Dinasa’s benefit. He also told Subject 4 to highlight the section in bold.<sup>547</sup>

315. Similarly, Subject 3 was “forceful,” he physically banged the desk and insisted that he did not want to change fuel vendors because “he was the one who would have to live with it.”<sup>548</sup> Subject 5, who had only just arrived a few months before, felt extreme pressure to comply with his supervisor’s demands.<sup>549</sup> In fact, Subject 3 sat at the computer with Subject 5 and directed how the fuel estimates should be changed to make Dinasa the lowest bidder.

316. The fact that the CAS (Subject 1) and Officer-in-Charge of Procurement (Subject 2) were involved was equally troubling. Since the direction and approval was coming

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<sup>541</sup> See *supra* paragraphs 183 *et seq.*

<sup>542</sup> Staff Member 2 interview (23 May 2007).

<sup>543</sup> *Id*

<sup>544</sup> *Id.*

<sup>545</sup> *Id*

<sup>546</sup> Subject 4 interview (23 May 2007). See *e.g.*, Subject 4 memorandum to Subject 2 (20 May 2005).

<sup>547</sup> Subject 4 interview (23 May 2007).

<sup>548</sup> Subject 4 interview (24 May 2007).

<sup>549</sup> Subject 5 interview (22 May 2007) and Subject 5 interview (29 May 2007) (he was manipulated by Subject 3 as Subject 4 had been by Subject 6).

from such senior representatives, staff felt both that they could not refuse to follow these instructions, and that their actions were in fact sanctioned.<sup>550</sup>

## XI. BRIBERY ALLEGATIONS

### A. TOTAL HAITI'S COMPLAINT

317. On 6 June 2005, OIOS received a complaint that Subject 4 attempted to solicit a bribe from Total Haiti.<sup>551</sup> In response, OIOS investigated the matter, which included interviews by the Task Force. Notably, the complaint was filed before the procurement exercise had been completed.

318. In May 2005, Subject 4 called a Total Haiti representative, Mr. Wilclair Clerger. Mr. Clerger was in charge of the company's commercial accounts. Subject 4 told him he wanted to stop by to see him at the office on his way home from work.<sup>552</sup>

319. Once there, he told Mr. Clerger that Total Haiti's proposal was well-presented, but the company still needed to address the remote locations where fuel would be delivered.<sup>553</sup> According to Mr. Clerger, Subject 4 then informed him that MINUSTAH was considering sending Total Haiti a letter of intent based on its proposal; however, with a contract this size, Mr. Clerger "might have to give something to some people."<sup>554</sup> Mr. Clerger was not told who these "some people" were. Mr. Clerger recalled a 10% figure, possibly linked to equipment prices being mentioned.<sup>555</sup> Mr. Clerger said he understood this to be a request for kickbacks.<sup>556</sup> Mr. Clerger then told Subject 4 that he would discuss the matter with the General Manager.<sup>557</sup>

320. The next day, Mr. Clerger told the General Manager, Mr. Alexandre Kislanski. Mr. Kislanski knew such conduct was illegal and therefore asked Mr. Clerger to set up a second meeting with Subject 4.<sup>558</sup> A few days later, Subject 4 visited Total Haiti; again, he was alone.<sup>559</sup>

321. This time, Mr. Kislanski said he confronted Subject 4 directly and asked why he wanted to help Total Haiti. Subject 4 did not make any statements alluding to kickbacks in this meeting.<sup>560</sup> Instead, Subject 4 told him that the way the first contract had been handled was "outrageous" and that "this shouldn't be done" because it was "not

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<sup>550</sup> Subject 5 interview (29 May 2007); Subject 4 interview (23 May 2007); Subject 2 interview (23 February 2007).

<sup>551</sup> OIOS Case No. 299/05 (received 6 June 2005).

<sup>552</sup> Total Haiti interview (22 May 2007) and Subject 4 interview (24 May 2007).

<sup>553</sup> Total Haiti interview (22 May 2007).

<sup>554</sup> *Id.*

<sup>555</sup> *Id.*

<sup>556</sup> *Id.*

<sup>557</sup> *Id.*

<sup>558</sup> *Id.*

<sup>559</sup> *Id.*

<sup>560</sup> *Id.*

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normal.”<sup>561</sup> Mr. Kislanski interpreted Subject 4’s comments to mean that a competitor, Dinasa, had been bribing a staff member in the Mission.<sup>562</sup> Mr. Kislanski said Subject 4 never asked him directly for money, but his behaviour implied it.<sup>563</sup> Subject 4 then added that he had taken “a risk coming” to Total Haiti’s offices.<sup>564</sup>

322. Shortly thereafter, on 11 May 2005, Mr. Kislanski contacted a UN staff member and asked for guidance on this matter, which he found very troubling.<sup>565</sup> He was then directed to OIOS and officially reported the matter.<sup>566</sup> He told OIOS that his employee, Mr. Clerger, relayed information suggesting that Subject 4 solicited a bribe from Total Haiti.<sup>567</sup>

## **B. SUBJECT 4 DEFENCE**

323. Subject 4 conceded that he visited Total Haiti on two occasions, without another UN representative with him.<sup>568</sup> However, he vehemently denied soliciting any kickback or requesting a bribe.<sup>569</sup>

324. When Subject 4 was initially interviewed by the Task Force, he told investigators that he never met with Mr. Clerger alone; he only went to Total Haiti once, and met with Mr. Clerger and Mr. Kislanski together.<sup>570</sup> Subject 4 maintained this version when he met with Task Force investigators again.<sup>571</sup> Only after investigators reminded Subject 4 of his duty to be truthful, informing him that they had uncovered evidence of two separate visits, Subject 4 relented and confirmed he did attend two separate meetings at Total Haiti.

325. Subject 4 explained that on the first occasion, he went to Total Haiti’s offices to meet with Mr. Clerger alone.<sup>572</sup> He confirmed that he called Mr. Clerger on the telephone and told him he would be stopping by Total Haiti’s offices on his way home.<sup>573</sup> He said they discussed some of the difficulties in Total Haiti’s proposals, such as fuel delivery to remote locations. Subject 4 denied telling Total Haiti that it was probably going to win the contract. On the contrary, Subject 4 claimed it was Mr. Clerger who made this statement.<sup>574</sup>

<sup>561</sup> *Id.*

<sup>562</sup> *Id.*; Alexandre Kislanski interviews (25 July 2005) and (29 March 2006).

<sup>563</sup> Alexandre Kislanski interview (29 March 2006).

<sup>564</sup> Total Haiti interview (22 May 2007)

<sup>565</sup> Staff Member 1 interview (25 May 2005).

<sup>566</sup> OIOS Case No. 299/05 (received 6 June 2005).

<sup>567</sup> Alexandre Kislanski interview (25 July 2005).

<sup>568</sup> Subject 4 interview (24 May 2007).

<sup>569</sup> Subject 4 interview (30 March 2006).

<sup>570</sup> *Id.*

<sup>571</sup> Subject 4 interview (24 May 2007).

<sup>572</sup> *Id.*

<sup>573</sup> *Id.*

<sup>574</sup> *Id.*

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326. Subject 4 also confirmed that he attended a second meeting at Total Haiti, which had been arranged when Mr. Clerger called him and asked him to stop by the office.<sup>575</sup> Subject 4 told investigators that he had informed Subject 6 of this visit and that he stayed for almost one hour.<sup>576</sup> This time, Subject 4 met with both Mr. Kislanski and Mr. Clerger in Mr. Kislanski's office.<sup>577</sup>

327. Subject 4 claimed he went to see Mr. Kislanski "to explain the bidding document because he didn't understand it well."<sup>578</sup> There, he answered questions regarding the change in delivery locations in the procurement exercise and the mobilization aspect of the proposal.<sup>579</sup> Subject 4 said he did not recall Mr. Kislanski asking Subject 4 why he wanted to help the company. Similarly, Subject 4 did not recall describing the situation as unfair to Total Haiti, or suggesting that Dinasa had been bribing someone in Procurement.<sup>580</sup> In his view, Mr. Kislanski must have simply "misunderstood" him.<sup>581</sup>

## C. TASK FORCE EVALUATION

328. The Task Force found a number of circumstances noteworthy. In light of this evidence, it appears Subject 4 indeed attempted to solicit a bribe from Total Haiti.

329. First, Subject 4 confirmed much of Mr. Clerger's and Mr. Kislanski's statements. Subject 4 eventually and reluctantly admitted that he did make two separate visits to Total Haiti, one of which was with Mr. Clerger, and the second with both gentlemen. He conceded he was alone, and did not have another representative from the Mission. He also admitted discussing the procurement exercise.

330. Subject 4's independent visit to a vendor, in the middle of a procurement exercise was not the most prudent course of action. While staff may visit vendors, ideally, he or she should be accompanied by another staff member, and should obtain written direction from a supervisor authorizing the visit.<sup>582</sup> The preferred course would be to have vendors attend meetings at the Mission's offices instead.<sup>583</sup>

331. Second, Subject 4 initially misrepresented information to the Task Force. He initially denied meeting with Mr. Clerger alone, and maintained that it was a joint meeting with Mr. Kislanski. Only after investigators presented him with evidence did he admit the earlier meeting. If he had done nothing wrong, there would have been no reason or motive for him to hide this information from investigators.

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<sup>575</sup> *Id.*

<sup>576</sup> *Id.*

<sup>577</sup> *Id.*

<sup>578</sup> Subject 4 interview (30 March 2006).

<sup>579</sup> Subject 4 interview (24 May 2007).

<sup>580</sup> *Id.*

<sup>581</sup> Subject 4 interview (30 March 2006).

<sup>582</sup> Staff Member 2 interview (23 May 2007).

<sup>583</sup> *Id.*

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332. Third, Mr. Kislanski quickly reported the alleged bribery attempt. He told investigators that he knew bribery was illegal in France and felt troubled that this would take place with a UN staff member.

333. Fourth, there is no obvious reason for Total Haiti to have filed such a compliant, further supporting its accuracy. Mr. Kislanski had no incentive or motive to fabricate this story. On the contrary, by making such allegations, he actually risked jeopardizing his and Total Haiti's working relationship with the Mission. He, and Total Haiti, received no material benefit, financial or otherwise, by coming forward and notifying OIOS of what transpired.

334. Fifth, Subject 4's subsequent conduct demonstrated a consciousness of guilt. After the Task Force interviewed Subject 4 in May 2007, he called Mr. Clerger to complain. Notably, the Task Force had cautioned Subject 4 not to discuss this case with anyone involved since the investigation was still pending. Subject 4 nevertheless told Mr. Clerger that he had put Subject 4 in an "awkward situation," which he did not "appreciate."<sup>584</sup>

335. Finally, this alleged incident took place during a procurement exercise fraught with manipulation. The allegation was that Dinasa had been bribing a UN employee, a company that was unfairly awarded the short-term contract. Subject 4's purported solicitation of a kickback from Total Haiti was unsuccessful. Significantly, Total Haiti was not initially awarded the long-term contract, but Dinasa was.

## **XII. THE TASK FORCE FINDINGS AND CONCLUSIONS**

### **A. SHORT-TERM PROCUREMENT EXERCISE**

336. The Task Force finds that short-term procurement for ground fuel in MINUSTAH was fraught with irregularity and the failure to adhere to proper procedure. The issues began at the Tender Opening when both the financial and technical proposals were opened simultaneously in violation of the Procurement Manual.

337. At the request of UNHQ's Fuel Unit, clarifications were requested from Total Haiti, Dinasa and Texaco, before they could all be considered fully compliant. After receipt of these clarifications, however, no final technical evaluation was completed. Such an evaluation would have shown that all three of these vendors became technically compliant after providing the requested information.

338. When Mr. Yakovlev performed the commercial evaluation, which consisted solely of an email to the Chief of UNPS, Mr. Saunders, he stated that only two vendors were deemed to be technically compliant. This misstatement was facilitated by the lack of a final technical evaluation. In addition, it appears that Mr. Yakovlev used bulk fuel pricing as the basis for his award. In that category, the company he recommended, Dinasa, did not offer the lowest prices; rather, Total Haiti did. The situation was further

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<sup>584</sup> Wilclair Clerger interview (11 June 2007).

complicated by the fact that the case files at UNPS and MINUSTAH did not contain crucial documents, namely a final technical evaluation, a commercial evaluation or an overall evaluation matrix.

339. These facts render the entire evaluation process far from transparent. Responsibility for this failure, and for the fact that the lowest, technically compliant vendor was not selected, must be shared by UNHQ Fuel Unit, for failing to complete a final technical evaluation, UNPS for conducting a faulty commercial evaluation, and ultimately, by MINUSTAH Procurement, who was responsible for the overall procurement exercise.

## B. LONG-TERM PROCUREMENT EXERCISE

### 1. Subject 1

340. During this procurement exercise, Subject 1 served both as Chief, Administrative Services, as well as Chief Procurement Officer until he was replaced in May 2005. As such, he oversaw the procurement exercise for the long-term ground fuel contract. The Task Force finds that Subject 1 knowingly and purposefully colluded with others to steer the technical and commercial evaluations to favour a specific vendor, Dinasa. This was accomplished through an intentional effort by the evaluators, at the direction of supervisors, Subject 1, Subject 2, Subject 6, and Subject 3, to inflate Dinasa's score and rate the company's proposal just slightly better than SkyLink, the vendor who previously had been given the highest score. Dinasa was intentionally given a score of 98 in order to exceed SkyLink, which had been given a score of 97. The evaluators then made sure that Dinasa's financial bid was commercially more viable than the other competitors, and this manufactured result was accomplished through the alteration and manipulation of the fuel estimate requirements. The requirements were manipulated just enough to cause Dinasa's prices to be lowest.

341. As a result of the bid-rigging scheme, the integrity of procurement exercise was severely compromised, and the process wholly lacked fairness, objectivity, and transparency.

342. Subject 1 engaged in the following actions in furtherance of the scheme:

- as CPO, Subject 1 failed to object to the improper participation of a requisitioner in the tendering opening, yet made no objection despite the fact that he was aware of this circumstance from his review of the bidding sheet;
- when the Tender Opening Committee improperly opened both the financial and technical evaluations simultaneously Subject 1 failed to object to this procedure, or take any steps to investigate whether the exercise had been conducted properly;
- after Subject 1 learned that a Procurement Assistant under his supervision improperly provided the pricing information to the Technical Evaluation Committee prior to the completion of the technical evaluation, he failed to take any steps to investigate whether the exercise had been compromised, or otherwise object to this action;

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- after discovering that Dinasa had been found to be non-compliant, Subject 1 attended and participated in a series of meetings between Fuel and Procurement in which they discussed a strategy to keep Dinasa alive in the procurement exercise;
  - Subject 1 approved a memorandum which manipulated the language of the initial technical evaluation and changed Dinasa from “non-compliant” to a vendor that “could reasonably be made acceptable” if it provided certain information;
  - Subject 1 agreed to allow Dinasa a second opportunity to correct its proposal and submit missing information regarding a mobilization plan, even though the company had been disqualified from the procurement exercise;
  - Subject 1 recommended and approved that a BAFO be held solely to help a non-compliant vendor, Dinasa, which impermissibly allowed the company a second opportunity to correct its proposal;
  - Subject 1 provided the template to help Procurement draft the BAFO;
  - Subject 1 approved the use of the BAFO which included a mobilization section that was written and highlighted specifically to assist Dinasa;
  - Subject 1 approved the BAFO which misrepresented to vendors that the Statement of Works had not changed, despite knowing that the fuel estimates indeed had changed dramatically;
  - Subject 1 attended and participated in a meeting with Dinasa during the procurement exercise at which the company had been told to submit a mobilization plan at no cost to the Mission in its BAFO response;
  - Subject 1 improperly participated in discussions as to how the vendors would be technically evaluated;
  - Subject 1’s subordinates instructed the technical evaluation team to reveal to them the proposed evaluation prior to the release of the evaluation in order to confirm that the figures were acceptable and at a level to ensure the intended result, an effort Subject 1 knew, or should have known. As a result of this effort, the technical evaluation team intentionally increased Dinasa’s score so the company offered the leading proposal and was positioned to win the contract;
  - after learning that Dinasa was not the lowest bidder, Subject 1 held meetings and participated in discussions with others to reach a strategy to ensure that Dinasa won the award;
  - Subject 1 colluded with staff members in the Fuel Unit and Procurement Section to take steps to ensure that Dinasa became the lowest bidder;
  - Subject 1 colluded with others to establish Dinasa as the lowest bidder in order for the company to win the award;
  - Subject 1 was aware that the commercial evaluation was also altered in order to favour Dinasa and that the proposals were not fairly evaluated;

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- during this time, as the most senior member involved, Subject 1's participation gave the appearance that he approved of the actions that took place during the exercise, and thereby sent a message to his subordinates to participate in this scheme;
- Subject 1 was not truthful with investigators when questioned about this procurement exercise and made material misrepresentations, specifically that he participated in a scheme to favour Dinasa through the rigging of the final financial and technical evaluations, which he intentionally did not disclose to the Task Force and indeed denied any improper favouritism.

343. Based on the foregoing, Subject 1 breached **Regulation 1.2(b)** of the **Staff Regulations of the United Nations** because he failed to "uphold the highest standards of . . . integrity" when he failed to be impartial, fair, honest and truthful during this procurement exercise.

344. Subject 1 breached **Regulation 1.2(g)** of the **Staff Regulations of the United Nations** when he used his "office or knowledge gained from [his] official functions for private gain, financial or otherwise, or for the private gain of any third party, including . . . those he favor[ed]," specifically, Dinasa.

345. Subject 1 breached **Regulation 1.2(r) of the Staff Regulations of the United Nations** because he failed to "respond fully to requests for information from" the Task Force in its investigation into the possible misuse of funds, waste or abuse.

346. Subject 1 breached **Regulation 1.3(a)** of the **Staff Regulations of the United Nations** because he did not "uphold the highest standards of . . . integrity in the discharge of [his] functions" during this procurement exercise.

347. Subject 1 breached **Rule 101.2** of the **Financial Regulations and Rules of the United Nations** because he intentionally did not "comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules" during this procurement exercise, and therefore should "be held personally accountable and financially liable for his . . . actions."

348. Subject 1 breached **Regulation 5.12(b)** of the **Financial Regulations and Rules of the United Nations** because this procurement exercise was purposefully not conducted in a fair manner, with "integrity and transparency."

349. Subject 1 breached **Rule 105.15(b)** of the **Financial Regulations and Rules of the United Nations** because the recommended award to Dinasa was not "awarded to the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth in the solicitation documents."

350. Subject 1 breached **Section 10.1.1(3)** of the **United Nations Procurement Manual** when, as Chief Procurement Officer, knew or should have known that the requisitioner, Subject 3, improperly served on the Tender Opening Committee.

351. Subject 1 breached **Sections 10.8.4(4) and 11.6.6(5)** of the **United Nations Procurement Manual** when, as Chief Procurement Officer, knew or should have known that both the technical and financial proposals were opened simultaneously.

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352. Subject 1 breached **Section 11.1(1)(b)** of the **United Nations Procurement Manual** because the “procurement process [was not] fair, objective and transparent,” nor did the process “give due consideration to” the general principles of “[f]airness, integrity and transparency.”

353. Subject 1 breached **Section 11.1(2)** of the **United Nations Procurement Manual** because the selection process was not “objective and . . . conducted in accordance with the above principles.”

354. Subject 1 breached **Section 11.3(2) of the United Nations Procurement Manual** because the technical and commercial proposals were not evaluated based on “objective, non-discretionary” criteria or with an “ objective analysis” in accordance with the RFP and the Procurement Manual.

355. Subject 1 breached **Section 11.6.1(1)** of the **United Nations Procurement Manual** because the selection process was not “open and transparent,” and the evaluation of the proposals was not “fair, reasonable and objective.”

356. Subject 1 breached **Section 11.6.1(3)** of the **United Nations Procurement Manual** because the recommended award to Dinasa was not to “the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth” in the RFP.

357. Subject 1 breached **Section 11.6.2(2)** of the **United Nations Procurement Manual** because the technical evaluation was not “performed without prior knowledge of cost” and the financial proposals had been released to the Technical Evaluation Committee prior to the finalization of a technical evaluation.

358. Subject 1 breached **Section 11.6.7(4)** of the **United Nations Procurement Manual** because the technical and commercial proposals were not evaluated “in a manner that [was] consistent and fair to all prospective Vendors.”

359. Subject 1 breached **Section 12.1.4(d)** of the **United Nations Procurement Manual**, because he failed to ensure “that the procurement action [was] undertaken in accordance with the FRR, established procurement practices and procedures, and applicable SGBs and AIs.”

## **2. Subject 2**

360. In May through June 2005, Subject 2 served as Officer-in-Charge of the Procurement Section. The Task Force finds that during the long-term ground fuel procurement exercise, Subject 2 colluded with others to steer the technical and commercial evaluations to favour a specific vendor, Dinasa. This effort was accomplished through the participation of the evaluators, who, at the direction of their supervisors, rated Dinasa’s proposal 1% higher than SkyLink, the previously highest scoring vendor. Dinasa was intentionally given a score of 98 in order to exceed SkyLink, which had been given a score of 97. The evaluators also made sure that Dinasa’s financial bid was commercially superior to the other competitors, which was

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accomplished by altering and manipulating the fuel estimate requirements until Dinasa offered the lowest prices.

361. As a result of the bid-rigging scheme, the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.

362. Specifically, Subject 2 was responsible for the following actions:

- he received a conflicting evaluation that ranked Dinasa as technically non-compliant, and yet recommended allowing it a second chance to correct its proposal;
- he held and attended a series of meetings between Fuel and Procurement in which they discussed how to keep Dinasa in the procurement exercise;
- he approved a memorandum which manipulated the language of the initial technical evaluation, which changed Dinasa from “non-compliant” to one that “could reasonably be made acceptable” if it provided certain information;
- he agreed to give Dinasa a second chance to correct its proposal and submit missing information regarding a mobilization plan, even though it had been disqualified from the procurement exercise;
- he approved that a BAFO be held solely to help a non-compliant vendor, Dinasa, which gave it a second opportunity to correct its proposal;
- he approved a BAFO, which contained a mobilization section that had been written and highlighted specifically to assist Dinasa;
- he approved the BAFO, which misrepresented to vendors that the Statement of Works had not changed, despite knowing that the fuel estimates indeed had changed dramatically;
- his staff attended a meeting with Dinasa during the procurement exercise at which the company had been told to submit a mobilization plan at no cost to the Mission in its BAFO response;
- he attended a meeting with Total Haiti during the procurement exercise, at which the company had been told not to change its prices, thus reducing Total Haiti’s chance to offer more competitive prices;
- he participated in discussions as to how the vendors would be technically evaluated;
- he instructed the Tender Evaluation Committee to reveal to him the final technical evaluation prior to its release in order that he could ensure that the figures reflected the desired result;
- as a result, the technical evaluation team intentionally increased Dinasa’s score so it became the most qualified vendor in order for it to win the contract;
- he approved the final technical evaluation which had not been fairly conducted and which was intentionally manipulated to favour Dinasa;

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- after learning that Dinasa was not the lowest bidder, he held meetings and participated in discussions with others to discuss a strategy to ensure that Dinasa could win the award;
- he agreed with staff members in the Fuel and Procurement to take whatever steps were necessary in order for Dinasa to become the lowest bidder;
- he agreed with others to make Dinasa the lowest bidder so it could win the award;
- he thus knew that the commercial evaluation was eventually rigged to favour Dinasa and that the proposals were not fairly evaluated;
- he intentionally misdated a document, which ostensibly asked the requisitioner to recommend the most qualified vendor, even though he knew the procurement had been manipulated to favour Dinasa, in order to conceal the scheme;
- he provided and/or approved of misrepresentations regarding the procurement exercise to the LCC and HCC;
- during this time, as a senior member involved, his participation gave the appearance of approving and/or condoning the actions that took place during the exercise, thereby sending a message to his staff to participate in this scheme;
- he was not truthful with investigators when questioned about the procurement exercise and made material misrepresentations, specifically that he participated in a scheme to favour Dinasa through the rigging of the final financial and technical evaluations, which he intentionally did not disclose to the Task Force and indeed denied any improper favouritism.

363. Based on the foregoing, Subject 2 breached **Regulation 1.2(b)** of the **Staff Regulations of the United Nations** because he failed to “uphold the highest standards of ... integrity” when he failed to be impartial, fair, honest and truthful during this procurement exercise.

364. Subject 2 breached **Regulation 1.2(g)** of the **Staff Regulations of the United Nations** when he used his “office or knowledge gained from [his] official functions for private gain, financial or otherwise, or for the private gain of any third party, including . . . those he favor[ed],” specifically, Dinasa.

365. Subject 2 breached **Regulation 1.2(r)** of the **Staff Regulations of the United Nations** because he failed to “respond fully to requests for information from” the Task Force in its investigation into the possible misuse of funds, waste or abuse.

366. Subject 2 breached **Regulation 1.3(a)** of the **Staff Regulations of the United Nations** because he did not “uphold the highest standards of . . . integrity in the discharge of [his] functions” during this procurement exercise.

367. Subject 2 breached **Rule 101.2** of the **Financial Regulations and Rules of the United Nations** because he intentionally did not “comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those

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Regulations and Rules” during this procurement exercise, and therefore should “be held personally accountable and financially liable for his . . . actions.”

368. Subject 2 breached **Regulation 5.12(b)** of the **Financial Regulations and Rules of the United Nations** because this procurement exercise was purposefully not conducted in a fair manner, with “integrity and transparency.”

369. Subject 2 breached **Rule 105.15(b)** of the **Financial Regulations and Rules of the United Nations** because the recommended award to Dinasa was not initially “awarded to the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth in the solicitation documents.”

370. Subject 2 breached **Section 11.1(1)(b)** of the **United Nations Procurement Manual** because the “procurement process [was not] fair, objective and transparent,” nor did the process “give due consideration to” the general principles of “[f]airness, integrity and transparency.”

371. Subject 2 breached **Section 11.1(2)** of the **United Nations Procurement Manual** because the selection process was not “objective and . . . conducted in accordance with the above principles.”

372. Subject 2 breached **Section 11.3(2) of the United Nations Procurement Manual** because the technical and commercial proposals were not evaluated based on “objective, non-discretionary” criteria or with an “ objective analysis” in accordance with the RFP and the Procurement Manual.

373. Subject 2 breached **Section 11.6.1(1)** of the **United Nations Procurement Manual** because the selection process was not “open and transparent,” and the evaluation of the proposals was not “fair, reasonable and objective.”

374. Subject 2 breached **Section 11.6.1(3)** of the **United Nations Procurement Manual** because the recommended award to Dinasa was not to “the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth” in the RFP.

375. Subject 2 breached **Section 11.6.7(4)** of the **United Nations Procurement Manual** because the technical and commercial proposals were not evaluated “in a manner that [was] consistent and fair to all prospective Vendors.”

376. Subject 2 breached **Section 12.1.3(4)** of the **United Nations Procurement Manual** because he submitted a presentation to the LCC and HCC which was not factually accurate.

377. Subject 2 breached **Sections 12.1.4(a)(d)** of the **United Nations Procurement Manual**, because he submitted an inaccurate presentation to the LCC and HCC and he failed to ensure “that the procurement action [was] undertaken in accordance with the FRR, established procurement practices and procedures, and applicable SGBs and AIs.”

### 3. Subject 6

378. As a team leader in Procurement, Subject 6 was a supervisor for the procurement exercise for the long term fuel contract. The Task Force finds that during the long-term ground fuel procurement exercise, Subject 6 colluded with others to steer the technical and commercial evaluations to favour a specific vendor, Dinasa. This was done when the evaluators, at the direction of their supervisors, rated Dinasa's proposal 1% higher than SkyLink, the previously highest scoring vendor. Dinasa was intentionally given a score of 98, to be higher than SkyLink's score of 97. The evaluators also made sure that Dinasa's financial bid was commercially superior to the other competitors, which was accomplished by altering and manipulating the fuel estimate requirements until Dinasa's prices were the lowest.

379. As a result of the bid-rigging scheme, the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.

380. Specifically, Subject 6 was responsible for the following actions:

- he approved a Procurement Assistant's improper disclosure of pricing information to the Technical Evaluation Committee prior its completion of a technical evaluation; and did not object to the fact that the exercise had been compromised
- he received a conflicting evaluation that ranked Dinasa as technically non-compliant, and yet recommended allowing it a second chance to correct its proposal;
- after discovering that Dinasa had been found to be non-compliant, he attended and participated in a series of meetings between Fuel and Procurement in which they discussed how to keep Dinasa in the procurement exercise;
- he drafted a section of the initial overall evaluation which changed Dinasa from "non-compliant" to one that "could reasonably be made acceptable" if it provided certain information, in order to justify its continued participation in the procurement;
- he agreed to give Dinasa a second chance to correct its proposal and submit missing information regarding a mobilization plan, even though it had been disqualified from the procurement exercise;
- he contacted Mr. Yakovlev in New York to find a way to keep Dinasa in the competition;
- he approved proceeding with a BAFO that was held solely to help a non-compliant vendor, Dinasa, and which gave it a second opportunity to correct its proposal;
- he intentionally added the mobilization section to the BAFO, which he then had highlighted, specifically to assist Dinasa;
- he approved the BAFO, which misrepresented to vendors that the Statement of Works had not changed, despite knowing that the fuel estimates indeed had changed dramatically;

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- he attended a meeting with Dinasa during the procurement exercise at which the company had been told to submit a mobilization plan at no cost to the Mission in its BAFO response;
- he attended a meeting with Total Haiti during the procurement exercise, at which the company had been told not to change its prices, thus reducing Total Haiti's chance to offer more competitive prices;
- he participated in discussions as to how the vendors would be technically evaluated;
- he instructed the technical evaluation team to show him the proposed evaluation prior to its release so he could make sure the "figures were okay,"
- as a result, the technical evaluation team intentionally increased Dinasa's score so it became the most qualified vendor in order for it to win the contract;
- he approved the final technical evaluation which had not been fairly conducted and which was rigged to favour Dinasa;
- after learning that Dinasa was not the lowest bidder, he participated in meetings with others to figure out how Dinasa could win the award;
- he agreed with staff members in the Fuel and Procurement Section to do whatever was necessary in order for Dinasa to become the lowest bidder;
- he instructed staff to make Dinasa the lowest bidder so it could win the award;
- he thus knew that the commercial evaluation was eventually rigged to favour Dinasa and that the proposals were not fairly evaluated;
- he provided and/or approved of misrepresentations regarding the procurement exercise to the LCC and HCC;
- during this time, as a supervisor, his participation gave the appearance of approving and/or condoning the actions that took place during the exercise, and implicitly, if not explicitly, placed pressure upon his employees to participate in this scheme;
- he was not truthful with investigators when questioned about the procurement exercise and made material misrepresentations, specifically that he participated in a scheme to favour Dinasa through the rigging of the final financial and technical evaluations, which he intentionally did not disclose to the Task Force and indeed denied any improper favouritism;
- and finally, Subject 6 falsely testified under oath in a U.S. criminal trial in which he denied favouring Dinasa, and denied having a rating system adjusted to favour a vendor.

381. Based on the foregoing, Subject 6 breached **Regulation 1.2(b)** of the **Staff Regulations of the United Nations** because he failed to "uphold the highest standards of . . . integrity" when he failed to be impartial, fair, honest and truthful during this procurement exercise. Moreover, not only does his allegedly perjured testimony

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constitute a criminal offence, such an action also discredits and dishonours the United Nations. Intentionally submitting false testimony in a criminal trial can hardly be considered acting with integrity, truthfully and honestly.

382. Subject 6 breached **Regulation 1.2(g) of the Staff Regulations of the United Nations** when he used his “office or knowledge gained from [his] official functions for private gain, financial or otherwise, or for the private gain of any third party, including . . . those he favor[ed],” specifically, Dinasa.

383. Subject 6 breached **Regulation 1.2(r) of the Staff Regulations of the United Nations** because he failed to “respond fully to requests for information from” the Task Force in its investigation into the possible misuse of funds, waste or abuse.

384. Subject 6 breached **Regulation 1.3(a) of the Staff Regulations of the United Nations** because he failed to “uphold the highest standards of . . . integrity in the discharge of [his] functions” during this procurement exercise.

385. Subject 6 breached **Rule 101.2 of the Financial Regulations and Rules of the United Nations** because he intentionally did not “comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules” during this procurement exercise, and therefore should “be held personally accountable and financially liable for his . . . actions.”

386. Subject 6 breached **Regulation 5.12(b) of the Financial Regulations and Rules of the United Nations** because this procurement exercise was purposefully not conducted in a fair manner, with “integrity and transparency.”

387. Subject 6 breached **Rule 105.15(b) of the Financial Regulations and Rules of the United Nations** because the recommended award to Dinasa was not initially “awarded to the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth in the solicitation documents.”

388. Subject 6 breached **Section 11.1(1)(b) of the United Nations Procurement Manual** because the “procurement process [was not] fair, objective and transparent,” nor did the process “give due consideration to” the general principles of “[f]airness, integrity and transparency.”

389. Subject 6 breached **Section 11.1(2) of the United Nations Procurement Manual** because the selection process was not “objective and . . . conducted in accordance with the above principles.”

390. Subject 6 breached **Section 11.3(2) of the United Nations Procurement Manual** because the technical and commercial proposals were not evaluated based on “objective, non-discretionary” criteria or with an “objective analysis” in accordance with the RFP and the Procurement Manual.

391. Subject 6 breached **Section 11.6.1(1) of the United Nations Procurement Manual** because the selection process was not “open and transparent,” and the evaluation of the received proposals was not “fair, reasonable and objective.”

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392. Subject 6 breached **Section 11.6.1(3)** of the **United Nations Procurement Manual** because the recommended award to Dinasa was not to “the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth” in the RFP.

393. Subject 6 breached **Section 11.6.2(2)** of the **United Nations Procurement Manual** because the technical evaluation was not “performed without prior knowledge of cost” and the financial proposals had been released to the Technical Evaluation Committee prior to the finalization of a technical evaluation.

394. Subject 6 breached **Section 11.6.7(4)** of the **United Nations Procurement Manual** because the technical and commercial proposals were not evaluated “in a manner that [was] consistent and fair to all prospective Vendors.”

395. Subject 6 breached **Section 12.1.3(4)** of the **United Nations Procurement Manual** because he submitted a presentation to the LCC and HCC which was factually inaccurate.

396. Subject 6 breached **Sections 12.1.4(a)(d)** of the **United Nations Procurement Manual**, because he submitted an inaccurate presentation to the LCC and HCC, and he failed to ensure “that the procurement action [was] undertaken in accordance with the FRR, established procurement practices and procedures, and applicable SGBs and AIs.”

397. Finally, Subject 6 committed perjury in violation of Title 18 United States Code Section 1623 while a witness, under oath, in the criminal trial in the matter of United States v. Sanjaya Bahel when he testified that he did not steer the fuel contract to Dinasa.

#### **4. Subject 3**

398. Subject 3 was Chief of the Fuel Unit and a member of both the Technical and Tender Evaluation Committees. He therefore was responsible for performing the technical and overall evaluations for this procurement.

399. During the long-term ground fuel procurement exercise, Subject 3 colluded with others to steer the technical and commercial evaluations to favour a specific vendor, Dinasa. He did so by making sure Dinasa was the highest qualified vendor, which was accomplished by rating its proposal 1% higher than SkyLink, the previously highest scoring vendor. Dinasa was intentionally given a score of 98 so that it was higher than SkyLink’s score of 97. Subject 3 also made sure that Dinasa’s financial bid was commercially superior to the other competitors, which was accomplished by altering and manipulating the fuel estimate requirements until Dinasa’s prices were the lowest.

400. As a result of the bid-rigging scheme, the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.

401. Specifically, Subject 3 was responsible for the following actions:

- he improperly asked for, received, and then distributed vendors’ pricing information prior to the completion of a technical evaluation;

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- he initially agreed that Dinasa's proposal was non-compliant and lacked an understanding of the RFP;
  - he initially agreed not to request any clarifications from Dinasa because it failed to respond to a material element in the proposal, and therefore was non-compliant;
  - after several drafts of the initial technical evaluation, he suddenly decided that Dinasa merely forgot to include this information, and should therefore be given another chance;
  - he repeatedly told staff members in the Fuel Unit and Procurement Section that he wanted Dinasa to win the contract;
  - he told his employees that he did not want Total Haiti to win the award because he did not want to switch vendors;
  - he subsequently drafted language in an evaluation that changed Dinasa from being non-compliant to one that could reasonably be made acceptable in order to keep Dinasa in the procurement;
  - he held and attended a series of meetings between Fuel and Procurement in which they discussed how to keep Dinasa in the procurement exercise;
  - he agreed to give Dinasa a second chance to correct its proposal and submit missing information regarding a mobilization plan, even though it had been disqualified from the procurement exercise;
  - he knew or should have known as the Chief of the Unit (and author of the original SOW) that the BAFO misrepresented to vendors that the Statement of Works had not changed, despite the fact that the fuel estimates had changed dramatically;
  - he attended a meeting with Dinasa during the procurement exercise at which the company had been told to submit a mobilization plan at no cost to the Mission in its BAFO response;
  - he attended a meeting with Total Haiti during the procurement exercise, at which the company had been told not to change its prices, thus reducing Total Haiti's chance to offer more competitive prices;
  - as Chair of the technical evaluation team, he intentionally increased Dinasa's score so it became the most qualified vendor in order for it to win the contract;
  - he knew the final technical evaluation had not been fairly conducted since it was rigged to favour Dinasa;
  - after learning that Dinasa was not the lowest bidder, he attended meetings and participated in discussions with others to figure out how Dinasa could win the award;
  - he agreed with others to make Dinasa the lowest bidder so it could win the award;

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- he suggested that the Fuel Unit manipulate the fuel estimates (by increasing the Mission's demand for bulk fuel, where Dinasa offered lower prices) in order for Dinasa to become the lowest bidder;
- he physically sat with and assisted one of his employees to change the fuel estimates for the commercial evaluation in order to accomplish this;
- he therefore rigged the commercial evaluation to favour Dinasa and he thus knew that the proposals were not fairly evaluated;
- he intentionally misdated a document recommending Dinasa as the most qualified vendor, even though he knew the procurement had been manipulated to favour the company;
- during this time, as a supervisor, his participation gave the appearance of approving and/or condoning the actions that took place during the exercise, and implicitly, if not explicitly, placed pressure upon his employees to participate in this scheme;
- and he was not truthful with investigators when questioned about the procurement exercise and made material misrepresentations, specifically that he participated in a scheme to favour Dinasa through the rigging of the final financial and technical evaluations, which he intentionally did not disclose to the Task Force and indeed denied any improper favouritism.

402. Based on the foregoing, Subject 3 breached **Regulation 1.2(b)** of the **Staff Regulations of the United Nations** because he failed to “uphold the highest standards of . . . integrity” when he failed to be impartial, fair, honest and truthful during this procurement exercise.

403. Subject 3 breached **Regulation 1.2(r) of the Staff Regulations of the United Nations** because he failed to “respond fully to requests for information from” the Task Force in its investigation into the possible misuse of funds, waste or abuse.

404. Subject 3 breached **Regulation 1.3(a)** of the **Staff Regulations of the United Nations** because he did not “uphold the highest standards of . . . integrity in the discharge of [his] functions” during this procurement exercise.

405. Subject 3 breached **Rule 101.2** of the **Financial Regulations and Rules of the United Nations** because he intentionally did not “comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules” during this procurement exercise, and therefore should “be held personally accountable and financially liable for his . . . actions.”

406. Subject 3 breached **Regulation 5.12(b)** of the **Financial Regulations and Rules of the United Nations** because this procurement exercise was purposefully not conducted in a fair manner, with “integrity and transparency.”

407. Subject 3 breached **Rule 105.15(b)** of the **Financial Regulations and Rules of the United Nations** because the recommended award to Dinasa was not initially

“awarded to the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth in the solicitation documents.”

408. Subject 3 breached **Section 11.1(1)(b)** of the **United Nations Procurement Manual** because the “procurement process [was not] fair, objective and transparent,” nor did the process “give due consideration to” the general principles of “[f]airness, integrity and transparency.”

409. Subject 3 breached **Section 11.1(2)** of the **United Nations Procurement Manual** because the selection process was not “objective and . . . conducted in accordance with the above principles.”

410. Subject 3 breached **Section 11.3(2) of the United Nations Procurement Manual** because the technical and commercial proposals were not evaluated based on “objective, non-discretionary” criteria or with an “ objective analysis” in accordance with the RFP and the Procurement Manual.

411. Subject 3 breached **Section 11.6.1(1)** of the **United Nations Procurement Manual** because the selection process was not “open and transparent,” and the evaluation of the proposals was not “fair, reasonable and objective.”

412. Subject 3 breached **Section 11.6.1(3)** of the **United Nations Procurement Manual** because the recommended award to Dinasa was not to “the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth” in the RFP.

413. Subject 3 breached **Section 11.6.2(2)** of the **United Nations Procurement Manual** because the technical evaluation was not “performed without prior knowledge of cost” and the financial proposals had been released to the Technical Evaluation Committee prior to the finalization of a technical evaluation.

414. Subject 3 breached **Section 11.6.7(4)** of the **United Nations Procurement Manual** because the technical and commercial proposals were not evaluated “in a manner that [was] consistent and fair to all prospective Vendors.”

## 5. Subject 4

415. As a Procurement Assistant, Subject 4 was the case officer for the procurement, as well as a member of the Tender Evaluation Committee. During this time, he was primarily supervised by Subject 6, Subject 2 and Subject 1. During the long-term ground fuel procurement exercise, Subject 4 colluded with others to steer the technical and commercial evaluations to favour a specific vendor, Dinasa. Subject 6 participated in this effort by ensuring that Dinasa was the highest qualified vendor, which was accomplished by rating its proposal 1% higher than SkyLink, the previously highest scoring vendor. Dinasa was intentionally given a score of 98 in order to exceed SkyLink’s score of 97. Subject 4 was also a member of the Tender Evaluation Committee which improved Dinasa’s financial bid until it was commercially superior to the other competitors by altering and manipulating the fuel estimate requirements until Dinasa’s prices were the lowest.

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416. As a result of the bid-rigging scheme, the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.

417. Furthermore, Subject 4 attempted to bribe one of the vendors, Total Haiti, during this procurement.

418. Specifically, Subject 4 was responsible for the following actions:

- as the Procurement representative, he knew that the requisitioner improperly participated in the tender opening, yet made no objection;
- he knew the Tender Opening Committee improperly opened both the financial and technical evaluations simultaneously, and yet did not object or take any steps to investigate whether the exercise had been compromised;
- he improperly disclosed pricing information to the Technical Evaluation Committee prior its completion of a technical evaluation;
- he initially agreed that Dinasa's proposal was non-compliant and lacked an understanding of the RFP;
- he initially agreed not to request any clarifications from Dinasa because it failed to respond to a material element in the proposal, and therefore was non-compliant;
- as part of the Tender Evaluation Committee, he agreed to allow Dinasa to remain in the competition if the company demonstrated "mobilization details at no additional cost," even though the company had been rated technically non compliant;
- he drafted the overall evaluation which contained both the decision and recommendation to allow a technically non compliant vendor to remain in the bidding process;
- after reporting to his supervisors that Dinasa had been found to be non-compliant, he attended and participated in a series of meetings between Fuel and Procurement in which they discussed how to keep Dinasa in the procurement exercise;
- with the help of Subject 6, he drafted a memorandum which changed Dinasa from "non-compliant" to one that "could reasonably be made acceptable" if it provided certain information, in order to justify its continued participation in the procurement;
- he agreed to give Dinasa a second chance to correct its proposal and submit missing information regarding a mobilization plan, even though it had been disqualified from the procurement exercise;
- he agreed to proceed with a BAFO that was held solely to help a non-compliant vendor, Dinasa, and which gave it a second opportunity to correct its proposal;
- with the help of Subject 6, he drafted the BAFO which intentionally highlighted the mobilization section to assist Dinasa;

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- he drafted the BAFO which misrepresented to vendors that the Statement of Works had not changed, despite knowing that the fuel estimates indeed had changed dramatically;
  - he attended a meeting with Total Haiti during the procurement exercise, at which the company had been told not to change its prices, thus reducing Total Haiti's chance to offer more competitive prices;
  - he agreed to show the proposed technical evaluation to his supervisors prior to its release so they could make sure the "figures were okay;"
  - as part of the evaluation team, he agreed to intentionally increase Dinasa's score so it became the most qualified vendor in order for it to win the contract;
  - he participated in a final technical evaluation which had not been fairly conducted and which was steered to favour Dinasa;
  - after learning that Dinasa was not the lowest bidder, he notified his supervisors;
  - he then participated in meetings with others for the purpose of determining how Dinasa could win the award;
  - he agreed with staff members in the Fuel and Procurement Section to do whatever was necessary in order for Dinasa to become the lowest bidder;
  - he agreed with others to make Dinasa the lowest bidder so it could win the award;
  - he knew the fuel estimates were being manipulated so Dinasa would become the lowest bidder;
  - he thus knew that the commercial evaluation was eventually rigged to favour Dinasa and that the proposals were not fairly evaluated;
  - he drafted the final overall evaluation which concluded that Dinasa scored the highest technically and, with its new prices, was "the lowest of the three proposals" and "1% lower than Total Haiti;"
  - he deliberately misdated the final evaluation document to disguise that it was drafted after the rigged commercial evaluation;
  - he provided and/or approved of misrepresentations regarding the procurement exercise to the LCC and HCC;
  - during this procurement exercise, he met with representatives from Total Haiti and attempted to solicit a bribe in exchange for assistance with the award; and
  - he was not consistently truthful with investigators when questioned about the procurement exercise and made material misrepresentations, specifically that he participated in a scheme to favour Dinasa through the rigging of the final financial and technical evaluations, which he intentionally did not disclose to the Task Force

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and indeed denied any improper favouritism, as well as his denial of any attempt to solicit a bribe from Total Haiti.

419. Based on the foregoing, Subject 4 breached **Regulation 1.2(b)** of the **Staff Regulations of the United Nations** because he failed to “uphold the highest standards of . . . integrity” when he failed to be impartial, fair, honest and truthful during this procurement exercise.

420. Subject 4 breached **Regulation 1.2(g)** of the **Staff Regulations of the United Nations** when he used his “office or knowledge gained from [his] official functions for private gain, financial or otherwise, or for the private gain of any third party, including . . . those he favor[ed],” specifically, Dinasa.

421. Subject 4 breached **Regulation 1.2(r)** of the **Staff Regulations of the United Nations** because he failed to “respond fully to requests for information from” the Task Force in its investigation into the possible misuse of funds, waste or abuse.

422. Subject 4 breached **Regulation 1.3(a)** of the **Staff Regulations of the United Nations** because he did not “uphold the highest standards of . . . integrity in the discharge of [his] functions” during this procurement exercise.

423. Subject 4 breached **Rule 101.2** of the **Financial Regulations and Rules of the United Nations** because he intentionally did not “comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules” during this procurement exercise, and therefore should “be held personally accountable and financially liable for his . . . actions.”

424. Subject 4 breached **Regulation 5.12(b)** of the **Financial Regulations and Rules of the United Nations** because this procurement exercise was purposefully not conducted in a fair manner, with “integrity and transparency.”

425. Subject 4 breached **Rule 105.15(b)** of the **Financial Regulations and Rules of the United Nations** because the recommended award to Dinasa was not initially “awarded to the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth in the solicitation documents.”

426. Subject 4 breached **Section 10.1.1(3)** of the **United Nations Procurement Manual** because he knew the requisitioner, Subject 3, improperly served on the Tender Opening Committee.

427. Subject 4 breached **Sections 10.8.4(4) and 11.6.6(5)** of the **United Nations Procurement Manual** because he knew that both the technical and financial proposals were opened simultaneously, prior to the completion of a technical evaluation.

428. Subject 4 breached **Section 11.1(1)(b)** of the **United Nations Procurement Manual** because the “procurement process [was not] fair, objective and transparent,” nor did the process “give due consideration to” the general principles of “[f]airness, integrity and transparency.”

429. Subject 4 breached **Section 11.1(2)** of the **United Nations Procurement Manual** because the selection process was not “objective and . . . conducted in accordance with the above principles.”

430. Subject 4 breached **Section 11.3(2) of the United Nations Procurement Manual** because the technical and commercial proposals were not evaluated based on “objective, non-discretionary” criteria or with an “ objective analysis” in accordance with the RFP and the Procurement Manual.

431. Subject 4 breached **Section 11.6.1(1)** of the **United Nations Procurement Manual** because the selection process was not “open and transparent,” and the evaluation of the proposals was not “fair, reasonable and objective.”

432. Subject 4 breached **Section 11.6.1(3)** of the **United Nations Procurement Manual** because the recommended award to Dinasa was not to “the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth” in the RFP.

433. Subject 4 breached **Section 11.6.2(2)** of the **United Nations Procurement Manual** because the technical evaluation was not “performed without prior knowledge of cost” and the financial proposals had been released to the Technical Evaluation Committee prior to the finalization of a technical evaluation.

434. Subject 4 breached **Section 11.6.7(4)** of the **United Nations Procurement Manual** because the technical and commercial proposals were not evaluated “in a manner that [was] consistent and fair to all prospective Vendors.”

435. Subject 4 breached **Section 12.1.4(d)** of the **United Nations Procurement Manual** because he failed to ensure “that procurement action [was] undertaken in accordance with the FRR, established procurement practices and procedures, and applicable SGBs and AIs.”

436. Subject 4 breached **Section 12.1.3(4)** of the **United Nations Procurement Manual** because he submitted a presentation to the LCC and HCC which was factually inaccurate.

437. Finally, Subject 4 breached **Section 12.1.4(a)(d)** of the **United Nations Procurement Manual** because he submitted a presentation to the HCC and LCC which was not accurate and he failed to “ensure that the procurement action [was] undertaken in accordance with the FRR, established procurement practices and procedures, and applicable SGBs and AIs.”

## 6. Subject 5

438. Subject 5 was a member of both the Technical and Tender Evaluation Committees and shared responsibility for performing the technical and overall evaluations. During the long-term ground fuel procurement exercise, Subject 5 participated in the collusive effort with others to steer the technical and commercial evaluations to favour a specific vendor, Dinasa. As a result of the bid-rigging scheme, the procurement exercise was not

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conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.

439. Subject 5, however, fully cooperated with the Task Force regarding the circumstances of this procurement exercise. When the procurement was commenced in January 2005, Subject 5 had just joined the Mission. He acted under the directions of senior staff members, including his supervisor, Subject 3, and the CAS, Subject 1. Furthermore, Subject 5 transferred out of the Fuel Unit after this procurement exercise because he found it such a troubling experience.

440. Specifically, Subject 5's actions included:

- he initially agreed that Dinasa's proposal was non-compliant and lacked an understanding of the RFP;
- he initially agreed not to request any clarifications from Dinasa because it failed to respond to a material element in the proposal, and therefore was non-compliant;
- after reporting to his supervisors that Dinasa had been found to be non-compliant, he attended and participated in a series of meetings between Fuel and Procurement in which they discussed how to keep Dinasa in the procurement exercise;
- he agreed to give Dinasa a second chance to correct its proposal and submit missing information regarding a mobilization plan, even though it had been disqualified from the procurement exercise;
- he agreed to proceed with a BAFO that was held solely to help a non-compliant vendor, Dinasa, which also gave it a second opportunity to correct its proposal;
- he attended a meeting with Total Haiti during the procurement exercise, at which the company had been told not to change its prices, thus reducing Total Haiti's chance to offer more competitive prices;
- as part of the evaluation team, he agreed to intentionally increase Dinasa's score so it became the most qualified vendor in order for it to win the contract;
- he therefore participated in a final technical evaluation which had not been fairly conducted and which was rigged to favour Dinasa;
- he then participated in meetings with others to figure out how Dinasa could win the award;
- he agreed with staff members in the Fuel and Procurement Section to do whatever was necessary in order for Dinasa to become the lowest bidder;
- he agreed with others to make Dinasa the lowest bidder so it could win the award; and
- under the supervision and direction of his supervisor, Subject 3, he manipulated the fuel estimates so Dinasa would become the lowest bidder;
- he thus knew that the commercial evaluation was eventually rigged to favour Dinasa and that the proposals were not fairly evaluated.

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441. Based on the foregoing, Subject 5 breached **Regulation 1.2(b)** of the **Staff Regulations of the United Nations** because he failed to “uphold the highest standards of . . . integrity” when he failed to be impartial, fair, honest and truthful when participating in this procurement exercise.

442. Subject 5 breached **Regulation 1.2(g) of the Staff Regulations of the United Nations** when he used his “office or knowledge gained from [his] official functions for private gain, financial or otherwise, or for the private gain of any third party, including . . . those he favor[ed],” specifically, Dinasa.

443. Subject 5 breached **Regulation 1.3(a)** of the **Staff Regulations of the United Nations** because he did not “uphold the highest standards of . . . integrity in the discharge of [his] functions” during this procurement exercise.

444. Subject 5 breached **Rule 101.2** of the **Financial Regulations and Rules of the United Nations** because he intentionally did not “comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules” during this procurement exercise.

445. Subject 5 breached **Regulation 5.12(b)** of the **Financial Regulations and Rules of the United Nations** because this procurement exercise was purposefully not conducted in a fair manner, with “integrity and transparency.”

446. Subject 5 breached **Rule 105.15(b)** of the **Financial Regulations and Rules of the United Nations** because the recommended award to Dinasa was not initially “awarded to the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth in the solicitation documents.”

447. Subject 5 breached **Section 11.1(1)(b)** of the **United Nations Procurement Manual** because the “procurement process [was not] fair, objective and transparent,” nor did the process “give due consideration to” the general principles of “[f]airness, integrity and transparency.”

448. Subject 5 breached **Section 11.1(2)** of the **United Nations Procurement Manual** because the selection process was not “objective and . . . conducted in accordance with the above principles.”

449. Subject 5 breached **Section 11.3(2)** of the **United Nations Procurement Manual** because the technical and commercial proposals were not evaluated based on “objective, non-discretionary” criteria or with an “objective analysis” in accordance with the RFP and the Procurement Manual.

450. Subject 5 breached **Section 11.6.1(1)** of the **United Nations Procurement Manual** because the selection process was not “open and transparent,” nor was the evaluation of the proposals “fair, reasonable and objective.”

451. Subject 5 breached **Section 11.6.1(3)** of the **United Nations Procurement Manual** because the recommended award to Dinasa was not to “the qualified proposer whose proposal, all factors considered, [was] the most responsive to the requirements set forth” in the RFP.

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452. Subject 5 breached **Section 11.6.7(4)** of the **United Nations Procurement Manual** because the technical and commercial proposals were not evaluated “in a manner that [was] consistent and fair to all prospective Vendors.”

## XIII. RECOMMENDATIONS

### A. RECOMMENDATION PTF-R010/07/1

453. The Task Force recommends that appropriate action be taken against **Subject 1** for the violation of the UN Staff Regulations and Rules, UN Financial Regulations and Rules, and the UN Procurement Manual, and for his failure to cooperate fully and truthfully with the Task Force’s investigation.

### B. RECOMMENDATION PTF-R010/07/2

454. The Task Force recommends that appropriate action be taken against **Subject 2** for the violation of the UN Staff Regulations and Rules, UN Financial Regulations and Rules, and the UN Procurement Manual, and for his failure to cooperate fully and truthfully with the Task Force’s investigation. However, the Task Force recommends that Subject 2’s brief tenure as Officer-in-Charge of Procurement should be considered a mitigating factor.

### C. RECOMMENDATION PTF-R010/07/3

455. The Task Force recommends that appropriate action be taken against Subject 6 for the violation of the UN Staff Regulations and Rules, UN Financial Regulations and Rules, and the UN Procurement Manual, and for his failure to cooperate fully and truthfully with the Task Force’s investigation.

### D. RECOMMENDATION PTF-R010/07/4

456. The Task Force also recommends that Subject 6 be referred to the United States Attorney’s Office, Southern District of New York, for wilfully and intentionally making a material misstatement while testifying under oath in violation of Title 18 U.S.C. Section 1621.

### E. RECOMMENDATION PTF-R010/07/5

457. The Task Force recommends that appropriate action be taken against **Subject 3** for the violation of the UN Staff Regulations and Rules, UN Financial Regulations and Rules, and the UN Procurement Manual, and for his failure to cooperate fully and truthfully with the Task Force’s investigation.

## F. RECOMMENDATION PTF-R010/07/6

458. The Task Force recommends that appropriate action be taken against **Subject 4** for the violation of the UN Staff Regulations and Rules, UN Financial Regulations and Rules, and the UN Procurement Manual, and for his failure to fully and truthfully cooperate with the Task Force's investigation.

## G. RECOMMENDATION PTF-R010/07/7

459. The Task Force recommends that appropriate, yet mitigated, action be taken against **Subject 4** be referred to the appropriate criminal authorities for a possible violation of bribery and corruption laws.

## H. RECOMMENDATION PTF-R010/07/8

460. The Task Force recommends that **no** action be taken against **Subject 5** for several reasons. First, Subject 5 was the first witness to fully and truthfully cooperate with the Task Force's investigation. His testimony greatly aided the Task Force with its investigation. Second, Subject 5, who was new at the Mission during this time, was working under the direction of his supervisor, Subject 3. Finally, Subject 5 immediately transferred out of the Fuel Unit after this procurement exercise because he was so uncomfortable with his and the others' actions.

## I. RECOMMENDATION PTF-R010/07/9

461. Pursuant to **Rule 112.3** of the **Staff Regulations of the United Nations**, Subject 1, Subject 2, Subject 6, Subject 3 and Subject 4 should be "required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of" their violations for the above Staff and Financial Regulations and Rules, and Procurement Manual.

## J. RECOMMENDATION PTF-R010/07/10

462. Finally, it has been established in this report that, in numerous ways, Dinasa was shown favouritism during the MINUSTAH fuel procurement exercise. There has also been a credible account, reported in a timely manner, of an attempt by a MINUSTAH Procurement staff member to obtain a financial benefit from one of the competing vendors.

463. It has been the experience of the Task Force investigators involved in this case, who have a combined law enforcement background of more than 35 years, that favouritism to a particular vendor is often accompanied by financial remuneration that benefits one or more of the co-conspirators. This has equally been demonstrated in the previous Task Force investigations which involved Mr. Alexander Yakovlev and several United Nations vendors (including Volga-Dnepr Airlines, Cogim S.p.A., and Avicos), as well as Mr. Sanjaya Bahel and the vendors, Telecommunication Consultants of India Ltd. and Thunderbird Industries, LLC.

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464. As stated above, the Task Force has limited coercive authority. In light of this, and because of the strong connection between vendor favouritism and financial benefit, it is recommended that the Secretary General direct the staff members, who have been identified participating in wrongdoing in this investigation and report, to provide full and complete financial disclosure. Specifically, that Subject 1, Subject 2, Subject 6, Subject 3, and Subject 4 be required to provide bank account information, bank statements, property and business records, and other such similar information requested by the Task Force for the time period both prior to and after this procurement exercise.

## **K. RECOMMENDATION PTF-R010/07/11**

465. The Task Force recommends that the matter be referred to prosecutorial authorities in the host country.

## ANNEX A: SUBJECT 2 LETTER TO THE TASK FORCE (11 JUNE 2007)

11<sup>th</sup> June 2007

Dear Mr. Appleton,

This is to acknowledge receipt of your letter dated 4<sup>th</sup> June 2007 and I thank you for affording me an opportunity to provide response and circumstances in connection with your proposed findings. Let me explain to the best of my recollection the situation, and I earnestly hope you would consider and favorably evaluate prior to reaching a firm conclusion.

### BACKGROUND

I was assigned to MINUSTAH on an urgent basis for a period 2 months at the request of DPKO, to assist MINUSTAH Procurement Section to clear out a large number of approx. 400 unprocessed requisitions amounting to approx. \$26 Million prior to the end of the financial year. The assignment was to cover the months of May and June of 2005. My first working day was 2 May and I left the mission on 29 June 2005. The new CPO arrived and took over on or about the 22<sup>nd</sup> of June. I was made to understand that if the outstanding requisitions were not processed prior to the end of the financial year (end June), that the mission would lose the unspent funds and could not afford to do so at the time.

It needs to be taken into account that on my own accord I did not apply to go to MINUSTAH at any time for even a short or a regular assignment. To date I am not aware as to the basis on which I was selected to go to MINUSTAH to undertake such an arduous task and what qualifications and experience I possessed to have been chosen above anyone else. It was my understanding that my temporary assignment was merely to assist the mission in reducing the back-log of requisitions within the time frame; and I must stress that DPKO, upon its request for my release made no reference to my assuming the functions of CPO or OIC. The fact that I was installed as OIC by the SAO of MINUSTAH is not sufficient grounds for me to be held responsible for the actions of MINUSTAH staff.

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Perhaps you may or may not know the culture within the organization that if a S/M rejects (declines) to undertake such assignments, it is not viewed favorably by the administration, and may effect ones progression within the organization. In this particular situation I had little choice, but to accept the assignment and to undertake the task.

Prior to arrival in MINUSTAH (or even to date) I have no idea as to the background of why such a situation arose in terms of such an unprecedented number of unprocessed requisitions. Upon arrival I found that the former CPO had been promoted to SAO status within the mission overseeing Procurement among other sections and a new CPO had been identified and that the S/M was in travel status, and arrival was due towards the end of June 2005. It was clear to me that I was a “stop gap” arrangement between the previous and the new CPO.

Serious allegations have been intimated against me, rooted upon the state of affairs at MINUSTAH at the time of my arrival, in particular the unprecedented back-log of work which to my defense I myself have questioned. I should even be so bold as to question why the former CPO did not simply continue till the newly appointed CPO arrived – it was a mere 2-month period? Why bring in a third party to the mission at a very crucial time (end of financial year)? Moreover the post of CPO in MINUSTAH is at P4 level and I was at P3 level; I have not handled assignments of such magnitude before nor have I had any previous experience in managing situations in such very tight time frames and limited resources such as staffing (lack of).

Instinctively my task was to motivate and empower staff to gain efficiency and to ensure processing the back-log in a timely manner. Staff had no idea about the situation or the pursuant deadlines. Furthermore there was a lack of ownership on their part as to the work they were doing. Requisitions were being raised in a piece-meal basis, no consolidation of requirements.

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I had no prior working experience with any of the staff of the section. I had to take the chance to empower them, make them take ownership of the work they were handling. The section was divided to 3 teams and they were asked to carry on with the case files as they were already doing. They were entrusted to work autonomously and most often than not they were working 7 days a week 7-to-7 basis. To the best of my understanding at the time, the prime task I had was to ensure efficiency gains from the section.

**GROUND FUEL PROCUREMENT PROCESS**

To my defense, under the circumstances and given the magnitude of the workload and the task of managing staff, it was not humanly possible to review case files that had already been processed in detail at the time. The case in question was one additional amongst the many unprocessed requisitions. The process of the ground fuel requirement had begun well before my arrival in MINUSTAH. According to the records I received from your office the commencement of the procurement process began during October 2004. The case officers handling the case seemed competent based on my perception of them and the situation at the time, and I had to proceed from the assumption that I had to trust them, and that they knew what they were doing. I had no grounds for any suspicions. They were told to continue their work and I would assist if required. The case officers went about their work processing the case, they consulted the technical team, and also the officers involved in the case prior to my arrival such as the former CPO. Due to the lack of detailed knowledge of the case I was unable to give or make an informed decision about the case process. I may have attended some meetings in connection with the case in question, however taking into account my lack of detailed information of the case I would not have been able to make any tangible contributions towards the process. If at all, the underlying intent of attending those meetings would have been to grasp some details of the case in question in summary fashion.

It is a fact that my signature appears on a number of documents in relation to the case in question. The process followed then (and generally followed) is that the case officer drafts the document and once the document is presented for signature, it has been

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already reviewed and initialed by either or both S/Ms handling the case. The workload and the times were such that I would sign the document on the basis presented and that I would not have been in a position to provide (or seek) any informed clarifications, challenging the contents of the document(s). Time schedules were tight and under the circumstances I did not want to stall any process of paperwork.

One of the case officers was a former staff of the Headquarters Committee on Contracts (HCC), and having this in mind and the assumption that he was conversant with HCC process and requirements, there was very little doubt in my mind of his capabilities and competence. Hence in my own judgment at the time I felt that there was no need for micro managing the case file.

**PROPOSED DRAFT FINDINGS**

Taking into account the background and the circumstances highlighted above, I had no reason or need to collude with others to steer a technical or financial evaluation to favour a specific vendor. I had no previous working experience with any of them. For one to collude there has to be a “comfort zone” between each other, which I did not have.

Moreover, at the time I had no inkling as to any alleged bid-rigging by others in the mission. So far in my career I have been earnest and work towards integrity, reporting instances of malpractice to my superiors even though instances may not lie within my area of responsibility. If I had any idea of any alleged bid-rigging or anything relating thereto, I would have mentioned it in some form or another to my DPKO superiors during my dc-briefing on my return to my parent duty station; I would have had nothing to lose as I was not under any binding obligation to MINUSTAH, its staff or anyone else.

I earnestly confess that I was no party to any scheme in providing inaccurate, false or misleading information to the Committee on Contracts. The documents presented to the Committee on Contracts were based on what was presented to me; moreover the documents were reviewed by the case officers as well as members of the

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TEC for accuracy and compliance. Under the workload stress and strain that prevailed at the time, I on-forwarded the documentation to the Committee on Contracts as presented to me, having placed every confidence in the output of the staff involved.

Of the two interviews that took place, although during the first interview I was afforded the opportunity to express my views freely, I feel that during the second interview I was left somewhat inhibited. Nevertheless, I confirm that what ever the responses I gave, they were to the best of my recollection today. During the interview I was asked if I attended a tender evaluation meeting on 3<sup>rd</sup> May. I confirm that I have no recollection of attending this meeting. I am aware from the documentation provided to me by your office that I have attended a Committee on Contracts meeting on that day. It should be taken into context that this was my second day at work, still recovering from the shock of the daunting task ahead of me, I was still undergoing the checking-in process, still finding my feet on the ground. Under such circumstances I had neither the time nor the inclination to review the case file in question and be in a position to respond to queries or clarifications from the Committee. Committee on Contracts case presentations were presented to the Committee by one of the Case Officers, either they or the requisitioner would respond to questions and clarifications raised by the Committee. Although I attended some Committee on Contracts meetings, due to my unfamiliarity with the case content I offered no response, nor did I make any clarifications.

With respect to meeting with vendors, I have kept no records and have no recollection of meeting with them. Even if it is claimed that I did attend, the reason for my non-recollection can be attributed to the fact that the level of my participation during the proceedings was minimal. I have no intention of not being truthful to anyone. The evaluations, the Best and Final Offer (BAFO) process etc were all based on what was presented to me by the Technical Evaluation Committee (TEC) as well as the Case officers. I merely on-forwarded them, placing every confidence in the staff who prepared them, which I had little choice but to do given the ensuing circumstances I found myself to be in at the time.

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

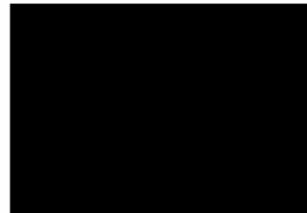
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If, as you say any misleading changes had been made to the calculations, it would have been easily picked up by a third party such as the TEC member(s) who had reviewed the submission prior to presenting to the Committee on Contracts.

Given the circumstances and the conditions under which I had to perform the assignment, I believe I did my best, i.e. acted to the best of my knowledge and experience at the time, always upholding Organization's expectations, rules and regulations. I did not in anyway deliberately or otherwise breach any rules and regulations, favour any one or even collude with others to favour anyone. It appears to me that, unfortunately I was at the "wrong place at the wrong time". Nevertheless, with all due respect I find the allegations and breaches as stated in your letter unjustified.

Once again I thank you for giving me the opportunity to explain, and earnestly hope you would consider favorably before making the final conclusion.



Mr. Robert M. Appleton  
Chairman  
Procurement Task Force  
Office of Internal Oversight Services.

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**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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## ANNEX B: SUBJECT 6 LETTER TO THE TASK FORCE (25 JUNE 2007)

### NIXON PEABODY ATTORNEYS AT LAW

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June 25, 2007

#### BY FACSIMILE and U.S. MAIL

Robert M. Appleton, Chairman Procurement Task Force  
Office of Internal Oversight Services  
United Nations  
New York, NY 10017

Re: [REDACTED]

Dear Mr. Appleton:

We represent [REDACTED] and I write in response to your letter of June 4, 2007. Below please find [REDACTED] responses to the proposed draft findings of the Procurement Task Force. For your convenience, we respond to your findings in the order in which you presented them.

- (1) **In 2005, as a supervisory Procurement Officer, you supervised the procurement exercise for the long-term ground fuel contract.**

It is inaccurate to say that I supervised the procurement exercise. I was the lowest level supervisor on the procurement team. [REDACTED] was the Chief Procurement Officer and [REDACTED] was the Officer in Charge of the Procurement Section. I reported to both of these gentlemen. Although we communicated regarding the procurement exercise, I did not have the authority to make decisions regarding the procurement exercise.

- (2) **As such, you improperly permitted a procurement officer to provide the vendors' pricing information to the Technical Evaluation Committee prior to Procurement receiving a completed technical evaluation.**

It is inaccurate to say that I gave permission to provide the vendors' pricing information to the Technical Evaluation Committee prior to Procurement Services receiving a completed technical evaluation. I did not.

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- (3) **In 2005 during the procurement exercise for MINUSTAH's long term fuel contract you conspired with others to steer the technical evaluation to favor a specific vendor.**

Your allegation is conclusory and does not provide a purported factual basis to which I can respond. Further, I engaged in no such conspiracy with respect to the technical evaluation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (4) **In 2005 during the procurement exercise for MINUSTAH's long term fuel contract you colluded with others to steer the financial evaluation to favor a specific vendor.**

Your allegation is conclusory and does not provide a purported factual basis to which I can respond. Further, I engaged in no such collusion with respect to the financial evaluation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (5) **As a result of the bid-rigging scheme, the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.**

Your allegation is vague and ambiguous because it does not define "bid-rigging scheme." Your allegation is also conclusory and does not provide a purported factual basis to which I can respond. I am unaware of any "bid-rigging scheme." If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (6) **In an attempt to conceal this scheme, you provided inaccurate, false and misleading information to the Committees on Contracts.**

Since you failed to provide a specific factual basis for this allegation, I am unable to respond. I never knowingly provided inaccurate, false, or misleading information to the Committees on Contracts. Further, to the extent that anything may have ultimately turned out to be inaccurate, it was inadvertent and unintentional. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

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- (7) You were not truthful to investigators when questioned about the procurement exercise, and made material misrepresentations regarding the financial and technical evaluations for the proposals submitted following the Best and Final Offer, among other misstatements.

I answered your questions to the best of my recollection. Without identification of exactly what you claim was untruthful, I cannot adequately answer your accusation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (8) Based on the foregoing, you have breached Regulation 1.2(b) of the *Staff Regulations of the United Nations* ("the Staff regulations") which requires staff members to "uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status."

You improperly cite to the U.N. Staff Regulations dated June 3, 1999 despite the existence of an updated version that was in effect at the time in question. I assume that as an attorney and a member of the Procurement Task Force you had access to the applicable regulations. Please explain your basis for relying on outdated regulations. Further, your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (9) As a result of the foregoing, you have also breached Regulation 1.2(g) of the *Staff Regulations of the United Nations* which prohibits staff members from using "their office or knowledge gained from their official function for private gain, financial or otherwise, or for the private gain of any third party, including . . . those they favor."

You improperly cite to the U.N. Staff Regulations dated June 3, 1999 despite the existence of an updated version that was in effect at the time in question. I assume that as an attorney and a member of the Procurement Task Force you had access to the applicable regulations. Please explain your basis for relying on outdated regulations. Further, your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. I have not used my office to receive any such private gain, financial or otherwise. This allegation is especially confusing given that no fuel contract was executed. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

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- (10) As a result of the foregoing, you have also breached *Regulation 1.2(r) of the Staff Regulations of the United Nations* which requires that staff members “must respond fully to requests for information from staff members and other officials of the Organization to investigate the possible misuse of funds, waste or abuse.”]

You improperly cite to the U.N. Staff Regulations dated June 3, 1999 despite the existence of an updated version that was in effect at the time in question. I assume that as an attorney and a member of the Procurement Task Force you had access to the applicable regulations. Please explain your basis for relying on outdated regulations. In my view, I have given full cooperation to the Procurement Task Force. I was interviewed by members of the Procurement Task Force on four separate occasions (once by telephone and three in-person meetings), and responded to ostensibly the same questions many times. As you will recall, when Mr. Fernando Ortiz and Mr. Kenneth Orce left the Procurement Task Force, I was required to repeat the interviews with other members of your team. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (11) In addition, you have breached *Regulation 1.3(a) of the Staff Regulations of the United Nations* which holds staff members “accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions, and their performance will be appraised periodically to ensure that the required standards of performance are met.”

You improperly cite to the U.N. Staff Regulations dated June 3, 1999 despite the existence of an updated version that was in effect at the time in question. I assume that as an attorney and a member of the Procurement Task Force you had access to the applicable regulations. Please explain your basis for relying on outdated regulations. Further, your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (12) Based on the foregoing, you have also breached *Rule 101.2 of the Financial Regulations and Rules of the United Nations* which states that all “United Nations staff members are obligated to comply with the Financial Regulations and Rules and with administrative instructions issued in connection with those Regulations and Rules. Any staff member who contravenes the Financial Regulations and Rules or corresponding administrative instructions may be held personally accountable and financially liable for his or her actions.”

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Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (13) **In addition, you have also breached Regulation 5.12(b) of the *Financial Regulations and Rules of the United Nations* which states that the general principles governing procurement activities, “[f]airness, integrity and transparency,” shall be given due consideration when exercising the procurement functions of the United Nations.**

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. I also note that you failed to cite the portion of this provision that indicates that consideration should be given to protecting the interest of the United Nations. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (14) **You have also breached Rule 105.15(b) of the *Financial Regulations and Rules of the United Nations* which states that “[w]hen a formal request for proposal has been issued, the procurement contract shall be awarded to the qualified proposer whose proposal, all facts considered, is the most responsive to the requirements set forth in the solicitation documents.”**

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. Further, it seems inapplicable because no fuel contract was executed. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (15) **You have breached Section 10.8.4 (4) of the *United Nations Procurement Manual* which states that for requests for proposals, “only the technical proposal shall be opened at the public opening. The financial details of the proposals shall normally remain opened, and the contents shall remain unread, until the Procurement Officer has received the completed technical evaluation.”**

You have altered the regulation and I cannot respond to an allegation based on a nonexistent regulation.

- (16) **In addition, you have breached Section 11.1(1)(b) of the *United Nations Procurement Manual* which states that “[t]he purpose of the source selection process is to identify the Vendor(s) to whom the contract(s) is to be awarded, i.e. the process from the receipt of Solicitation Submission, through the evaluation of such submission to the decision to award the contract.” It also states that “[i]n order to ensure that the**

NIXON PEABODY LLP

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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Robert M. Appleton, Chairman Procurement Task Force

June 25, 2007

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procurement process is fair, objective and transparent, the source selection process shall also give due consideration to," *inter alia*, the principles of "[f]airness, integrity and transparency."

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. Further, it seems inapplicable because no fuel contract was executed. I also note that you failed to cite the portion of this provision that indicates that consideration should be given to protecting the interest of the United Nations. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (17) You have also breached *Section 11.1(2)* of the *United Nations Procurement Manual* which states that "[t]he Source Selection process shall be objective and documented throughout all its steps in order to verify that the Selection has been conducted in accordance with the above principles."

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. Further, it seems inapplicable because no fuel contract was executed. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (18) In addition, you have breached *Section 11.3(2)* of the *United Nations Procurement Manual* which states UN staff members must take an "objective, non-discretionary determination" in evaluating the proposals to determine whether such bids are responsive. It further defines responsiveness as requiring "substantive, objective analysis of the bids or proposal in accordance with the . . . RFP duly prepared in accordance with this Manual."

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (19) In addition you have breached *Section 11.6.1(1)* of the *United Nations Procurement Manual* which states that the source selection process shall be "open and transparent, and the evaluation of the received Submissions shall at all times be fair, reasonable and objective."

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (20) You have also breached *Section 11.6.1.(3)* of the *United Nations Procurement Manual* which states that “[i]f the submission is the result of an RFP, the best value for money shall consist in issuing an award ‘to the qualified proposer whose proposal, all factors considered, is the most responsive to the requirements set forth in the solicitation documents’ (Financial Rule 105.15(b)).”

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. Further, it seems inapplicable because no fuel contract was executed. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (21) In addition, you have breached *Section 11.6.2.(2)* of the *United Nations Procurement Manual* which states that the technical evaluation “shall be in writing (and is independent of the commercial evaluation [sic]), and shall be performed without prior knowledge of cost . . . Under no circumstances shall any cost data furnished by the Vendors be released [to the requisitioner] prior to the finalization of the technical evaluation.”

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. Further, it seems inapplicable because no fuel contract was executed, and I was not involved with opening the proposals or performing the technical evaluation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (22) In addition, you have breached *Section 11.6.6. (5)* of the *United Nations Procurement Manual* which states that only the technical evaluation shall be opened during the Public Bid Opening. “The price/cost proposal shall remain sealed until completion and submittal of the technical evaluation and shall only then be opened.”

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. Further, it seems inapplicable because I was not involved with opening the proposals or performing the technical evaluation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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- (23) You have also breached *Section 11.6.7 (4)* of the *United Nations Procurement Manual* which states that “[t]he evaluation committee shall devise the rating system in a manner that is consistent and fair to all prospective Vendors.”

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. The rating system that was used was based on a standard template provided by DPKO head offices in New York. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (24) You have also breached *Section 12.1.3.(4)* of the *United Nations Procurement Manual* which states that procurement officers “shall ensure that submissions to the Committee on Contracts are comprehensive, factually accurate and clear” in order to enable the Committee to “obtain an accurate and complete description of procurement actions taken.”

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

- (25) You have also breached *Section 12.1.4.(a)(d) [sic]* of the *United Nations Procurement Manual* which states that procurement officers shall ensure “accurate, timely and comprehensive presentations to the HCC/LCC,” as well as “[e]nsuring that procurement action is undertaken in accordance with the FRR, established procurement practices and procedures, and applicable SGB’s and AIs.”

Your accusation is so vague as to be meaningless and fails to provide me with a factual basis for your allegation. In the case of the Minustah long-term ground fuel contract, our team prepared a comprehensive analysis report which was submitted to the HCC through the LLC and the Chief Administrative Officer. That report was altered by Procurement Services in New York without consulting me. If the objective of your investigation is to ascertain the truth, and you are interested in preserving the integrity of the process, please provide a detailed factual basis so that I might intelligently respond to your allegation.

**OIOS PROCUREMENT TASK FORCE**



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Please contact me if you have any additional concerns. I look forward to receiving the requested information as soon as possible. Thank you in advance for your cooperation.

Sincerely,

A handwritten signature consisting of a stylized 'M' and 'P' followed by 'R'.

Martin P. Russo

cc: Inga-Britt Ahlenius  
Under Secretary-General, OIOS  
United Nations Headquarters  
New York, NY 10017

Jan Beagle  
Assistant-Secretary-General, OHRM  
United Nations Headquarters  
New York, NY 10017

10624502.1

**ANNEX C: SUBJECT 4 LETTER TO THE TASK FORCE  
(25 JUNE 2007)**

**OIOS PROCUREMENT TASK FORCE**  
**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
**STRICTLY CONFIDENTIAL**



Mr. Robert M. Appleton,  
Chairman,  
Procurement Task Force  
Office of Internal Oversight Services

25 June 2007

**Via electronic mail**

Dear Mr. Appleton:

**A. Opening Statement**

I refer to your letter dated 4 June 2007 which was provided to me, giving notice of intent of the Procurement Task Force (PTF), OIOS, to report to the Organization formally upon its investigation concerning MINUSTAH's long term ground fuel procurement process. Herewith let me provide my comments, response and evidence which I deem appropriate and relevant, and believe the Task Force will evaluate and consider it before it reaches any firm conclusions and submits its report. Accordingly, please find here below in section B. of this letter the responses, comments and evidence concerning the findings of your letter.

1) Firstly, I wish to thank you for the opportunity afforded me during my recent visit to UNHQNY on 18 June 2007 in the offices of the PTF, in the presence of [REDACTED] [REDACTED] from PTF, to review a copy of the record of conversations on these matters, which took place on 30 March and 28 June 2006 and 23-24 May 2007. This review gave me the chance to point out necessary corrections in the record shown to me by the PTF to the best of my recollection. After I had finished reviewing the records, the above PTF staff met briefly with me and I was promised by them that they will review my changes/comments and take them into account, as well as inform me soon in writing of any comments to these changes/comments, if deemed necessary.

2) I wish to further point out that the interviews conducted in 23 and 24 May 2007 by Ms. Janet Engel and Ms. Kelley Swift were over four (4) continuous hours each day. The interviews were conducted under undue pressure and not in a professional manner from your team, which resulted in extreme stress and duress. Consequently it was difficult for me to provide precise information and responses to the allegations against me, regarding my procurement activities on this complex project over two years ago.

3) As recognized by your letter of 4 June 2007, I wish to reiterate my willingness to continue my full cooperation with the investigation; my statements were made to the best of my knowledge and recollection at the time of the interviews concerning the sequence of events during the procurement exercise, bearing in mind the undue pressure exerted by your team. Unfortunately, due to the circumstances of the interviews, I made some statements, which were unintentionally incorrect and I see from the findings in your letter that I was also misinterpreted. I shall hereby attempt to correct these statements, and make evidence in my below responses.

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## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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4) The Task Force may wish to note that I was assigned with this extremely complex and high-value (30 million US Dollars) long term fuel project, in my function as a Procurement Assistant (on TDY from my duty station), and having 3-months only experience in DPKO, acquired during the start-up phase of the Mission. I had made this comment to the then CPO [REDACTED]. However she insisted that I take the assignment and added that I will be guided by her during the process of the case. My prior UN experience was acquired at my previous duty station with ESCWA and was limited to total yearly straightforward purchases ranging 2 to 3 million US Dollars. This total volume was shared by four (4) procurement staff. I wish to further emphasize that in this complex project, I very much relied – during every step of the process - on the experience, consultations, instructions and consent of my supervisors and senior staff members. I reiterate what I stated in the interviews, that many meetings took place amongst the then OIC CAS, OIC Procurement and my direct supervisor at the time in the presence of staff from the Requisitioner, with the understanding and spirit of achieving the best interest of the Organization (one example of meeting for this fuel tender is the attached copy of exchange of email messages made in February 2005 between the concerned staff of MINUSTAH - **Exhibit-A**). Another example of the consultations I made with my supervisors is the email I have sent to them on 23/5/05 regarding the overall evaluation of the proposals received and the draft BAFO - **Exhibit-B**). This shows that I was not the overall authority in this case.

5) I hope that the investigators have fully taken into account the dynamics of the situation on the ground regarding the supply of fuel to the mission during the start-up phase of the Mission. It is not just the people who were directly involved in procurement who had a hand in the situation. There were extensive consultations within the Mission, with UNHQNY and, as the situation developed, with Legal Office.

**B. Responses, information and evidences of the findings****Finding 1**

*In 2005, a procurement officer at MINUSTAH, you were assigned as the case officer for the procurement of the Mission's long-term ground fuel, and were supervised at various times by Mr. Ronald Pinto, [REDACTED] and [REDACTED]*

**It was not in 2005, but in September 2004 that a Senior Procurement Officer requested me, in my capacity as Procurement Assistant to forward the Expression of Interest for the provision of a turn-key fuel operation to MINUSTAH, Haiti to Mr. Sean Porter in UNHQNY to post it on the HQ website. Mr. Vladimir Grechka was OIC Procurement Section and supervising my work at the starting phase of this project (Exhibit-C). At that time, my job on this case was simply to issue the request for EOI and no further action were expected of me.**

M

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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**Finding 2**

*You accepted a position on the Tender Opening Committee even though you were the procurement officer assigned to this case.*

The UN Procurement Manual (Jan 2004) Section 10.6.2 sub-paragraph (2) quotes:  
“In the case of large or complex tenders, the Procurement Officer shall, as he/she may deem appropriate, attend bid openings as an observer”(Exhibit-D).

Thus, having a procurement case officer attend tender opening committee meeting as an observer was actually allowed according to the Procurement Manual. At the time I was designated, in my capacity of Procurement Assistant and working the case, to attend the meeting as an observer in behalf of Procurement Section, and did not accept a position on the Tender Opening Committee which is an independent body.

**Finding 3**

*As a member of the Tender Opening Committee, you improperly opened both the financial and technical evaluations simultaneously.*

I believe there is a typographical error here and that it meant the financial and technical proposals simultaneously. If so, please be assured that to this finding I was not a member of the Tender Opening Committee; therefore, I could not have opened the proposals which is proven that I did not affix my signature on each page of the proposals received by the Tender Opening Committee. Attending the meeting as an observer does NOT automatically result or mean that I was a participating member of the committee (Exhibit-E).

Here, I would like to point out that the then CPO and OIC Administrative Services, ██████████, announced to all procurement staff through an email message dated 27 January 2005, copying Chief Finance Section who was then the Chairperson of the TOC, that new procedures shall be carried out in the Mission to open both financial and technical proposals together. However the financial proposals should be kept in Procurement pending the completion of the technical evaluation (Exhibit-F).

**Finding 4**

*You improperly provided the vendor's pricing information to the Technical Evaluation Committee prior to procurement receiving a completed a technical evaluation.*

I wish to point out that when PTF first asked me if I have provided the vendors' pricing information to the Technical Evaluation Team, I responded negatively. The

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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PTF said that they have contrary proof to my statement and insisted that I tell the truth. Because of their spurious accusation, I began to doubt my own memory and initial answer, and replied to their allegation that I might have done it under instructions given by my supervisors but was not sure. The PTF expressed their discontentment in my uncertainty and requested me to ensure correct answers before responding. After the PTF team left the Mission, I have since reviewed my files and found that my first statement was indeed correct:

I was not even present in Haiti when the Supply Section received both the technical and financial proposals. When the Chief Supply Section acknowledged receipt of the proposals on 7 April 2005, I was outside of Haiti on leave from 2 to 9 April 2005. The evidence of my absence during this period is proven in the attached signed Leave Report and the exit/entry stamps on my passport by the Immigrations Officers in Haiti as well as in Miami/USA (Exhibit-G). Therefore, I could not have personally provided such information to the Technical Evaluation Team. Nevertheless, and while reviewing the files and talking to colleagues, it is possible that somebody who is not involved in the dynamics of the situation might have unintentionally sent the technical and financial proposals simultaneously to the Chief Supply Section for evaluation.

Accordingly, please consider the modifications made on the copy of the record of conversation of 23-24 May 2007 after reviewing it on 18 June 2007, where I have crossed-out my statement on this finding.

**Finding 5**

*In 2005, you had discussions with one of the vendors during the procurement exercise regarding its proposal without the presence of a requisitioner or any other staff members, and this meeting took place at the vendor's office of business.*

It is unclear what this allegation is about. On the one hand I am accused of steering the contract to DINASA while on the other hand I am accused of having discussions with one of the vendors, presumably Total, Haiti during the procurement exercise. In both PTF investigations conducted in 2006 and 2007, I have never denied my official visit to the office of Total, Haiti and I explained that, to my recollection, the purpose of the visit, as pre-cleared by my supervisor, was to provide clarifications mainly on the mobilization plan. It was at the request of the vendor that the meeting was conducted at his office to clarify these issues in the spirit of accelerating the finalization of this complex case. If the purpose of my visit to this vendor was for something illegal or unethical, I would have not recorded my name in the company's visitor's registry. I went alone because of the shortage of staff in Procurement who were busy in finalizing other complex large projects, and this was cleared by my supervisors. However, I was informed that this vendor still did not understand some clarifications and that he was visited later by the Chief of Fuel Unit, also alone, presumably for the same subject.

A1

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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**Findings 6 and 7**

(6) *In 2005 during the procurement exercise for MINUSTAH's long term fuel contract you colluded with others to steer the technical evaluation to favor a specific vendor.*

(7) *In 2005 during the procurement exercise for MINUSTAH's long term fuel contract you colluded with others to steer the financial evaluation to favor a specific vendor.*

Firstly, as to the issue of frequent change in quantities, the issue should be addressed to the Supply Section as the requisitioner. Nevertheless, I have revisited the point the PTF team made about quantities being increased where Dinasa was the lowest bidder and vice versa where Total, Haiti was the lowest bidder. My review confirms your statement in some respects and the conclusion you draw from this may be justifiable on the basis of the information you have. However, from the procurement side, we were given to understand that these changes had much to do with troop movements and redeployments. This does not preclude the possibility that an individual might have not have taken advantage of these changes to accomplish his/her personal data, but all decisions concerning this matter were taken openly and everyone involved knew why they were being taken. To try to blame the lowest person on the totem pole for a management decision made at a much higher level is somewhat questionable. You also fail to distinguish the difference between a staff member acting for personal gain and a staff member acting on instructions from above taken in the best interests of the Organization. It is instructive that you have not adduced any evidence that anyone dealing with this matter did what you allege for personal gain or received a kickback."

Secondly, it is difficult to respond fully to these two allegations without a full understanding of the dynamics of the situation we were dealing with.

Even though DINASA did not submit a mobilization plan with their proposal, MINUSTAH (Supply Section) was dealing with DINASA for almost a year and was fully aware of DINASA's capacity to serve the mission throughout the whole country. So the absence of the mobilization plan in its technical proposal was accepted by the Tender Evaluation Committee as an oversight and the mission's mind set was to correct the oversight. On the other hand, the mission knew that Total, Haiti did not have any infrastructure in four locations of the country even though their proposal was evaluated as technically compliant on paper. Thus, MINUSTAH (Supply Section) knew there would be a problem down the road during the actual implementation and operations, which they brought to the attention of the Procurement Section. At that time, I recall attending most of the meetings at the office of OIC CAS and OIC Procurement to discuss the next course of action and that the option of BAFO was a decision taken by my supervisors in conformity with the provisions of the Procurement Manual and in the best interests of the Organization. In my opinion, the appropriate action should have been to ask DINASA to provide the missing information rather than declaring its proposal as



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technically non-compliant. This statement from the Tender Evaluation Team is again in my opinion incorrect as they actually meant “incomplete”. But then it was too late to correct it. However, it was elaborated later in the presentation of the case to the Committee on Contracts.

Before and during the BAFO exercise, it should be noted that the situation on the ground was changing rapidly with the deployment and movement of troops throughout the country in response to security requirements, as per instructions from the Force Commander and Chief of UNPOL. After receiving the vendors' responses to the BAFO, the Supply Section had a realistic figure of the quantities of ground fuel needed throughout the country and realized that the original requirements were overestimated. In this spirit, Supply Section changed downwards the quantities accordingly and not to favor a specific vendor.

In reality, I have to add here that, at that time, discussions were conducted in CPO's office where it was mentioned that the appropriate action should have been to cancel the bidding exercise and re-bid the requirements. However, it was acknowledged that the Mission had no time for this new exercise and that the change in quantities by the Supply Section were fully justified and were developed in response to troop movements from one area to another. Such changes – which are not unusual in a peacekeeping mission and in particular during the start-up phase - were made because of military movements reflecting the realistic ground situation prevailing at the time.

Therefore, it is a mischaracterization to describe what happened here as a collusion. The Mission acted together with one mind on this problem and to the best of my knowledge nobody did this for personal gain. It was done in the best interests of the Organization on the ground.

It cannot be said that I colluded to steer the contract in any way; as I was not the sole dominant authority in this case and all throughout this exercise my supervisors took an active role in deciding the best course of action for the interest of the Organization.

**Finding 8**

*As a result of the bid-rigging scheme, the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.*

I am not aware of any bid-rigging scheme and therefore I could not have participated in one. The (incorrect) findings of the PTF do not support this allegation.



## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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**Finding 9**

*In attempt to conceal this scheme, you provided information which was inaccurate, false and misleading to the Committees on Contracts.*

Although I have requested PTF in writing to provide me with clarifications on this issue, to date I have not received any response. This allegation does not identify what information provided to the Committee on Contracts was inaccurate, false and misleading. Therefore, I could only respond that if any information provided by me turned out to be inaccurate, false and misleading to the Committee on Contracts, it was unintentional.

Assuming that the quantities in the submission to the LCC are being referred to, the information included in the presentation was the best information available to all at the time. The dynamics were such that the ground situation kept changing continuously, e.g., troop movements and re-deployments ordered by the Force Commander (and eventually also by Police Commissioner [Chief of UNPOL] insofar of their relevance) to address the security concerns prevailing at the time. These movement orders from the FC (and perhaps UNPOL) must be taken into account.

**Finding 10**

*Initially, you were not truthful to investigators when questioned about the procurement exercise, and made material misrepresentations regarding the financial and technical evaluations for the proposals submitted following the Best and Final Offer, and other such misstatements.*

For reasons stated in my response to Finding 4 above, it is correct that when I was first interviewed I could not recollect all the events that occurred nearly two years prior. After I consulted my own records and reviewed the case files, my recollection improved. It is unfair to characterize this situation as being untruthful. Life in a peacekeeping mission is extremely intense. The missions are all understaffed and as a result most –particularly in procurement sections - are generally overworked. It is impossible for any individual to recall every single instance from two years previously, especially in such a stressful situation such as these interviews were conducted.

**Related to paragraphs 11 to 30**

I believe that Findings 11 to 30 are intended to point out the supposed violations due to Findings 1 to 10 as per the UN Staff Regulations, UN Financial Regulations and Rules and the UN Procurement Manual.

To this end, I believe that I have responded to each of the Findings 1 to 10 which I believe are incorrect. However, as a result of my addressing the underlying findings (1-10) at this current time, I will not address findings 11-30 in this instance, but rather would address them at a later stage if necessary.

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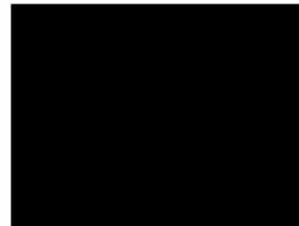
**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

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**C. Conclusion:**

I hope that I have provided greater clarification on my role and my understanding of the procurement exercise on this project. I would appreciate your consideration of the above responses to your findings before reaching your firm conclusions and submitting a final report to the Organization formally on this matter.



/17

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REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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EXHIBIT- A

[REDACTED]  
17/02/2005 03:43 PM

To [REDACTED]  
cc [REDACTED]  
bcc [REDACTED]  
Subject Re: Fw: Jet Fuel Tender

History: This message has been forwarded.

[REDACTED]  
17/02/2005 13:34

To [REDACTED]  
cc [REDACTED]  
Subject Fw: Jet Fuel Tender

Dear all,

As requested by [REDACTED] a meeting has been scheduled in the Procurement office tomorrow 18/02 at 3:00 pm to discuss issues raised by WFS concerning the Fuel tender. Please confirm.

Thank you and regards

MINUSTAH

----- Forwarded by [REDACTED] on 17/02/2005 01:25 PM -----



[REDACTED]  
16/02/2005 02:30 PM

To [REDACTED]  
cc [REDACTED]  
Subject Re: Fw: Jet Fuel Tender

Let us please set up a meeting with the fuel cell (including C/supply) to discuss all these issues. thnaks

[REDACTED]  
CPO/OIC Administrative Services, MINUSTAH

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**OIOS PROCUREMENT TASK FORCE**



**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

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[REDACTED]

16/02/2005 13:26

To [REDACTED]  
cc [REDACTED]  
Subject Fw: Jet Fuel Tender

[REDACTED] these are the essential issues you raised with [REDACTED]

Now how do we handle it?

[REDACTED] ----- Forwarded by [REDACTED] on 16/02/2005 01:26 PM -----



"Rey Portal"  
<RPortal@wfscorp.com>

15/02/2005 03:20 PM

To [REDACTED]  
cc "Rey Portal" <RPortal@wfscorp.com>, "Armando Vidalon"  
<AVidalon@wfscorp.com>  
Subject Jet Fuel Tender

Good afternoon Gentlemen,

Understand that your tender for fuel products at Haiti includes a "turn key" investement, which involves construction of tanks, depot, diesel, jet, ect...  
We are looking into bidding the entire package, but at this time, I have a couple of questions:

- 1) Would you like to roll the existing deal we have for PAP and CAP until such depot is built?? Then turn it over to the entitiy that was awarded the project
- 2) Is there a tender that just deals with Jet Fuel at PAP and CAP?? or is it an "All inclusive turn-key deal"??

Please let me know as soon as possible.

thks!!!!  
rey

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**OIOS PROCUREMENT TASK FORCE**

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

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**EXHIBIT - B**



23/05/2005 02:12 PM

To

cc

bcc

Subject RFP/05/027/RP: Overall evaluation and draft BAFO for the  
Fuel project - URGENT

URGENT

Dear all,

Please find attached copies of the overall evaluation of the proposals received in response to the above RFP and the recommended draft BAFO for your review and clearance.  
It is to be noted that the original text of the Technical Evaluation (Annex 1) is signed by the Tender Evaluation Committee.

Your urgent response is much grateful.



Memo\_Overall\_Evaluation.doc Technical\_Evaluation - annex 1.doc Annex 1\_matrix.xls Annex 2.doc BAFO [draft].doc

Thank you and best regards



MINUSTAH Procurement Section  
Port-au-Prince, Haiti

1 of 1

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IAPSO - Inter-Agency Procurement Services Office

EXHIBIT-C

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**Turn-key fuel operation**

**MINUSTAH**  
Deadline: October 15th 2004

**Request for Expression of Interest**

**Provision of a turn-key fuel operation to MINUSTAH, Haiti**

Date of this Expression of Interest (EOI): 01 October 2004

Closing Date for Receipt of EOI: 15 October 2004

Reference Number: EOI/FUEL-0001/AK

Your Expression of Interest by email to the attention of:  
Mr. Vladimir Grechka, Procurement Section MINUSTAH, Haiti.  
or Grechka@un.org

**UNDP/IAPSO**  
Midtermolen 3,  
P.O. Box 2530  
DK-2100 Copenhagen Ø  
Denmark  
Tel: (+45) 3546 7000  
Fax: (+45) 3546 7001

Description of requirement:  
The United Nations Stabilization Mission in Haiti (MINUSTAH) intends to issue a Request for Proposal (RFP) for the commencement of a turn-key fuel operation. The services to be provided are the provision of bulk fuel (diesel and petrol), vehicle fuel points, LPG, kerosene and ancillary lubricants, and the storage and distribution of aviation fuel to aircraft.

The turn-key fuel operation is to be provided in support of MINUSTAH's operations in Haiti which involve the deployment of vehicles in support of approximately 7,100 persons consisting of military troops, civilian police and international staff members and a number of fixed and rotary wing aircraft.

The resultant contract will consist of the provision of services for an initial period of two years with the option to extend the contract by a further two additional one-year periods.

The full technical requirements and details will be provided with the RFP.

[← go back](#)

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<http://www.iapso.org/supplying/procurement-notices-view.asp?id=816>

25/10/2004

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

STRICTLY CONFIDENTIAL

**EXHIBIT - D**

UNITED NATIONS      NATIONS UNIES

**PROCUREMENT MANUAL**

of the Solicitation Document. A Sample List of Invitees is attached as Annex D-23.

- (2) In the case of large or complex tenders The Procurement Officer shall, as he/she may deem appropriate, attend bid openings as an observer. //
- (3) The Bid Opening Official Shall:
  - a. Receive Submissions sent by mail, courier service, fax, hand delivered or other acceptable means, and time and date stamped by the applicable Registry.
  - b. Facsimile Submissions are to be sealed in envelopes or similar manner to ensure that they will not be available until the Solicitation Opening. Record the time and date of receipt, the date and time of the opening, and the name of the prospective Vendor on the envelopes.
  - c. Record the receipt of Solicitation Documents against the invitee list provided by the Procurement Officer.
  - d. Secure the Submissions in a secure area, or place in a safe, until the specified bid opening time.

**10.7. Disclosure of information prior to opening**

- (1) No substantive, information, save for Solicitation Documentation, subsequent amendment, questions, clarifications and answers to Vendor inquiries shall be disclosed by the Bid Opening Official, or other UN staff members, to any individual or otherwise made public, prior to the opening date and time of Submissions.
- (2) Any irregularities surrounding the opening and recording of bids or proposals shall be immediately reported by the Bid Opening Official or Procurement Officer as the case may be, to the Chief, UN/PD or CPO and recorded in writing.

**10.8. Public opening procedures for Submissions under formal methods of solicitation****10.8.1 General**

- (1) Depending on the type of Solicitation Document utilized, see section 9.4.2, the opening of the Submissions shall be handled as set forth in 10.8.2 to 10.8.5 below.
- (2) Any modification to Submissions, see section 10.3, received prior to Bid Closure shall be handled together with the original submission during the applicable Submission opening. Upon completion of the opening, said modification shall be attached to the related submission.

**Page 1 of 1**

January 2004

## OIOS PROCUREMENT TASK FORCE



## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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**EXHIBIT-E**INVITATION TO BID (RPF) No. 05/027REQUEST FOR PROPOSAL: PROVISION OF AVIATION FUELDATE AND TIME OF CLOSING:... 21 MARCH 2005, 15 HRES PMDATE AND TIME OF PENING:... 22 MARCH 2005, 11 HRES PMLIST OF INVITEES:

Ser. No.	INVITEES	TECHNICAL PROPOSAL	FINANCIAL PROPOSAL	REMARKS
1	Canea C*a			
2	Casa Arani C*A			
3	Conoco.Distribuye GBL del caribe			
4	Crown Petrocar			
5	Esso Standart Oil			
6	Kendall Motor Oil Dist			
7	Lubricantes Dominicanos S.A			
8	Motul Lubricantes Dist.			
9	Petroquimicoa Automotrices			
10	Respuertos Fayson S.A			
11	EF LUBRICANTES			
12	THE SHELL COMPANY			
<b>FRANCE</b>				
1	PRONAL S.A			
2	MR RAPHAEL MAPOU			
<b>HAITI</b>				
1	HAYTIAN TRACTOR	✓	✓	T & F opened
2	DINASA	✓	✓	✓
3	TOTAL	✓	✓	✓
4	ESSO STANDARD OIL S.A			✓
5	TEXACO			✓
6	ESSO STANDARD OIL S.A. LIMITED			
7	JAMAGI S.A	✓	✓	✓
8	SODIGAZ	✓	✓	✓
<b>ITALY</b>				
1	AMA SPA (UN VENDOR ID 20823)			
<b>CANADA</b>				
1	SKYLINK	✓	✓	✓
<b>INDIA</b>				
1	MR. PRADEEP P. GIDWANI			

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OIOS PROCUREMENT TASK FORCE  
REPORT ON MINUSTAH GROUND FUEL PROCUREMENT  
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UNITED NATIONS  
UNITED NATIONS STABILIZATION MISSION IN HAITI  
Port-au-Prince  
MINUSTAH

ZAMBIA				
1	GEORGES BOVAZIS			
UNITED STATES				
1	MR.MICHAEL CLEMENTI			
SOUTH AFRICA				
1	CALTEX OIL			

*Joseph Bideau*

[REDACTED] Signature of Witnessing Staff

*Georges Bideau* 22/3/05  
Name & Signature of Tender Opening Committee member

[REDACTED] Name & Signature of Tender Opening Committee member

[REDACTED] Name & Signature of Tender Opening Committee member

Received by Procurement:  
Date: 22-03-05

# OIOS PROCUREMENT TASK FORCE

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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DISTRIBUTEURS NATIONAUX S.A.



March 21, 2005

Tender Opening Committee  
MINUSTAH Logistics base at P-au-P Airport  
Building No. 7  
Port-au-Prince, Haiti

**Re: The Provision of Aviation Fuel, Ground Fuel (Petrol, Diesel, Kerosene,LPG) & Lubricants ("POL") - Reference RFP/05/027/RP**

Dear Gentlemen,

Following your above mentioned request for proposal dated January 29<sup>th</sup> 2005,  
DINASA is pleased to submit a Technical proposal to MINUSTAH.

PS: DINASA will not submit an Offer for Jet Fuel as it is not available in our facilities

### CORPORATE EXPERTISE, EXPERIENCE AND CAPABILITY

Distributeurs Nationaux S.A. (DINASA) is a local oil company that has acquired the operation of Shell in Haïti (with a legacy of 70 years of experience in Haïti). We own and operate a significant portion of the petroleum installations in Haïti and supply fuel to Government and private power generation companies, we also own a significant portion of the LPG Market of Haïti (through our subsidiary SODIGAS which will bid separately). Overall, DINASA import and distribute monthly around 15,000,000 (Fifteen Millions) liters of petroleum products.

### COMPANY'S BACKGROUND

#### - DINASA IN BRIEF

Distributeurs Nationaux S.A. (DINASA) is a corporation which in the course of the year 2003 acquired Shell interest in Haïti. This acquisition was made possible with the partnership of 2 of the most successful business group in Haïti :

1.- GB Group

2.- UNIFINANCE a subsidiary of UNIBANK

More information about our corporation is attached to this in appendices.

DINASA has about one hundred and forty (140) employees and a well structured Organization. We order, store and deliver between 35% to 40% of Haïti's fuel consumption.

175, Autoroute de Delmas, Haïti P.O. Box, 15493, Pétion-Ville, Haïti  
Tel : (509) 246-1600, 246-1799, 246-1810, 246-2460  
Fax : (509) 246-2433, 246-2481

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**OIOS PROCUREMENT TASK FORCE**  
**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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**EXHIBIT - F**

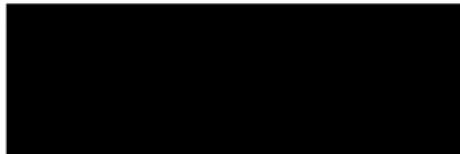


27/01/2005 10:20 AM

To Antuanela Poenaru/MINUSTAH@MINUSTAH, Auk Neletta  
Ridderikhoff/MINUSTAH@MINUSTAH, Claudia  
Hurtarte/MINUSTAH@MINUSTAH, Karline  
cc Kaltouma N'Guessan/MINUSTAH@MINUSTAH  
bcc  
Subject New Procedures

Dear colleagues, just to announce a few new changes which can be discussed at the next Procurement section meeting. The first is that we will now open the technical and commercial bids together, however Procurement will maintain the commercial proposal and only forward the technical proposal to the requisitioner. After receipt of the technical evaluation, the commercial proposal can be shared with the requisitioner, if the requirement is such that the requisitioners involvement will assist in determining value for money.

On the second issue, since we now have an inland transportation and custom clearance contracts, routine POs for imported goods should be on the basis of Incoterm, CIF port-au-prince seaport or airport; to the attention of our custom clearing agent, i.e. Chatelain cargo (address and phone number). Additionally, under the clause of the PO terms " Documentation and Requirement, para 5.1", in which we are requesting advance copies of the AWB etc to be sent to the buyer, we should also include the e-mail address of the custom clearance agent. We can make exceptions to the CIF delivery terms by using DDU for small or light packages that can be sent by DHL etc. We may also use DDU terms for fragile or attractive items to ensure that responsibility for safe arrival of the goods to our warehouse. When in doubt please request vendors to quote on both Incoterms. The reason for the change is that I believe our contracts for custom clearance and inland transportation are far more competitive than those offered by outside vendors.



(Page 1 of 1)

**EXHIBIT G**

**UNITED NATIONS**  
United Nations Stabilization  
Mission in HAITI



**NATIONS UNIES**  
Maison des Nations Unies pour la  
Stabilisation en HAITI

**MINUSTAH**

Memorandum

Date: 1 April 2005

To: Tender Evaluation Committee  
Global RFP for the Provision of POL Products

From:

A.A.2

Subject: Evaluation of Technical Proposals for RFP No. RFP/05/027/RP

Following my memorandum of 19 March 2005, the Committee is hereby tasked to review the Technical Proposals received from the following six (6) bidders and advise your technical evaluation no later than Friday 15 April 2005:

- 1) HAYTIAN TRACTOR
- 2) DINASA
- 3) TOTAL HAITI
- 4) JAMAGI S.A.
- 5) SODIGAZ
- 6) SKYLINK

Your special attention to this matter will be highly appreciated.

Thank you and best regards.

Received in Supply Section  
7 April 2005. Note that  
Tender Committee dated receipt  
of documents on 22/3/05 -  
12 business days to relay to Supply.

Chen Arnold  
7 April 05

(Page 1 of 5)

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**OIOS PROCUREMENT TASK FORCE**  
**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
**STRICTLY CONFIDENTIAL**

**EXHIBIT - G**



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**OIOS PROCUREMENT TASK FORCE**

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

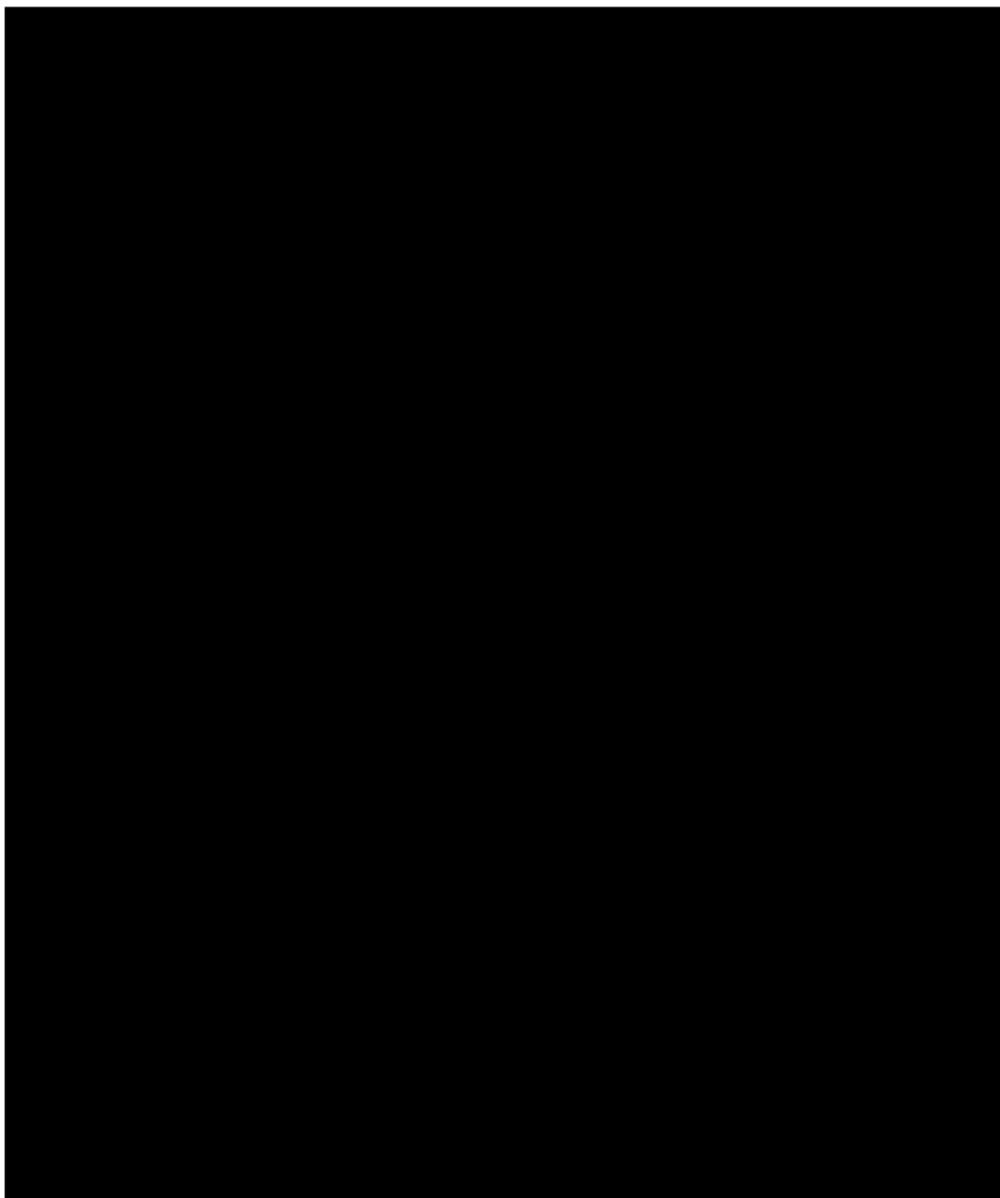
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**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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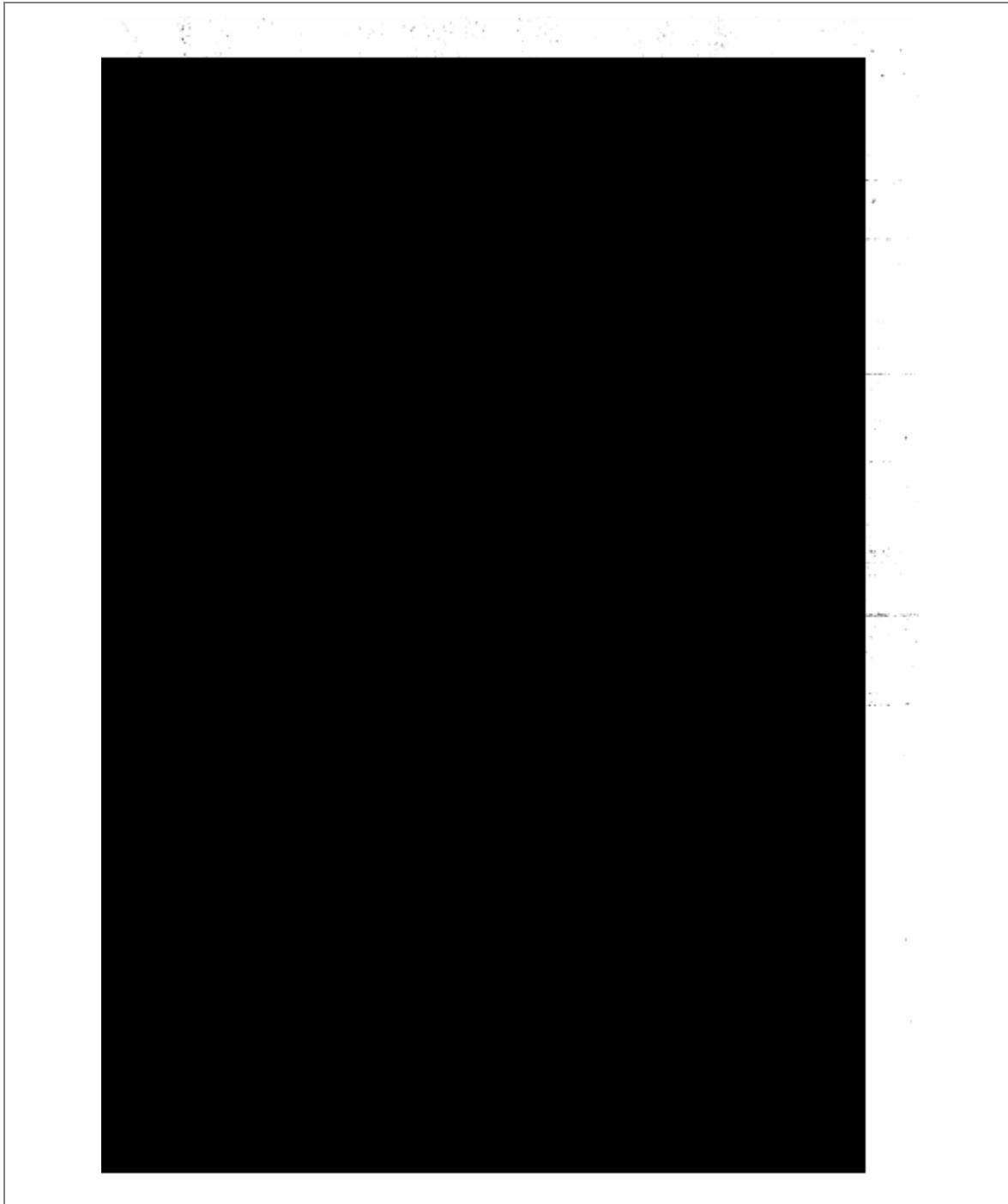
EXHIBIT - G



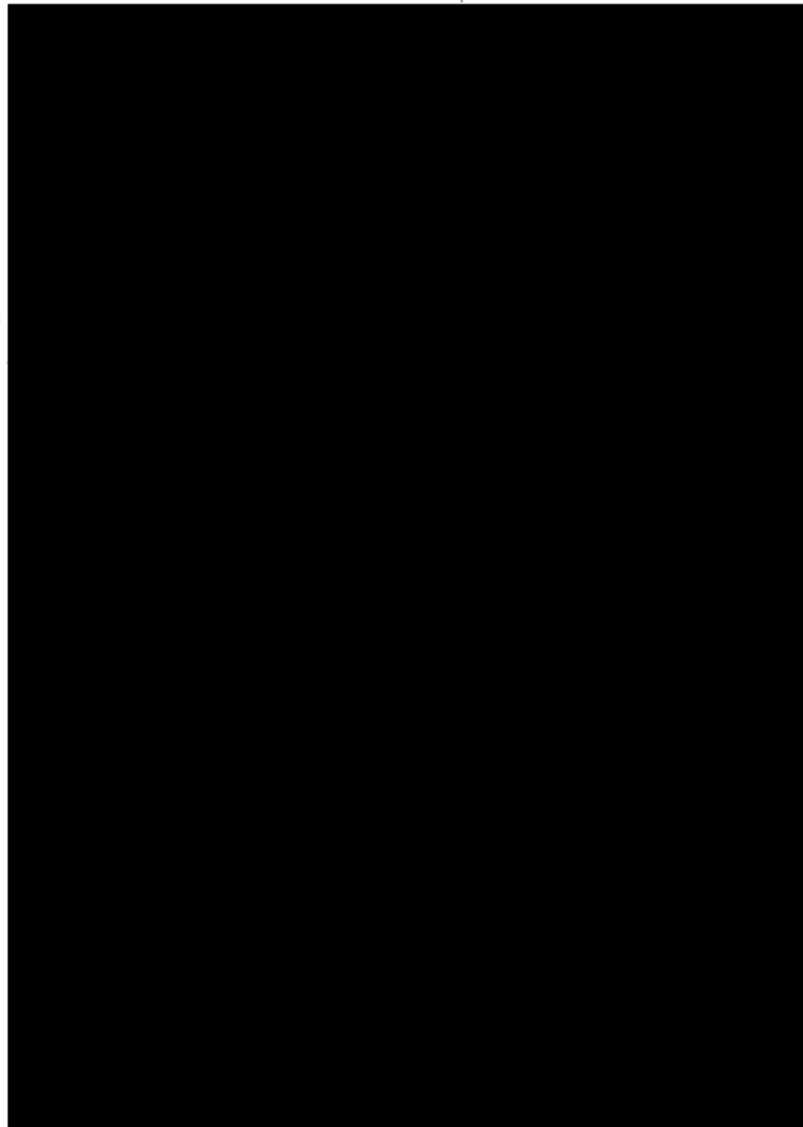
Page 2 of 5

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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**OIOS PROCUREMENT TASK FORCE**  
**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
**STRICTLY CONFIDENTIAL**



**ANNEX D: SUBJECT 3 LETTER TO THE TASK FORCE  
(29 JUNE 2007)**



29/06/2007 09:47 AM

To: Robert  
Appleton/NY/UNO@UNHQ@UN-MAILHUB@UNITED  
NATIONS LOGISTICS BASE

cc:

bcc: [REDACTED]  
Subject: RESPONSE TO PTF LETTER DATED 4th JUNE 2007

Dear Robert,

Please find my response to your letter dated 4th June attached.



Response to PTF (29 June 2007).doc

Kind regards,



**RESPONSE TO LETTER DATED 7th JUNE 2007**  
**FROM MR ROBERT APPLETON, CHAIRMAN, PROCUREMENT TASK FORCE**

1. You portray me as some kind of key player in a scheme to steer a contract for fuel to a particular vendor. Nothing could be further from the truth. My job is to make sure that the right kind of fuel is available, in the right place, in amounts that keep UN operations moving.

2. While offices in New York usually have the luxury of having most of the staff on their manning table, it is a much different situation in Missions, where it is not unusual for a section to have less than half the staff they are supposed to have but at the same time they have to produce results. It should be noted that I have not received any training on Procurement since I joined the United Nations. When the Mission was putting together a committee, I found myself to be a member despite my lack of expertise, because of the small number of people available in the mission at the time. I reluctantly agreed because it would not be good for my future prospects to be seen as un-cooperative in a small Mission.

3. When MINUSTAH was in start up phase, as part of the Requisitioning Section, Fuel Unit was responsible for providing technical input, not for input on financial and procurement processes. Financial and Procurement matters were the responsibility of Administration Services and the Fuel Unit responded to direction from the Finance and Procurement Sections.

4. I arrived in Mission August 2004 and was thrown into to a startup Mission environment, with a complete lack of staff that was mirror imaged in other parts of the organization. This was my first Mission and during the start-up phase the Supply Section and Fuel Unit was critically understaffed. The original organizational structure of the Fuel Unit was devised to support a full turn-key contract not a bulk fuel delivery concept. Despite this several international posts were taken from the Fuel Unit and distributed elsewhere in the Supply Section. The workload on the members of the new organizational structure was monumental and it was a highly stressful and reactive environment. Effectively the Fuel Unit had to provide the equivalent of a full turn key service with insufficient staff, resources and equipment. It is a credit to my colleagues that the integrity of the supply chain never failed fully.

5. I cannot help but note that you are very long on allegations but very short on proof. You outline in broad strokes the draft findings of the PTF but do not relate the listed breaches of the rules and regulations with any detailed insight into how they were derived. My response to each item is given below:

6. Paragraph 1 says: "In 2005, as Chief Fuel Unit and a member of the Tender Opening Committee, you improperly opened both the financial and technical evaluations simultaneously". That is completely wrong. This goes to the Tendering Opening Process which was not under my control and the responsibility of Finance Section, at the time under Chief of

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

STRICTLY CONFIDENTIAL

Section Kaltouma N'Guessan. The proposals for this bid were opened by the Tender Opening Committee, publicly (as per Section 11.1 (1) (b) of the United Nations Procurement Manual), chaired by Joseph Brent from Finance Section. In an email from [REDACTED] MINUSTAH dated 27<sup>th</sup> January 2005 to his staff, copy to Kaltouma N'Guessan , Chief Finance Section, he states: "Dear Colleagues, just to announce a few changes that can be discussed at the next Procurement Meeting. The first is that we will now open both the technical and commercial bids together." As a newcomer in the organization I was neither briefed on the formal procedures or provided with the Terms of Reference for the TOC or the applicable Financial Rules and Regulations or Procurement Rules relating to it. At all times I took direction from Finance, who chaired it, and Procurement, who were present.

7. The second paragraph goes on to say: "In 2005, as Chief Fuel Unit and a member of the Tender Opening Committee, and responsible for performing a technical evaluation, you improperly asked for and reviewed the vendor's pricing prior to completing a technical".

I certainly did not. I never at any point requested insight into any financial or commercial information at the Tender Opening. There was simply no reason I should try to influence the process. At all times I took direction from and followed the advice of Finance and Procurement.

8. According to paragraph 3: "In 2005 during the procurement exercise for MINUSTAH's long term fuel contract you colluded with others to steer the technical evaluation to favour a specific vendor".

I did no such thing and I quite sure that that you cannot provide any proof that I did. I categorically state that I did not steer the technical evaluation in any particular direction.

9. Paragraph 4 states: "In 2005 during the procurement exercise for MINUSTAH's long term fuel contract you colluded with others to steer the financial evaluation to favour a specific vendor".

That is nonsense. I have never colluded with anyone. Procurement is responsible for the procurement exercise and evaluations were both discussed with all parties and OIC Procurement. At all times I acted in accordance with the guidance provided me.

10. Regarding paragraph 5: "As a result of the bid-rigging scheme the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner".

I was never part of any bid rigging scheme. In my role as a requisitioning officer, I carried out the technical evaluation as part of the overall procurement process, within my knowledge of the procedures, in a fair and transparent manner. I was not responsible for the procurement process. This lies with Procurement.

11. As for paragraph 6: "In an attempt to conceal this scheme you were involved in providing false and misleading information to the Committee on Contracts".

I did not attempt to conceal any scheme and as far as I know, there never was one. I did not provide false or misleading information to the Committee on Contracts. All

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT****STRICTLY CONFIDENTIAL**

submissions to the CoC were presented by Procurement, not by me. I was not present at the LCC Meeting.

12. Paragraph 7 contains the allegation: "You were not truthful to investigators when questioned about the procurement exercise and made material misrepresentations regarding the financial and technical evaluations for the proposals submitted following the Best and Final Offer".

I was quite truthful when questioned and you have no evidence to the contrary. All my answers were based on memory of events that were nearly two years previously, without being given adequate time to research and collect more information. At the time of the interviews I was in NY on official business under a huge workload and very tight deadlines, so there are details of some things that I did not clearly recall. Mainly I recall the pressure of the workload and the deadlines.

13. Paragraph 8 contains a catch-all allegation:

Based on the foregoing you have breached Regulation 1.2 (b) of the Staff Regulations of the United Nations (the "Staff Regulations") which provides "(s)taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honest and truthfulness in all matters affecting their work and status.

You are basically suggesting that I acted improperly, while at the same time you do not have any evidence that I have done so.

14. As your allegations go on, they become more ridiculous. Paragraph 9 states:

Based on the foregoing you have breached Regulation 1.2 (g) of the Staff Regulations of the United Nations which provides that "(s) staff members shall not use their office or knowledge gained from their official office for private gain, financial or otherwise, or for the private gain of any third party, including family, friend or those they favour.

There was no financial gain to me, to any family, to any friend, to anyone I favor or to any third party and you have absolutely no proof that there was, because such proof does not exist.

15. With regard to paragraph 10, which states:

Based on the foregoing you have breached Regulation 1.2 (r) of the Staff Regulations of the United Nations which provides that "(s) staff members must respond fully to requests for information from staff members and other officials of the Organisation to investigate the possible misuse of funds, waste or abuse."

I have not breached that regulation. Your allegations are based on conjecture and surmise, not upon facts.

16. Paragraph 11 says:

Based on the foregoing you have breached Regulation 1.3 (a) of the Staff Regulations of the United Nations which holds staff members "accountable to the Secretary General for the proper discharge of their functions. Staff members are

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

STRICTLY CONFIDENTIAL

expected to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions, and their performance will be appraised periodically to ensure the required standards are met.

You are suggesting a lack of integrity on my part, which will be shown to be untrue, along with the rest of your false allegations. At all times I believe I carried out my duties to the best of my abilities and in the manner that was required.

17. In paragraph 12 there is a statement:

Based on the forgoing, you have also breached Rule 101.2 of the Financial Regulations and Rules of the United Nations which states that “(a)ll United Nations staff are obligated to comply with the Financial Regulations and Rules and with the Administrative Instructions issued in conjunction with those Regulations and Rules. Any staff member who contravenes the Financial Regulations and Rules or corresponding administrative instructions may be held personally accountable and financially liable for his or her actions.

It is quite clear to me, from reading the Staff Rules and Staff Regulations that determining who “may be held personally accountable and financially liable for his or her actions” is way beyond the scope of your authority. In any event you have yet to prove that I contravened “Financial Regulations and Rules or corresponding administrative instructions”. You don’t just have the function of accusing people, you also have the burden of proving that what you are saying is true and so far you have come nowhere near doing that.

18. With regard to paragraph 13:

In addition you have also breached Regulation 5.12 (b) of the Financial Regulations and Rules of the United Nations which states that “(p)rocurement functions include all the actions necessary for the acquisition, by purchase or lease, of property, including products and real property and of services including works.” Among general principles to be given “due consideration when exercising the procurement functions of the United Nations” is fairness, integrity and transparency;

This is another catch-all accusation that is completely wrong and which you cannot possibly prove. Staff Regulation 1.2 (b) requires fairness from both the Administration and the staff. Making completely false allegations against me is grossly unfair to me.

19. I think paragraph 14 is addressed to the wrong person. It says:

You have also breached Regulation 105.15 (b) of the Financial Regulations and Rules of the United Nations which states that “(w)hen a formal request for proposal has been issued, the procurement contract shall be awarded to the qualified proposer whose proposal, all factors considered, is the most responsive to the requirements set forth in the solicitation documents.

This is both procurement issue and a catch-all accusation that is unfair to me. It should be directed at those responsible for the procurement process. My function is to make sure the right kind of fuel is moved to the right place for the UN to use it, not to purchase it.

20. There is a long accusation in paragraph 15 which says: “

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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In addition, you have breached Section 11.1 (1) (b) of the United Nations Procurement Manual which states that “(t)he purpose of the source selection process is to identify the Vendor(s) to whom the contract(s) is to be awarded, i.e. the process from receipt of Solicitation Submission, through the evaluation of such submission to the decision to award the contract.” It also states that “(i)n order to ensure that the procurement process is fair, objective and transparent, the source selection process shall also give due consideration to” *inter alia* the principle of “fairness, integrity and transparency”.

I am not responsible for procurement and I have not done anything to circumvent “fairness, integrity and transparency”. Again this shows unfairness by the Administration towards me.

21. Paragraph 16 claims:

In addition, you have breached Section 11.1 (2) of the United Nations Procurement Manual which states that “(t)he source selection process shall be objective and documented throughout all its steps in order to verify the Selection has been conducted in accordance with the above principles.

This assumes that I should be familiar with the Procurement Manual, which I am not, because my job does not involve procurement. I did not oversee the source selection process.

22. Paragraph 17 also involves an assumption of intimate knowledge of the Procurement Process, which I don’t have because I have no training on it and it is not part of my functions:

In addition, you have breached Section 11.3 (2) of the United Nations Procurement Manual which states that UN staff members must take an “objective, non-discretionary determination” in evaluating the proposals to determine whether such bids are responsive. It further defines responsiveness as requiring “substantive, objective analysis of the bids of proposal in accordance with the ..... RFP duly prepared in accordance with this manual.

I don’t really understand why this allegation is there.

23. The series of false allegations is continued in paragraph 18:

In addition, you have breached Section 11.6.1 (1) of the United Nations Procurement Manual which states that the source selection process shall be “open and transparent, and the evaluation of the received Submissions shall at all times be fair, reasonable and objective.

I carried my duties as a requisitioner as I was made to understand them, and to the best of my professional ability and UN experience.

24. The allegation in paragraph 19 is:

You have also breached Section 11.6.1 (3) of the United Nations Procurement Manual which states that “(i)f the submission is the result of an RFP, the best value for money shall consist in issuing an award “to the qualified proposer whose proposal, all factors considered, is the most responsive to the requirements set forth in the solicitation documents’ (Financial Rule 105.15 (b).

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT****STRICTLY CONFIDENTIAL**

This is an overall procurement responsibility. My technical input role in the Tender Evaluation Committee cannot be seen as to have broken this rule.

25. Paragraph 20 claims:

In addition, you have breached Section 11.6.2 (2) of the United Nations Procurement Manual which states that “(t)he technical assessment shall be in writing (and is dependant on the commercial evaluation), and shall be performed without prior knowledge of cost, as specified in the respective Submissions. Under no circumstance shall any cost data furnished by the Vendors be released prior to the finalization of the technical evaluation.

This clearly does not apply to me. The release of financial information was not my doing or responsibility.

26. There is a similar allegation in paragraph 21:

In addition, you have breached Section 11.6.6 (5) of the United Nations Procurement Manual which states that “only the technical evaluation shall be opened during the Public Bid Opening. “The price/cost proposal shall remain sealed until completion and submittal of the technical evaluation and shall only then be opened.

This goes to the Tendering Opening Process which was not under my control and the responsibility of Finance Section. Procurement had directed that both the technical evaluation and price/cost proposal would be opened. Procurement had directed that both the technical evaluation and price/cost proposal would be opened. Once again this does not apply to me.

27. Paragraph 22 claims: “You have also breached Section 11.6.7 (4) of the United Nations Procurement Manual which states that “(t)he evaluation committee shall devise the rating system in a manner that is consistant and fair to all prospective Vendors.” I have no reason to think that I did any such thing. I do not recall if the RFP contained any evaluation criteria, but this is ultimately a Procurement responsibility, not mine.

28. The last paragraph concludes the unfounded allegations:

Finally you have breached Section 12.1.3 (4) of the United Nations Procurement Manual which states that all “submissions to the Committee on Contracts” shall be comprehensive factually accurate and clear” in order to enable the Committee “to obtain and accurate and complete description of procurement actions taken.”

It is the responsibility of Procurement to prepare presentations and present cases to the LCC, not my responsibility. As far as I know any information provided was complete and correct. I was not present at the LCC meeting held on 15<sup>th</sup> June 2005.

## ANNEX E: EXPENDITURES TO DINASA FOR GROUND FUEL (11 JUNE 2007)

**PROVISION OF GROUND FUEL (Diesel, Gasoline and Kerosene) - DINASA**

**A. FY04-05**

<u>PO number</u>	<u>Total amount obligated (in US Dollars)</u>	<u>LCC aggregate amount (in US Dollars)</u>	<u>LCC No. and date</u>
4HSA-200035	114,799.51	---	---
4HSA-200055	240.73	---	---
5HSA-200257	48,268.94	---	---
5HSA-200266	47,000.00	---	---
5HSA-200318	250,000.00	---	---
5HSA-200413	61,000.00	---	---
5HSA-200424	1,458,903.47	2,200,000.00	MIN/29/2005 held on 3 May 05
5HSA-200747	1,334,018.83	3,800,000.00	MIN/34/2005 held on 15 June 05
<b>TOTAL1:</b>	<b>3,314,231.48</b>	<b>3,800,000.00</b>	<b>MIN/34/2005 held on 15 June 05</b>

**B. FY06-07**

6HSA-200014	482,200.49	---	---
6HSA-200016	2,000.00	---	---
6HSA-200120	1,962,000.00	5,762,000.00	MIN/05/2006 held on 10 August 05
6HSA-200128	25,000.00	---	Ex-post facto to pay 2005 invoices.
6HSA-200357/4	6,553,528.02	8,062,000.00 (HCC approval) 9,662,000.00	MIN/13/2006 held on 24 October 05 MIN/23/2006 held on 2 February 06
<b>TOTAL2:</b>	<b>9,024,728.51</b>	<b>12,338,960.00</b>	<b>MIN/24/2006 held on 6 March 06</b>
<b>TOTAL1+2:</b>	<b>12,338,959.99</b>		
7HSA-200062/5	9,265,000.00	16,238,960.00 (until 31/12/06)	MIN/33/2006 held on 8 June 06
7HSA-200064/2	90,000.00	22,280,730.00 (until 30/04/07)	MIN/05/2007 held on 27/09/06
7HSA-200473	2,000.00	22,280,730.00 (until 30/04/07)	MIN/05/2007 held on 27/09/06
<b>TOTAL3:</b>	<b>9,357,000.00</b>	<b>27,775,759.99</b> (until 31/12/07)	<b>MIN/21/2007 held on 26/03/07</b>
<b>TOTAL1+2+3:</b>	<b>21,595,959.99</b>		

*Date 11 June 2007*

**OIOS PROCUREMENT TASK FORCE**  
**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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## ANNEX F: SANJAYA BAHEL TRIAL EXCERPT (4 JUNE 2007)

764FBAHF.txt

1499

1 764FBAH1 Trial  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 -----x  
5  
6 UNITED STATES OF AMERICA,  
7 v. S2 06 CR. 918 (TPG)  
8 SANJAYA BAHEL,  
9 Defendant.  
10 -----x  
11 Before:  
12 HON. THOMAS P. GRIESA,  
13 District Judge  
14 APPEARANCES  
15 MICHAEL J. GARCIA  
16 United States Attorney for the  
17 Southern District of New York  
18 BY: CATHY SEIBEL  
19 ALEXANDER J. WILLSCHER  
20 Assistant United States Attorneys  
21 RICHARD B. HERMAN  
22 HENRY MAZUREK  
23 JEFFREY BROWN  
24 Attorneys for Defendant  
25 ALSO PRESENT: SEAMUS CLARKE, Special Agent, FBI

June 4, 2007  
10:15 a.m.

1500

1 (In open court; jury present)  
2 (Trial resumed)  
3 THE COURT: Good morning, ladies and gentlemen.  
4 JURORS: Good morning.  
5 THE COURT: All right, let's go ahead.  
6 MR. HERMAN: Good morning, Judge. Good morning.  
7 Your Honor, I have three stipulations to read on to  
8 the record.  
9 THE COURT: All right.  
10 MR. HERMAN: And the first one is labeled as  
11 Defendant's Exhibit 16A, and the stipulation says: "It is  
Page 1

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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18 poorly performing, do we remove them from the approved list of  
19 vendors who can do business with the U.N., for example?  
20 Q. If an award of a contract by the HCC was made conditional  
21 upon the submission to the United Nations of audited financial  
22 statements acceptable to the United Nations, would you  
23 reasonably conclude that the accounts division would play a  
24 role in analyzing those records on behalf of the United  
25 Nations.

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1516

764FBAH1 Eppert - redirect

1 A. Well, procurement itself has some capacity to look over  
2 those documents. I think if they felt they didn't have  
3 capacity, they would ask for external help, so to speak, and  
4 look, naturally, to the internal resources.  
5 Q. And would it be the D1 that would have to sign off on this?  
6 A. Well, I think usually things in the U.N. are very  
7 hierarchical, so the office, any request for advice or input  
8 typically is under the signature of the person in charge, the  
9 D1 in this case, for example.

10 MR. HERMAN: Thank you very much.

11 MS. SEIBEL: Nothing further.

12 THE COURT: You may step down. Thank you.

13 (witness excused)

14 THE COURT: Next witness.

15 MR. HERMAN: Defense calls [REDACTED]

16 [REDACTED] called as a witness by the Defendant,  
17 having been duly sworn, testified as follows:

18 THE DEPUTY CLERK: You may be seated. Please state  
19 your full name for the record and spell your last name.

20 THE WITNESS: [REDACTED]

21 THE DEPUTY CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. HERMAN:

24 Q. [REDACTED] please speak into the microphone.  
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1517

764FBAH1

1 could you please tell the jury the extent of your experience at  
2 the United Nations?

3 A. I joined the United Nations in April, 1992 in the  
4 procurement service. I was promoted from there in middle of  
5 1998 to the headquarters committee on contracts secretariat,  
6 and as of now I am in the headquarters contracts committee. In  
7 between, I worked as a procurement officer for the United  
8 Nations stabilization mission in Haiti for a period of two  
9 years, that's December 2004 to December 2006.

10 Q. When you were in the procurement division, sir, was it  
11 routine for vendors to communicate with procurement officers  
12 concerning certain matters?

13 A. Yes, sir.

14 Q. Now, do you have a recollection of Mr. Bahel making  
15 presentations to the HCC?

16 A. Yes.

17 Q. And what is your recollection of his performance?

18 A. It's quite routine. The presentations were strong, the  
19 cases were reviewed, and he came forthright with questions that  
20 were posed by the committee.

21 Q. Did you ever for any instance see him favoring any  
22 particular vendors during the course of these matters?

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## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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23 A. No, sir.  
24 Q. Did there come a time in 2005 that you learned that  
25 Mr. Bahel was recommended to return back to the procurement  
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1518

1 764FBAH1  
division?  
2 A. Yes. There was a circular issued by my immediate boss, a  
3 circular issued to all staff. I was in Haiti at that time, but  
4 we also received the circular in Haiti.  
5 Q. And what if anything else do you recall about that?  
6 A. I had congratulated Mr. Bahel at that time, who I called  
7 him on the telephone, congratulated him, but he said he didn't  
8 want --  
9 MS. SEIBEL: Objection. Objection, objection.  
10 THE COURT: Can I hear, just what's the answer so far?  
11 (Record read)  
12 THE COURT: The objection is sustained.  
13 Q. Sir, in your experience as both the former procurement  
14 officer and an HCC member, are you aware of any inside  
15 information that could be shared by a procurement officer and  
16 an ITB?  
17 A. I'm not an HCC member. I served as an alternate secretary  
18 on the contracts committee. No.  
19 Q. And an RFP, would knowing the list of vendors invited to  
20 participate in a bid by the United Nations be valuable  
21 information to a prospective bidder?  
22 A. In the U.N. system of procurement, I would say no. Because  
23 we invite, as per the general assembly mandate, wide spectrum  
24 of vendors covering entire regions of the world.  
25 Q. And how does that global competition affect the value of  
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1 764FBAH1  
any information that could be learned by a prospective bidder  
2 on a U.N. contract?  
3 A. It's a dynamic. In the case of, I worked in the U.S.  
4 private firms, it's totally different. In the U.N., we have  
5 around 192 members which the policies are totally different.  
6 They had mandated certain requirements for the procurement  
7 activity. One certain requirement is we need to have minimum  
8 number of vendors to be invited from various regions of the  
9 world, and in that context, as the requirements are all posted  
10 on the internet, the procurement plans moving ahead, what are  
11 the future requirements, upcoming requirements, it is, to the  
12 best of my knowledge, doesn't do much.  
13 Q. On the average, sir, about how many vendors are usually  
14 invited to participate in an RFP?  
15 A. Anywhere 25 plus. 25 to a hundred.  
16 Q. And that's globally?  
17 A. Globally.  
18 Q. It's not limited to, say, like the United States?  
19 A. No.  
20 Q. Sir, how have the procurement staff reacted to the creation  
21 of the PTF?  
22 MS. SEIBEL: Objection, your Honor.  
23 THE COURT: Sustained.  
24 Q. Sir, do you know whether or not Mr. Bahel accepted that  
25 appointment back to the procurement service in 2005?  
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764FBAH1  
1 A. As far as I think he was ordered --  
2 MS. SEIBEL: Objection.  
3 THE COURT: No, overruled.  
4 A. When I called him to congratulate from the mission --  
5 MS. SEIBEL: Objection.  
6 Q. Don't talk about that discussion. The question to you,  
7 sir, is whether do you know Mr. Bahel ever accepted the  
8 position to return to procurement in 2005?  
9 A. No. I don't know.  
10 Q. Excuse me?  
11 A. I don't know.  
12 Q. You don't know that answer?  
13 A. No.  
14 MR. HERMAN: No further questions. Thank you.  
15 CROSS-EXAMINATION  
16 BY MS. SEIBEL:  
17 Q. Good morning, [REDACTED] My name is Cathy Seibel, I'm one  
18 of the prosecutors.  
19 You said you don't know if Mr. Bahel ever took the  
20 position as head of procurement, correct?  
21 A. Which one? Following the 2005 circular?  
22 Q. Correct.  
23 A. No. I don't think he has taken the position. Whether he  
24 has accepted, I don't know.  
25 Q. And in fact, the offer was withdrawn, was it not?  
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1521

764FBAH1  
1 A. A month later, a month or two months later.  
2 Q. Now, you mentioned that during the time that you were in  
3 procurement, which I gather was until, was from 1992 to 1998?  
4 A. Yes.  
5 Q. It was routine to communicate with vendors, correct?  
6 A. Yes, it is still routine to communicate. Vendors call all  
7 the time to the procurement service.  
8 Q. And it's one of the basic principles of the procurement  
9 service is that all vendors should have similar information,  
10 correct?  
11 A. Correct.  
12 Q. So, for example, if a vendor calls with a question about  
13 something in an RFP, for example, that answer is provided in  
14 writing and shared with all the bidders, correct?  
15 A. Depends on the procurement exercise on hand. If there is a  
16 procurement exercise already in the market, if the questions  
17 are posed by the vendors, we inform all the vendors in writing.  
18 Q. And that's so that, one of the reasons for that procedure  
19 is that so that a procurement officer can't favor a particular  
20 vendor, correct?  
21 A. Correct.  
22 Q. And you were asked a question about whether Mr. Bahel  
23 favored vendors, correct?  
24 A. I was asked the question, yes.  
25 Q. And have you ever favored a vendor?  
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1522

764FBAH1  
1 A. No.  
2 Q. Have you ever agreed in advance with others within the U.N.  
3 that one vendor was going to receive the highest score?

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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4 A. The scoring is done -- there are two types of scoring. One  
5 is a technical scoring, which is done by the requisitioners who  
6 have requested the services, and we in procurement do the  
7 commercial scoring. So then once we do it, then they are  
8 totally, we have sort of no influence to adjust it or --  
9 Q. So you've never adjusted calculations in favor of a  
10 particular vendor?  
11 A. No. We have questioned -- if the technical evaluation is  
12 not objective, yes, we have a right to question them. Because  
13 if we don't question, the committee and the higher management  
14 will question us.  
15 Q. Have you ever told a subordinate to adjust an estimate or a  
16 rating of a vendor?  
17 A. In the case where there was flaws in the technical  
18 evaluation, we have pointed it out to them and requisitioner  
19 has corrected and resubmitted the evaluation. Yes, there are  
20 instances.  
21 Q. When you were in Haiti, did you work on a procurement  
22 involving a fuel company named Dinasa?  
23 A. Yes.  
24 Q. Is it your testimony that you didn't do anything to help  
25 Dinasa?

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1523

764FBAH1

1 A. No.  
2 Q. And I take it you never got anything of value from Dinasa?  
3 A. No.  
4 Q. Or any other vendor?  
5 A. No.  
6 Q. Did Mr. Bahel ever tell you that he had a long-time  
7 personal relationship with some individuals who represented  
8 companies that were bidding at the U.N.?  
9 A. If he -- he didn't tell me. I did ask him and he --  
10 somewhere when he was cleared by the audit and investigation, I  
11 did ask him about his, whether he had relationship with the  
12 Kholis and he told me yes.  
13 Q. He told you he did have a relationship with the Kholis?  
14 A. Yes, friendship, yes.  
15 Q. Did he ever tell you that while he was working on  
16 procurements involving the Kholis?  
17 A. Not -- because he was a supervisor, he was not the case  
18 officer, he would not work directly.  
19 Q. Did he tell you about the \$16,000 worth of first-class  
20 plane tickets that he accepted from the Kholis in 2001 when he  
21 was working on their procurements?  
22 A. No.  
23 Q. Did he tell you that he had hundreds of private  
24 conversations with Nanak Kohli?  
25 A. No.

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1524

764FBAH1

1 Q. Did he tell you that he had hundreds of private  
2 conversations with Nishan Kholi?  
3 A. No.  
4 Q. And he never told you he got a great deal on an apartment  
5 from the Kholis, did he?  
6 A. No.  
7 Q. And you said this conversation occurred after some kind of  
8 an investigation had cleared him?

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## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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9 A. Right.  
10 Q. Did you speak to him again after other investigations with  
11 different outcomes?  
12 A. No.  
13 Q. And did Mr. Bahel tell you that he had spoken up and  
14 advised his superiors within the U.N. that he shouldn't be  
15 working on cases involving the Kholis because he had a  
16 long-time personal relationship with them?  
17 A. We in the U.N., there is no such things that because of the  
18 nature of the member states, the way they have mandated us,  
19 there was no such rule.  
20 Q. There was no such rule?  
21 A. Unless you recuse it -- if you're directly dealing with a  
22 certain, distinct, your own family member; your wife, your kids  
23 or your brother, sisters are dealing, that was the only one  
24 which was required as of last year.  
25 Q. Are you familiar with the U.N. staff rules and staff  
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1525

764FBAH1 [REDACTED]  
1 regulations?  
2 A. Yes.  
3 Q. Okay, I'm going to show you something. Let me just show  
4 Government Exhibit 20. Have you ever seen that before?  
5 A. I may have seen it, yes.  
6 Q. And this is -- it's the status basic rights and duties of  
7 U.N. staff members?  
8 A. Mm-hmm.  
9 Q. Just to pick one rule, [REDACTED] -- I'm going to try to put  
10 it up on the screen so you can see it.  
11 MS. SEIBEL: If you could enlarge regulation 1.2G,  
12 please?  
13 Q. [REDACTED] do you see that that says, "Staff members shall  
14 not use their office or knowledge gained from their official  
15 functions for private gain, financial or otherwise, or for the  
16 private gain of any third party, including family, friends and  
17 those they favor."  
18 Do you see that?  
19 A. Yes, that existed.  
20 Q. And that is not limited to just family members, correct?  
21 A. Correct.  
22 MS. SEIBEL: Thank you. I don't have anything  
23 further.  
24 MR. HERMAN: No further questions, your Honor.  
25 THE COURT: You may step down. Thank you.  
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764FBAH1 [REDACTED]  
1 (witness excused)  
2 THE COURT: Next witness.  
3 MR. HERMAN: At this time, your Honor, defense rests.  
4 THE COURT: Could the jury step out, please?  
5 (Jury excused)  
6  
7  
8  
9  
10  
11  
12  
13

## ANNEX G: SUBJECT 1 LETTER TO THE TASK FORCE (6 JULY 2007)

6 July 2007

**Via electronic mail**

Dear Mr. Appleton,

This is in response to your letter dated 4 June 2007, in which you have advised me of the Procurement Task Force's proposed findings from the investigation of MINUSTAH's long-term ground fuel procurement process. You have given me the opportunity to comment on those findings and offer any information for the Task Force to consider before formally reporting on this matter to the Organization.

I wish to make some preliminary remarks about the procedure followed in this case before responding to this letter in detail. As you have noted, the Task Force has interviewed me on several occasions. At no time, was I advised that I was a subject of an investigation, until now.

Among the suggested findings, your letter of 4 June 2007 raises a number of allegations concerning staff formerly under my supervision. As I have not been provided with their statements, it is more difficult for me to respond to the allegations in a meaningful way. Except in some brief interviews almost a year apart, I have not been advised what facts, if any, I am expected to clarify or what documentation you may not have already seen. Since 7 March 2007 and prior to the issuance of the subject letter, I have not had any contact with the Task Force at all. Although I have never been presented with a draft report placing these allegations into the appropriate context, it appears that the Task Force is nevertheless prepared to conclude with findings that I have acted in breach of the Staff Regulations and Financial Regulations. It appears that the investigation has proceeded to a point where I have been accused of breaching rules without being given the opportunity to provide the necessary clarification, and ultimately to defend my reputation. The letter of 4 June 2007 does not substantiate the Task Force's draft findings.

In spite of these constraints, I shall try to address the issues raised in the letter of 4 June 2007 to the extent possible. My comments on the draft findings summarized in the letter are as follows:

*(I) In 2005, as Chief Procurement Officer and then Chief of Administrative Services, you oversaw the procurement exercise for the long-term fuel contract.*

As Chief Procurement Officer of MINUSTAH, I fulfilled this function until 2 May 2005, during which time I only had oversight of part of the procurement exercise for the long-term provision of ground fuel. In my subsequent role as Chief of Administrative Services (CAS), I was not responsible for overseeing the acquisition of the subject contract. In my capacity as CAS, I supervised Administrative Services, consisting of the overall management and coordination of the Procurement, Finance, Personnel, and General Services Sections, as well as the Staff Counselors and UNV Support Offices (Annex 1 - Terms of Reference for CAS). This distinction

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT****STRICTLY CONFIDENTIAL**

is important in assessing responsibility and accountability within the procurement process. While the CAS is responsible for providing managerial oversight of the Procurement Section at the strategic level, the responsibility for the core and daily functions of the Section is within the purview of the Chief Procurement Officer or Officer-in-Charge of the Procurement Section (CPO), who is granted a delegation of procurement authority which is personal and cannot be delegated further. This delegation of authority holds the CPO primarily and principally responsible for ensuring that procurement activities are conducted in accordance with the UN Financial Regulations and Rules, the UN Procurement Manual, and other established procedures and practices, and for ensuring that the Organization receives best value for money (Annex 2 – Delegation of Procurement Authority).

***(2) As CPO, you improperly appointed a requisitioner and the procurement officer assigned to the case to be members of the Tender Opening Committee.***

The Tender Opening Committee (TOC) is an independent body, the members of which are appointed by the Chief Administrative Officer (CAO), and not by the CPO. (See section 10.1.1 (3) of the UN Procurement Manual). In the bid opening for the subject contract, the CAO's TOC appointments of 20 June 2004 were operative (Annex 3 – MINUSTAH Administrative Circular dated 20 June 2004<sup>1</sup>). From the foregoing, it is evident that I did not appoint any member to the TOC.

***(3) While you were CPO, members of the Tender Opening Committee improperly opened both the financial and technical evaluations simultaneously.***

As quoted in your letter, section 10.8.4 (4) of the UN Procurement Manual stipulates that:

*"...only the technical proposals shall be opened at the public opening. The financial details of the proposals shall normally remain unopened, and the contents shall remain unread, until the Procurement Officer has received the completed technical evaluation.  
..."*

I note that section 10.8.4 (4) continues as follows:

*"... However, under exceptional circumstance, as approved by the Chief, UN/PD, the financial details of the proposals may be opened and evaluated by the Procurement Officer prior to his or her receipt of the technical evaluation, provided that all measures will be taken to ensure the confidentiality of the financial details and that they are not shared with anyone until the receipt of the technical evaluation." [Emphasis added].*

<sup>1</sup> As can be noted, the TOC had requisitioning staff as part of its membership, presumably because the Mission was not sufficiently staffed to constitute a TOC membership with the required segregation. On 11 July 2005, the establishment of a new TOC, to which no members from requisitioning offices were appointed, regularized this situation. As can be noted, in both TOCs, the presence of Procurement staff was only granted in an "ex officio" capacity, in accordance with established practice in field procurement, and of the UN Procurement Manual which provides that "*in the case of large or complex tenders the Procurement Officer shall, as he/she may deem appropriate, attend bid openings as an observer.*" Thus, there were no irregularities in MINUSTAH with respect to this issue.

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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The decision to open financial and technical proposals simultaneously was to expedite the ground fuel acquisition process by truncating potential delay points in the procurement process to the extent permitted by procurement procedures. Potential delay points in the field acquisition process, particularly at the inception or early part of the mission life cycle, include, *inter alia*, the convening of various procurement-related committees, such as the TOC, the Tender Evaluation Committee, and the Local Committee on Contracts. The significant volume of procurement requirements in start-up field operations makes the two-envelope system and its requirement for multiple tender openings at times a cause of delay, as TOC members cannot always be convened in a timely manner due to competing operational commitments. This issue was raised by the CPO of ONUCI (Ivory Coast) to the Chief PS/NY in an e-mail exchange that included the CPOs of UNMIL, UNLB, MINUSTAH, and the PS Chief of Field Procurement. Subsequently, the Chief PS/NY agreed that financial and technical proposals could be opened at the same time, as long as it was ensured that the financial details were kept by Procurement and not shared with the requisitioner ([Annex 4](#) - copy of email correspondence dated 02 December 2004). This practice was applied to the subject contract.

The following factors contributed to the necessity to expedite the acquisition process for MINUSTAH's long-term ground fuel requirement. The Mission was at that time meeting its fuel requirement without a formal contract, relying on ad hoc arrangements made at the inception of the Mission, which were never regularized. This issue had been the subject of multiple audit observations, thus placing pressure on Administration to regularize the Mission's fuel contracts. It was also an operational requirement at that time to have a reliable fuel contractor in place to support the heightened activities of scheduled elections. The Mission had to take into account the period needed by a new contractor to mobilize and develop a capacity that would effectively support the electoral process, if the contract was going to be awarded to a firm other than the one with whom the Mission was maintaining ad hoc arrangements. Thus, for these reasons, it was decided to fast-track the procurement process under the "exceptional circumstances" exception provided for in section 10.8.4 (4) of the UN Procurement Manual.

- (4) While you were CPO, a procurement officer improperly provided the vendors' pricing information to the Technical Evaluation Committee prior to receiving a completed technical evaluation.**

I was not then, nor am I now aware of any procurement officer allegedly providing vendors' pricing information to the Technical Evaluation Committee prior to the completion of the technical evaluation. I was not given any more specific information in this regard, but if this has occurred, then it was a violation.

- (5) In 2005, during the procurement exercise for MINUSTAH's long-term fuel contract, you colluded with others to steer the technical evaluation to favor a specific vendor.**

I was not aware that the technical evaluation was steered to favour a specific vendor. I therefore could not have colluded with others to do so. As I have not been presented with evidence supporting this 'finding', I therefore cannot comment further until and if this should be substantiated.

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT****STRICTLY CONFIDENTIAL**

In the present context, I can only describe the extent of my involvement in the technical evaluation process for the subject contract.

As the CPO at the time, I approved on 19 March 2005, in accordance with section 11.6.2 of the UN Procurement Manual, the establishment of a Tender Evaluation Committee (TEC) (Annex 5 – copy of TEC authorization memorandum). The purpose of which was to ensure that the technical and commercial evaluations of submissions were not subject to the decision of any individual or undue influence or judgment of any particular interest. It should be noted that the TEC also included a member from the Contracts Management Section to further ensure the impartiality of the process. The TEC declared that the subject firm, which was allegedly favoured (Dinasa), to be technically non-compliant because its proposal did not include details of its mobilization plan.

Sometime around mid-May 2005, when I was no longer the CPO, I was consulted by the then CPO, his two case officers, and the Fuel Officer (Supply Section) regarding what action should be taken as the firm determined to be technically non-compliant was the Mission's current fuel provider, and had been so since its inception. Significantly, the determination of non-compliance was based on the failure of the subject firm to provide information on its mobilization plan, when in fact the firm was not required to mobilize, as it was already the Mission's current fuel provider. It was unclear why the TEC had not requested the required detail from Dinasa through Procurement, in accordance with section 11.6.4 of the UN Procurement Manual, namely a request for clarification and additional information, as the TEC had done with the other bidders.

At this stage, the available options were to either accept the technical evaluation as it stood, or to afford Dinasa an opportunity to provide the required information on its mobilization plan. I judged that the Organization would be at risk of exposure to criticism, and to potential liability, if Dinasa was to challenge the basis of the decision of technical non-compliance, given that it was already mobilized, which is illogical. This risk was considerable, particularly since the other bidders had been given an opportunity to clarify their proposals during the technical evaluation process, while this opportunity had not been afforded to Dinasa. It was also considered that the rather complex RFP document was drafted in English but had to be understood by Haitian French-speaking vendors, such as Dinasa. It was conceivable that the requirement for submitting a mobilization plan was not readily apparent to Dinasa. For these reasons, although the decision was ultimately that of the CPO's, I supported giving Dinasa the opportunity to provide information on its mobilization plan, which I believed to be in the best interest of the Organization. The discussion then focused on what was the best modality to obtain this information. As there was already an intention to request the bidders to submit a Best and Final Offer ("BAFO"), I supported that this should be done by BAFO. There were several reasons that made me support this decision. The first was that time could be saved by not having to first obtain the information by way of a further request for clarification from Procurement, and, thereafter, to undertake the BAFO. The second reason was that I felt that a BAFO would be the fairer methodology, as it also provided the other bidders with an opportunity to further clarify their technical proposals. The Fuel Officer [redacted] advised that there was a change in the requirement, including a requirement for fuel in some locations not previously anticipated due to elections related troop movement changes. He also added that Total does not have infrastructure

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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in these locations. I supported that the changes should also be reflected in the BAFO, as the option to cancel the bid at that time was not operationally feasible in the context for the forthcoming elections and without having a fuel contract in place.

While it was understood that a BAFO is normally a means of obtaining a better financial proposal from bidders, this decision was taken on the basis that I believed the Mission's operational requirements should take precedence. I supported this decision because it was in the best interests of the Organization.

Such decisions are not always black and white and sometimes require the exercise of judgment, as demonstrated by an earlier case in MINUSTAH with similar circumstances. This involved a tender for construction services; the technical evaluation declared all but one bidder as technically non-compliant. The Procurement Section - noted that one of the firms determined technically non-compliant was not only the lowest bidder by a significant margin, but also had earlier performed similar services satisfactorily to the Mission – queried the technical evaluation and was informed that the subject vendor had not provided key information requested in the tender documents. In this case the Procurement Section requested the information, which then enabled the requisitioner to declare the firm technically compliant. Being the lowest bidder, the firm was then recommended for award of contract. Subsequently, this decision was subject to criticism by the Local Committee on Contracts, which found that by requesting this information from the particular firm the other bidders had not been treated equally. I consulted the Chief PS/NY concerning this issue, who noted that this was a grey area in the procurement process and opined that he would have given the firm an opportunity to provide information by means of a BAFO, as it also provides the other firms an opportunity to improve their bids ([Annex 6](#) - e-mail correspondence dated 10 March 2005). This is what was done in this case and I therefore understood I was complying with an established and accepted practice.

Additionally, prior to leaving this meeting, I advised the CPO to consult with PS/NY to make sure that the proposed approach is acceptable. Subsequently I received an e-mail from Mr. Pinto informing that he had discussed with PS/NY HQ and received their consent<sup>2</sup>.

*(6) In 2005, during the procurement exercise for MINUSTAH's long-term fuel contract, you colluded with others to steer the financial evaluation to favor a specific vendor.*

I was not aware that the financial evaluation was steered to favour a specific vendor. I therefore could not have colluded with others to do so. I have not been presented with evidence supporting this finding and therefore cannot comment further until and if this should be substantiated.

Moreover, I note that the financial evaluation process falls under the management and supervision of the CPO. As CAS, I was unaware of the details of the subject financial evaluation, nor would I ordinarily be expected to be aware of details of any financial evaluation. ([Annex 1](#) – Terms of Reference of CAS). It is the CPO's responsibility to vet the results of the financial evaluation in accordance with procurement procedures. This is borne out by the subsequent

<sup>2</sup> I do not have the e-mail correspondence but is in the PTF documents that I reviewed (period after Technical Evaluation but before BAFO).

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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endorsement of the evaluation results by the CPO (Annex 7 – Memorandum of 20 May 2005 in which CPO requested case officer to proceed with evaluation results).

As the CAS, I was distinctly aware of the Mission's difficulties in securing reliable contracts for meeting the Mission's fuel requirement. As I have consistently done when faced with difficulties I escalated this issue to the Chief PS/NY and LSD in a June 2005 facsimile. I recommended that UNHQ should take over the responsibility of securing fuel contracts on behalf of the Mission (Annex 8 – copy of fax {Para's 10 & 11}). My approach of the issue in this regard is not compatible with the allegation of favouring a particular vendor.

***(7) As a result of the bid-rigging scheme, the procurement exercise was not conducted in compliance with the applicable rules and regulations, nor was it undertaken in a fair and transparent manner.***

I was not aware of any bid-rigging scheme until advised by the Task Force investigators of this allegation during my second interview.

For the first time, I was informed by a Task Force investigator in March 2006 that changes in the fuel quantities had favoured Dinasa. I recalled having contested the determination that the evaluation of the subject contract was flawed, as I believed the changes under discussion were those that had been reflected in the BAFO. My position was based on my opinion that, as long as changes in quantities are presented to all vendors participating in the tender, this was fair. Subsequently, in March 2007, Task Force investigators informed me that the financial evaluation was based on fuel quantities different from those presented in the BAFO. I advised the investigators that I was not aware of this information, as I was not the CPO at the time. However, I stated that if this had occurred, then it was wrong.

I submit that my support to reflect changes in the fuel requirements in the BAFO does not equate to support for changing the quantities for the purpose of the financial evaluation to favour any particular vendor.

In reviewing the details of the financial evaluation to prepare my response, it was apparent that under the best value procurement methodology, wherein there is a weighing of technical and financial score, 60% to 40% respectively to determine the best offer, Dinasa would still have scored the highest total scores if the BAFO quantities were used for the financial evaluation. This is mostly in view of the significant variance in the overall scores between Dinasa and Total (98.80 to 79.29 respectively). The 1% difference in the competitiveness of the Total prices compared to Dinasa's in the original tender would not have made sufficient difference in the overall scores to preclude the recommendation for the award of contract to Dinasa after the BAFO Annex 7 – Final Overall Evaluation of Proposals, pg 3). Although this does not detract from the charges, it is nonetheless striking that regarding the alleged bid-rigging, this was not in fact necessary for Dinasa to be fairly recommended for award of contract. Based on my considerable years of DPKO experience, if I was CPO, or indeed wanted to favour a vendor, I would have certainly observed this pertinent fact.

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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***(8) In attempting to conceal this scheme, your staff members provided inaccurate, false, and misleading information to the Committee on Contracts.***

I note that the subject case was brought before the Local Committee on Contracts (LCC) on 15 June 2005, when I was no longer CPO.

Regarding the alleged concealment, the process of preparing and submitting cases to the LCC is a Procurement function. Procurement staff report directly to the CPO, who is responsible for ensuring that information provided to the LCC is accurate. In my role as CAS, I did not know, nor could I have known, whether or not information relating to the subject case presented to the LCC was accurate.

***(9) You were not truthful with investigators when questioned about the procurement exercise, and made material misrepresentations regarding the financial and technical evaluations for the proposals submitted following the Best and Final Offer, and other similar misstatements.***

I attest that I have always demonstrated the highest standards of integrity and professionalism in my various functions. I have been truthful to the best of my recollection in all my dealings with Task Force investigators, and at no point did I knowingly make any misrepresentations or other misstatements. It should be noted that the case had been investigated for over a year by the time I was interviewed about ground fuel and other cases for the first time in March 2006. The ground fuel case had been ongoing for over two years when I was interviewed again in March 2007. Given the passage of some considerable time, it is not inconceivable that I would not be able to recollect the minutiae of operations at that time. However, at no point during any of these interviews was I informed that I was the subject of investigation. Furthermore, I assisted the investigators to the best of my knowledge without the benefit of reviewing any documentation to assist my recollections and review of the circumstances under investigation. As I have been subsequently given an opportunity to review partial records, although I understand this material does not constitute the entire body of evidence, I am nevertheless in a position to respond more precisely.

In conclusion, I have served the Organization faithfully and have consistently demonstrated impeccable standards of professionalism for almost 14 years. Therefore the draft allegations and findings in your letter of 4 June 2007 came as a considerable shock, especially as this is a complete contradiction with my longstanding reputation for integrity and ethics. I have responded collectively to these allegations, rather than to each rule and regulation I am alleged to have violated as each is covered by the primary allegations addressed above.

Sincerely,



**OIOS PROCUREMENT TASK FORCE**  
**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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Compendium - Occupational Groups

**ANNEX I**

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**Chief Administrative Services, P-5**

**DEADLINE FOR APPLICATIONS:** Open  
**DATE OF ISSUANCE:** 01 Feb 2006  
**ORGANIZATIONAL UNIT:** Field Missions Administered by DPKO  
**DUTY STATION:** Multiple D/S  
**VACANCY ANNOUNCEMENT NUMBER:** 06-ADM-PMSS-409288-R-MULTIPLE D/S

**Remuneration**

Depending on professional background, experience and family situation, a competitive compensation and benefits package is offered.

[More Info](#)

**United Nations Core Values: Integrity, Professionalism, Respect for Diversity**

**Responsibilities**

Under the direct supervision of the Chief Administrative Officer (CAO), the Chief Administrative Services (CAS) is responsible for coordination and effective delivery of internal administrative services to mission personnel. Grouped under this service are the sections for personnel, finance, procurement and general services. Specifically, the incumbent shall carry out the following functions:  
- Act as principal adviser to the CAO on all management matters pertaining to human resources, finance, procurement, general services and medical; - Provide effective management of human, financial and physical resources of the Sections; - Ensure the development, preparation, coordination and monitoring of work plans, strategies and programmes for the administrative activities of the Mission and take the lead in securing the required human and financial resources; - Establish a set of sound policies, procedures, standards and tools that are consistent with United Nations rules and regulations ensuring financial management and control; - Provide guidance, support and supervision to senior administrative staff; - Guide, evaluate, supervise and mentor administrative support and other staff in the areas of his/her responsibility; - Act as Officer-In-Charge of Administration in the absence of the CAO when designated; - Perform any other related duties as required by the CAO.

**Competencies**

Professionalism: Demonstrated ability to provide technical advice in a broad range of human resources, financial and administrative areas; Vision: Ability to identify key strategic issues, opportunity and risks; Leadership: Strong managerial/supervisory skills, and negotiating skills, good judgment and decision-making skills; Managing Performance: Ability to establish priorities and to coordinate and monitor work of others; Technological Awareness: Solid computer skills, including proficiency in word processing, good knowledge of databases; Communications: Solid writing skills, ability to prepare reports or rationale with respect to key administrative decisions; Teamwork: Ability to lead and gain the assistance and cooperation of others in a team endeavor.

**QUALIFICATIONS**

**Education**

An Advanced University Degree (Masters Degree or equivalent) in Business or Public Administration, Human Resources Management, Finance, Accounting, Law or related fields of study. An equivalent combination of relevant education and experience will also be considered.

[http://myun.un.org/Galaxy/Release3/vacancy/Display\\_Vac.aspx?lang=1200&VACID=5b...](http://myun.un.org/Galaxy/Release3/vacancy/Display_Vac.aspx?lang=1200&VACID=5b...) 05/07/2007

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## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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**UNITED NATIONS**  
United Nations Stabilization  
Mission in HAITI**NATIONS UNIES**  
Mission des Nations Unies pour la  
Stabilisation en HAITI**MINUSTAH**

Date: 2 May 2005

To:

From: Willi Scholl *(Signature)*  
Chief Administrative Officer  
MINUSTAHSubject: Delegation of Procurement Authority - [REDACTED] - Index  
No. 229874

1. Pursuant to Financial Rule 105.13(a), I hereby delegate to you the responsibility for procurement activities within MINUSTAH subject to the terms and conditions, set forth below.

2. Your delegated procurement authority shall be **United States Dollar Fifty-thousand only (USD 50,000.00)**. Accordingly, you are authorized to enter into contracts for the purchase of goods and services on behalf of MINUSTAH with a single contractor in respect of a single requisition or series of related requisitions. Your delegated procurement authority may be decreased at any time or reviewed from time-to-time, at my sole discretion.

3. This delegation of authority is granted to you personally and requires that you exercise your duties and responsibilities with the utmost care, competency, efficiency, fairness and integrity. This delegation of authority may not be re-delegated by you. You shall be personally accountable for the improper use of your authority or for acting without proper authority. In discharging your responsibilities under this authorization you shall also be required to be familiar with, and adhere to strictly, the following:

- a. The Charter of the United Nations;
- b. The Financial Regulations and Rules of the United Nations, including, but not limited to, the provisions of F.R. 105.13 through F.R. 105.19;
- c. The Staff Regulations of the United Nations and Staff Rules;
- d. The Procurement Services Procurement Manual, as amended from time to time, including, but not limited to, the HCC Policy Guidelines and Procedures; and
- e. All other applicable OCSS and Procurement Services issuances and instructions.

REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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4. This authorization shall take into effect immediately and shall automatically terminate in the event, for any reason, you are transferred from MINUSTAH or your employment with the United Nations ceases. Please acknowledge receipt of this memorandum and your agreement with its terms and conditions by signing in the space provided below and returning it to Chief Procurement Officer. Please retain a duplicate copy for your records.

[REDACTED] S AND CONDITIONS AGREED

Date

02-May-2005

REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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ANNEX 3

UNITED NATIONS  
INTEROFFICE MEMORANDUM



NATIONS UNIES  
MEMORANDUM INTERIEUR

ADMINISTRATIVE CIRCULAR No 009/2004

TO: All MINUSTAH Personnel  
A:

DATE: 20 June 2004

FROM: Antonio Gómez de la Torre, CAO  
DE: *Weber, SAO*

SUBJECT: Tender Opening Committee (TOC)  
OBJET:

1. In accordance with Financial Rule 105.14 (e) a MINUSTAH Tender Opening Committee comprising the following members has been established with immediate effect:

Chairperson	- Chief Finance Officer or his/her delegate
Member	- Chief, General Services or his/her delegate
Member	- Chief Supply Officer or his/her delegate
Member	- Administrative Officer Integrated Support Services or his/her delegate
Ex-officio	- Procurement representative

2. The chairperson and two members shall constitute a quorum and the opening of bids shall be public.

3. The TOC, under the leadership of the Chairperson, shall establish its own Terms of Reference complying with relevant provisions of the revised Financial Rules and Regulations promulgated in ST/SGB/2003/7 of 9 May 2003 and the Procurement Manual, rev. 2 of January 2004.

WW/am

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**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**  
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OIOS PROCUREMENT TASK FORCE



REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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ANNE X 4

[REDACTED]  
12/02/2004 02:04 PM

To: Helen Dodd/Procurement/ONUCI@ONUCI@UNITED  
NATIONS LOGISTICS BASE@UNHQ-DPKO  
Dmitri Downopoly/NY/UNO, Sandra Saiegh/NY/UNO, Peter  
cc: [REDACTED]  
bcc:  
Subject: Re: Bid Openings

History:  This message has been forwarded.

Agreed

Best

[REDACTED]  
Helen Dodd

From: Helen Dodd  
Sent: 02/12/2004 04:57

[REDACTED] a Saiegh; Peter Hilton/United Nations@UNLB;  
Christopher Fathers/UNMIL@UNMIL

Subject: Bid Openings

[REDACTED]  
Hoping for some advice. I think I recall a string of emails going around on this subject and apologies for  
the need for further clarification. I just want to be sure I am not committing any major faux pas.

The present practice in this mission is to open only the technical proposals of bid submissions at the initial tender opening. Once technical evaluations are complete - the commercial proposals can then be opened at a separate tender opening (with the theory that non compliant bids may not be opened).

My feeling, in light of HCC requests to see the commercial analysis of non-compliant vendors alongside the compliant vendors, amongst other things, is that we open both technical and commercial submission together. It is then for procurement to ensure that the technical evaluations are not influenced by price, ie technical submissions only are distributed to requisitioners.

I would like to revert to this practice here in ONUCI.

Your advice would be much appreciated.

Thanks

Best Regards,

Helen Dodd  
Chief Procurement Officer, ONUCI

REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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ANNEX 5

Annex 5

1 4 1

UNITED NATIONS  
United Nations Stabilization  
Mission in HAITI



MINUSTAH

NATIONS UNIES  
Mission des Nations Unies pour la  
Stabilisation en HAITI

Date: 19 March 2005

Ref:

To:

Procurement Section

From:

Procurement Section

Subject: Tender Evaluation Committee – Global RFP for the Provision of POL Products – Closing on 21 March 2005

*Approved*  
*[Signature]*

1. Pursuant to Chapter 11 of the Procurement Manual, please be informed that a Evaluation Committee comprising the following member is hereby established:

[REDACTED]

2. The Committee is hereby tasked to review the Request for Proposal (RFP), which included the evaluation criteria, amendments to the RFP, and analyze vendor's proposals with a view to identify which proposal responds and meets the requirements as set forth in the RFP.

3. The Committee shall report its findings to the Chief, Procurement Section and to the Chief, Supply Section.

4. Your acceptance to this arrangement is kindly requested.

cc: Ms. Ellen Aamodt

REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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[REDACTED]

03/10/2005 01:40 AM

cc Dmitri Dovgopoly/NY/UNO@UNHQ, Nicolas von  
Ruben/United Nations@UNHQ-DPKO, babymina@un.org  
bcc  
Subject Re: Fw: minutes no 18 signed

[REDACTED]

This area in the process is not particularly clear in the manual. If it had been me and knowing that the bidder that was technically unacceptable had done satisfactory work in the past I would have done a BAFO in order to give all bidders the opportunity to improve their bids, which would probably have been a fairer way of doing things.

Given the huge difference in price and knowing the past performance of the vendor I don't think you could have ignored it.

Best

[REDACTED]  
P.S. Larissa will be the focal point for your HCC submission



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[REDACTED]

  
09/03/2005 12:38 PM

[REDACTED]  
cc: Dmitri Dovgopoly/NY/UNO@UNHQ, Nicolas von Ruben/United  
Nations@UNHQ-DPKO  
Subject: Fw: minutes no 18 signed

OIOS PROCUREMENT TASK FORCE



REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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[REDACTED] please find attached our submission to the HCC for the provision of internet services support services. We will send an official fax as soon as signed. request your usual support for submission.

On another issue, which I will like you to address separately, you will note that the minutes also reflect a case for the construction of roads and parking lot by a firm known as HL Construction. Although this case falls within the LCC authority, I will like to seek your opinion on the LCC's criticism of the procurement process. The case is self evident, but I will summarize the issue. We tendered a two envelope system RFP for the services to which four firms responded. The subsequent technical evaluation deemed all but one of the respondents technically compliant. When we opened the financial evaluation we found out that the firm that was non compliant was the lowest by a very significant margin (about 50% of the cost of the next lowest bidder). We also know this firm has provided similar works before. So we questioned the technical evaluation, and the requisitioner pointed out that they had failed this firm because they did not provide sufficient information on the methodology of construction. So we asked the firm to provide further clarification, which they did, and the requisitioner deemed their proposal as adequate. We came under criticism from the LCC, particularly the Legal Advisor, who deemed the process as unfair because we have provided the vendor the opportunity to "re-submit" their proposal. We countered with the fact that this was an rfp and provided excerpts of the Procurement Manual that shows we can have discussions with potential contractors in the case of rfp. However the minutes still indicate that we "deviated from the normal procurement process and recommended that we do not do it again. The CAO agrees.

Since it is foreseeable that similar circumstances may arise, I need you to advise on the matter. thanks

PS, I am going to invite [REDACTED] for a short visit. cheers



[REDACTED] on 09/03/2005 11:29 -----

09/03/2005 10:03 [REDACTED]

cc

Subject Fw: minutes no 18 signed

[REDACTED]  
See Para 37 of the minutes. We need to advise the CAO the understanding of the LCC Member, particularly legal is not up to the point. It is contradicting the procedures set forth in the Procurement Manual promulgated by the USG for Management.

Regards  
[REDACTED]

----- Forwarded by Ronald Pinto/MINUSTAH on 09/03/2005 10:02 AM -----

Martina Pellny/MINUSTAH



09/03/2005 09:56 AM

To [REDACTED]

cc

Subject minutes no 18 signed

# OIOS PROCUREMENT TASK FORCE

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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UNITED NATIONS  
United Nations Stabilization  
Mission in Haiti



NATIONS UNIES  
Mission des Nations Unies  
Pour la Stabilisation en Haïti

### INTEROFFICE MEMORANDUM

### MEMORANDUM INTERIEUR

DATE: 6 June 2005

REFERENCE: \_\_\_\_\_

TO: [REDACTED]  
A: [REDACTED] OIC, Procurement Section *p/S placed.*  
FROM: [REDACTED] Tender Evaluation Committee for RFP/05/027/RP A  
DE: [REDACTED]

Alexander Maisuradze  
Contracts Management Unit *A. Maisuradze*

SUBJECT: Request for Proposal No. RFP/05/027/RP; Final Overall Evaluation of  
OBJECT: proposals for BAFO/2005/MINUSTAH/001/PM related to the provision of  
Aviation and Ground Fuels.

In relation to the Best and Final Offer (BAFO) referred above, three (3) proposals were received in due time, the Tender Evaluation Committee met and made an assessment of the financial and technical elements of the proposals. Based on the criteria agreed upon, the proposals were evaluated 60% for Technical compliance and 40% for the Commercial aspects. Please find below the overall evaluation of the proposals received from SkyLink Aviation Inc., DINASA and Total Haiti.

1. **AVIATION FUEL:** Only one (1) proposal was received from **SkyLink Aviation Inc.** in Toronto, Canada for the Aviation Fuel. The overall evaluation of his proposal is as follows:

1.1 **Technical Evaluation:** The BAFO proposal does not change the original technical proposal rating. The technical proposal is compliant with a 97 out of a 100 grading.

1.2 **Financial Evaluation:** The cost analysis is as follows:

1.2.1 **Mobilization:** The Mobilization costs are still considered by far over priced.

1.2.2 **Jet A1 Fuel:** The Jet A1 Fuel costs did not change and are still 10% to 18% higher than the prices paid by MINUSTAH to the current supplier of same fuel during the same periods proposed.

**Recommendation:** In light of the above, and noting the estimated yearly consumption of Aviation Fuel of 5,600,000 litres and the related cost of US \$7,895,954.00 for the first year and US \$21,883,143.45 for the total period of 3 years including Mobilization Costs and the average estimated price increase of 5% per year, it is recommended to reject the proposal of Skylink Aviation Inc. for the **Aviation Fuel** and to enter into negotiated contract pursuant to Financial Rule 105.15 (c) – “*Interest of Organization best served by rejecting Bids/Proposals Received and entering into a negotiated contract*”.

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

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ANNEX 7

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\*\*\*\*\*  
**2. GROUND FUEL (Diesel, Gasoline, and Kerosene):** Three (3) BAFOs were received for Ground Fuel. Their evaluation is as follows:

**2.1 TOTAL HAITI**

**2.1.1 Technical Evaluation:** The BAFO proposal does not change the original technical proposal rating. The technical proposal is compliant with a 68 out of a 100 grading, as per the Technical Evaluation Matrix (**Annex 1**) converted to 40.80 Technical Points out of 60.

**2.1.2 Financial Evaluation:** Please refer to the Overall Financial Evaluation of BAFO/2005/MINUSTAH/001/PM (**Annex 2**). The cost analysis is as follows :

**2.1.2.1 Mobilization: Contractor Managed Sites.** With the clarification of the list and storage capacity of locations included in the BAFO, the Mobilization costs proposed by TOTAL Haiti in the BAFO are US\$351,000.00 and considered acceptable.

**2.1.2.2 Mobilization: UN Managed Sites.** In order to complement the storage and distribution capacity of the Contingents the installation of estimated 30 UN Managed Sites would cost US \$1,080,000.00 based on the individual pricing of US\$36,000.00 provided by TOTAL Haiti in the BAFO.

**2.1.2.3 Ground Fuel:** The fuel costs proposed are the second lowest and calculated as 60% lower than the prices proposed by Skylink and 1 % higher than the prices proposed by Dinaso.

**2.2 SKYLINK AVIATION INC.**

**2.2.1 Technical Evaluation:** The BAFO proposal does not change the original technical proposal rating. The technical proposal is compliant with a 97 out of a 100 grading, as per the Technical Evaluation Matrix (**Annex 1**) converted to 58.20 Technical Points out of 60.

**2.2.2 Financial Evaluation:** Please refer to the Overall Financial Evaluation of BAFO/2005/MINUSTAH/001/PM (**Annex 2**). The cost analysis is as follows:

**2.2.2.1 Mobilization: Contractor Managed Sites.** With the clarification of the list and storage capacity of locations included in the BAFO, the Mobilization costs proposed by Skylink in the BAFO are US\$7,459,855.00 and can now be compared with Total Haiti's and DINASA's and it is found out that the prices offered by Skylink are still considered far excessive.

**2.2.2.2 Mobilization: UN Managed Sites.** In order to complement the storage and distribution capacity of the Contingents, the installation of estimated 30 UN Managed Sites would cost US \$7,876,200.00 based on the individual pricing of US\$262,540.00 provided by SkyLink in the BAFO and equally considered far excessive.

**2.2.2.3 Ground Fuel:** The fuel costs proposed in the BAFO are approx. 61% higher than the prices proposed by DINASA and approx. 60% higher than the prices proposed by Total Haiti.

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

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**2.3 Distributeurs Nationaux SA (DINASA):**

**2.3.1 Technical Evaluation:** The BAFO received from **Distributeurs Nationaux SA (DINASA)** in Port-au-Prince, Haiti, now addresses all of the requirements of the RFP in a very realistic manner. As per the Technical Evaluation Matrix (**Annex 1**), DINASA has now demonstrated a complete understanding of the requirements of the RFP and BAFO; they have addressed all technical difficulties and found feasible solutions. The revised ratings for each evaluation point were mostly exceptional and very good. The technical proposal is now compliant with a 98 out of a 100 grading equalling to 58.8 out of 60 Technical Evaluation points and considered the highest **Technically Compliant** of the three proposals presented.

**2.3.2 Financial Evaluation:** Please refer to the Overall Financial Evaluation BAFO/2005/MINUSTAH/001/PM (**Annex 2**). The cost analysis is as follows:

**2.3.2.1 Mobilization: Contractor Managed Sites.** The Mobilization costs for 18 Contractor Managed Sites were estimated by DINASA for the total amount of US\$1,834,212.80 and are offered free of charge to MINUSTAH.

**2.3.2.2 Mobilization: UN Managed Sites.** In order to complement the storage and distribution capacity of the Contingents, the installation of estimated 30 UN Managed Sites would cost US\$1,209,000.00 based on the individual pricing of US\$40,300.00 provided by DINASA in the BAFO.

**2.3.2.3 Ground Fuel:** The fuel costs proposed in the BAFO are the lowest of the three proposals and they are approximately **61% lower** than the prices proposed by Skylink and **1% lower** than Total Haiti.

Ground Fuel	Dinasa	Total Haiti	SkyLink
Technical Points	58.80	40.80	58.20
Price Points	40.00	39.89	19.17
<b>Total Evaluation Points</b>	<b>98.80</b>	<b>80.69</b>	<b>77.37</b>

**Recommendation:** In light of the above, and noting the estimated yearly consumption of Ground Fuel (20,702,000 litres) submitted by Supply Section (**Annex 1**), and the average estimated price increase of 5% per year, it is recommended to award the contract for the **Ground Fuel** requirement to **Distributeurs Nationaux S.A. (DINASA)** covering the period of one (1) year starting from 1 August 2005 and ending 31 July 2006 in the not-to-exceed amount of US \$10,148,320.01 with an option for MINUSTAH to extend the contract for additional two one-year terms through 31 July 2008 at the aggregate not-to-exceed total amount of US \$30,859,716.65 pursuant to Financial Rule FR105.15 (a) - Qualified, Most Responsive Proposal (Lowest Cost Proposal).

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**SUMMARY OF THE FINDINGS:**

By summarizing the above recommendations, it is recommended to split the award in accordance with the provision of the RFP, as per the below final overall evaluation.

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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1. **Aviation Fuel:** The only proposal received by **Skylink Aviation Inc.** was considered excellent from the technical point of view; however the financial proposal is still high-priced. Therefore, it is recommended to reject the proposal of Skylink Aviation Inc. for the **Aviation Fuel** and to enter into negotiated contract pursuant to Financial Rule 105.15 (c) – “*Interest of Organization best served by rejecting Bids/Proposals Received and entering into a negotiated contract*”. It is also recommended that a benchmark figure for negotiation should be established using the rate paid presently under World Fuel Services (WFS) arrangement against the estimated quantity projected by Supply Section, with a total 20% allowance taking into account the Skylink’s offer (average 15% higher than WFS) and an estimated 5% price increase per year through government legislation.
2. **Ground Fuel:** The overall proposals of **Dinasa**, **Total Haiti** and **Skylink Aviation Inc.** are considered acceptable. However, the proposal of **Dinasa** has obtained the best rating, as evaluated above. Therefore, it is recommended to award the contract for the **Ground Fuel** requirement to **Distributeurs Nationaux S.A. (DINASA)** for the period of one (1) year starting from 1 August 2005 and ending 31 July 2006 in the not-to-exceed amount of US \$10,148,320.01 with an option for MINUSTAH to extend the contract for additional two one-year terms through 31 July 2008 (taking into account the average estimated price increase of 5% per year) at the aggregate not-to-exceed total amount of US \$30,859,716.65 pursuant to Financial Rule FR105.15 (a) - Qualified, Most Responsive Proposal (Lowest Cost Proposal).

## OIOS PROCUREMENT TASK FORCE



## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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**UNITED NATIONS**  
**United Nations Stabilization**  
**Mission in Haiti**



**NATIONS UNIES**  
**Mission des Nations Unies**  
**Stabilisations pour la Haïti**

## TELEFAX TRANSMISSION

Outgoing fax msg no:	CAO/05/OF/329	Page 1 of 3
To:	[REDACTED]	From: Willi Scholl Chief Administrative Officer MINUSTAH
	Mr. Ian Divers Chief Supply LSD/OMS/DPKO	
Fax no.	3-9858, 3-4537, 3-0383	Fax no: 7-9080
Info:	Date: 22 June 2005	
	Mr. Clemens Adams Chief SSS LSD/OMS/DPKO UNHQ, New York	
Subject:	<b>Long Term Provision of Aviation Fuel for MINUSTAH</b>	

1. We wish to inform on the current state of our effort to establish a long term contract for the provision of aviation fuel on behalf of MINUSTAH, and to also seek your guidance or possible intervention in addressing some of the difficulties encountered therein.

2. As may be recalled, MINUSTAH started its air operations in June 2004, and with assistance from PS UNHQ, awarded a contract for the supply of aviation fuel to Texaco, Haiti, following a formal solicitation in which they were the sole bidder. It has since been established that Texaco, Haiti, is the sole provider of aviation fuel in Haiti, having facilities in Port-au-Prince and Cap Haitien, and the only firm that imports aviation fuel into Haiti.

3. However, the relationship between Texaco and MINUSTAH has been strained from the beginning, with Texaco refusing to sign a UN contract, and not responding in good faith to our queries as why they refused to sign a contract. Subsequently in late September 2004, Texaco injected World Fuel Services (WFS), a fuel broker based in Miami, USA, to act as its representative in the provision of aviation fuel to MINUSTAH. This arrangement has since remained in place, with WFS undertaking the billing and accounting of the fuel contract, while TEXACO is providing the fuel, equipment, and other logistics support. It should be noted that WFS has also not signed a UN contract, notwithstanding earlier representations that they are willing to do so, and in spite of our numerous attempts formalize the relationship.

## REPORT ON MINUSTAH GROUND FUEL PROCUREMENT

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4. Meanwhile MINUSTAH launched a comprehensive international tender exercise for the provision of POL to the Mission, to include 28 firms, with a deadline to respond by 28 February 2005, which was subsequently extended to 21 March 2005.

5. Although six firms responded to the overall POL tender, Skylink was the only firm that submitted a proposal for the provision of aviation fuel. In its executive summary of its technical proposal, Skylink informed that they had formed a consortium with AMA Spa of Italy, World Fuel Services (WFS) of USA and Texaco for purposes of their submission for the supply of aviation fuel. While AMA Spa and WFS had confirmed this partnership in writing to MINUSTAH, Texaco had remained silent to our request for confirmation.

6. The subsequent commercial analysis of the Skylink proposal for the provision of aviation fuel to MINUSTAH appears to confirm our initial concern that the so called consortium simply amounts to collusion in so far as the Organization's interests are concerned. The mobilization costs quoted by Skylink for the aviation fuel in the amount of US\$1,881,954 is considered too excessive when compared to the prices quoted in UNHQ System Contracts for the provision of same equipment, excluding certain costs yet to be determined.

7. Although this can be remedied by MINUSTAH purchasing the same equipment under existing systems contract, there are other costs that also appear unreasonable and not so easily remedied. First and foremost, the Skylink proposed unit cost for the provision of aviation fuel is 18% higher than our current arrangement, despite the significantly higher volumes of fuel involved. In addition to the above costs, there are other unknown financial implications which will be borne by MINUSTAH, such as shipping costs of equipment + 5% administration charges, cost of preparing the land for UN managed sites, and other interest charges applicable to the UN payment terms.

8. MINUSTAH has sought to address this situation by seeking Committee authorization to cancel all bids and negotiate in accordance with Financial Rule 105.15 (c) (*Interest of Organization best served by rejecting Bids/Proposals Received and entering into a negotiated contract*) However, we are now inclined to believe that a comprehensive and strategic approach may be more appropriate, as the MINUSTAH experience may only be the crystallization of a growing trend in the establishment of fuel supplies for peacekeeping operations that requires further investigation by UNHQ. This trend is the recent and dedicated effort by Skylink to become a major supplier of fuel to peace keeping operations

9. The concern is that Skylink is not traditionally a fuel supply company, and that their involvement requires collaboration with the traditional fuel suppliers (such as Mobil, Texaco, BP, Shell, etc), which almost always results in higher prices. Perhaps more importantly, as their involvement is presumably limited to peacekeeping operations, this does not bode well for the long term development and capacity building of the fuel infrastructure in the host nations of peacekeeping operations. Thus if we are forced in the realm of negotiated procurement for fuel services, our interest may lie in pursuing the major fuel firms that have representation and long term development interests in the theater of operations.

**REPORT ON MINUSTAH GROUND FUEL PROCUREMENT**

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10. Another related issue that may require intervention at the strategic level is the frequent reluctance by some of the major fuel firms to sign a UN contract with the standard terms and conditions. In our opinion this issue can best be addressed by UNHQ as it affects several missions, and also the number of new missions provides negotiating leverage not available to individual missions trying to negotiate a contract with local fuel representatives.

11. As both of these trends described above are affecting MINUSTAH's ability to meet its long term aviation fuel requirement, we request your guidance and welcome any intervention that would facilitate a resolution while maintaining an uninterrupted provision of subject services on behalf of the Mission.

cc: CISS, C/Supply, CPO

Drafted by: