

**HEADQUARTERS COMMITTEE ON CONTRACTS** 2008 JAN -7 A 10:43  
**Special Meeting No. HCC/07/117**  
**Held on Monday, 31 December 2007**  
**At 4:00 PM in Room No. S-2171-O**

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**MINUTES**

**HCC Committee Members in Attendance:**

Ms. Helena Nord Lee	Deputy Chairperson, HCC
Mr. David Hananel	Member, OLA
Ms. Iona Dixon	Member, OPPBA
Mr. Joao Marcedo	Secretary, HCC

**Also in attendance:**

Mr. John Purcell	PS
Mr. Dmitri Dovgopoly	PS
Mr. Krzysztof Stasiewicz	DFS
Mr. Vitali Petrounev	DFS
Mr. Rolf Sjoberg	DFS
Mr. Serge Divounguy	DFS

**I. Agenda:**

1. The Agenda, attached as Annex I, was adopted as presented.

**II. Opening Remarks:**

1. With a view to facilitating prompt issuance of the Minutes, Appendix A hereto sets forth the full text of the referenced Financial Rule basis for the award/recommendation in each case. Due to there being several possible bases for award/recommendation under a given Financial Rule, Appendix A numerically lists the reference, e.g. "[Appendix A, # 1]."
2. The Deputy Chairperson, HCC, convened a Special Meeting today to review an MOU with the African Union (AU) that includes e.g. provisions with respect to the supply of food rations and catering services to the troops in Darfur (that the UN took over from 1 January 2008) by the contractor Pacific Architects and Engineers (PAE). The Committee initially understood that the AU contract with

PAE was expiring today (31 December 2007) and that action had to be taken today to ensure that the contract did not expire.

3. The case presentation was approved by PS at 2:19 PM on 31 December 2007 and submitted through the e-HCC system to the HCC Secretariat. The latter distributed the presentation to members of OLA and OPPBA for their review before the meeting and the Deputy Chairperson called the meeting to order at 4:00 PM today.

### III. Case Presentations:

1. The case presentations are attached as Annex II.

#### Agenda Item 01: Provision of various services / UNAMID

1.01 This presentation relates to an arrangement with the African Union, through a Memorandum of Understanding, for the continued provision of various services, in support of UNAMID, as follows:

- Catering Services contract with Pacific Architects & Engineers (USA) through sub-contractor, Amzar Trading, for the period 1 January – 31 March 2008 (plus optional three-months), in the total NTE amount of - **US\$24,034,630.40**
- Satellite Internet Service at all camps for PAE by Crown Agents – contract expires 22 February 2008 – MOU required for period 1 January – 22 February 2008 at No Cost - **US\$ =0=**
- Maintenance of civilian police station – Current contract expires 31 December 2007. Continuation of contract with UNITEAM was required to prevent further deterioration of the existing police stations for three months through 31 March 2008 till new contract for construction and upgrade of police stations in Darfur is finalized. Cost of continuation of contract for three months – **US\$600,000**
- Requirement of a fixed wing aircraft to transport food and PAE/Amzar personnel from El Obeid to various locations in Darfur. Contract with African Transport, Trading & Investment Company for this requirement provided through MOU with the AU with funding provided by the Government of Canada, both due to expire on 31 May 2008. Funding currently not required - **US\$ =0=**
- Total Funding required - **US\$ 24,634,630.40**

#### Deliberations:

##### Food Rations and Catering Services

1.02 The case presentation indicated that an LCC meeting was held on 31 December 2007. However, after the meeting PS confirmed that the LCC had not convened and this case was handled entirely at HQ.

#### Ex post facto

1.03 The Committee had been informed that the ceremony "re-hatting" the AU troops

as UN troops was conducted earlier in the day (Sudan time) and these troops would have to be fed breakfast in the next few hours. The Committee inquired if the contract with PAE had already expired since it was already 1 January 2008 in the Sudan.

- 1.04 DFS indicated that the contract with PAE had not expired since the ASG/DFS had telephoned the Ambassador of the AU and asked that the contract with PAE be extended until 15 January 2008. The AU agreed to this and had sent out notice to PAE, see attached. The Committee received a copy of the notice after the meeting and noted upon reading the same that it appeared that the AU indicated that the contract would be extended for 3 months not 15 days. DFS informed the Committee that there was nothing signed between the AU and the UN at this stage. DFS also informed the Committee that PAE confirmed verbally that they would continue services through 15 January 2008, as per the Chief, Integrated Support Services/Darfur.
- 1.05 In light of this, the Committee noted that there at this point was a verbal contract in place between the AU and the UN covering the period 1 to 15 January 2008. The Committee reiterated what it has stated in earlier cases where there is no written contract in place that this puts the Organization at risk if there is a dispute between the parties since it is unclear what terms and conditions apply.

#### Delay in submitting the case to the LCC and the HCC

- 1.06 The Committee inquired why this case was presented to the Committee at the last minute, noting that the members should be provided with sufficient time to read the documentation before the meeting to enable them to conduct a productive review.
- 1.07 The Committee, in light of this, asked when DFS was first alerted that the UN on 1 January 2008 would have to take over the responsibility for feeding the troops. PS indicated the Security Council resolution concerning Darfur was passed in July 2007. The Committee inquired if DFS had known before the resolution that this would be a possible scenario. DFS responded no and explained that the situation in July was as follows: the US Department of State was funding this requirement for the AU and had a contract in place with PAE. As far as DFS knew at the time the US Department of State would continue to fund this requirement until 31 March 2008 even if the UN took over the responsibility for the troops. DFS therefore did not consider any other options to meet this requirement. However, in November 2007, the US Department of State informed the UN that they would not fund the requirement beyond 31 December 2007. As far as the Committee understood it was at that point too late to do a competitive bidding and DFS instead explored if PAE could continue to provide the services beyond 31 December 2007. This will be addressed further below.
- 1.08 The Committee still inquired why the case was not submitted to the HCC sooner. DFS explained the time line of the internal correspondence that took place and

provided the Committee with copies, see attached. DFS explained that since it was clear that the only option was that PAE would continue to provide services under its contract with the AU, different options were explored such as the contract with PAE being assigned or novated to the UN. This will be addressed further below. However, it was determined that the best option was that there would be an arrangement between the AU and the UN and not between the UN and PAE. It was first envisaged that the legal modality for this arrangement would be an Exchange of Letters. It was then discussed back and forth if it should be an MOU. It was finally decided last week based on advice from OLA that the legal modality was to be an MOU. PS also confirmed in response to a follow up query that in the case of "assignments," the case would have to go through the normal vetting procedure.

- 1.09 In any event, PS and DFS explained that since it was determined that there would be no assignment or novation of the contract by the UN and since the legal modality was at first determined to be an Exchange of Letters, DFS and PS was under the impression that there was no requirement to submit the case to HCC. On Friday of last week, it became clear that the case would have to be reviewed by the HCC. In summary, due to lack of clarity in the funding issues, the legal modality to be used and the review processes with respect to such modality, the case was not submitted to the HCC sooner.

#### **Assignment/Novation/MOU**

- 1.10 The Committee queried whether previous "re-hatting" of troops were undertaken by entering into MOUs. PS confirmed that such "re-hatting" carried out in Haiti and other peacekeeping missions were done by "assignment," i.e., the risks and obligations were assigned to the UN. This was the first time such "re-hatting" was being done through an MOU.
- 1.11 PS responded that the US position was for the UN to take over their contract either through an assignment or novation, whereby the UN would absorb the US' risks. PS later concluded that the contract should be taken over through an MOU, since this in PS opinion was a less risky option. The Committee noted that the US Department of State is no longer providing funding for this requirement.
- 1.12 PS further cautioned that the contract with PAE as contracted by the US State Department contains substantial deficiencies and PS would like to distance itself from this contract as soon as possible. PS also confirmed that the "change order" attached to the presentation was actually a contract amendment. The Committee noted that the change order document was signed by an authorized representative of PAE dated 27 December 2007, and while it was not signed by the UN, in the opinion of the Committee, it appeared to place obligations on UNAMID vis-à-vis PAE.
- 1.13 DFS confirmed that the draft MOU had been sent to OLA for review on 31 December 2007. The Committee recalled that it had previously recommended

that OLA be involved with the Darfur contracts.

- 1.14 The Committee also noted, and concurred with, the following comments of PS concerning the draft MOU:
- The draft MOU negotiated by DFS did not contain provisions for contract administration;
  - The provision that the UN will act as a pay agent needs to be elaborated on in the final text of the MOU; and
  - The draft MOU does not contain an audit clause – “open books” – allowing the UN to validate services rendered;
  - DM and OLA should be involved in finalizing the MOU.

### Prices

- 1.15 Noting that the original contract was initiated in 2004, the Committee queried whether a competitive solicitation had been undertaken. PS responded that they understood that the US State Department did carry out a competitive solicitation.
- 1.16 PS explained that there was no way of doing an “apples to apples” comparison of the prices for the following reasons: The food rations provided under the contract with PAE does not meet the UN standard for food rations, which is higher than the AU standard. In addition, the prices in UN contracts include delivery to the point of consumption. At first glance the price for the food rations would appear cheaper under the contract with PAE but since the food rations are not at the UN standard and delivery to the consumption point is not included in the price, it is impossible to say that this is a competitive price. DFS indicated that they just wanted to take over the contract now as an interim measure but had no intention to “beef it up.” PS reiterated that the quality of the food provided under the PAE contract was substantially lower than that provided under UN contracts at other peacekeeping missions. This disparity in quality deeply concerned the Committee.
- 1.17 The Committee queried whether the prices provided to the UN were the same as provided to the AU. At this point, the Committee was able to contact the Chief, ISS/Darfur on the telephone (past mid-night; 1 January 2008 - Sudan time). The CISS confirmed a price increase from US\$12 to US\$12.85 per man-day, but did not know whether that was attributable to general market increases. However, he confirmed that supervisory services, which were not included before, were included under the proposed subject contract. Furthermore, PAE would fix equipment breakages and provide maintenance, which was not included in the contract between the AU and PAE. However, if equipment was to be replaced, the new equipment would then be recorded as UNOE. The proposed contract was not entirely identical to the former contract. The CISS also confirmed that the troop daily dining strength averaged about 7,300 personnel. DFS confirmed that the 7,500 troop strength mentioned in one of the attachments was a typographical error.

## Other Issues

- 1.18 The Committee queried the current staffing level at UNAMID. DFS confirmed that the Mission was at a skeletal staffing level with a minimum number of posts being filled. Also, currently there was no proper accommodation provided. DFS explained that the budget for these posts was approved on 27 December 2007.
- 1.19 DFS explained that the arrangement with AU had been negotiated solely by one DFS staff member.
- 1.20 The Committee queried when the UNAMID requirement would be bid out. PS confirmed having just received the new SOW and intended to issue an RFP on 4 January with a closing date of 23 January 2008, subject to receipt of permission from the Controller. DFS also added that their intention was to float the RFP as soon as possible. However, they had to resolve several issues, such as separate contracts for UN troops and hybrid troops, contracts for rations and contracts for food preparation.
- 1.21 PS on 2 January 2008 informed the Committee that the NTE for 1 to 15 January 2008 is US\$ 1,882,577 (ex post facto) and for 16 Jan to 31 March 2008 is US\$10,134,738.20. PS further explained that the NTE amount is calculated on a daily population of 7,520 and NOT 7,320 (current) as was outlined in the presentation.

## Maintenance of Civilian Police Stations

- 1.22 The Committee sought confirmation on the availability of funds for the maintenance of the civilian police stations. DFS understood that US\$600,000 was available from the sponsors for this current requirement and at this point there is no request for additional funding.
- 1.23 On a general note, the Committee opined that donations were outside the purview of the Committee and would be addressed no further. In that regard, the Committee indicated that the requested NTE amount ought to be reduced by US\$600,000.

## At this point the Committee retired to an Executive Session

- 1.24 The Committee understood that there was a verbal agreement to continue the services for the period 1 – 15 January 2008, making this an ex-post facto situation. The Committee also indicated that verbal agreements do not sufficiently protect the interests of the Organization in the event of a dispute.
- 1.25 Recapping based on the foregoing discussion, the Committee indicated the following:
- It appeared the UN had no other viable option given the current time element;

- The Organization had no way to determine if the prices were competitive;
- The Organization had no certain confirmation if a competitive solicitation with respect to the contract with PAE had been undertaken, and if so, if it was done in 2004;
- The food standards established in the contract with PAE are reportedly lower than the standards set by the UN for peacekeeping missions;
- A DFS staff member was singularly involved in direct negotiations with the AU. The Committee noted that according to standard procedures, the requisitioner is not supposed to conduct such negotiations without the involvement of PS;
- Recognizing PS and DFS explanation as to why the case was not submitted to the HCC sooner, the Committee was still concerned with the limited time it was given to review this case and pointed out that appropriate measures should be taken by DFS to avoid these situations from occurring in the future.

1.26 The Committee, recognizing the urgency of this requirement decided that it had **no choice** but to take note of the ex-post facto element (1 -15 January 2008) and would recommend that the Controller also take note of the same, **conditioned upon the AU agreeing to sign an MOU for this period**. Furthermore, while noting that the RFP solicitation is expected to be issued on 4 January 2008, the Committee decided to recommend this arrangement for approval for the period 16 January through 31 March 2008 only. The Committee also noted that the standard of food rations provided by PAE under the contract with the AU is lower than the UN standard. The Committee felt that also for this reason the requirement should be re-bid as soon as possible. Should it become necessary to extend the contract to complete the solicitation, PS/DFS would need to revert back to the Committee for any further extension. The Committee concurred with PS recommendation that OLA and DM be involved with negotiating and finalizing the MOU. Since it is also unclear to the Committee if the Organization has already committed itself for a longer period than the stated 15 days, the Committee recommended also that OLA's advice be sought in this regard.

**Recommendation:**

1.27 In view of the above, the Committee had no choice but to take note of the ex-post facto element (1 -15 January 2008) in the NTE amount of US\$1,882,577 and would recommend that the Controller also take note of the same, **conditioned upon the AU agreeing to sign an MOU for this period**.

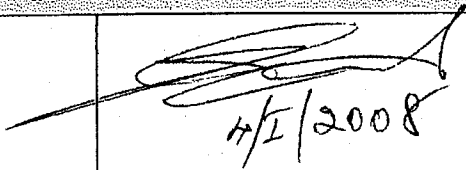
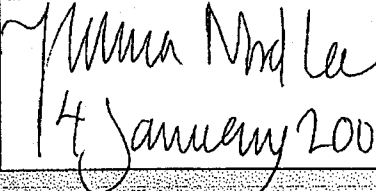
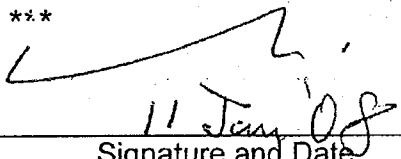
1.28 The Committee also recommended for approval the arrangement with the African Union for the continued provision of catering services through its contract with Pacific Architects & Engineers (USA) for the period 16 January to 31 March 2008 in the NTE amount of US\$10,134,738.20, corresponding to an aggregated NTE amount of US\$12,017,315.20, pursuant to FR. 105.16(a)(vii), Exigency.

1.29 In concurrence with PS, the Committee further recommended that OLA and

DM be involved with negotiating and finalizing the MOU with the African Union.

**Closing Remarks:**

The Deputy Chairperson thanked all Committee members and presenters, and adjourned the meeting at 5:45 PM

Approval of HCC Minutes		
Drafted by:	Joao Marcedo, Secretary, HCC	 4/1/2008
Approved by:	Helena Nord Lee Deputy Chairperson, HCC	 14 January 2008
Approval of HCC Recommendations		
*The HCC recommendations are hereby accepted and approved:	Warren Sach, Assistant Secretary-General / Controller DM	***  11 Jan '08
	Name and Function	Signature and Date

\*\* The Controller granted an expedited approval on 3 January 2008.

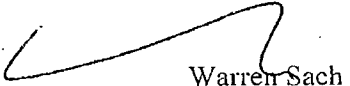
\*\*\* See note dated 2 January 2008 to Ms. Nord Lee.



Note to Ms. Nord Lee

HCC deliberations on logistical support to UNAMID troops

1. I refer to the HCC minutes received for expedited approval today on above-mentioned subject.
2. I share the Committee's reservations as laid out in the cover letter. In particular, I am deeply concerned about the delay in contacting the HCC; the lack of detail in the submission on a variety of issues (e.g. prices and quality of food, existence of verbal agreements, etc.); and the fact that DFS as the requisitioning office undertook the negotiations without the involvement of the Procurement Division.
3. I also concur with the Committee's conclusion that the United Nations must enter into an agreement as soon as possible in order to ensure that UNAMID personnel continue receiving catering services. It is neither practical nor morally acceptable to leave the situation of feeding and supplying troops unresolved.
4. In this regard, the submission by DFS of the matter to HCC at such a late stage renders the deliberations perfunctory. In terms of providing a solution to an existing problem, rejecting the DFS request is not a real possibility and I must therefore accept the proposal.
5. I do not agree, however, with the HCC reasoning decision that the request be approved on the grounds of exigency as per Financial Rule 105.16 (a) (vii). In my view, the urgency of the matter stems from poor planning and is therefore not an exigency. I do agree, however, that the matter is both urgent and that it is not deferrable.
6. Based on the above, I have decided to approve the DFS request to enter into agreements with the AU for provision of catering services based on Financial Rule 105.16 (a) (ix); according to which formal methods of solicitation may be suspended if such solicitation will not give satisfactory results. Since the results, in terms of providing the service with immediate effect, can only be provided through the means described in the submission to the HCC, any solicitation would prove meaningless.
7. The approval of the request includes taking note of the ex post facto element of the case, as well as the condition that the AU agrees to sign an MOU for the period as per paragraph AA. I should appreciate it if, in the final minutes, the paragraph CC were amended to include mention that the Department of Management be involved in the negotiations as was indicated in the cover letter.

  
Warren Sach

Assistant Secretary-General, Controller  
02 January 2008

Cc: Ms. A Bárcena  
Ms. J Holl Lute  
Mr. J Karia