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**INTERNAL AUDIT DIVISION
OFFICE OF INTERNAL OVERSIGHT SERVICES**

Reference: AUD-7-1:31 (0487 /03)

08 April 2003

To: Mr. Benon Sevan, Executive Director
Office of the Iraq Programme

From: Esther Stern, Director
Internal Audit Division, OIOS

Subject: **OIOS Audit No. AF2002/23/1: Management of the contract for the provision of independent inspection agents in Iraq**

1. I am pleased to present herewith the final report on the subject review, which was conducted from July through October 2002.

2. We note from your response to the draft report that OIP has generally accepted the recommendations. Based on the response, we are pleased to inform you that we have closed recommendations 2, 9, 12, 14 to 16, 18 to 22 and 25 in the IAD recommendation database. OIOS has also withdrawn recommendations 3 and 17. In order for us to close out the remaining recommendations-recommendations 1, 4 to 8, 10, 11, 13, 23 and 24 we request that you provide us with additional information as indicated in the text of the report and a time schedule for implementing each of the recommendations. Please refer to the recommendation number concerned to facilitate monitoring of the implementation status.

3. IAD is assessing the overall quality of its audit process and kindly requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.

4. I take this opportunity to thank the management and staff of OIP for the assistance and cooperation provided to the auditors in connection with this assignment.

Copy to:
UN Board of Auditors
Ms. H Thorup-Hayes
D. Knutsen
J. Prasad

Best regards.



United Nations
OFFICE OF INTERNAL OVERSIGHT SERVICES
Internal Audit Division

Audit Report

Audit subject: Management of the contract for the provision for independent inspection agents in Iraq

Audit No.: AF2002/23/1

Report date: 08 April 2003

Audit team: Jayanti Prasad, Auditor-in-charge
Anna Halasan, Auditing Assistant

**Audit of the management of the contract for the provision of
independent inspection agents in Iraq
(AF2002/23/1)
Executive Summary**

Between July and October 2002, OIOS conducted an audit of the management of the contract for the provision of independent inspection agents in Iraq between the United Nations and Cotecna Inspection S.A. (the Contractor). The focus of the audit was on administrative, contractual and management aspects of the Contract.

OIOS' overall conclusion is that management of the Contract has not been adequate and certain provisions of the Contract had not been adhered to. In addition, the incorporation of additional costs, such as rehabilitation of camps, in the man-day-rate was an uneconomical arrangement. Also, the Contract had been amended prior to its commencement, which was inappropriate. OIP needs to strengthen its management of contracts and the Procurement Division (PD) should ensure that the basis of payment is appropriate in order to avoid additional costs to the Organization.

Results in brief:

Monitoring contractors performance and payments

- ❑ The Contractor had not fully performed its contractual duties in relation to goods procured by the Inter-agency Humanitarian Programme in North Iraq. As a result, under the 13 per cent account for goods imported by the UN agencies, there were huge differences between the figures for goods reported to have arrived by the UN agencies and the Contractor. The Contractor also did not provide convoy control services in relation to the 13 per cent account goods at Zakho. This service was provided by UNOHCI resulting in additional cost to the Organization.
- ❑ Contract payments are based entirely on man-days worked, however, there was no verification of attendance records of the Contractor, which forms the basis for the payments. Furthermore, the Contractor had sometimes maintained lower staff strengths than those required by the Contract. While OIP had been aware of this, no action to correct it had been taken. If lower staff numbers than those provided for in the Contract were considered adequate by OIP, consideration should have been given to amending it and reducing costs.
- ❑ Though required under the Contract to provide 24-hour services at all specified locations in Iraq, the Contractor was not doing so at Zakho and Trebil. Despite OIP being aware of this, no remedial action was taken to ensure this or, if this requirement was satisfactory to OIP, to effect a reduction in contract price for reduced hours of duty.

Contract issues

- ❑ Despite the Contract being "all inclusive", the per-man day fee of the original contract was inappropriately increased from \$499 to \$600 on account of rehabilitation of camps, communication charges, and fee for retention of agents. In addition, the decision of OIP/PD to pay for camps' rehabilitation at a cost of \$320,000 by merging it with the per-man-day fee of \$600 instead of paying for it as a one-time lump sum, led to an avoidable expenditure of approximately \$700,000.
- ❑ Even before the Contractor started providing services under the Contract from 01 February 1999, OIP/PD amended the Contract by authorizing additional communication cost of \$206,000 and operating cost of \$150,000, which was approved by the Headquarters Committee on Contracts (HCC) four days after the signing of the initial Contract. The amendment, even prior to start of services, could be viewed as a modification to the original Request for Proposal (RFP), and therefore negotiating it with only one bidder was not appropriate. Furthermore, \$95,000 was not recovered from the Contractor by way of the residual value of the equipment as provided for in the Contract.
- ❑ The present Contract had no linkage with the actual volume of work being performed as the contract price was based on the number of agents. Furthermore, the Contract specified a fixed number of agents at the four locations. OIP had not assessed whether it may have been more economical for the contract price to include a variable charge component to reflect the actual volume of work and to have more flexibility in the number of agents at specific locations based on the workloads.

Major recommendations:

OIP should:

- ❑ Reconcile and analyse the reasons for variation in the figures reported by the Contractor and those provided by UN agencies for the 13 per cent account goods. Determine if the Contractor has not provided services as required under the contract for certain portion of the 13 per cent account goods and deduct a proportional amount from the payments to the Contractor.
- ❑ Recover an appropriate amount from the Contractor for not providing services pertaining to convoy control and passport collection for the 13 per cent account goods as required.
- ❑ Re-assess the requirement for the 24-hour operation at all sites based on ground realities, and if reduced working hours is acceptable to OIP, amend the Contract and effect an appropriate reduction in Contract price.
- ❑ Recover \$95,000 from the Contractor provided for in Amendment of the Contract.

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I. INTRODUCTION

1. Between July and October 2002, OIOS conducted an audit of the management of the contract between the United Nations and Cotecna Inspection S.A. (the Contract) for the provision of independent inspection agents in Iraq. The objective of the Contract was to provide services, equipment and materials to verify and confirm that: (i) the description, value, quantity and quality of supplies arriving in Iraq (including those imported in connection with the United Nations Inter-Agency Humanitarian Programme) are in accordance with the requirements of the Committee established under Security Council Resolution 661; and (ii) the services ancillary to the import of supplies are performed in accordance with the requirements established by the Committee. The audit was conducted in accordance with the general and specific standards for the professional practice of internal auditing in the United Nations organizations.

2. The initial Contract (Contract no. PD/CON/324/98) with Cotecna Inspection S.A. was awarded in December 1998. A new bidding exercise was conducted by the Procurement Division (PD) in March 2001 which resulted in the same Contractor again being awarded the Contract (Contract no. PD/CO144/01). The new Contract extends from 01 August 2001 through 31 July 2002 with an annual value not to exceed \$11,767,600. Moreover, the new Contract provides for a renewal option for an additional period of one year under the same terms and conditions, including price. The details of the contract and amendments are in Figure 1:

Figure 1

Contract No	Period	Price (\$)	Aggregate value (\$)	No of charged inspectors	Remarks
PD/CON/324/98	01/02/1999 to 31/07/1999	4,877,226		54	\$499 per-man per day
PD/CON/324/98 Amendment 1 of March 1999		356,000	5,233,226		Cost of additional communications equipment (\$256,000) and communications operating cost (\$150,000) for a six- month period.

PD/CON/324/98 Amendment 2 of August 1999	01/08/1999 to 31/01/2000	5,108,064	10,341,290	54	Extension of contract through 31 January 2000. 54 inspectors @ \$ 499 per man per day for 184 days (\$4,958,064) and communications operating cost (\$150,000) for a six month period.
PD/CON/324/98 Amendment 3 of January 2000	01/02/2000 to 31/07/2000	5,896,800	16,238,090	54	Extension of contract through 31 July 2000. Per man per day rate increased to \$600.
	01/08/2000 to 31/07/2001	11,826,000	28,064,090	54	Extension of contract for one- year period through 31 July 2001. 54 inspectors @ \$600 per man per day.
PD/CON/324/98 Amendment 5 of January 2000	01/01/2001 to 31/07/2001	1,017,600	29,081,690	62	Eight additional inspectors authorised from 1 January 2001 to 31 July 2001 @ \$600 per man per day.
PD/CO144/01	01/08/2001 to 31/07/2002	11,767,600		62	New Contract. Negotiated rate of \$520 per man per day.

3. An exit conference with the Office of Iraq Programme was conducted on 17 December 2002 to discuss the audit findings and recommendations. OIP's and PD's comments on the draft audit report have been incorporated in the report, as appropriate and are indicated by the use of italics.

II. AUDIT OBJECTIVES

4. The major objectives of the audit were to:

- (i) Assess OIP's management of the Contract, both in Iraq and at Headquarters, with respect to the obligations of the Contractor and OIP under the terms of the Contract, and the procedures to verify and evaluate the Contractor's performance, receipt of services, and review payment invoices;

- (ii) Determine if the Contractor provided the required services in an economical, efficient and effective manner; and
- (iii) Review the contractual provisions and amendments to the Contract to determine if these are in the best interest of the United Nations.

III. AUDIT SCOPE

5. The audit focused on contractual and contract management issues. It consisted of a review of the initial and new Contracts, amendments thereto, invoices, and OIP's procedures to evaluate the Contractor's performance. In addition, physical inspections of the Contractor's operations and interviews with its personnel were carried out at Zakho, Umm Qasr and Baghdad, Iraq. We interviewed and issued questionnaires to OIP officials in New York and UNOHCI staff in Iraq.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Monitoring of invoice payments and financial matters

Procedures are not in place to verify attendance records of the Contractor

6. The Request for Proposal (RFP), Statement of Work (SOW) and the Contract provides for specific number of inspectors to be located at four locations in Iraq, namely Trebil, Umm Qasr, Zakho and Al Waleed. These requirements are shown in Figure 2:

Figure 2

Period	Number of Inspection Agents required at different locations				Total Inspection Agents
	Trebil	Umm Qasr	Zakho	Al Waleed	
01/02/1999 to 31/12/2000	18	11	14	11	54
01/01/2001 to 31/07/2002	18	22	12	10	62

7. The number of inspection agents is the sole parameter used for authorizing payment to the Contractor, hence an accurate attendance record is essential to support the monthly invoices. However, there is no independent verification of the Contractor's attendance records at the field level. Hence, there is no assurance as to the accuracy of the records provided by the Contractor.

Recommendation 1:

OIP management should develop field procedures for verifying Contractor attendance records as the basis for reviewing invoices and supporting documentation, and provide input to evaluate the services provided (AF02/23/1/001).

8. OIP accepted recommendation 001 and stated that UNGCI's daily radio checks of contractors staff and UNOHCI's entry and exit records could be considered for independent verification of attendance records and assured that any discrepancies identified with the contractors invoices would be deducted from payments to the Contractor. They further stated that for the next contract the issue would be addressed through a formulation of an appropriate RFP. In order to close this recommendation, OIOS requests OIP to indicate procedures being established for the next contract.

Contractor's staff strengths lower than provided for in the Contract

9. The Contractor has sometimes maintained a lower number of inspection agents than those required under the Contract. The total man-days short was 672 and the shortage of inspection agents ranged from 1 to 14 as shown in Figure 3:

Figure 3

Month	Total man-days short	Range of staff shortages
Feb'99	150	1-12
Mar'99	73	1-4
Apr'99	71	1-6
May'99	166	3-8
Jun'99	55	1-4
Jul'99	31	1-7
Aug'99	48	1-14
Sep'99	1	1
Nov'99	2	1
Dec'99	1	1
Jan'00	3	1-2
Jan'01	71	2-6
Total	672	

10. OIOS is of the opinion that maintaining agent strengths at levels lower than those provided for in the Contract violates not only the Contract but also affects the performance of the services since it could lead to delays in the authentication of goods entering Iraq under SCR 986. Furthermore, there is no provision in the Contract to penalize the Contractor for not maintaining the required strengths. The inspection services are now in their fourth year and OIP has been aware of

this fact through monthly invoices as well as field missions of OIP staff. OIOS considers this a critical omission of the Contract.

Recommendation 2:

OIP in cooperation with Procurement Division (PD) should amend the Contract and in future contracts include a penalty clause for not maintaining the required number of inspection agents at the various duty locations (AF02/23/1/002).

11. *OIP accepted recommendation 002 to include a penalty clause in future contracts and further clarified that for any shortfall in the number of staff agreed in the contract, the contractor is requested to reduce the value of subsequent invoices accordingly. PD also accepted recommendation 002. Based on the reply, OIOS is closing this recommendation.*

Payment discounts had not always been obtained

12. Article 7.2 of the initial and new Contracts (PD/CON/324/98 and PD/CO144/01) entitles the UN to a 2 per cent discount on invoices if the payment is made within fifteen days of the receipt of an invoice and supporting documentation. In most instances, the invoices were paid within fifteen days and the 2 per cent discount obtained. However, the invoices for February and March 1999 and January 2001 were not paid within 15 days, resulting in an additional expenditure of \$52,067.

13. We also observed that while raising internal purchase orders (POs) for the purpose of payment to the Contractor, the full contract amount was being obligated. Obligating the full amount less the 2 per cent discount could serve as an additional internal control to ensure that the invoices were paid on time.

Recommendation 3:

OIP management should obligate funds in the contract price amount less 2 per cent discount to act as an additional internal control to ensure timely payment and realization of the resultant discount (AF02/23/1/003).

14. *While assuring that every effort is made to obtain the discount, OIP did not agree with recommendation 003 due to accounting treatment of relevant accounts. Based on the clarification provided, OIOS is withdrawing this recommendation.*

Services provided by UNOHCI have not been charged to the Contractor

15. Under Article 8 and 9 of the Contracts (PD/CON324/98 and PD/CO144/01), the UN was required to provide identity cards only for the Contractor's personnel and to allow access to UN transport facilities only in cases of evacuation due to security developments and medical reasons.

Under Article 9.3, in case of emergency medical treatment, on an exceptional basis, the UN would allow the Contractor's personnel access to available medical facilities. In Article 9.4, the Contractor had agreed to reimburse the UN for any costs incurred by the Organization in connection with such obligations under Article 9.3.

16. Through 21 October 2002, the UNOHCI Medical Unit had provided medical service to 51 of the Contractor's staff on 154 occasions. Charges for these should have been levied as per the terms of the Contract, however, UNOHCI did not do so. Furthermore, UNOHCI has provided the Contractor with office space, which had not been charged for. While these services are necessary to enable the Contractor to function and should continue, the cost of these services should be recovered from the Contractor in accordance with the Contract.

Recommendation 4:

OIP management should quantify the cost of services (medical, office space, etc.) provided to the Contractor by UNOHCI and recover the amounts based on standard mission charge out rates (AF02/23/1/004).

17. *While accepting recommendation 004, OIP stated that for office space there should be no reimbursement from the Contractor as the space is provided free to UNOHCI by the GOI. They added that appropriate reimbursement for medical services would be done after quantification of the services by UNOHCI.* In order to enable OIOS to close this recommendation, we request that OIP provide us with documentation showing that the amount due from the Contractor for medical services has been recovered.

B. Monitoring Contractors performance

Inadequate monitoring of the Contract

18. Under Article 11 of the Contracts (PD/CON324/98 and PD/CO144/01), the UN reserves the right to inspect and test all services performed by the Contractor at all reasonable times and places during the period of the Contract. In this regard, OIP staff from NY have periodically reviewed the services provided by the Contractor and documented these review in mission reports.

19. However, while the Contract is performed in Iraq, OIP had not designated anyone in situ to manage the Contract on a continuing basis. In the absence of a contract manager, there can be no assurance that the services provided were in consonance with the spirit and letter of the Contract. Many of the irregularities pointed out in this report could have been detected and corrected had a contract management staff been located in Iraq.

Incomplete performance by the Contractor in regard to Inter-Agency Humanitarian Programme supplies in Northern Iraq

20. Article 3 of the Contracts (PD/CON324/98 and PD/CO144/01) requires that the Contractor provide all services, equipment and materials to verify and confirm that the description, value, quantity and quality of supplies arriving in Iraq, including those imported in connection with the Inter-Agency Humanitarian Programme (13 per cent account), are in accordance with the established requirements. Article 4.3 of the Contract further lays down the responsibilities of the Contractor in terms of the procedures for verification, quantity inspection by weight or count, quality inspection, sampling, testing, authentication confirmations and reporting to the Secretary-General (SG) on arrivals of goods into Iraq, both for the 59 per cent and the 13 per cent account goods. However, according to OIP, the value of arrivals relating to the 13 per cent account goods reported by the Contractor were far less than the figures reported by the UN Agencies importing these goods for the SCR 986 Programme in North Iraq for programme phases VII through X. These figures are shown in figure 4:

Figure 4

Arrival of 13 per cent account goods in Iraq as at 28 June 2002

Phase	Value Figures Reported by Contractor (\$)	Value Figures reported by UN Agencies (\$)	Value reported short by Contractor (\$)
I	108,194,438	108,194,438	0
II	100,697,595	100,697,595	0
III	109,541,654	109,541,654	0
IV	132,901,700	132,901,700	0
V	187,169,992	187,169,992	0
VI	376,666,496	376,666,496	0
VII	154,224,083	221,636,453	67,412,370
VII	45,160,589	87,627,119	42,466,530
IX	274,756	1,729,529	1,454,764
X	0	3,187	3,187

21. OIP clarified that the arrival figures reported by the Contractor were available only from Phases VII onwards, when in fact the Contractor had started providing all services from 01 February 1999, during Phase V. Therefore, it is not clear if the Contractor provided any services for the 13 per cent account goods prior to Phase VII. The reasons for the large difference are as follows:

- Inadequate understanding by the Contractors who felt they did not have much to do with the 13 per cent account goods on the grounds that their authentication was not a pre-requisite to payment for these goods and that they were only to provide authentication for goods pertaining to the 59 per cent account;
- Contractor not doing "value" certification for these goods, even though required under the Contract to do complete services in relation to the 13 per cent goods;
- Inadequate coordination between OIP, UN agencies and the Contractor resulted in incomplete information on goods being procured under the 13 per cent account by the Agencies;
- Lack of clarity in the Contract concerning the specific obligations of the Contractor in relation to the 13 per cent account goods; and
- Inclusion of insurance, local transportation costs, etc. in figures reported by the UN agencies.

In the above circumstances, it is also not clear which figures (whether Agency or the Contractor's) OIP is using in the SG's 180-day reports for the 13 per cent account goods.

22. According to Article 4.6 of Contract PD/CON/324/98 and Article 4.7 of Contract PD/CO144/01, the Contractor was made responsible for operating the convoy control system at the Zakho/Faida border crossing, including without limitation, preparing convoy lists, collecting passports and providing these documents to the relevant authorities. However, the Contractor was not providing any convoy control services for the 13 per cent account goods at Zakho/Faida. UNOHCI was operating an office (Border Staging Point) at Ibrahim Khalil, Zakho in order to provide these services. This was known by UNOHCI/OIP and it was also recommended to be rectified by the UNOHCI Chief Resident Auditor in March 2001. Clearly, UNOHCI was performing a task, which was the responsibility of the Contractor.

Recommendations 5 - 10:

OIP should:

- (i) Analyse and reconcile the reasons for the variations in the figures reported by the Contractor for the 13 per cent account goods arriving in Iraq and those that actually arrived as per the UN agencies (AF02/23/1/005);
- (ii) Determine whether the Contractor has provided services as required under the contract for the 13 per cent account goods since 01 February 1999 and if not, deduct an appropriate amount from the payments made to the Contractor for non-performance (AF02/23/1/006);
- (iii) Issue clear guidelines to the Contractor, UN agencies, and UNOHCI to ensure sufficient coordination in order for the Contractor

to provide complete and accurate service in relation to the 13 per cent account goods (AF02/23/1/007);

(iv) Recover an appropriate amount from the Contractor for not providing the convoy control and passport collection services for the 13 per cent account goods arriving through Ibrahim Khalil, Zakho. An estimate of this recovery could be the expenditure incurred by UNOHCI in manning and operating its Office at Ibrahim Khalil, Zakho for the same services (AF02/23/1/008);

(v) Decide if UNOHCI should continue to provide convoy control services at Zakho in view of the requirement for "independent" authentication/reporting as per the relevant SCRs and MOU, and if a decision is taken for UNOHCI to continue this service, amend the Contract and effect an appropriate price reduction for the reduced services (AF02/23/1/009); and

(vi) Provide induction training for all new inspection agents on the requirements of the UN under the Contract (AF02/23/1/010).

23. *OIP accepted recommendation 005 and stated that the reasons for discrepancies will be analysed from Phase-VII onwards with all possible remedial action to be completed by 30 September 2003. In order to close this recommendation, we request that OIP provide OIOS with the analysis and indicate what remedial action has been taken.*

24. *OIP accepted recommendation 006 and indicated that a determination would be made and recovery effected, if appropriate. In order to enable OIOS to close this recommendation, we request OIP to provide the results of their determination and recovery effected, if any.*

25. *Regarding recommendation 007, OIP stated that a circular incorporating the guidelines would be issued by 30 April 2003. In order to close this recommendation, we request that OIP provide us with a copy of the circular.*

26. *OIP did not provide a clear acceptance of recommendation 008. In OIP's opinion, if the Contractor has to operate the convoy service as per the Contract, additional inspectors would be required, with added cost to the Organisation. They however, agreed to establish the expenditure incurred by UNOHCI in manning its office at Ibrahim Khalil. They further anticipated that the Contractor would not be required to reimburse the UN in this regard. According to the Contract, the Contractor was required to provide these services with the sanctioned staff strengths. However, these services were not provided by the Contractor. OIOS requests OIP to reconsider our recommendation and recover an appropriate amount from the Contractor.*

27. OIP accepted recommendation 009 and indicated they would review this policy and amend the Contract if a decision is made for UNOHCI to continue providing this service. Based on the explanation provided, OIOS is closing this recommendation.

28. OIP accepted recommendation 010 and assured that an induction package for all new inspectors would be provided by 30 June 2003, in consultation with the Contractor. In order to close this recommendation, OIOS requests that OIP provide us with a copy of the induction package, when completed.

Non-performance of Contract's 24-hour duty requirement

29. Under Article 4.1 of the Contracts, (PD/CON/324/98 and PD/CO144/01), the Contractor is required to perform the services on a 24-hour, 7-day per week basis. However, the Contractor was not operating on a 24-hour basis at Zakho and Trebil. The duty times at these locations in Iraq were in consonance with the opening/closing of the borders and are shown in figure 5:

Figure 5

Duty Location	Duty Hours	Total hours of duty
Zakho	12:00-16:00 16:00-20:00	8
Trebil	09:00-13:00 13:00-17:00 17:00-last truck (usually 23:00)	14

30. OIOS is of the opinion that since the Contractor did not perform its 24-hour duty requirement at these two locations, an appropriate amount should have been deducted from the payments. Furthermore, this fact was known to OIP, and it did not take corrective action to either: (i) ensure 24-hour operation by the Contractor at these sites; or (ii) if this reduced performance (in term of hours) was satisfactory to OIP, to revise the SOW, amend the Contract and reduce the contract price.

Recommendations 11 and 12:

OIP should:

- (i) Recover an appropriate amount from the Contractor for past periods of service, based on the fewer number of hours worked at Zakho and Trebil than those envisaged (24 hours) in the Contract (AF02/23/1/011); and

- (ii) In future contracts, amend the SOW to be more specific as to the equipment the Contractor should have to discharge its obligations effectively (AF02/23/1/014).

35. OIP did not accept recommendation 013 and stated that implementing Article 3 of the Contract which provides for the Contractor to provide "... all equipment... to verify and confirm" would create backlog/delays in authentication resulting in OIP not meeting the deadline as mandated by SC, cause additional expenditure, financial hardship to suppliers and possibly bring Organisation into disrepute. They further stated that Art. 3 of the Contract requiring the Contractor to provide all equipment for the services is redundant to that extent and was accordingly being modified through the formulation of RFP for the next contract. OIP did, however, indicate that disputes between the quantities invoiced by the suppliers and the weighbridge statistics provided by the Port Authority have been an occasional source of concern in the absence of independent equipment for the purpose. OIP's reply contradicts the existing provisions of the Contract and their own assessments through their mission reports regarding the 'independent' nature of services (as commented upon in paragraph 34). OIOS therefore reiterates the recommendation and requests OIP to reconsider its response.

36. OIP accepted recommendation 014 stating that the SOW/RFP being formulated for the new contract would be more specific in terms of equipment required by the Contractor. Based on the explanation provided, OIOS is closing this recommendation.

Free facilities provided by the GOI not taken into account in the RFP

37. The Contract as well as the RFP specified that equipment, materials, facilities necessary to perform the services under the contract, and accommodations (boarding, lodging) for the inspectors, were the responsibility of the Contractor. Accordingly, all bidders would have proposed contract prices incorporating these expenses. In this regard, the GOI has provided free of cost the following facilities to the Contractor. These facilities were also provided free of cost to the previous contractor (Lloyds Register) and are shown in Figure 6:

Figure 6

Duty Location	Facilities provided at no charge to Contractor, by the GOI
Trebil	Front Office room, Main Office room, Gym, Small TV room in Customs building
Al Waleed	Front Office, Main Office, TV room, Lounge at Customs building
Zakho	Front (Border) Office

38. While we are aware that the continuance of such free facilities could not have been ensured by OIP, the fact remains that the GOI had been providing these facilities in the past and should have been mentioned in the RFP. In OIOS' opinion, disclosing this fact to bidders could have resulted in a contract price reduction.

Recommendations 15 and 16:

OIP/PD should:

- (i) Negotiate with the Contractor to reduce the contract price to reflect the provision of facilities provided free by the GOI (AF02/23/1/015); and
- (ii) When bidding in future for same services, provide information on free facilities which may be provided by the GOI in order to obtain more economical proposals (AF02/23/1/016).

39. *OIP did not accept recommendation 015 on the grounds that the Contractor has made equivalent investment on the facilities provided free by GOI. However, they noted that they will take into account this recommendation in the next contract. PD however, accepted recommendation 015. Based on the reply, OIOS is closing this recommendation.*

40. *OIP accepted recommendation 016 and assured that such information would be provided in the RFP for the next contract. PD also accepted recommendation 016. Based on the reply, OIOS is closing this recommendation.*

Need for the Contract Manager to be based in Baghdad rather than Amman

41. The Contractor has an administrative liaison office in Baghdad, which performs only administrative responsibilities. All technical and operational responsibilities of the Contractor are done in Amman where reports from various locations in Iraq are received and consolidated. UNOHCI and UN agencies have periodic meetings with the Contractor's personnel, to sort out various operational problems. It was the opinion of the previous Humanitarian Coordinator (HC) that to ensure better coordination, the contract manager of the Contractor should be based in Baghdad instead of Amman, as the Liaison office in Baghdad was unable to make relevant and necessary decisions in a timely manner. We are in agreement with the HC's assessment that this would be a more efficient arrangement.

Recommendation 17:

OIP should request the Contractor to base its Contract Manager in Baghdad (AF02/23/1/017).

42. *OIP did not accept recommendation 017 stating that there is no provision in the Contract for a Contract Manager and this post was at the initiative of the Contractor. Furthermore, the Contract Manager regularly attends the monthly Agency meetings in order to reply to any queries regarding the Contractors responsibilities. Based on the clarifications provided, OIOS is withdrawing this recommendation.*

The Contract needs to be more flexible to improve efficiency

43. The Contract and the contract price are based on the number of inspection agents and the payment has no linkage to the actual volume of work performed which depends on (i) the GOI's oil revenues, (ii) the contracts with suppliers by GOI/Agencies after the necessary approvals, and (iii) the speed and flow of goods from the suppliers. In OIOS' view, the contract price should be linked to the volume of work instead of being based only on the number of agents.

44. The Contract specifies the number of inspection agents assigned to each of the four duty locations as described in Paragraph 6 and 7 of this report. The required number of agents at each duty location changed only once in approximately four years. The requirement to have a fixed number of agents at a location is inflexible in the dynamic work environment. While an upper limit of inspections agents needs to be specified, some flexibility should be allowed, with the approval of OIP, for the number of agents at each location depending on the volume of work.

Recommendations 18 and 19:

OIP/PD should:

- (i) Explore the possibility of having a pricing mechanism in future contracts/RFPs for inspection services that includes: (i) a fixed charge component for manning the duty locations, and (ii) a variable component to verify, confirm and authenticate the arrival of goods based on the actual volume of work performed (quantity, value) (AF02/23/1/018); and
- (ii) Provide flexibility in future contracts for the Contractor to vary the number of agents at the work locations with the approval of OIP dependent on the workload, subject to the maintenance of a full complement of agents in Iraq as specified in the Contract (AF02/23/1/019).

45. *OIP accepted recommendation 018 stating that they would explore the possibility for the recommended pricing mechanism. PD also agreed to look into the possibility of revising the Contract on the recommended mechanism. OIOS is, therefore, closing this recommendation.*

46. *OIP accepted recommendation 019 stating that the forthcoming statement of work and RFP for the next contract has been adjusted to include the recommended flexibility. PD also agreed to*

include an appropriate enabling clause in all future contracts. OIOS is, therefore, closing this recommendation.

Unprofessional conduct of the Contractor

47. In the HCC contract deliberations (PD/CON/324/98), an OIP representative clarified that “the company would draw necessary personnel from Switzerland and the UK and not deploy a sub-contractor.” Furthermore, under Article 5.0 of the United Nations General Conditions of Contract the Contractor was to obtain prior written approval and clearance from the UN for all sub-contractors.

48. In August 1999, PD received a complaint against the Contractor from a company stating that the Contractor had signed an agreement with them on 26 January 1999 (prior to the start of services by the Contractor in February 1999) based on which the company had provided six inspectors to the Contractor to assist in the discharge of the duties under the Contract with the UN. The Contractor did not seek or receive any prior approval from the UN.

49. In another instance, the Contractor approached the GOI Ministry of Trade in November 1999 and requested that they be included on the accreditation list of the GOI. We are of the opinion that this could have affected the “independent” nature of the services required under the Contract. In both cases, we did not find any letter of reprimand from OIP.

Recommendation 20:

OIP/PD should issue a formal letter of reprimand to the Contractor in cases where it has taken actions that violated provisions of the Contract (AF02/23/1/020).

50. *OIP accepted recommendation 020 in principle and informed that the Contractor was reprimanded in September 1999. In future cases of violation of contracts provisions, OIP in consultation with PD will ensure that formal letters of reprimand are issued. While assuring that it is PD’s standard practice to issue formal letters of censure to contractors when warranted, the Chief of Procurement Division stated that it was not informed about the case commented upon in paragraph 49. Based on the clarification provided, OIOS is closing this recommendation.*

D. Contract issues

The Contract was amended prior to the start of services

51. The UN and the Contractor signed the Contract (PD/CON/324/98) on 31 December 1998. Article 4.11 of the Contract stated that “The Contractor shall supply all equipment, materials and facilities necessary to perform the services, including without limitation all equipment for taking and storing samples, all vehicles for transporting the agents, all equipment for transmitting authenticated confirmations and other reports required under this contract, and all other equipment, materials and

facilities set forth in the Proposal.” Furthermore, Article 7.1 of the Contract states “the UN will pay the Contractor a price not to exceed a total of \$4,877,266. This price includes all costs relating to the services to be provided under this Contract, including without limitation, all salaries, benefits, insurance, board, lodging, security, transportation, and communications, electronic data processing and other equipment.”

52. Article 2 of the contract specifies the contract terms. After the first extension, reasonable adjustment to contract price was envisaged to reflect any increase or decrease in the Contractor's costs. Clearly, when the Contract was signed, there was no provision to increase the price, at least up to 31 January 2000 (i.e. until the end of the first six-month extension). Article 4.11(c), however, provided for certain additional equipment at the duty stations with appropriate adjustment to the contract price through an amendment. In OIOS' view, Article 4.11 (c) was inconsistent with Article 2 and Article 7 of the Contract.

53. Before the Contractor started providing services under the Contract from 01 February 1999, OIP/PD amended the Contract by authorizing additional costs for communication equipment and operations of \$206,000 and \$150,000, respectively. The amendment was approved by the HCC four days after signing of the initial Contract.

54. This amendment, in our opinion, contravened the provisions of the Contract calling for the Contractor to provide all equipment, operating costs etc. and could be viewed as a modification to the original RFP and, therefore, negotiating with only one bidder (the Contractor) was not appropriate. Furthermore, any additional equipment should have been taken into consideration in the initial RFP. Amendment 1 resulted in the UN paying \$506,000 (\$356,000 through Amendment 1 and \$150,000 of operating costs through Amendment 2) in excess of the initial contracted amount during the first year of the Contract, despite the provisions of Article 2 of the Contract, which states that the contract price would not increase in the first year of the initial contract.

55. Furthermore, Amendment 1 stated that the Contractor would retain ownership of the equipment upon reimbursing the UN a residual value of \$95,000 at the end of six months of the Contract. However, no payment was made and OIP has not requested for one. OIP informed us that there was no information available regarding how the residual value was arrived at and it was the understanding of the Contractor that since the Contract was extended beyond the first six-month period, payment of the residual sum was not necessary.

Recommendations 21 - 23:

PD should:

- (i) Ensure that future contracts are drafted in such a manner as to avoid inconsistencies in the various contract provisions after seeking guidance from Office of Legal Affairs (OLA) (AF02/23/1/021);

(ii) In future contracts, define the RFP and scope of work after taking into account all requirements so that the need to amend the Contract prior to the start of a contract is avoided, in order to ensure that the contract price remains the same, as was stipulated in the initial Contract. (AF02/23/1/022); and

(iii) OIP should recover the residual value of the equipment (\$95,000) from the Contractor as was provided for in Amendment 1 of the Contract. (AF02/23/1/023).

56. OIP accepted recommendation 021 and stated that they would ensure that future contracts do not contain inconsistent and redundant provisions. PD also agreed with recommendation 021. Based on the reply, OIOS is closing this recommendation.

57. OIP accepted recommendation 022 by stating that to the extent possible, OIP will work in close consultation with PD to ensure that future RFPs reflect all the necessary requirements. PD also accepted recommendation 022 and stated that in future contracts it would endeavour to ensure that the RFP and scope of work include all requirements, thus eliminating the need to amend the Contract at a later date. Based on the reply, OIOS is closing this recommendation.

58. OIP accepted recommendation 023 and stated that the Contractor has confirmed that the residual value of \$95,000 was not reimbursed to the UN, as required and that they would arrange to have the funds duly reimbursed. PD also accepted recommendation 023. In order to close this recommendation, we request that OIP inform OIOS when the recovery is effected from the Contractor.

Inappropriate price increase on account of accommodation, communications and fee for retention of agents

59. As indicated above, Contract (PD/CON/324/98) was "all inclusive" including accommodation charges, communications, equipment, etc. For these services the contract price was established at \$499 per man per day. In a letter dated 30 November 1999 (two months prior to the expiry of the Contract on 31 January 2000) addressed to the Executive Director, OIP, Cotecna proposed a per-man-day fee structure of \$600. This was justified on the grounds of additional costs totaling \$820,000 for (i) communications charges over six months (\$150,000), (ii) rehabilitation of four camps (\$320,000), and (iii) inflation and hiring of inspectors (\$350,000). It further stated in the proposal that the daily fee of \$600 would cover the total additional costs of \$820,000 as well as \$150,000 paid every six months by the UN for additional telecommunications operating costs. The proposal was endorsed by OIP, and PD presented it to HCC which approved the fee hike on 21 December 1999. HCC also approved a contract extension for the period 01 February 2000 to 31 July 2000 at a unit per-man-day rate of \$600.

60. The new per man per day fee structure of \$600, was exactly equal to the offer of the second lowest bidder (Intertrek Testing (UK)). Thus, within one year of the start of the Contract, the basic

reasons for awarding the Contract to the Contractor on grounds of the being the lowest bidder were no longer valid. Accordingly, it is our opinion that OIP/PD should have gone for a fresh bid, as the price increase was substantial (\$101 per-man-day, representing an increase of more than 20 per cent).

61. Although HCC approved the increased fee, it questioned whether the \$320,000 asked for rehabilitation of the camps was in accordance with the contractual provisions. PD stated that "they were not but, according to OIP, such rehabilitation of the sites was required and the proposed cost of \$320,000 was considered reasonable." Further, PD had opined that the fee hike of \$350,000 for inflation and to attract inspectors was reasonable, even though no independent verification was made for the cost proposed. It is our opinion that since accommodation, communications as well as hiring of agents was the Contractors responsibility under the provisions of the Contract, no hike in the contract price should have been agreed to by OIP/PD. OIOS believes that the hike was unjustified based on the fact that when OIP/PD conducted a re-bidding in March 2001 for a new contract (PD/CO144/01), the same Contractor proposed a per-man-per day fee of \$550, which was further negotiated down to \$520.

62. Furthermore, even if OIP was convinced that the costs to the Contractor had actually increased, merging it with the per-man-day fee was not an economical decision. If the Contractor had to be reimbursed at all, it should have been made as a one-time reimbursement for the \$320,000 estimated camp rehabilitation portion of the cost increase. Instead, over the next 1 ½ years (from 01 February 2000 to 31 July 2001) the costs were hidden in the per-man-day fee of \$600. OIOS estimates that this decision led to avoidable expenditures of \$721,029.

63. In our audit of the management of oil inspection services contract (AF2001/30/6), we also found that the decision of OIP/PD to merge costs of the equipment, communications, accommodation, etc. in the per day fee structure instead of the one time lump sum and based on ground realities, led to substantial excess payments. Accordingly, we recommended that in future contracts, these charges be de-linked from per day fee structure. OIP had agreed to our recommendation.

Recommendations 24 and 25:

OIP/PD should:

- (i) In future contracts for independent inspection services, de-link costs of equipment, communication, accommodation, transport etc. from the per day fee structure (AF02/23/1/024); and
- (ii) PD should ensure that in outsourced contracts of this nature, fixed costs such as accommodation, transport, communications, equipment, etc. are provided for on a lump sum or actual cost basis upon presentation of supporting documentation, instead of merged in the per-day fee structure which leads to unjustifiable and excessive expenditures over a period of time (AF02/23/1/025).

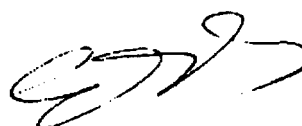
64. *In reply to recommendation 024, OIP stated that they would ensure that future RFPs are drafted to elicit responses not based on an all-inclusive amount, but rather quote fixed costs and man-day rates separately. However, they then stated that the recommendation can not be accepted as de-linking the costs of equipment from the per day fee structure leads UN to end up being owner of the equipment, which, given the political dynamics of the Programme, may not be suitable for the UN. PD taking note of recommendation 024 stated that for future contracts it will de-link the costs of equipment, communication, accommodation and transport, from the per-day fee structure, where appropriate and that RFPs in future will not be based on an all-inclusive amount, but will request fixed costs and separate man/day rates.*

65. OIP's rejection of this recommendation is not acceptable to OIOS, since one way out of the assets ownership problems for the UN would be to transfer the ownership of assets after a period of time to the Contractor, after re-imbursement of an appropriate amount. This procedure/policy was adopted for this Contract itself, as commented upon in paragraph 55. Furthermore, it is inconsistent with the response from PD, which has agreed to de-link the equipment costs from the per-day fee structure. In view of PD's acceptance of the recommendation, OIOS requests OIP to reconsider its reply to this recommendation.

66. *OIP accepted recommendation 025 stating that in future contracts they would seek to provide lump sum payments for such costs. PD also agreed. Based on the response, OIOS is closing this recommendation.*

V. ACKNOWLEDGEMENT

67. We wish to express our appreciation for the assistance and cooperation extended to the auditors by OIP and UNOHCI during the conduct of this audit.



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