

**Case #: CMAI200706221457**

HCC Case Completed (13/08/2007 04:35:33  
PM)

Created by Chantal Maille on 22/06/2007 02:57 PM

HCC Meeting Number: 0755  
Agenda Number: 5

APPROVED BY PS Team:  
APPROVED BY PAUL BUADES  
ON 25/06/2007 07:16 PM

**HEADQUARTERS COMMITTEE ON CONTRACTS**

**To:** The Chairman Headquarters Committee on Contracts

**From:** Chief Procurement Division

**Subject:** COOPERATION AGREEMENT WITH NAMSO

**Category of Presentation:** New Procurement

**Is it an LCC Recommended Case:**  Yes  No

**Date LCC Reviewed the Case:** 22/06/2007

**LCC Case Number:** xxxx

**Buyer:** Chantal Maille, **Phone #:** 3-8248

**Responsible Requisitioning Officer:** Ian Robert Divers/United Nations, **Phone #:** 7-3098

**Requisitioning Office:** UNMIS

**Nature of Specifications:** Generic

**Summary of Requirement:**

This presentation relates to the proposal of award of a cooperation agreement with NAMSO for the provision of Procurement Officers for a 6 months period in a not to exceed amount of €366,304.

**Expression of Interest:**  Yes  No

**Was this requirement subject to competitive bidding:**  Yes  No

**Why solicitation exercise was not done:**

A waiver of competitive bidding was granted by the Controller.

**PS Analysis:**

1. NAMSO is the North Atlantic Treaty Organization Maintenance and Supply Organization, an International inter-government organization, wholly sharing in the international legal personality of NATO.
2. The requirement to assist PD, on an urgent and short term basis, has

been identified in anticipation of the exigency situation arising out the forthcoming surge in the volume of procurement transactions associated with the start up of the UN operations in Darfur. The proposed arrangement with NAMS0 to carry out UN procurement functions has received sole source award approval from the ASG/Controller (Attachment 1) and has been reviewed by OLA (Attachment 2 and 3).

3. OLA recommended the assessment of the proposed arrangement with NAMS0 in line with the outsourcing requirements outlined by the General Assembly. The General Assembly A/RES/59/289 of 13 April 2005, paragraph 2 states that outsourcing should be used in full compliance with the criteria set out in resolution A/RES/55/232 of 23 December 2000 as follows:

- a) to acquire technical skills not readily available within the Organization, including accessing state of the art technologies and expertise or acquiring needed flexibility to meet quickly changing circumstances;
- (b) to achieve cost savings;
- (c) to provide a source more effectively, efficiently or expeditiously;
- (d) to provide an activity or service not needed on a long-term basis;

4. PD assesses that the proposed arrangement meets criteria (c) and (d) of the resolution. The arrangement offers immediate availability of staff with no obligation for the UN towards the staff at the end of the 6 months period. OLA has developed a stand alone agreement comprising the UN General Terms and Conditions of contract, insurance obligations on behalf of NAMS0 and the Parties respective liabilities and obligations of the individual Procurement Officers. At the time of drafting this presentation the Agreement is still being negotiated. It provides for the following:

- a. The NAMS0 Procurement Officers would only be assigned on a temporary basis, not exceeding six months, to assist in procurement matters with which they would be fully familiar given their background and professional experience, such as food rations, fuel and air charter agreement.
- b. The Procurement Officers would remain NAMS0 employees, and it would not be possible for the UN to directly enter into contractual arrangements with anyone of them individually.
- c. They would continue to receive their salaries and allowances directly from NAMS0. The UN would reimburse NAMS0 in respect of salaries, entitlements and pay NAMS0 an administrative fee for managing the Procurement Officers.

5. The Procurement Officers shall not be entrusted with any fiduciary responsibilities, will not be deployed in the field, will not be given a delegated procurement authority to enter into contracts on behalf of the United Nations and will not be in a position to take any decisions that would ultimately bind the Organization. NAMS0 operate under a framework of ethical standards that is very similar to that of this Organization.

6. NAMS0 shall deploy one A4 and two A3 Procurement Officers. The comparison of the NATO salary scale against the UN salary scale is attached (Attachment 4). It shows that the A4 level is comparable to the P4 level in the UN and the A3 level is comparable to the P3 level in the

UN.

7. NAMS0 shall pay the Procurement Officers a per diem of EURO 202 per day. The comparison of the total NAMS0 per diem value against the UN DSA applicable for New York in accordance with Information Circular ST/IC/2006/54 is attached as Attachment 5. It shows that the UN DSA would be approximately US\$ 993.03 higher in cost in total. The contract with NAMS0 will therefore include EURO 202 per person per day for 6 months.

8. PD views the proposed cooperation agreement between the UN and NAMS0 as a guarantee for prompt availability of procurement expertise at short notice and for a limited period of time. It would not be possible to recruit 3 fully trained staff within the time allowed. The exercise is in addition to staff recruitment activities, already existing arrangements with UN agencies such as UNOPS etc. and Missions.

9. Based on the above PD requests the Committee's recommendation for approval of the award of a stand alone cooperation agreement with NAMS0 in the not-to-exceed amount of EURO 366,304 on a sole source basis on the basis of FRR 105.16 (a)(iii), Cooperation with other organisations of the UN system pursuant to Rule 105.17 (common procurement action).

10. The advice of the Committee is requested.

Is this a split award:  Yes  No

Currency: EUR	Amount of the Award:	Exchange Rate	Estimated USD:
	366,304.00	1.3441	\$492,344.09
	on		
	22/06/2007		

Name of the Vendor for LCC Case: North Atlantic Treaty Organization Maintenance and Supply Organization

Country Name: LUX

**Financial Rule which the Award is recommended:**

105.16(a)(iii) Cooperation with other organizations of the UN system pursuant to Rule 105.17 (Common Procurement Action)

Type of Review: REG

Entity: PK

HCC Meeting Number: 0755

Agenda Number: 5

Please select method: Regular

Meeting Location: FF-224

Is this a Walk-In case?  Yes  No

Please select HCC Meeting Date 03/07/2007 and Time: 02:00 PM

Office: OPPBA 

HCC Member: Lionelito Berridge/NY/UNO

HCC Member: Jun hee Lee/NY/UNO

Office: OLA

HCC Member: Zoltan Nagy/NY/UNO

Office: DESA

HCC Member: Zoltan Nagy/NY/UNO

Office: DESA

#### Minutes of the Meeting:

5.01 This presentation relates to a proposed agreement with the North Atlantic Treaty Organization Maintenance and Supply Agency (NAMSA) for the provision of three procurement officers for six months, in support of UNMIS, in the total NTE amount of Euros 366,304 (approximately \$492,344.09).

#### Deliberations:

5.02 PS confirmed that the requested NTE amount of Euros 366,304 included reimbursement to NAMSA for salaries, entitlements, and a 21% administrative fee to NAMSA for managing the three Procurement Officers, and payment of DSA at the New York rate directly to the NAMSA procurement officers.

5.03 The Committee noted that the UN does not usually enter into commercial contracts with international agencies for the provision of personnel. The Committee also noted that, as indicated in OLA's note to PS, dated 31 May 2007, when the Organization requires temporary services of individuals to assist the regular staff in the performance of certain functions, such services are typically obtained through direct engagement of consultants or individual contractors, unless such services could be obtained through the recruitment of staff, former staff or through obtaining staff from other agencies or organizations within the UN system pursuant to the Inter-Organizational Agreement Concerning Transfer, Secondment or Loan of Staff among the Organizations applying the UN Common System of Salaries and Allowances. The Committee queried the possibility of having the services of the NAMSA procurement officers made available to the Organization through secondment from NAMSA or through a direct contractual arrangement between the UN and the individual NAMSA procurement officers. PS responded that as NAMSA was not part of the UN family, these officers could not be seconded to the UN. PS informed the Committee that it intended to have a "stand-alone" agreement with NAMSA for this purpose.

5.04 The OLA representative stated that OLA had expressed its views with respect to this case in its Note to PS, dated 31 May 2007. OLA had also made some very specific comments on issues of concern in its subsequent Note to PS dated 12 June 2007. PS responded that the Controller had granted exceptions to several articles of the UN General Conditions of Contract, such as the standard clauses on the Parties respective liabilities, settlement of disputes and granting of advance payments. PS provided the Committee with a copy of the Controller's signed waiver at the meeting.

5.05 The DESA representative did not consider this to be a procurement case. Rather, the proposed engagement would be more appropriate through the use of a Memorandum of Understanding (MOU) between NAMSA and the UN. In that regard, he noted that NAMSA was not a UN-registered vendor nor a vendor of services/goods.

5.06 Additionally, the Committee noted that the outsourcing rules cited by PS do not appear to be fully applicable to the proposal under consideration, and neither was the Financial Rule that PS quoted - FR105.16(a)(iii), Cooperation with other organizations of the UN system pursuant to Rule 105.17. According to OLA's 12 June 2007 Note to PS, the Controller waived the requirement for formal method of solicitation based on FR105.16(a)(i). In this regard, the Committee queried whether PS explored whether there are organizations or entities, other than NAMSA, which can provide similarly qualified procurement officers (i.e., whether there is a market for the subject requirement).

5.07 The Committee further queried whether OHRM had been consulted, as was recommended by OLA in its 31 May 2007 Note to PS. PS confirmed that OHRM was not consulted since the UN was contracting with NAMSA for the provision of Procurement Officers and they would not be on the UN payroll (but would be paid directly by NAMSA). As a follow up, the Committee queried whether only NAMSA was considered for this requirement. DPKO responded that the requirement was for Darfur and that NAMSA "seems to have experience in this type of work." DPKO also confirmed that they had

not approached OHRM to meet this requirement; its representative also expressed some doubt regarding this being a procurement transaction.

5.08 The Committee queried the necessity of engaging “current” NAMSAs employees instead of engaging procurement officers having “NAMSA experience.” PS responded that it was necessary that they also have “International” experience, whereupon the Committee indicated that any engagement could include that element as well. PS indicated that the “team” from NAMSAs had to be deployed immediately and would not need any training. The DPKO representative indicated that they would likely be used to work on the logcap requirement for the Darfur operation.

5.09 The Committee recommended that PS consider exploring other mechanisms (e.g., secondment, direct engagement, etc.) under which qualified procurement officers could be made available to the Organization. The Committee also recommended that PS consider exploring other sources of procurement officers to meet subject requirement.






**HCC Recommendations:**

The Committee recommended that PS consider exploring other mechanisms (e.g., secondment, direct engagement, etc.) under which qualified procurement officers could be made available to the Organization. The Committee also recommended that PS consider exploring other sources of procurement officers to meet subject requirement.

**HCC Comments:**

**Abstract of Informal Market Survey, if any:**

**Supporting Documentation:**

-  - 20070622040158430.pdf
-  - 20070622040218265.pdf
-  -
- 20070622040307373.pdf
-  - 20070622040637621.pdf
-  -
- 20070622040730188.pdf

No messages.



NATO / UN  
SALARY SCALE COMPARISON

	GRADE	QTY	Euro	MONTHLY GROSS US\$*	TOTAL COST EURO				GRADE	MONTHLY GROSS US\$**
NATO	A4	1	6,304.63	8,473.97	37,827.78	UN			P4 step 8	8,334.90
	A3	2	5,425.33	7,292.11	65,103.96				P3 step 9	7,090.16
				EURO	102,931.74					
*	Net of income tax, subject to additions or deductions according to the situation of the staff member									
**	Subject to application of staff assessment, additions or deductions according to the situation of the staff member									
	effective 1 January 2007									

United Nations  Nations Unies  
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

①

to: Mr. Warren *W. W.* *W. W.* ASG, The Controller  
A:

DATE: 12 June 2007

RECEIVED  
2007 JUN 13 P 1:00  
OFFICE OF THE CHIEF  
PROCUREMENT DIVISION  
REFERENCE

FROM: Yavar Khan, OIG, Procurement Division (PD)  
DE: *Y. Khan* *12.06.07*

SUBJECT: **NAMSA - Procurement Officers in support of PD**  
OBJET:

1. I refer to the requirement for the provision of procurement officers from the NATO Maintenance and Supply Agency (NAMSA) to assist PD, on an urgent basis, in carrying out the upcoming procurement requirements in respect of the UN operations in Darfur.
2. The NAMSA Procurement Officers would only be assigned on a temporary basis, not exceeding six months, to assist in procurement matters with which they would be fully familiar given their background and professional experience, such as food rations, fuel and air charter agreement.
3. The procurement officers would remain NATO employees, and it would not be possible for the UN to directly enter into contractual arrangements with anyone of them individually.
4. The total estimated cost of the project is €367,000.
5. The proposed cooperation agreement between the UN and NAMSA is of an exceptional nature due to the exigency arising out of the UN operations in Darfur.
6. Your approval for a sole source contract award is requested on the basis of FRR 105.17 - Cooperation with a government, non-governmental organization, or other public international organization, in respect of procurement activities.

Approved / Not approved

*W. W.*  
*13/01/07*

2007 JUN 12 P 3:14  
2233

PROGRAMME CLASSES  
SECRET AND ACCOUNTS



Note to Mr. Buades

2007 JUN -1 P 14 01  
OFFICE OF THE UNITED NATIONS  
PROCUREMENT DIVISION  
RECEIVED  
07-01432

Provision of NATO Officers to the United Nations Procurement Service (PS)

1. I refer to your note dated 10 May 2007, the subsequent exchanges of e-mails, your discussions with members of this Division and our meeting of earlier this week regarding the proposal for the provision of procurement officers from the NATO Maintenance and Supply Agency (NAMSA) to work in PS.
2. As we understand the proposal, it is envisioned to conclude an agreement with NAMSA for the provision of NAMSA Procurement Officers to assist PS in carrying out the anticipated operational requirements resulting from the deployment to Darfur. To this end, the NAMSA Procurement Officers will undertake the functions of a UN Procurement Officer; however, their work will be limited to Sudan-related requirements. It is also envisioned that the NAMSA Procurement Officers will carry out their assignments under your supervision (or of the respective team leaders of PS), that they will not be entrusted with any fiduciary responsibilities and that they will not be deployed in the field.
3. You further explained that the NAMSA Procurement Officers would remain employees of NAMSA and would continue to receive their salaries and allowances directly from NAMSA. Under the agreement between the UN and NAMSA, the UN would reimburse NAMSA in respect of salaries and other entitlements of the NAMSA Procurement Officers and pay NAMSA an administrative fee for managing the Procurement Officers. In addition, the UN would pay DSA to each NAMSA Procurement Officer while carrying out services for PS at UNHQ. You informed us that the Controller approved of the financial elements of the proposal.
4. As mentioned in our meeting of 30 May 2007, the United Nations does not usually enter into commercial contracts with international agencies for the provision of personnel. Furthermore, there is no legal instrument currently in force (such as a Loan Agreement or an MOU), which would provide a basis for such an arrangement.<sup>1</sup> Moreover, the absence of a suitable instrument for the provision of personnel might expose the Organization to certain risks. As described more fully below, the proposed arrangement with NAMSA for the provision of personnel might not provide sufficient control for the United

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<sup>1</sup> In this respect, we note that the cooperation agreement between NATO/NAMSA and the United Nations relates to the exchange of information and cooperation in matters of mutual interest and does not contain any provisions under which NAMSA staff could be made available to the Organization.

Nations in respect of NAMSA personnel. As these officers will carry out procurement functions for the United Nations, it would be necessary for the Organization to have full control over NAMSA personnel.

Outsourcing

5. In order to enter into a commercial arrangement with NAMSA for the provision of personnel to carry out UN procurement functions, such arrangement would need to be examined in light of the outsourcing requirements, established by the General Assembly, as the recruitment/provision of procurement officers would be carried out by NAMSA. The General Assembly resolution governing the outsourcing practice of the Organization is resolution A/RES/59/289 of 13 April 2005. Paragraph 2 of that resolution states that outsourcing should be used in full compliance with the criteria set out in resolution A/RES/55/232 of 23 December 2000, as follows:

“(a) To acquire technical skills not readily available within the Organization, including accessing state-of-the-art technologies and expertise or acquiring needed flexibility to meet quickly changing circumstances;

“(b) To achieve cost savings;

“(c) To provide a source more effectively, efficiently or expeditiously;

“(d) To provide an activity or service not needed on a long-term basis.”

We recommend that the proposal be examined by PS to determine that it fully meets the General Assembly’s outsourcing requirements.

Insufficient control

6. As stated above, the NAMSA Procurement Officers will carry out the functions of a UN procurement officer while remaining subject to and under authority of NAMSA. These functions will be carried pursuant to an agreement between the UN and NAMSA and not pursuant to a direct contract with the individual. As a result, we are concerned about the limited control and authority on the part of the UN vis-à-vis the NAMSA Procurement Officers. The functions to be carried out by the NAMSA Procurement Officers are understood to be “core functions” of the Organization, and, therefore, the UN should have direct control and authority over the personnel carrying out such functions. However, under the current proposal, the NAMSA Procurement Officers would be responsible to the Secretary-General of NATO and not to the Secretary-General of the United Nations.

we recommend that they be given the status of "experts on mission". Also, see paragraph (b) of the attached draft undertaking (Annex A).

Article 5

11. As suggested by the Controller, we have prepared a comprehensive undertaking to be signed by each NAMSA Procurement Officer to be assigned to PS (also see Annex A).

Article 8

12. The payment provision included in the NATO draft is not clear. It raises a number of questions and should be substantially revised. In addition to the questions inserted directly into the attached version, we note that it contains references to NATO internal documents that are not used by the United Nations. Also, it appears that NATO may request payment on the basis of an estimate and that the actual costs incurred by NATO will only be calculated at a much later stage, following a final NATO internal audit. Furthermore, it appears that the UN may have to make payments of the estimated costs in advance. In this respect, we refer to Rule 105.19 of the UN Financial Regulations and Rules ("UNFRR"), which provides that

"(a) Except where normal commercial practices or interests of the United Nations so require, no contract or other form of undertaking shall be made on behalf of the United Nations which requires a payment or payments on account in advance of ... the performance of contractual services."

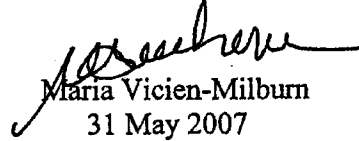
13. We also recommend that the attached draft budget (Annex B) be revised to clearly provide for the two main elements, i.e., (i) personnel costs and (ii) administrative fee that NAMSA is charging under the proposed arrangement. The terms "indirect specific" and "indirect shared" referred to in the budget prepared by NAMSA are not clear and not defined, and both terms give the impression that NATO may charge more than 21% as indirect costs (administrative fee?) to the UN under the Agreement.

Article 10 (Dispute resolution)

14. The draft agreement prepared by NATO provides that a dispute "will not be referred to an international tribunal or a third party for arbitration, litigation or other resolution". In case of a dispute between the parties, its final resolution is not clear to us. As you know, the UN General Conditions of Contract provide for arbitration, in the event that the parties are unable to resolve a dispute amicably.
15. While this Office would encourage NAMSA and PS to resolve any dispute amicably and without resorting to arbitration, any commercial agreements entered into by the United Nations should provide for a dispute resolution mechanism in the event that the Parties fail to resolve a dispute amicably.

into directly with an institution or corporation (ST/AI/327 of 23 January 1985 on institutional or corporate contractors). However, the temporary services covered under such arrangements typically involve the provision of interpretation, translation, editing, library, language training, public information secretarial or clerical work (see ST/AI/327, section 3, also for additional examples). Furthermore, as provided in ST/AI/327, section 5, the "contractor shall be considered as having the legal status an independent contractor [and the] agents or employees of the contractor shall not be considered in any respect as being officials or staff members of the United Nations". Given that UN procurement officers are subject to the highest ethical and moral standards, and as mentioned above, we are concerned about the lack of authority or control the UN would have in respect of contractor's personnel carrying out UN procurement functions.

12. We are available to further discuss this matter with you.

  
Maria Vicien-Milburn  
31 May 2007

cc: Mr. N. Michel  
Mr. W. Sach  
Ms. J. Beagle

CM

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Actia plz

ACE

13/6/07

(2)

Note to Mr. Buades

Provision of NATO Officers to the United Nations Procurement Service (PS)

OFFICE OF THE  
DIRECTOR  
OF  
PROCUREMENT

2007 JUN 13

RECEIVED  
07-01547

07-0618

1. I refer to the ongoing discussions, including this Office's note of 31 May 2007, regarding the proposal for the provision of procurement officers from the NATO Maintenance and Supply Agency (NAMSA) to assist, on an urgent basis, your Office in carrying out upcoming procurement requirements in respect of the UN operations in Darfur.
2. In respect of this Office's concerns expressed during our discussions and in the above-referenced note of 31 May 2007, you informed us that the NAMSA Procurement Officers (1) will not be entrusted with any fiduciary responsibilities, (2) will not be given a delegated authority to enter into contracts for the United Nations, (3) will not be in a position to take any decisions that would ultimately bind the Organization, and (4) are urgently required by PS to address the upcoming procurement requirements relating to Darfur. Furthermore, the NAMSA Procurement Officers would only be assigned on a temporary basis, not exceeding six months, to assist in procurement matters with which they would be fully familiar given their background and professional experience, such as, food rations, fuel and aircharter agreements. You have also informed us that NAMSA and its procurement officers operate under a framework of ethical standards that is very similar to that of this Organization.
3. In response to the suggestions contained in our note of 31 May 2007, you informed us that, in light of the exigency of the matter, it would not be possible to engage experienced procurement officers from other organizations of the UN system and that there would be no procurement officer available with whom the United Nations could enter into a direct contract (consultant, individual contractor). Furthermore, as the procurement officers to be provided by NAMSA would remain NATO employees, it would not be possible for the UN to directly enter into contractual arrangements with anyone of them individually.
4. Under the circumstances, you requested us to review the draft Agreement submitted by NATO in this matter, with a view to enabling PS to respond to the upcoming procurement requirements and ensuring that the risks described in our above-referenced note of 31 May 2007 and raised during our discussions, including the meeting with the Controller of 30 May, be kept at a minimum.

5. In view of the above, and as requested, please find attached a revised version of the draft Agreement prepared by NATO. In light of the numerous changes and new provisions proposed by this Office, we are not providing you with a mark-up of the draft prepared by NATO.
6. The attached draft has been prepared on the basis of our understanding that the NAMSA Procurement Officers will be assigned to PS for a period not exceeding six months. We believe that most changes and additions are self-explanatory; however, we would like to highlight the following aspects of the attached version.

#### General Comments

7. We note that the draft agreement prepared by NATO provides for general cooperation between NAMSA and PS and it is more in the nature of a framework agreement with a view to establishing unlimited and indefinite cooperation in several procurement areas, including "the provision by NAMSA of contracting support services on a fully reimbursable basis".
8. While both organizations are, of course, free to enter into a cooperation agreement on issues of mutual interest, we believe that the provision of NAMSA Procurement Officers should not be a regular element of a Cooperation Framework Agreement. In this regard, we refer to the exceptional nature of this proposal and the exigencies expressed by PS. Also, as stated in our note of 31 May 2007, the United Nations does not usually enter into commercial contracts with international agencies for the provision of personnel. Instead, when the Organization requires temporary services, the instruments and mechanisms described in paragraph 10 of that note usually serve that purpose. For these reasons, a stand-alone agreement between NAMSA and PS relating to the provision of NAMSA Procurement Officers appears more appropriate in the present case and consistent with the exceptional nature of this arrangement.
9. The draft agreement prepared by NAMSA is incomplete. It does not include any of the UN General Conditions of Contract. Also, it does not provide for any insurance obligations on the part of NAMSA and does not address the Parties respective liabilities either. The attached version, therefore, includes a number of the standard clauses that are always part of UN contracts and addresses, among other things, respective liabilities, insurance obligations and obligations of the individual Procurement Officers to be assigned to PS.

#### Specific Comments

##### Article 4

10. Based on our understanding of the activities to be carried out by the NAMSA Procurement Officers assigned to PS, it is not clear to us whether they will be carrying out any official activities of the United Nations. In the affirmative,

7. You indicated in your note that the NAMSA Procurement Officers have agreed to work under the instructions of PS and you also suggested that they sign the declaration of office of officials and experts on mission (the "declaration").
8. We note that the declaration is used in respect of personnel engaged directly by the United Nations, such as, *inter alia*, individual contractors or consultants (see ST/SGB/2002/9 on the "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission" (hereinafter the "Regulations"), para.3).<sup>2</sup> In addition, we note that an expert on mission must be perceived to be impartial and may not accept instructions or remuneration from any Government or non-governmental source. Specifically, regulation 2 (g) of the Regulations provides, as follows:

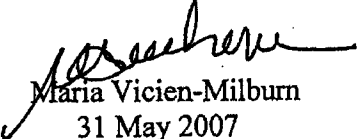
"2 (g) Officials and experts on mission may not accept any honour, decoration, favour, gift or remuneration from any Government or non-governmental source for activities carried out during the course of their official functions while in the service of the United Nations." (Emphasis added)
9. The NAMSA Procurement Officers would remain under the direct authority of NATO and would only be accountable to the Secretary-General of NATO. There would be no contractual arrangement between the UN and each individual. For this reason, the proposal appears to be inconsistent with the above regulation and there is a risk that the NAMSA Procurement Officers would not be perceived to be impartial as required by the above regulation.
10. In the event the Organization requires temporary services of individuals to assist the regular staff in the performance of certain functions, such services are typically obtained through the direct engagement of consultants or individual contractors, unless such services could be provided through the recruitment of staff, former staff or through obtaining staff from other agencies or organizations within the UN system pursuant to the Inter-Organization Agreement Concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances. Accordingly, we recommend that you explore, if necessary in consultation with OHRM, direct contractual arrangement between the United Nations and the individual procurement officers under which the required services could be carried out on a temporary basis (e.g., individual contractors).
11. Alternatively, the Organization may obtain temporary services of individuals from time to time by engaging them as contractors under a contract entered

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<sup>2</sup> The declaration is also used in respect of individuals, even though they do not sign a consultant contract, if they are designated by United Nations organs to carry out missions or functions for the United Nations (e.g., rapporteurs) (*ibid.*).

into directly with an institution or corporation (ST/AI/327 of 23 January 1985 on institutional or corporate contractors). However, the temporary services covered under such arrangements typically involve the provision of interpretation, translation, editing, library, language training, public information secretarial or clerical work (see ST/AI/327, section 3, also for additional examples). Furthermore, as provided in ST/AI/327, section 5, the "contractor shall be considered as having the legal status an independent contractor [and the] agents or employees of the contractor shall not be considered in any respect as being officials or staff members of the United Nations". Given that UN procurement officers are subject to the highest ethical and moral standards, and as mentioned above, we are concerned about the lack of authority or control the UN would have in respect of contractor's personnel carrying out UN procurement functions.

12. We are available to further discuss this matter with you.

  
Maria Vicien-Milburn  
31 May 2007

cc: Mr. N. Michel  
Mr. W. Sach  
Ms. J. Beagle