



**HEADQUARTERS COMMITTEE ON CONTRACTS**  
**Special Meeting No. HCC/07/75**  
**Held on Friday, 31 August 2007 at 2:00 p.m.**  
**In Room S-2171**

2007 SEP 10 P 5:06

**Notice of Confidentiality**

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**MINUTES**

**HCC Committee Members in Attendance:**

Ms. Helena Nord Lee	Deputy Chairperson
Mr. Igor Vallye	Member, OPPBA
Mr. David Jeffrey	Member, OLA
Mr. Zoltan Nagy	Member, DESA
Mr. Ronald Pinto	Alternate Secretary, HCC

**Also in attendance**

Ms. Chantal Maille	PS
Mr. Dmitri Dovgopoly	PS
Mr. Sean Purcell	PS
Mr. Selwyn Heaton	DFS
Mr. Krzysztof Stasiewicz	DFS

**I. Agenda:**

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

**II. Note regarding Minutes:**

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]."

### III. Opening Remarks:

1. The Deputy Chairperson consulted the Members of an urgency reported by PS and DFS on Tuesday 28 August 2007 involving an award of a contract for the provision of multi-function logistics services in Darfur. The case presentation was received by the HCC on Thursday 30 August 2007. The Deputy Chairperson thanked the Members for agreeing to review the case, and called the meeting to order at 2:00 p.m.
2. Noting the PS statement that negotiations with respect to the rates and contract terms were still on-going, the Deputy Chairperson therefore, informed PS and DFS that the Committee does not have all the information necessary to make an informed recommendation to the Controller. However since the case is urgent the Committee will hear the background surrounding the case. When negotiations are completed PS should advise the Committee of the outcome, and thereafter, the Committee will deliberate on this case.
3. PS regretted the situation which is operationally unfortunate in terms of the time line. PS stated that while pre-preparation to support the Darfur operations had commenced in early 2007, the work only started in a hectic pace only after the Security Council passed a Resolution in late July 2007. PS also stated that the proposed contract is a "catalogue" type contract with some 13,000 individual line items with prices, and negotiations are complex, lengthy and may well extend beyond midnight Friday the coming week. PS requested the Committee to note that the current negotiations are focused on reducing the rates in order to obtain further savings to the Organization. PS informed the Committee that it believes that the presentation before the Committee includes all the information necessary to enable the Committee to render its recommendation to the Controller. Time is of essence to enter into a formal contract and delays could have political as well as financial implications on the Organization. PS is continuously required to report to the USG for Management and the Controller on the status of the negotiations and the contract.
4. The Committee while sympathetic to the position of PS and DFS noted that the Controller has granted a waiver to PS for sole source procurement but not exempted the proposed award from the HCC review process. Under the terms of reference, the HCC is required to have all information, including financial, legal and commercial terms, pertaining to the contract award in order to undertake a meaningful review and render an informed recommendation to the Controller. PS pointed out that it may then have to approach the Controller directly and request a determination based on the information available today (before the negotiations with Pacific Architects & Engineers ("PAE") have been completed). The Committee had no objection for the PS to approach the Controller directly since the HCC could not make any recommendation until the negotiations have been completed.
5. The Committee noted that by memorandum dated 19 April 2007, ASG/DPKO (now DFS), requested a sole source, (PAE) approach for the Heavy Support Package (HSP) in support of Darfur operations in response to a letter dated 17 April 2007 from the President of the Security Council addressed to the Secretary-General.

#### **IV. Case Presentations:**

1. The case presentations are attached as Annex II.

#### **Agenda Item 1.0 Heavy Support Package – Multi-Function Logistics Services, DARFUR**

1.01 This case relates to a proposed contract award to Pacific Architects & Engineers (USA) ("PAE") for the provision of multi-function logistics services for the Heavy Support Package ("HSP") for a period of six months in support of Darfur operations, in the NTE amount of USD 291,370,276.85.

#### **Deliberations**

##### **Background**

1.02 The Committee noted that by memorandum dated 19 April 2007, ASG/DPKO, requested a sole source (PAE) approach for the Heavy Support Package in support of Darfur operations in response to Security Council Letter 2007/212 dated 17 April 2007 from the President of the Security Council to the Secretary-General. In the memorandum the ASG advises that there is a Light Support Package (LSP) in Darfur "is supported through a Letter of Assist from the US Department of State and its contractor in Darfur, PAE". The ASG/DPKO also advised that PAE is the only contractor on the ground in Darfur with the capability to support the deployment in a timely manner.

1.03 The Committee also noted that in response to the ASG/DPKO's memorandum, the Controller on 25 April 2007 confirmed his agreement in principle with the sole source approach for the award of contract to PAE for the multiple function logistics services for the HSP subject to a satisfactory Statement of Work, and DFS plan of action for future rapid deployment.

1.04 The Committee questioned whether the two conditions in the Controller's memorandum of 25 April 2007 have been met. PS replied that the conditions had been met and after the meeting submitted a copy of an e-mail from Mr. Buades to the Controller to support this. The Committee noted upon receiving a copy of the e-mail that there was no communication from the Controller indicating whether the conditions in his opinion had been met.

1.05 At the request of the Committee, PS explained that PAE is providing the services required under the light support package to some 180 military staff officers on the ground. As mandated by the Security Council, and taking into account that Darfur is a barren desert, UN is required to have a HSP in place by October 2007 in preparation for the hybrid package targeted for January 2008. While, the HSP includes construction of camps and provision of related services to some 4,000 UN personnel, including troops, police and civilian staff, the hybrid-package involves full merger of the African Union troops into the fold of the UN Peacekeeping Operations.

1.06 To a question from the Committee, PS replied that PAE is part of the Lockheed Martin Corporation, a military contractor for the United States Government. PS advised that while the African Union has been providing security and military support in Darfur it was unable to provide on its own the necessary logistical and material support to troops deployed in Darfur. PAE under a contract with the USDOS provides camp services to some 7500 troops from the African Union. Under the present operations in Darfur, United States is providing camp services, Canada is providing air support, and European Union is providing other transport logistics. By its resolution 1769 (2007), Security Council has now mandated that UN take over the operations in light of the deteriorating situation in Darfur.

1.07 To another question, DFS replied that the total value of the LSP is approximately USD 9.5 million.

1.08 DFS elaborated that given the tight time frame, the UN under its present procurement and staff recruitment process would be unable to establish timely arrangements to sustain the deployment for the HPS and provide the necessary infrastructure, which involves engineering, construction, maintenance and support services to the UN personnel. Current planning calls for arrival of the Chinese troops in mid October, and the Pakistani Troops and the Nigerian Hospital facility by end October. In order to have the basic infrastructure ready to accommodate the arriving troops, it was decided to obtain the necessary logistics services through commercial means. Considering the fact that PAE is already on the ground in Darfur and that it is familiar with the surroundings, it was determined that awarding a negotiated contract to PAE will serve the best interests of the Organization.

1.09 The Committee questioned the term of the PAE contract with the US State Department (USDOS). In response PS stated that they are given to understand that the contract with PAE is expiring at midnight today (31 August). They are also given to understand that a new bidding exercise is at the concluding stage with DynCorp and PAE as the two finalists vying for the new contract. In any case, the PAE contract will be extended, even if DynCorp win the new contract as there is 90 days transition period. The Committee then questioned what will be the term of the new contract. PS replied that it will be until December 2007 as the African Union and UN's hybrid will be effective 1 January 2008. To a question from the Committee, DFS replied that political dynamics have changed since USDOS undertook a bidding exercise. The Security Council resolution 1769 (2007) of July 2007 mandating the UN to take over has overtaken all other factors. PS at the meeting received news from PAE that its contract with USDOS had been extended for another 30 days. The Committee was informed by PS that PAE was awarded the contract with USDOS after a competitive bidding exercise.

1.10 The Committee queried about the ownership of the equipment on the ground in Darfur. DFS replied that PAE does not own the equipment. The equipment is worth some USD 7 to 8 million and is owned by the US Government and it is currently envisaged that US government will either donate the equipment to the Government of Sudan or to the UN. PS stated that it is the subject of on-going negotiations between the UN and the USDOS. DFS requested the Committee to note that the UN does not have the necessary means to purchase and deploy heavy equipment, particularly the earth-moving equipment to support the construction services. To a question from the

Committee, PS replied that it is not certain that the equipment will be donated to the UN. However, if the US Government donates the equipment to the UN, the price paid to PAE will be significantly lower.

1.11 The Committee queried the condition of the equipment and whether it will satisfy the UN needs. DFS replied that the equipment is operated and maintained by PAE and that PAE made the proposal to use the equipment. With respect to the needs, DFS is uncertain to categorically state that it will suffice to meet the UN's need. It all depends how fast the deployment occurs. Currently, only two sites for the camps are known and therefore the size, shapes and the ground logistics of the other three camp sites are yet to be determined. There is a real possibility that there will be a sixth site. Ideally, it would be preferred that the UN progresses gradually from one camp construction to the other. However, DFS has to make arrangements for the support of troops and civilian personnel should the troop deployments to various camps occur in parallel in light of the mandate approved by the Security Council.

1.12 The Committee further noted that USDOS has been consulted not only to obtain the donation of the engineering machinery already in theatre in connection with the deployment of LSP and AMIS camps but as well as the donation of the camps already established for PAE's operations with the aim to cut down on mobilization costs while speeding up the mobilization schedule.

#### Negotiations with PAE

1.13 The Committee noted that PS and DFS met with PAE on 26 April 2007 and provided background information on the HSP and the current situation of the UN in Darfur. The Committee was informed that in response PAE presented its capabilities and mobilization timeframe, and agreed to pursue their participation with the understanding that their involvement in the HSP would not preclude their participation in future business competition for the African Union/UN Hybrid operation in Darfur beyond the current logistical support services support services in the context of the HSP such as contract management and work supervision etc.

1.14 The Committee was advised that subsequent to that meeting, PAE made a submission containing time and materials pricing schedule. The Committee was also advised that the submission in the amount of USD 287M, excluded Project Management Office, staff entitlements and margins, and conflicted with DFS' preferred performance driven mechanism.

1.15 The Committee was informed that PS and DFS met with PAE on 15 May 2007 to address status assumptions, review the submittal and discuss performance measurements, certification and payment methodology and with PS discussion on costing and legal requirements. The Committee noted that at this meeting PS provided a copy of the UN contract to PAE.

1.16 The Committee was also informed that PS and DFS teams visited UNMIS and Darfur twice to maintain the momentum in the completion of the Statement of Requirement (SOR) for the HSP, to identify potential issues in preparation for the Hybrid and acquaint themselves with the current situation on the ground including visits to the

PAE installation and operations in Darfur, visit the sites where the 4 camps will be built and coordinate activities with UNMIS.

1.17 The Committee noted that PS, on 13 July 2007, received a fully comprehensive Scope of Requirement for multi function logistics services presenting the principle of the establishment of an "umbrella" contract with unit rates, labor rates, mobilization rates, variables outside unit rates, Operational and Maintenance, performance measurements such that once the contract is signed its implementation is carried out by the field Mission staff via task orders which include specific Key Performance Indicators (KPI). The Committee noted a total of 31 services listed in the case presentation.

1.18 PS advised that the proposed logistics services will be for a period of 6 months; however the contract will include an option for the UN to extend the contract for 2 optional 3 months periods to meet the deployment timeline of 4050 personnel into 4 locations in Darfur -El Fasher, Nyala, El Geneina and Zalingei. PS also advised that the time is a critical factor in the award and it aims to award a contract no later than 31 August 2007. PS at the meeting informed the Committee that it aims to award the contract no later than 7 September 2007 when it believes the negotiations will be finalized. PS requested the Committee to note that Security Council Resolution 1769 decides on the establishment of an initial operational capability for the headquarters no later than October 2007, therefore camps for civilians (office and accommodation) must be established and materials, water and equipment must be available for the first military units (Chinese Engineering Company) to establish their own camps by that date. The support plan for the military units provides for all units to arrive self-sustained with 30 days supply of water and 60 days supply of rations and 90 days of supplies.

1.19 The Committee recalled that the troops are supposed to be deployed under self-sustainment arrangements for at least three months. DFS replied that the normal requirement is for 60 days. However, the Darfur situation is unique because of the environment. Some of the services to be provided by PAE and which will be listed in the catalogue will actually be depending on the actual self-sustainment capacity of the troops. This can be determined only when the troops are actually on the ground.

1.20 To a question from the Committee, DFS replied that PAE will operate and maintain the camps after construction. There will be a number of subcontractors working with PAE. PS explained that the proposed contract will list some 13,000 individual line items with unit rates, the "catalog". Any of the line items listed in the catalogue will be executed by way of a Task Order. The Task Order will clearly identify the deliverables, timeline and quality control for effective contract management. DFS outlined to the Committee the process and the workflow. DFS stated that once the logistics of the operations and the site are confirmed, a Task Request will be raised and forwarded to the Project Manager (UN staff member, essentially the Chief Engineer, responsible for Darfur operations). The Project Manager will coordinate with the externally hired Consultant Contract Manager (CCM), verify the Task Request, cross reference the individual items to the catalogue and thereafter, submit a Task Order to PAE. The PAE Project Manager will evaluate the Task Order, cross-check with the catalogue pricing and description, develop specifications, bill of quantities and submit the same as a "proposal" to the UN Project Manager. Discrepancies between the Task Order/Proposal and the catalogue contract, if any, will be resolved and a formal Task Order with timelines, deliverables, and quality control measures will be issued to the

PAE. The role of the external CCM will be to observe and monitor the PAE work and report directly to the UN Project Manager. The CCM will have no authority to instruct or direct PAE with respect to the Task Orders. Such authority will be the UN's responsibility. Payments will be made upon completion and certification of the deliverables identified in each Task Orders. See attached a work flow chart provided by DFS at the meeting.

1.21 The Committee questioned whether the CCM has already been hired. PS replied that the solicitation process to select the CCM is under way and the proposals are expected to be received in early September 2007.

#### Formal Proposal

1.22 The Committee noted that PS, on 16 July 2007, addressed a formal Request for Proposal and held a pre-proposal conference with PAE on 27 July 2007. PAE was advised of a change in the SOR which was to provide one additional location, El Obeid, where one transit camp was to be built for 200 people and two additional engineering services. By the designated date of 15 August 2007, PAE presented their proposal in the NTE amount of USD 505M. The Committee was informed that DFS and PS noted that the proposal presented major discrepancies with the SOR, a large number of errors and contradictions and PAE was requested to re-draft the proposal. The Committee noted that PAE, on 22 August 2007 submitted a second proposal, which, according to DFS and PS still contained major discrepancies with the SOR, errors and contradictions. The Committee was informed that a one-week meeting was convened with PAE with the aim to 1) address the mistakes of the proposal 2) negotiate and 3) develop a contract. At the meeting, PAE advised that the Project Management Office (PMO) costs had not been included in the total cost of the proposal. The Committee noted that PAE, on 27 August 2007 submitted a third proposal in the amount of USD 385,796,527. The Committee noted that the third proposal also lacked clarity, consistency and excluded PMO. Then on 29 August 2007 PAE provided a fully comprehensive proposal in the amount of USD 373,285,409.68. The Committee was informed at the meeting that PS was still working on some issues of clarity and inconsistencies of PAE's proposal.

1.23 As advised earlier, PS requested the Committee that negotiations on the prices for individual line items are still on-going. The third proposal is also not up to the level which can be readily accepted and incorporated into the contract. There are several items which are priced excessively and efforts are being made to bring down the prices.

1.24 The Committee questioned whether it is a cost plus reimbursable contract. PS replied negatively and stated that the services to be provided will all be listed in the catalogue with rates with the exemption for airfield related services were it will be on a cost plus basis. As an example, DFS explained that the camp construction will be on a square meter area and specifications to that effect are all in accordance with the UN standards. The unit rates will be on a square meter basis which will be easy to administer and manage. CCM and the UN Project Manager will jointly ensure the quality, performance and time schedules. Given the recent experience in the MONUC airfield services contract, the Committee then questioned whether PAE has any expectation on how much it is going to earn under the proposed contract. In response, PS stated that there is no minimum requirement. The quantities and delivery schedules

are unknown at the moment because of the political uncertainties. The proposed catalogue contract is actually an umbrella contract covering the entire scope of providing and sustaining working and living accommodation to the UN personnel being deployed in Darfur.

#### Cost Analysis and Price Negotiations

1.25 The Committee was informed that in order to establish negotiations benchmarks, PS had obtained prices from the USDOS under their contract with PAE for the support to the African Union since 2003 and reviewed the breakdown of prices applicable to the Light Support Package under the Letter of Assist.

1.26 The Committee noted that the proposed contract will contain a catalog of unit rates for labor, solutions, services and materials which will form the basis of Task Orders to be raised as and when required. The NTE amount in this request corresponds to the amount that is needed to enable PAE to effectively respond to a requirement for a rapid deployment concurrent in all 4 locations in Darfur and in El Obeid on the basis of the planning assumption available as at 15 July 2007. PS advised that this presents the worst case scenario whereby, for example, engineering construction assets will have to be purchased in greater quantity to support concurrent worksites as opposed to purchasing one of each items for use in several worksites consecutively. DFS is hoping for a slower deployment tempo which would result into the sequencing of Task Orders and therefore have a major impact on the expenditure of engineering assets and freight costs.

1.27 The Committee was informed that PAE offered fixed unit prices for services and solutions except as set forth under paragraph 1.24 above with respect to airfield services. PS analyzed the pricing which is summarized below:

- a) **Construction equipment:** PS compared the price of the equipment with prices available from the MONUC PAE contract for airfield services which were valid in January 2007 and noted the prices offered by PAE were 13.33% higher. The Committee was informed by PS that prices were also sometimes more than double the prices of systems contract. PS advised that it will maximize the use of systems contracts provided the contractors can meet the delivery schedule.
- b) Noting to the references to the existing systems contract, the Committee queried whether UN will purchase the materials from the systems contract and provided it to PAE. DFS replied that the prices in the systems contracts were used to determine the reasonableness of the PAE offer, and to the extent possible DFS will use the systems contracts. However, DFS requested the Committee to note that the systems contracts for major requirements – pre-fabricated buildings and generators – are in a uncertain stage either because of performance related issues as vendors are fairly new to the UN or as a result of the on-going investigation by the Procurement Task Force involving vendors who have been providing goods and services for a number of years. These are some of the reasons why it was determined to go to PAE on a sole source basis. PAE will be required to supply the materials in conformity to the UN defined specifications and standards.



c) **Freight forwarding:** The Committee was requested to take note of the tight schedule for deployment and port clearance difficulties in Port Sudan. Accordingly, PAE was requested to consider air lifting the equipment and material from Dubai directly to Darfur and include a provision for pre-customs clearance in Dubai. In response, PAE offered a total 342 IL-76 flights of 35 tons from Dubai to Darfur at a cost of USD 145,000 per flight. The total airfreight alone is therefore USD 49,865,523.75 (49,590,000). In addition, goods will be transported overland to two locations, Zalingei and El-Geneina due to lack of suitable airport facilities at an additional cost of USD 427,002. The total freight forwarding services is therefore USD 50,292,525.94. PS has assessed that one IL-76 on a one-year contract would cost approximately USD 2.2M. PS and DFS have assessed and have requested PAE to consider chartering aircraft for positioning in Dubai for a six month period to enable the necessary airlift of the UNAMID cargo. This item is still under negotiations with PAE.

d) **Catering:** PAE will sub-contract Es-Ko for the provision of prepared meals. PS has compared the PAE proposal with RFPS918 of 2005. To a question from the Committee, DFS replied that there are two contractors – Es-Ko and Supreme Sales providing food rations and their contracts have provisions to provide catering services. In the case of the contract with Es-Ko, catering services are being provided in some missions. The prices quoted by PAE are higher than the prices covered by UN contracts. The problem the UN is facing is the location. Prices will most likely be higher – mostly because of the surrounding conditions. This issue is also under further negotiation with PAE. To another question, PS replied that there will be several sub-contractors. At the present time PS is aware of Micron (electrical works), and Es-Ko. PS advised that it will provide a list of sub-contractors and their work proposed by PAE.

e) **Labor rates:** The Committee noted that PAE has provided General Service Agency (GSA) rates as a comparator and that PS advised the Committee that the UN is getting labor at significantly lower rates than GSA. To a question from the Committee, PS replied that it did not have a full picture on the rates prevailing in the USDOS contract with PAE and that the rates provided in the presentation are for expatriate staff and not for locals. PS also advised that in response to a request on the local minimum wage, the Government of Sudan provided the rates of the International Civil Service Commission (UN rates). DFS stated that it is given to understand that PAE pays approximately USD 3.28 per hour. PS further advised that this issue will be addressed to ensure fair compensation and confirmed to the Committee that PAE is not charging any overhead on the labor rates.

f) To a question from the Committee, PS replied that PAE is a signatory to the Global Compact.

g) **Standby Costs:** The Committee was advised that PAE shall apply standby costs if land and/or other critical elements are not confirmed in time for construction or other services to commence once the Task Order is issued. At this late stage it is a matter of concern to note that land has still not been formally secured with written lease agreements for any of the 4 HSP sites. It should be noted that standby costs will only apply after a Task Order has been issued.

DFS stated that this is the most difficult element the UN will have to face in the proposed catalogue contract. PS confirmed that Task Orders will not be issued if land is not secured. However, in PS experience there have been situations where although the land was initially secured the promise to supply such land was subsequently withdrawn. PS emphasized that these are the kinds of situations where the UN may have to pay standby costs to PAE.

h) **Performance Bond:** The Committee was advised that this issue remained unresolved at this time. To a question from the Committee, PS replied that the glitch is that there are no defined minimum or maximum deliverables in the proposed contract and as such, PAE is questioning the basis for issuing a performance bond. PS believes that the issue will be resolved with some understanding between the parties.

i) The Committee was informed that the UN is guided by an external legal counsel through the Office of Legal Affairs. One of the provisions already agreed to is to give the UN the right to apply charges retroactively in case mistakes in the finally accepted PAE proposal are identified during the course of the contract.

j) Recalling the experience in UNSOM (Somalia) in the early 1990s, the Committee questioned whether DFS and PS had considered the lessons learnt in the current exercise. In response, PS stated that in the case of Somalia, the UN took over a cost plus reimbursable contract that US had with Brown and Root which was not cost-effective. In the current case the UN is entering into a separate and direct contract with the PAE that is only fixed cost basis except for airfield services that will be provided on a cost plus basis.

1.28 The Committee noted that OIOS was briefed by PS and DFS on the proposed contract and requested to provide advice on the risks that may be present and internal controls that should be considered in the procurement process and the administration of the contract once it is awarded. The Committee also noted that the actual audit report was not available at the time of drafting this presentation. Nevertheless, PS in its presentation informed the Committee that OIOS advised that: "... *The Department of State Inspector General carried out an audit of PAE contract, which was in the process of being finalized. The audit focused on the award and the monitoring of the contract. The audit focused on the award and the monitoring of the contract. The audit showed that the Indefinite Delivery Indefinite Quantity/Fixed Firm Price contract awarded in May 2003 morphed into a cost reimbursable time and material contract by June 2004. The audit also found inadequate monitoring on the part of the Contracting Office with one Contract Manager responsible for all of Darfur with limited access to sites. There was also very limited reporting by the contract manager.*"

1.29 To a question from the Committee DFS replied that mortuary services are not included in the proposed catalogue contract. To another question, power supply and water treatment are part of the engineering works. To a further question, DFS replied that UN will outline the environmental policy and fire safety policy along with each of the Task Orders.

#### Sole Source Award

1.30 The Committee was assured that DFS have ensured that the proposed sole source contract shall be only used for basic camp construction and basic services fully justified as urgent to ensure minimum capability to set up the basic requirements in response to the Security Council Resolution 1769 (2007). DFS will also ensure maximum use of the systems contracts (water treatment plants, hard wall accommodation etc.) and the SOR addressed to PAE shall be the basis for an early re-bid of the follow on contract(s) established in accordance with the established procurement procedures.

1.31 The Committee wanted to know whether a contract of such magnitude will be a candidate for a split award. PS opined that it all depends on the realities on the ground and operational realities and capabilities of the UN.

1.32 The Committee will await further input from PS in order to continue the deliberations and adjourned the meeting at 4:30 p.m.

1.33 Subsequent to the meeting the Committee continued its deliberations of the case through telephone and email.

1.34 Referring to the approval from the Controller which states "camp construction and basic services" and the memorandum of 19 April 2007 from the ASG/DPKO also refers to "camp construction and services", the Committee noted that the presentation includes services such as Air Terminal Ground Operations, Air Terminal Passenger Service, Air Terminal Cargo Service and Airfield Rehabilitation. In this regard, the Committee questioned by e-mail whether these services in PS/DFS's opinion were contemplated to be included in "camp construction and basic services" when the request was sent to the Controller.

1.35 In its e-mail response, PS stated that in the opinion of DFS, these services had been included and DFS further stated that at this point this is a moot point, since without these services implementation of SCR 1769 would be impossible.

1.36 To several e-mail questions from the Committee, PS replied that it had obtained some prices from the USDOS and but these prices can only be used as benchmark as the level of specifications is much lower than UN standards provided in the PAE proposal. PS later clarified that the "PAE support [to UN staff] is to the same standards as per the PAE sole source"; however, "the standard being provided to AMIS (African Union – 7,500 personnel) camps is lower". PS also clarified that that it had to reiterate its request to USDOS for data on a number of occasions, but that the USDOS is in the process of providing the information. PS informed the Committee that since the information provided by USDOS on their PAE contract "is incomplete" it "does not allow a conclusive analysis".

1.37 With respect to the labor rates, the Committee queried by e-mail how much higher the rates quoted by PAE in this case are compared to the US Government rates. In response, PS stated that it is unclear what US Government rates in particular the HCC is referring to. PAE rates quoted in this proposal are largely lower than US Government (GSA) rates as shown in Attachment 3 of PS's presentation to HCC. PAE's discount on labor rates compared with US Government (GSA) rates ranges from

3.93% up to 68.81%. PS also stated that the information provided by the Department of State on their PAE contract is incomplete and does not allow a conclusive analysis.

1.38 By email dated 6 September 2009, PS provided revised figures on the proposed contract amount stated that for the first six month the NTE requested is USD 251,704,709.67, and for each optional three month extension the amount will be USD 42,610,443.13, for a cumulative total of USD 336,925,595.93 (i.e. USD 251,704,709.67+ USD 42,610,443.13 + USD 42,610.443.13). PS requested the Committee to note that at the contract formation stage it may still expect some minor downward price adjustments.

1.39 In reviewing the revised figures, the Committee further requested clarification and/or comments from PS recognizing that negotiations with PAE are still on-going:

a) **Construction equipment:** The Committee queried how the new rates compare with the systems contracts? In response, PS stated that the construction equipment is approximately 25% more than UN system contracts. However the PAE estimates are on site whereas UN system contracts are either DDU or FCA. As previously advised the UN will be making all efforts to use UNOE however this will depend on the urgency of providing the said items in order to satisfy the Security Council mandate. It is also dependent on what and when UN system contracts can supply. In many instances the UN system contracts do not have the capacity to satisfy the high demand for the HSP.

b) **Freight Forwarding:** The Committee queried whether it is going to be a long term charter or if it is going to be USD 145,000 per flight with an estimated 342 flights? In response, PS stated that an agreement has been reached between the parties that PAE would make every effort to charter aircraft dedicated to the UN. However, at this stage they have not identified subcontractor or costs. The current proposal is based on per flight cost of USD 114,297.12 for 295 flights (the numbers were negotiated down). Once again, the UN is not committed to use these services.

c) **Catering:** The Committee queried how does the new rates compare with the existing catering contracts? In response PAE's per man day cost of 3 meals range between USD 19.73 – USD 38.86 depending on locations. Mobilization costs totals USD 614,043.00. PS provided the following comparison:

Supreme Contract

Supreme per man day cost of 3 meals for UNMIL is Euro 7.99\*

Supreme per man day cost of 3 meals for UNMEE is Euro 11.8\*

Supreme per man day cost of 3 meals for ONUCI is Euro 10.60

\* Supreme's above costs include mobilization costs for prepared meals.

The current proposed rates are still being negotiated with PAE. PAE is researching the market for subcontractors other than Es-Ko to seek price reductions. PS requested the Committee to take into account the following factors:

i) Market prices of food have been increased since 2006 (when Supreme's prices were fixed).

- ii) Shorter period of contract.
- iii) Higher risk in Darfur.

1.40 To a question on any further development on the Performance Bond issue, PS replied that performance bonds were agreed at 10% of each task order. PAE will provide an "expedited" performance bond in the amount of USD 7 million with TO No.1 so that to ensure adequate coverage of the initial stage.

1.41 The Committee requested a brief explanation as to why PS considers it essential that the Committee review the case in its current state without having the final negotiated rates on an exceptional basis. In response, PS stated that in accordance with the terms of the Security Council Resolution 1769, UNAMID is expected to deploy its initial elements (command and control, HQ, etc) as of October 2007 and to complete all remaining tasks necessary to permit it to implement its mandate no later than 31 December 2007. Due to the strict terms and tight schedule of SCR 1769, the UN is obliged to undertake exceptional measures in order to ensure that the deployment deadlines are met. The Committee will note that the contractor's mobilization time is 60 days hence the contract has to be in place now in order to make PAE fully operational in October.

1.42 By an email dated 9 of September 2007, PS advised the values are still being negotiated but the updated NTE amount of the contract is USD 250,477,509.68 for the first six months and USD 41,336,992.63 for each of the two three-month optional extensions.

### Conclusion

1.43 The Committee noted that the Controller on 25 April 2007 approved the sole source approach "in principle" subject to some "clarifications being provided within the next 2 weeks". The clarifications sought referred to:

a. *A statement of work for the HSP for camp construction and basic services must be fully justified as urgent and should give the minimum capability to set up the basic requirements; the arrangement is an interim, short term solution, follow on arrangements will be executed under established procurement procedures and rules.*

b. *A statement of work cleared by Procurement Service for the interim support to HSP provides a clear scope, risk assessment, timeline and costs to minimize the range of the waiver.*

1.44 The Committee also noted that the Controller's approval was granted in response to a memorandum dated 19 April 2007 from the ASG/PKO.

1.45 The Committee was informed at the meeting that the clarification sought under a. had been resolved; however, this was not supported by any document showing the Controller's acceptance. The Committee has been informed that PS by an e-mail dated 31 August 2007, see attached, has "cleared" the statement of work, (see clarification b).

1.46 It appears to the Committee that the approval by the Controller refers to "camp construction and basic services" as was requested in a memorandum dated 19 April 2007 from the ASG/PKO. The presentation includes services such as Air Terminal Ground Operations, Air Terminal Passenger Service, Air Terminal Cargo Service and Airfield Rehabilitation in addition to the camp construction and basic services. It is unclear to the Committee if the Controller intended these services to be included in his approval of the sole source approach. Since the NTE amount includes these services, the Committee asked that the Controller when making his final determination of this case clarify this issue.

1.47 PS informed the Committee that the contract with PAE would not be a Cost plus contract, with the exemption of the airfield related services, but a fixed fee contract. The contract will contain a "catalog" of prices for goods and services that the UN will pay if it orders PAE to supply such goods or service. The Committee has not been informed about how much PAE will charge in overhead (Cost plus) for the airfield related services. The Committee noted that OIOS had referred to an audit of a PAE contract by the Department of State Inspector General which i.a. showed that the Indefinite Delivery Indefinite Quantify/Fixed Firm Price contract had "morphed into a cost reimbursable time and material contract".

1.48 With respect to other goods and services, PS has in its presentation for benchmarking purposes divided up such goods and services to be provided by PAE in the following categories: Construction Equipment, Freight Forwarding, Catering and Labor. No details were provided with respect to mobilization costs.

1.49 As a general comment, the Committee noted that the US Government has a contract with PAE for the provision of these kinds of goods and services. The Committee was informed that PS is in the process of but had not been able to obtain all the prices under that contract from the US Government. The Committee opined that such prices could have been used as a benchmark. The Committee was not informed of the reasons why the US Government would not share such prices with the UN. However, the Committee recommended that PS continue its attempts to obtain such prices.

1.50 With respect to the categories of goods and services, the Committee noted as follows:

**Construction Equipment:** The Committee noted that PS indicated that it will use the existing system contracts as a benchmark, noting that the prices in such systems contract most probably be based on longer delivery times than what is required in this case. In the presentation PS had indicated that at that time the prices related to airfield services (another contract with PAE) were 13.33% higher than what PAE is now quoting. PS further indicated that prices now quoted from PAE were in some cases double the price compared to the UN system contracts. The Committee noted that the NTE amount has since been reduced. The Committee noted PS' email response of 7 September 2008 wherein it advised that the prices now are "in the main is approximately 25% more than UN system contracts however the PAE estimates are on site whereas UN system contracts are either DDU or FCA. As previously advised the UN will be making all efforts to use UNOE however this will depend on the urgency of providing the said items

in order to satisfy the Security Council mandate. It is also dependent on what and when UN system contracts can supply. In many instances the UN system contracts do not have the capacity to satisfy the high demand for the Heavy Support Package".

**Freight Forwarding:** The Committee noted that PS in the presentation stated the PAE quoted a price per flight (USD 145,000 per flight for 342 flights) but that PS was attempting to negotiate a solution where PAE utilized a long term charter instead of individual flights, which PS deemed to be a cheaper and better solution for the Organization. The Committee has not received any response as to what has been agreed with PAE on this issue. By email on 7 September 2007, the Committee has been informed that negotiations are still ongoing and although a lower rate has been negotiated per flight the option of long term charter is still being discussed.

**Catering:** The Committee was informed at the meeting that the prices provided by PAE for these services were higher than the prices applicable under the existing UN contracts. The Committee has been informed by e-mail dated 7 September 2007 that negotiations are still ongoing.

**Labor:** The Committee noted that PS has used GSA rates as a comparator. The Committee also noted that PS has in an e-mail dated 6 September 2007 informed the Committee that PAE's discount on labor rates compared with US Government (GSA) rates ranges from 3.93% up to 68.81%. The Committee assumed that these percentages are still valid although the NTE amount has been decreased. The Committee noted that the GSA rates are based on US minimum wages.

1.51 The Committee noted that negotiations are still ongoing with the vendor and that PS from the original presentation has negotiated a lower NTE amount of USD 250,477,509.68 (for 6 months) compared to the NTE amount included in the presentation (USD 291,370,276.85). The Committee further noted that it is not the Committee's practice to accept cases that have not been finalized. In a further review of the case, the Committee was unable to reach a consensus in making its recommendation.

### **Recommendation**

#### **Majority Opinion**

1.52 In a majority 3:1 opinion, the Committee agreed to make an exception in this case to proceed with the award to PAE as recommended, noting the exigencies of the case as explained by PS and DFS, specifically taking into account:

- a) That UN requires a contract to be executed with PAE, selected on a sole source basis as approved by the Controller;
- b) The contract has to be executed immediately after the negotiations have been finalized by Monday 10 September 2007 to allow a 30-day mobilization period, in order to meet the operational requirements set forth in Security Council Resolution 1769 (2007);
- c) PS has advised that negotiations with the proposed vendor are, at the time of this writing, continuing and are likely to do so and that the NTE amount may be reduced, upon completion of negotiations; and,
- d) The recommendation is made on the basis of the best information currently available to the Committee.

1.53 Under the totality of circumstances described above, the majority of the Committee recommended for approval the proposed contract award to PAE for a initial period of six months in the not-to-exceed (NTE) amount of USD 250,477,509.67, pursuant to Financial Rule 105.16(a)(vii), Appendix A, # 19.

1.54 The Committee noted that the proposed contract will have provision for two three-month extensions each in the NTE amount of USD 41,336,992.63 and that PS will revert to the Committee prior to exercising those options.

1.55 In making the recommendation, the Committee expects that DFS will enforce adequate internal controls as described by DFS in paragraph 1.20 above in administering and managing the proposed contract. The Committee notes that PS and DFS have not yet been able to provide satisfactory responses to the issues set out in paragraph 1.56 below and are requested to do so as soon as possible. But for the extreme exigencies of this case, such responses would have been required to be provided prior to any recommendation being made.

#### Dissenting Opinion

1.56 In her dissenting opinion, the Deputy Chairperson, while recognizing the exigency of the case and that there appears to be no other solution to meet the requirements set forth in the relevant Security Council Resolution, recommended that the Controller approve the award only upon satisfactory response from PS on the following issues:

- a) The overhead charged by PAE on airfield related services;
- b) The final outcome of negotiations with respect to the category of construction equipment and how these new prices compare to prices under UN contracts;
- c) The result of the negotiations with respect to freight forwarding and some comparators to the agreed price;



- d) The impact of the reduction of the NTE amount on the category of catering and how these new prices, if any, compare to prices under existing UN contracts;
- e) Confirmation that the percentages presented with respect to labor costs are still valid;
- f) Mobilization costs and how they compare to a relevant benchmark; and,
- g) Confirmation that the finalized proposal from PAE fully meets the UN's needs.

Closing Remarks:

The Deputy Chairperson thanked all Committee members and presenters.

Approval of HCC Minutes		
Drafted by:	Ronald Pinto, Alternate Secretary, HCC	<i>Ronald Pinto</i> 10-sept 2007
Approved by:	Helena Nord Lee Deputy Chairperson, HCC	10 September 2007 <i>Helena Nord Lee</i>
Approval of HCC Recommendations		
*The HCC recommendations are hereby accepted and approved:	Warren Sach, Assistant Secretary-General / Controller DM	11 <sup>th</sup> Oct 07 <i>Warren Sach</i>
	Name and Function	Signature and Date

**APPENDIX A- TO THE HCC MINUTES  
BASIS OF AWARD AND THE APPLICABLE FINANCIAL RULE**

<b>FINANCIAL RULE</b>	<b>REF. # INDICATED IN MINUTES</b>	<b>BASIS OF AWARD</b>
105.15(a)	1	Qualified bidder whose bid substantially conforms to the ITB (lowest cost bid)**
	2	Qualified bidder whose bid substantially conforms to the ITB (lowest substantially conforming bid)
	3	Qualified bidder whose bid substantially conforms to the ITB (sole bidder)
105.15(b)	4	Qualified, most responsive proposal (lowest cost proposal)
	5	Qualified, most responsive proposal
	6	Qualified, most responsive proposal (sole proposal)
105.15(c)	7	Interest of Organization best served by rejecting bids (or proposals) received and undertaking new solicitation
	8	Interest of Organization best served by rejecting bids (or proposals) received and entering into a negotiated contract
	9	Interest of Organization best served by suspending procurement action
105.16(a)(i)	10	No competitive market place (monopoly exists)
	11	No competitive market place (prices fixed by legislation or government regulation)
	12	No competitive market place (proprietary product or service)
105.16(a)(ii)	13	Purchase of equipment/services already standardized (expiring [date])
	14	Need to standardize the equipment/services
105.16(a)(iii)	15	Cooperation with other organizations of the UN system pursuant to Rule 105.17 (common procurement action)
105.16(a)(iv)	16	Offers for identical products and services have been obtained competitively (within a reasonable period) and prices and conditions offered remain competitive
105.16(a)(v)	17	A formal solicitation conducted in [month/year] has not produced satisfactory results
105.16(a)(vi)	18	Purchase or lease of real property and market conditions do not allow effective competition
105.16(a)(vii)	19	Exigency
105.16(a)(viii)	20	Services that cannot be evaluated objectively
105.16(a)(ix)	21	Formal solicitation will not give satisfactory results
105.16(a)(x)	22	Procurement value is below established monetary threshold for formal solicitation
105.13(b)	23	Income to the Organization
	24	Amendment (modification) of a contract award previously reviewed by the Committee
105.17(b)	25	Cooperation with the Government (Letter of Assist)
105.16(b)	26	Award to a qualified vendor whose offer substantially conforms to the requirement at an acceptable price
105.2	27	Future financial periods commitments

\*\* It may be noted that all text in brackets at the end of each phrase, e.g. "(lowest cost bid)" is not the actual wording from the relevant Financial Rule. The UN Procurement Service and the HCC had agreed to such text, to facilitate a more comprehensive understanding of the applicable rule in each case, by all concerned parties.

**COMMITTEE ON CONTRACTS**

**HCC/07/75**

**Special Meeting to be held Friday, 31 August, 2007  
at 2:00 p.m. in Room No. S-2171**

**AGENDA**

01	Heavy Support Package - Multi-Function Logistics Services	DARFUR	CMAI
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