



**UNITED NATIONS  
NATIONS UNIES**

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**STRICTLY CONFIDENTIAL**

**OFFICE OF INTERNAL OVERSIGHT SERVICES  
INVESTIGATIONS DIVISION**

**REDACTED  
REPORT OF INVESTIGATION**

**ID CASE NO. 0543/05**

**28 March 2006**

## **Report of Investigation of conflict of interest, favouritism and mismanagement at the United Nations Joint Staff Pension Fund ID Case No. 0543/05**

### **I. Introduction**

1. In October 2005, Staff Members 1 and 2 of the United Nations Joint Staff Pension Fund (UNJSPF) sent a memorandum to several high-ranking United Nations (UN) officials, including the Under-Secretary-General of the Office of Internal Oversight Services (OIOS), the Chef de Cabinet of the Secretary-General, and others, requesting an investigation into alleged irregularities in UNJSPF management practices.
2. The memorandum alleges procurement irregularities in connection with the UNJSPF contracts awarded for information technology services, including allegations of waste of resources and conflict of interest between an officer of the Information and Management Systems Section (IMSS) of the UNJSPF<sup>1</sup> and a consultant<sup>2</sup> who was awarded those contracts “through a front company”<sup>3</sup>.
3. Additional allegations involved improper staff management relations such as allegations of favouritism, discrimination and harassment.
4. The management of UNJSPF strongly rejected the allegations of Staff Members 1 and 2, questioned their motivation and mode of communication, and requested an investigation by the Investigative Division (ID) of OIOS.
5. This report of investigation reviews the circumstances regarding the awarding of contracts to Consultant Company, including the allegations of conflict of interest, specifically addressing the following issues:
  - (a) Was the selection of Consultant Company conducted in accordance with the financial and procurement regulations of the United Nations, particularly the competitive bidding rules?
  - (b) Did IMSS Officer have a prior relationship with Consultant Company President, and did his/her actions on the selection of Consultant Company President and the contracts awarded to Consultant Company amount to a conflict of interest or appearance of a conflict of interest and thus violate the United Nations Charter and staff conflict of interest rules?
  - (c) Were the actions of persons other than IMSS Officer on this procurement proper within the context of UN procurement procedures?
6. ID/OIOS did not investigate the allegations regarding the improper staff management relations given that such matters are more appropriately addressed via OHRM. However, during interviews with the ID/OIOS investigators both UNJSPF staff and managers expressed concerns over these allegations and provided details on

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<sup>1</sup> IMSS Officer.

<sup>2</sup> The Senior Consultant is Consultant Company President.

<sup>3</sup> The company is Consultant Company.

some cases. ID/OIOS chose to report on some of them, so that the Office of Human Resources Management (OHRM) notes them and undertakes action as appropriate and necessary.

7. The investigation established that while there is no evidence to prove that IMSS Officer's actions amounted to a conflict of interest, there is an appearance of conflict of interest and favouritism towards Consultant Company and Consultant Company President. The detailed findings and recommendations of the investigation are provided below.

## **II. Applicable Law**

8. As shown in the paragraphs below, Consultant Company was awarded contracts following competitive bidding organized and administered by the Procurement Department (PD) of the UN and directly by the UNJSPF.

### United Nations Procurement and Ethics Rules

9. There are five sets of rules relevant to this report: (a) UNJSPF rules on procurement and on the hiring of consultants; (b) supplier registration rules – the rules determining whether a contractor qualifies for the “supplier roster” to allow it to bid on or retain a UN contract; (c) competitive bidding rules – the rules requiring solicitation of competitive bids and award of a contract to the lowest qualified bidder; and (d) ethical conflict-of-interest rules – the rules requiring UN officials to disclose or avoid circumstances in which they or members of their family might benefit from their official activities on behalf of the UN. These are described below.

#### (a) UNJSPF rules on procurement and the hiring of consultants

10. The UNJSPF is an inter-agency entity with about 20 member organizations, of which the UN is the largest. The operations and administration of the UNJSPF are governed by its own Regulations,<sup>4</sup> which at the time of the initial UNJSPF contracts in question, provide that the Secretary of the Pension Board is the Chief Executive Officer (CEO) for the UNJSPF, who shall perform that function under the authority of the Pension Board.<sup>5</sup> The CEO also serves as Secretary of the Pension Board. The Pension Fund reports to the UN General Assembly (GA) which is the Fund's legislative organ.

11. As an inter-agency entity, the UNJSPF is not bound to follow the specific regulations and rules of any of its member organizations in any area, including the application of financial regulations and rules. However, both the Pension Board and its Secretary have recognized that sound administrative practices require that all

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<sup>4</sup> The Regulations of the United Nations Joint Staff Pension Fund were adopted by the United Nations General Assembly by resolution 248 (III), effective 23 January 1949, and have been amended by the Assembly a number of times since then, following recommendations by and consultations with the United Nations Joint Staff Pension Board

<sup>5</sup> Article 5 of the Regulations provides that the Board shall consist of members appointed by the United Nations Staff Pension Committee, members appointed by the staff pension committee of other member organizations in accordance with the Rules of Procedures of the Fund, and alternate members, who may be appointed by each staff pension committee.

contracting and procurement activities undertaken on behalf of the UNJSPF follow clear established procedures.

12. It is the responsibility of the Secretary of the Board, as the CEO of the Fund, to authorize expenditures of the Fund. The Secretary is accountable to the Board, and the Board to the GA. The Secretary cannot delegate his/her responsibilities to any official or entity.

#### Contracting for the UNJSPF

13. The matter of contracting and procurement for UNJSPF was raised by the Pension Board in its 1996 report to the GA in the context of formalizing the contracting and procurement actions by the UN for the UNJSPF, so as to develop clear and workable procedures that duly recognize the particular responsibilities and constraints imposed on the Secretary of the Pension Board by the UNJSPF Regulations and Rules and on the UN officials by the UN Financial Regulations and Rules.

14. Under the solution proposed by the Board, which was subsequently approved by the GA in its resolution 51/217, the Secretary-General would continue to make available to the UNJSPF the services of the PD and the HCC, with reviews and recommendations with respect to the Fund's contracting and procurement activities being transmitted for decision to the Secretary of the Pension Board.

15. In all other aspects it was understood that (a) the UN officials and offices would, in arriving at their recommendations, follow the relevant UN Financial Regulations and Rules; and (b) the Secretary would, in this regard, also adhere to the UN Financial Regulations and Rules, it being understood that, under compelling circumstances, those rules themselves provide for waivers of certain requirements as referred to below.

16. As a separate matter, the General Assembly agreed to authorize the Secretary of the Pension Board to undertake, "in certain limited and exceptional instances," contracting and procurement activities for the Fund directly on its own authority.

17. The UNJSPF "General Procedure # 56/Rev. 1 – Guidelines for undertaking direct procurement action" dated 30 September 1999, provided that the instances referred to above, which "were expected to be quite rare", are:

- (i) When the UN/PTD could not complete the process within the required time frame;
- (ii) When the Secretary was unable to accept a particular recommendation made by the PD or by the HCC; or
- (iii) When the PD informed the Secretary that a particular contract could not be carried out by that office.

#### Employment of consultants by UNJSPF

18. The UNJSPF also adopted procedures regarding the employment of consultants. These are set out in the memorandum of understanding on Personnel

Policy and Procedures for UNJSPF dated 30 June 2000, between the then CEO of the UNJSPF and the then Assistant Secretary-General for Human Resources Management of the UN. It provides that: “The UNJSPF shall follow UN guidelines for the usage of consultants, gratis personnel and retirees, as set out in various administrative instructions issued on the basis of UN General Assembly mandates.” And further, that “[c]onsultants would be selected through a competitive process and an evaluation will be undertaken of the project work performed”.

(b) Supplier Pre-Qualification Procedures

19. In March 1998, the UN issued a revised procurement manual establishing a more comprehensive process for evaluating the qualifications of companies that were permitted to bid on and perform UN contracts. The procurement manual has been subsequently revised.

20. The 1998 procurement manual provided that the selection of suppliers for solicitations of UN contractors was to be based primarily on the Supplier Roster of registered suppliers. Although a contractor could be awarded a UN contract without first having been qualified for the supplier roster, such a contractor was registered on a temporary basis and was required to successfully complete registration within 180 days in order to remain on the qualified supplier roster. In addition, before awarding any contract to a company not on the supplier roster, the PD was obligated to ensure that the supplier was qualified.

(c) Competitive Bidding Requirements

21. In February 2001, when Consultant Company was awarded its first UNJSPF contract following competitive bidding organized by the PD, the Financial Regulations and Rules and the procurement rules of the UN specified that contracts for services required competitive bidding and that the award generally must be made to the lowest acceptable bidder. In essence the applicable procedure is as follows:

22. In coordination with the substantive UN office requesting a procurement action, the PD was tasked with administering the competitive bidding process, beginning with the preparation of a Request for Proposal (“RFP”) which was then issued to companies that had been determined by the PD to be qualified to bid on the contract. The RFP contains comprehensive and unambiguous technical specifications/descriptions of the scope of the work to enable suppliers to compete fairly.

23. After receipt of proposals, they were reviewed to determine if they substantially met the terms of the RFP and if the bidder possessed sufficient facilities, personnel and managerial capabilities to perform the contract satisfactorily.

24. After due consideration of the bidding information, the PD would recommend a company to receive the contract award. In keeping with the interests of fairness and transparency in the bidding process, the Financial Rules provided that each determination or decision required of an authorized purchasing officer be supported by written findings of that officer, to be placed in the appropriate case file maintained by the responsible department or office.

25. It is important to note at this point that rule 4.03 of the 1998 Procurement Manual, “Suppliers recommended by requisitioners or consultant”, provides that

Suppliers should not be recommended by requisitioners or substantive offices. Such practice undermines the principles of segregation of responsibilities between requisitioning and procurement entities. In exceptional circumstances, if such recommendations are received, procurement officers will evaluate, in consultation with Chief of Section/Division, with due care, the desirability of retaining the recommended vendor in the invitees list. Furthermore a consultant who has been engaged to prepare or review the specifications and/or to assist in the evaluation of proposals should not be allowed to recommend vendors for the tender or itself submit an offer.

26. The 1998 Procurement Manual also required that the PD recommendation be subject to review by the Headquarters Committee on Contracts (“HCC”) and the approval of the Assistant Secretary-General for the Office of Central Support Services if the contract was greater than US\$200,000. The purpose of the HCC review was to verify that the proposed procurement action was in accordance with the United Nations Financial Regulations and Rules and that the recommendation for an award was based on fairness, integrity and transparency.

(d) Ethical Rules Relevant to the Award of Contracts

27. A party contracting with the UN must warrant that no UN official has received or will be offered any direct or indirect benefit as a result of the contract. Moreover, the contractor must acknowledge that a breach of this warranty would constitute a breach of an essential term of the contract.

28. Apart from the above contractual condition, the UN has promulgated ethical standards that govern the manner in which staff members must discharge their duties. These standards are contained in the Charter of the UN (“Charter”), the Staff Regulations of the UN (“Staff Regulations”), and the Staff Rules of the UN (“Staff Rules”), all of which are definite and binding on the Organization and its staff.

29. Among other things, the Regulations and Rules provide that staff members shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. Staff members are to avoid any action that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.<sup>6</sup>

30. They further provide that staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour.<sup>7</sup>

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<sup>6</sup> Staff Regulation 1.2 (f)

<sup>7</sup> Staff Regulation 1.2 (g)

31. Similarly, Staff Rule 101.2 (n) requires each staff member to inform the Secretary-General if “deal[ing] in his or her official capacity with any matter involving [an entity] in which he or she holds a financial interest, directly or indirectly” and to eliminate the conflict either by divesting the interest or ending any involvement in the matter unless authorized by the Secretary-General.

32. Furthermore, any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace in connection with work is prohibited.<sup>8</sup>

33. The Report on Standards of Conduct in the International Civil Service (1954) (“1954 Standards”) guided the UN staff in executing their duties and was replaced in 2001 by the Standards of Conduct for the International Civil Service (2001) (“2001 Standards”). Although not binding, the 1954 Standards and the 2001 Standards provide additional guidance on conflict of interest issues. For example, the 1954 Standards warn that repeated instances of partiality, or bias would do serious harm to the Organization. The 2001 Standards provide, as regards procurement and hiring, that international civil servants should avoid assisting private bodies or persons in their dealings with their Organization where this might lead to “actual or perceived preferential treatment.” The 2001 Standards also provide additional guidance on working relationships, staff management relations, harassment, and conflict of interest. (See Attachment 1)

### **III. Background Information**

#### IMSS Officer

34. IMSS Officer joined the UNJSPF in 1991. He/she is involved in the IT operation of the UNJSPF.

35. The UN Personal History Form (P-11) submitted by IMSS Officer to the UN prior to his/her recruitment, disclosed that IMSS Officer worked at Company 1 and that Consultant Company President was his/her supervisor at that time. Consultant Company President is also listed as a reference.

#### Consultant Company President and Consultant Company

36. According to a Dun and Bradstreet Business Information report (D&B) requested by ID/OIOS in December 2005, Consultant Company is a management consulting service company founded in 1985. The report noted that Consultant Company President serves as Principal and Director of Consultant Company.

37. As detailed in the paragraphs below, Consultant Company received a series of contracts either directly by the UNJSPF or following competitive bidding organized by PD for UNJSPF. The total value of these contracts is US\$1,893,450.38.

### **IV. Methodology**

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<sup>8</sup> Staff Rule 101.2 (d)

38. The investigation by ID/OIOS included an examination of documentation and interviews conducted with current and former UNJSPF staff members and other persons who were identified as possessing information relevant to the investigation. In addition, at the direction of the USG/OIOS, an OIOS auditor assisted the investigation team.

## **V. Investigative Details**

39. The memorandum of Staff Members 1 and 2 did not provide information about the identity of those alleged to have breached the UN rules on conflict of interest. Rather, it speaks about a “Senior consultant”, referred to as the “former boss of the current officer of IMSS”, who consistently obtained “through a front company” contracts from the UNJSPF, thereby making “huge profits in an endless cycle of new projects and extension” and who has received from UNJSPF “year after year” over US\$350,000 as salary.

40. Further, it suggests waste of resources in connection with the contracts awarded for information technology services, on the grounds that “despite millions spent”, “basic activities required by the Fund have still not been computerized.” Staff Members 1 and 2 state in their memorandum that all documents they possessed were available upon request. However, when interviewed by ID/OIOS they could not produce any documentation to support their allegations. When queried on this issue, both stated that their information was based on confidential reports which they received mostly from UNJSPF staff members in their capacity of staff representatives, and suggested that ID/OIOS should obtain relevant information and documentation from these staff.

41. Following specific investigative steps, the OIOS Investigators established that the persons referred to in the memorandum are IMIS Officer and Consultant Company President, senior consultant with the UNJSPF.

### Allegations on procurement irregularities and conflict of interest

42. This investigation addresses the following questions:

- (a) Was the selection of Consultant Company conducted in accordance with the United Nations’ financial and procurement regulations, including the competitive bidding rules?
- (b) Did IMSS Officer have a prior relationship with Consultant Company President, and did his/her actions on the selection of Consultant Company President and the contracts awarded to Consultant Company amount to a conflict of interest or appearance of a conflict of interest and violate the United Nations Charter and staff conflict of interest rules?
- (c) Were the actions of persons other than IMSS Officer on this procurement proper within the context of UN procurement procedures?

### Selection of Consultant Company and summary of its contracts



43. From June 1998 through December 2005, Consultant Company was awarded a series of 15 contracts either (a) directly by the UNJSPF or (b) following competitive bidding organized by PD. The total value of these contracts is \$ 1,893,450.38.

a) Contracts awarded by the UNJSPF

44. By memorandum, IMSS Officer recommended to the UNJSPF Operations Officer, who was IMSS Officer's direct supervisor, that the UNJSPF hire an accounting consultant to analyze the Fund's requirements regarding the replacement of the General Accounting System (GAS); to ensure year 2000 compliance; to prepare for adjustment to IMIS interfacing transactions; and to address long-term reporting requirements. he/she advised him/her that he/she had "identified a contractor with experience" to undertake the necessary work and recommended that the UNJSPF enter into a five-month contract with Consultant Company, starting in June 1998 at a cost of US\$100,000. Operations Officer agreed with these recommendations and he/she and IMSS Officer interviewed Consultant Company President in his/her capacity as systems consultant with Consultant Company.

45. Citing the urgent necessity of this analysis, in June 1998, UNJSPF Official 1 exercised the discretionary power conferred to him/her by the Pension Board, discussed in paragraphs 16-17, and entered into an Institutional or Corporate (ICA) contract with Consultant Company without competitive bidding.

46. In late 1998, when it became apparent that Consultant Company's study required more time, UNJSPF Official 1 authorized another ICA contract with Consultant Company without competitive bidding for two months. However, he/she emphasized that he/she "[did] not wish that UNJSPF be documented as following the route of exceptions more often than adhering to established procedures."<sup>9</sup>

47. However, the record shows that despite these instructions by UNJSPF Official 1, Consultant Company received an additional seven ICA contracts from UNJSPF, for a total of nine contracts without competitive bidding. The rationale provided by the UNJSPF on each succeeding contract was that Consultant Company was familiar with the project and that it would take too much time and money to get another vendor up to speed. The award of these contracts was authorized by UNJSPF Official 1,

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<sup>9</sup> UNJSPF Official 1's handwritten note related dated 16 December 1998, on this issue, addressed to Operations Officer and IMSS Officer, reads as follows:

*...it seems to me that the options before me are (a) delay the exercise so we can go through competitive bidding, involving a break in the work and a loss of monetary; or (b) bite the bullet and go with another exceptional approval for now. My decision clearly has to be (b). At the same time, we must make greater efforts in our planning so as to avoid such limited options. I recognize the work demands and time pressures, but we must begin reviews of contract expirations 4 to 6 months in advance. I urge/request that this be done and a mechanism of checks and actions be followed in this regard, beginning with the first line supervisor for the projects concerned and then involving the next one or two layers or supervisors, and the Executive Officer. I do not wish that UNJSPF be documented as following the route of exceptions more often than adhering to established procedures. Operations Manager, we must draft a memo to PD as to why this exception is being taken.  
UNJSPF Official 1*

UNJSPF Official 2, his/her Deputy, and UNJSPF Official 3. For the work performed under these contracts Consultant Company received payments totaling US\$343,450.38.

48. ID/OIOS found no evidence that UNJSPF considered candidates other than Consultant Company for any of these contracts. Similarly, there is no evidence that UNJSPF made any checks on the background of Consultant Company independently (for example by requesting a D&B report on Consultant Company) or that UNJSPF attempted to independently determine whether Consultant Company President's fees were consistent with those charged by other consultants and/or companies which provide a similar type of service.

b) Contracts awarded following competitive bidding organized by PD

First Contract

49. On 4 January 2001, based on a request from UNJSPF, PD issued a request for proposal (RFP) to 20 vendors. By the closing date, three vendors had submitted proposals, including Consultant Company, which rated highest technically among the three and submitted the lowest cost proposal in the amount of US\$200,000. The HCC recommended the award of the contract to Consultant Company, and Consultant Company President, on behalf of Consultant Company, and Procurement Official 1, on behalf of the UN, signed the contract, which covered the period 5 February 2001 - 1 June 2001.

50. On 5 September 2001, IMSS Officer prepared a memo to Operations Officer recommending that Consultant Company be awarded a contract in the amount of US\$150,000 for an additional 100 days of consulting service. He/she stated that the work to be performed was tied to the First Contract, which had been completed in May 2001. Although the prior contract had expired and had been assessed as completed, this "extension" related to new, if somewhat related, work. In relation to his/her recommendation that the contract be made with Consultant Company, he/she stated:

Taking into consideration: a) the Standing Committee's unanimous decision to proceed with the recommendations of the consultant: b) the limited time remaining before the expected delivery of the infrastructure projects and c) the complexities and risks associated with the selection of a new vendor, including knowledge transfer costs, I would prefer to continue our relationship with Consultant Company Ltd. and the consultant assigned to the previous contract.

Operations Officer and UNJSPF Official 3 both recommended approval of the contract. An internal amendment to provide for the additional funding was made to the First Contract and Procurement Official 1 signed on behalf of the UN.

51. The review of the documentation related to the above contract, disclosed the following:

Vendor Registration

52. First, prior to 3 January 2001, Consultant Company was not a registered<sup>10</sup> vendor of the UN and therefore was not on the roster of vendors. However, article 5.01.01 of the Procurement Manual (version 31 March 1998) that was in effect at the time provided that “Entry onto the Roster can be by...unregistered Supplier being awarded a United Nations contract.”<sup>11</sup> Hence, Consultant Company could be awarded the contract although not a registered vendor.

53. Nevertheless, article 6.04.01 “Selection of Suppliers and Public Advertisement for Tenders” provides that “The selection of suppliers for solicitations should be made in a way which ensures the integrity of the process and the confidence of all users, suppliers and oversight bodies. The selection process should rely on the professional judgment of the Procurement Division (PD) and *should be based primarily on the Supplier Roster of registered Suppliers.*” [Emphasis added]

54. ID/OIOS noted on the above points that on 3 January 2001, Procurement Officer 1 assigned to this matter, made a handwritten note in the “Buyer’s Action Log” – a special form designed to record the activity undertaken by procurement officers in the case – that “IMSS Officer wants them (Consultant Company) included.”

55. During his/her interview with the OIOS investigators, Procurement Officer 1 confirmed that IMSS Officer told him/her then that he/she wanted to have Consultant Company included on the list of invitees although it was not a registered supplier. He/she pointed out, however, that the request by IMSS Officer to have Consultant Company included in the list was not unusual because requisitioners sometimes made such requests to ensure that many potential vendors are included.

56. As noted in paragraph 25, article 4.03 of the 1998 Procurement Manual specifically clarifies the principle of segregation of responsibilities between requisitioning and procurement entities.

#### Performance Bond and Favouritism

57. Procurement Officer 1 also noted that although the RFP required a performance bond of 20% of the total net amount of the contract or a standby letter of credit, the contract was amended to provide that in lieu of a performance bond Consultant Company was to defer its initial invoice of US\$50,000 for February 2001. He/she said that his/her then supervisor, Procurement Official 1, made this decision. Procurement Official 1 told ID/OIOS that PD readily accepted retention of the first invoice in lieu of the performance bond. However, this concession served the interest of Consultant Company, not that of the UN.

58. On this issue, ID/OIOS noted that when the HCC questioned the fact that Consultant Company did not confirm its ability to provide a performance bond or a Letter of Credit, they were informed jointly by the PD and UNJSPF that Consultant

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<sup>10</sup> Consultant Company was registered provisionally on 3 January 2001 but was not registered formally until 11 February 2002.

<sup>11</sup> 5.01.01 continues to state that “Such registration will be on a temporary basis for a period of 180 days (6 months) or the duration of the contract whichever is longer.”

Company had “verbally confirmed their ability to do so.” Nevertheless, the contract was amended on 14 March 2001 to read:

It has been mutually agreed that in lieu of the UN receiving a standby L/C (performance bond) from Consultant Company Ltd to ensure the complete and timely receipt of the tangibles...that Consultant Company Ltd will defer the initial invoice of US\$50,000 for February 2001. This deferred invoice will be held by the UN until satisfactory completion of the Contract.

Consultant Company President signed on behalf of Consultant Company and Procurement Official 2 on behalf of the UN.

59. However, the payment history extracted from the UNJSPF accounting system shows that all invoices submitted by Consultant Company under the First Contract had been paid without deferral. The table below summarizes information in the two preceding paragraphs on the above contract.

<b>Action</b>	<b>Date</b>	<b>Action</b>	<b>Date</b>	<b>No. of elapsed days</b>
Contract signed	05/02/01	Performance bond amendment date	14/03/01	37 days
Invoice 1	05/02/01	Payment of invoice 1	07/03/01	30 days
Invoice 2	01/03/01	Payment of invoice 2	15/03/01	14 days
Invoice 3	01/04/01	Payment of invoice 3	05/04/01	4 days
Invoice 4	01/05/01	Payment of invoice 4	10/05/01	9 days

60. As shown in the table above, actual payment terms in most cases were less than net 30 days, although the contract specified net 30 days. Moreover, the initial invoice was not deferred as provided in the 14 March 2001 amendment.

61. When asked whether he/she knew that Consultant Company President had supervised IMSS Officer before the latter had joined the UN, Procurement Officer 1 replied in the negative. He/she stated that had he/she known this, he/she would have scrutinized the contract more carefully, for example by looking more closely at the evaluation criteria used, and would have tried to get a better understanding of the project. He/she added that IMSS Officer should have distanced him/herself from the whole procurement process to avoid a situation of actual or alleged conflict of interest.

62. ID/OIOS noted with surprise that Company 2 (an international company with over 100 years history and world-wide presence and thousands of employees) scored lower in the area of “Web experience” than Consultant Company, a small company established in 1985 located and operated by Consultant Company President from the basement of his/her home. The technical evaluation was performed in UNJSPF by a team in which IMSS Officer participated as the Chief of IMSS.

### Award of Contract

63. The record disclosed that the UNJSPF had informed the PD and the HCC that its Standing Committee had approved funding for additional new projects related to the engineering of several functions within the Fund's operations area and that the mandated timeframe for the implementation of those projects was extremely short, requiring completion by December 2002. UNJSPF argued that this timeframe was achievable if the proper resources were identified and assigned to the projects early in the process.

64. Considering the above factors, and in view of the complexities and costs involved in the project, the UNJSPF recommended a continuation of its relationship with Consultant Company. However, the documentation examined suggests that the scope of the additional work went beyond the strategic IT and Management Consulting to the establishment of a project management infrastructure and to the further refining of the UNJSPF member organization technology assessment and needs analysis study. This appears to be a separate exercise that, if properly done, required a separate solicitation procedure and selection of a supplier.

65. As a result of the first part of the work (strategic information technology and management consulting study for the UNJSPF), Consultant Company produced a report which recommended that the UNJSPF undertake a further study of the technological requirements and also set up a Project Management Office. ID/OIOS notes that this was the subject of the next contract awarded to Consultant Company.

66. Finally, ID/OIOS further noted that in the recommendations of its report, Consultant Company specifically suggested that the UNJSPF IT Project Team should consist of a Director, who must be an IT Professional Grade Staff Member, and a Project Manager, who need not be a UNJSPF Staff Member. This contract ended on 1 February 2002 and on 1 March 2002 UNJSPF gave Consultant Company two sole source contracts for a total of three months from 1 March 2002 to 1 June 2002, for a total of US\$90,000, to undertake project management duties still required.

### Second Contract

67. Following a second solicitation exercise carried out by PD, Consultant Company was awarded a two-year contract for Provision of a Project Management Officer Coordinator from 1 June 2002 through 31 May 2004 for a total contract award of US\$600,000. This contract was signed on 29 May 2002 by Consultant Company President, on behalf of Consultant Company, and by Procurement Official 1, on behalf of the UN.

68. Procurement records show that the PD issued the RFP to 50 vendors, inviting them to submit up to three proposed candidates. By the closing date, the PD had received 14 proposals with resumes of 22 candidates. UNJSPF evaluated the candidates and short-listed five for interviews that were conducted by IMSS Officer and Procurement Officer 2. Consultant Company was the only firm to have met the minimum threshold of 80 percent. However, ID/OIOS could not determine how the scores were actually arrived at, given that the documents pertaining to the interviews conducted with the short-listed candidates, such as the questions asked and their answers, were not in the file.

69. The contract provides that in lieu of providing the UN with a performance bond, Consultant Company would defer 10% of each monthly invoice for a cumulative performance holdback of US\$60,000 over the term of the contract. However, ID/OIOS noted that during the RFP clarifications which were available to all the potential bidders, there was a question as to whether the performance bond could be waived for that RFP. The response was that the performance bond is a requirement and would not be waived. However, Procurement Official 1 told ID/OIOS that the decision to permit Consultant Company to defer one of its invoices in lieu of providing a bond was an acceptable solution for the UN.

70. UNJSPF set forth procedures for Payment of Invoices, approved by UNJSPF Official 2, on 12 September 1995. It states that IMSS-related charges for contractors are to be sent to Chief of IMSS for preliminary approval, and then submitted to the Executive Officer, through the Chief of Operations, for payment. The Chief of IMSS is to monitor all IMSS related payments, in cooperation with the Executive Office.

71. A review of documentation revealed that in fact there was no deferral of any portion of the invoices for this contract. In addition, this contract was amended twice, each time extending funding for Consultant Company President's services as provided by Consultant Company for a year and retaining all other provisions of the Second Contract. During the term of the first amendment, the full amount of each invoice was paid, except for the last four invoices, from which 10% of the contract price was withheld per invoice in accordance with the contract provisions. The outstanding balance on this contract was paid to Consultant Company 12 days after the date of its last invoice. The first payment on the second amended contract, the only payment made at the time of the ID/OIOS review, also had 10% of the invoiced amount withheld from Consultant Company.

72. During its meeting, the HCC made several queries in relation to this contract. The HCC recommended that the position be regularized as a staff post or that a consultant be retained on a short term contract, both of which alternatives would result in a lesser expenditure of funds. Although no supporting information was provided in the minutes, Procurement Officer 2 and IMSS Officer, who attended that meeting, asserted to the HCC that (a) the contract amount was in the mid-range of the prices submitted by the companies; (b) the candidate was the most qualified; and (c) OHRM would not offer a contract longer than six months. ID/OIOS also noted that when interviewed, IMSS Officer stated that Consultant Company President would only work as a contractor, which provided his/her protection under US corporation laws and paid more than he/she would receive as a consultant.

73. The UNJSPF informed the HCC that Consultant Company President had worked on several UNJSPF projects, the last of which was in 2000. However, ID/OIOS notes that Consultant Company had held a total of ten contracts with UNJSPF at that point.

74. The HCC approved the contract, but taking into account the nature of the work and the likelihood that the project requirements would continue well beyond 31 May 2004, it recommended that the UNJSPF make renewed efforts to have the function regularized as a staff post.

75. When asked to comment on the two PD contracts for Consultant Company and the actions by his/her subordinates, Procurement Official 1 confirmed to ID/OIOS that he/she had had discussions with UNJSPF representatives during which the latter had complained to him/her that the PD takes too long to complete the contracting process through competitive bidding. Therefore, the UNJSPF explained that it needed to resort to the award of direct contracts, as per the discretionary power given to its Secretary.

76. Procurement Official 1 further advised that during his/her discussions with UNJSPF Official 1, Operations Officer and IMSS Officer, he/she told them that they could not continue to provide Consultant Company President with institutional contracts and further told them that they should make a greater effort to go through competitive bidding through PD. Alternatively, he/she suggested that the UNJSPF could retain Consultant Company President through the use of SSAs. Nevertheless, he/she continued to support these contracts.

77. Procurement Official 1 further commented that the PD had no experts in that specific scope of work and had to rely heavily on the substantive office for details. Procurement Officer 2 informed ID/OIOS that he/she was new to PD when assigned to the second contract and sought guidance from Procurement Official 1 and information from IMSS Officer.

78. Procurement Official 1 said that he/she was not aware of the prior relationship between IMSS Officer and Consultant Company President. He/she commented that the UNJSPF should have advised the PD of the matter, in which case, he/she would have suggested that IMSS Officer not be involved in the technical evaluation portion of the procurement exercise.

79. The contract was brought up for a proposed one-year extension (with an additional optional one year extension) at the HCC. At that time the HCC reiterated its earlier recommendation to have the function of Project Management Office Coordinator regularized as a staff post instead of outsourcing it at a high level of remuneration

#### Relationship between IMSS Officer and Consultant Company President

80. The evidence obtained by the OIOS investigators disclosed that the allegation that Consultant Company President had supervised IMSS Officer before the latter joined the UN is true. This was confirmed by the P-11 Form<sup>12</sup> dated 21 May 1990, submitted by IMSS Officer to the UN prior to his/her recruitment, and through interviews conducted with UNJSPF staff members, including senior managers, and IMSS Officer and Consultant Company President.

81. Procurement Official 2 and Operations Officer told ID/OIOS that IMSS Officer had informed them of his/her prior professional relationship with Consultant Company President as early as 1998, when Consultant Company President was

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<sup>12</sup> IMSS Officer stated on the P.11 that Consultant Company President was his/her supervisor from August 1981 through March 1987 at Company 1. IMSS Officer also listed Consultant Company President as a reference, although the P.11 specifies that one listed as a supervisor cannot be also listed as a reference.

awarded the first of the series of successive contracts by UNJSPF. Both stated that they were very satisfied with the work done by Consultant Company President at the UNJSPF. Similarly, other UNJSPF staff interviewed in connection with the same matter stated that they had either heard and/or knew directly from Consultant Company President and/or IMSS Officer that they had worked together.

82. However, the OIOS noted that UNJSPF Official 1 and UNJSPF Official 3, and none of the PD staff members involved in the procurement of contracts awarded to Consultant Company were aware of this prior relationship.

83. When asked by ID/OIOS why the UNJSPF had awarded repeated contracts to Consultant Company President/Consultant Company without competitive bidding, all UNJSPF staff involved with the matter, including the most senior managers, replied that the UNJSPF has a special status, that the projects were both urgent and important, and that resorting to the PD would have been too time consuming. They all also stated that Consultant Company President provided excellent work for the UNJSPF.

84. However, other interviewees who were not involved in the Consultant Company procurements offered a different account. First, most of them, especially those who were not aware of the prior relationship between IMSS Officer and Consultant Company President, advised ID/OIOS of the general perception prevalent within the UNJSPF that there was a possible conflict of interest between the two. As one staff member said, “we all knew that it was about a friend giving business to a friend.”

85. When asked to comment on the allegation of waste of resources in connection with the contracts awarded for the information technology services, most of those interviewed advised that they could see results and rejected the allegation that basic operations were still performed manually.

#### Actions by IMSS Officer

86. The investigatory record shows that IMSS Officer had: (a) been instrumental in the process regarding the recruitment of Consultant Company President by the UNJSPF; (b) prepared, or was involved in the preparation of all subsequent UNJSPF documentation on the contracts awarded by UNJSPF to Consultant Company; (c) supervised and evaluated the work performed by Consultant Company President; (d) certified that the services rendered by Consultant Company President had been adequate, a requirement before payment was made; and (e) liaised with and assisted PD staff members in the preparation of documentation regarding the contracts awarded to Consultant Company following competitive bidding. These activities by IMSS Officer included the technical assessment/evaluation of the companies which responded to the RFPs issued by PD and the interviewing of short listed candidates for the second contract.

#### Interview of IMSS Officer

87. When interviewed by ID/OIOS, IMSS Officer acknowledged that Consultant Company President had been his/her supervisor before he/she joined the United Nations, but that was more than ten years prior to the first UNJSPF contract with



Consultant Company. However, he/she rejected the allegations of collusion between him/herself and Consultant Company President, claiming that he/she recommended Consultant Company President to the UNJSPF because he/she thought his/her highly qualified and experienced and that he/she would be able to resolve the problems which were affecting the UNJSPF, especially the then urgent Y2K issue.

88. IMSS Officer offered to provide ID/OIOS his/her personal financial records (bank accounts) to show he/she had not received kickback. A review of the records he/she did provide did not reveal any payments or transactions that appeared suspicious or improper relevant to this investigation.<sup>13</sup>

#### Interview of Consultant Company President

89. Consultant Company President first refused to meet with the OIOS investigators in connection with this investigation, and suggested that they speak with his/her lawyer(s). However, after intervention from the UNJSPF management, he/she met with the investigators at his/her home, which has the same address as Consultant Company.

90. During his/her interview, Consultant Company President confirmed his/her prior working relationship with IMSS Officer. However, he/she rejected the allegations of collusion between him/herself and IMSS Officer, arguing that the UNJSPF selected him/her because he/she was “the best” qualified person in his/her field.

91. At the request of the OIOS investigators, Consultant Company President supplied documentation which was not be located in the relevant procurement file, such as a copy of the certificate of incorporation for Consultant Company. However, Consultant Company President refused to provide financial information about Consultant Company, such as data on tax returns on the income received as payment under contracts awarded by the UN and ID/OIOS has no means to compel him/her.

### **VI. Findings**

92. As outlined in the introduction of this report, ID/OIOS set out to answer the following three questions:

- a) Was the selection of Consultant Company conducted in accordance with the United Nations’ financial and procurement regulations, including the competitive bidding rules?
- b) Did IMSS Officer have a prior relationship with Consultant Company President, and did his/her actions on the selection of Consultant Company President and the contracts awarded to Consultant Company amount to a conflict of interest or appearance of a conflict of interest and violate the United Nations Charter and staff conflict of interest rules?

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<sup>13</sup> ID/OIOS has no authority to obtain bank records or banking information about UN staff or others.

- c) Were the actions of persons other than IMSS Officer on this procurement proper within the context of UN procurement procedures?

Was the selection of Consultant Company conducted in accordance with the United Nations' financial and procurement regulations, including the competitive bidding rules?

93. The investigatory record clearly shows that neither the UNJSPF nor the PD followed all the established rules on procurement in connection with Consultant Company.

#### UNJSPF ICA Contracts

94. In the case of the UNJSPF, the evidence shows that Consultant Company President was the only candidate considered for the work undertaken under the contracts awarded to Consultant Company, and it violated its own procedures regarding direct procurement in connection with the contracts awarded to Consultant Company.

95. Further, the evidence shows that rather than relying quasi-exclusively on information provided by IMSS Officer, given his/her relationship with Consultant Company President who is, for all intents and purposes, Consultant Company, the UNJSPF managers should have tried to obtain information about Consultant Company independently, for example by requesting a D&B report, before awarding successive contracts to the company.

96. Similarly, there is no evidence that the UNJSPF managers attempted to establish independently whether the fees charged by Consultant Company President were indeed consistent with those charged for similar work by other consultants/companies.

97. Even if one were to accept as reasonable the award of the first ICA contract to Consultant Company, the explanations provided on the further extensions are not satisfactory. Indeed, UNJSPF Official 1, when he/she was asked to extend the first contract with Consultant Company, stated that the UNJSPF should comply with established procurement procedures rather than rely on exceptions, but that did not occur.

#### Procurement Department Contracts

98. In the case of the PD, while there were competitive bidding exercises for the two contracts awarded to Consultant Company, the irregularities noted in this report raise questions about the integrity of the procurement process. Based upon the evidence adduced, ID/OIOS finds that the PD violated its rules on these procurements.

99. For example, as noted above, Consultant Company failed to provide the performance bond and/or letter of credit required by Contract 1 and the RPF for Contract 2. Furthermore, despite the amendment of Contract 1 which allowed the deferral of one of its initial invoices, and the Contract 2 provision requiring a deferral

of a percentage of each invoice, there was no reasonable explanation from PD as to why these exceptions were allowed.

100. Further, the fact that the PD relied heavily on the technical evaluation by the UNJSPF, which rated Consultant Company higher than well established companies such as Company 2, and the fact that the interviewing process of candidates by the PD and the UNJSPF was not properly documented, similarly raise questions about the integrity of the process.

Did IMSS Officer have a prior relationship with Consultant Company President, and did his/her actions on the selection of Consultant Company President and the contracts awarded to Consultant Company amount to a conflict of interest or appearance of a conflict of interest and violate the United Nations Charter and staff conflict of interest rules?

101. There is no dispute that IMSS Officer and Consultant Company President had a prior relationship, but ID/OIOS found no evidence that IMSS Officer held directly or indirectly any financial interest in Consultant Company.

102. Similarly, there is no evidence that IMSS Officer had otherwise colluded with Consultant Company President, for example by receiving improper gifts or remuneration from the latter in exchange for assisting with UNJSPF contracts. The refusal of Consultant Company to provide access to its financial records raised doubts in this regard which are not resolved.

103. There is evidence, however, that by his/her actions starting from the day when he/she recommended the recruitment of Consultant Company President, until the award of the last contract to Consultant Company, IMSS Officer placed him/herself into a position which created the appearance of a conflict of interest and favouritism towards Consultant Company President, notable in the absence of competitive bidding at the UNJSPF and the PD and the lack of proper documentation on high ratings to Consultant Company President's firm. Additionally, the actions of IMSS Officer in approving Consultant Company's invoices under the PD contracts without noting the required deferral of funds in lieu of a performance bond, was to Consultant Company's benefit and the UNJSPF's detriment.

Were the actions of persons other than IMSS Officer on this procurement free from impropriety?

104. As regards the actions of persons other than Consultant Company President, ID/OIOS finds that, albeit to varying degrees, the actions of both present and former UNJSPF managers, notably Operations Officer, and PD staff members, notably Procurement Official 1, involved in the Consultant Company procurements had a direct impact on the appearance of conflict of interest and favouritism in this case. Specifically, Operations Officer failed to properly manage the contracts awarded to Consultant Company. He/she simply accepted IMSS Officer's recommendations of the use of Consultant Company President/Consultant Company, despite serial exceptions to procurement regulations and practices which left the UN unprotected. Procurement Official 1 approved the substitution of the requirement of a performance bond by Consultant Company, which was contrary to the best interests of the UN,

with no reason for doing so. Compliance with established procurement rules and procedures would have avoided or greatly reduced the appearance of conflict of interest. Moreover, the apparently careless disregard for established procedures in the continued utilization of Consultant Company cannot be said to serve the best interests of the UN.

#### Additional allegations of the memorandum

105. As mentioned in the introduction of this report, in addition to the allegations pertaining to procurement irregularities, the memorandum by Staff Members 1 and 2 also referred to personnel related matters, which include allegations of favouritism, discrimination and harassment.

106. Although ID/OIOS did not specifically investigate these allegations, based upon interviews conducted with both UNJSPF managers and staff from several sections of the UNJSPF, ID/OIOS comments on several related issues, as follows:

107. First, as regards the complaint by Staff Members 1 and 2, although the memorandum purported to represent the UNJSPF staff at large, most UNJSPF staff interviewed by the OIOS advised that they were not consulted about these issues and commented that the memo did not represent their views.

108. Similarly, most interviewees strongly objected to the fact that Staff Members 1 and 2 copied the memorandum to people not involved with the UNJSPF, such as the Chairman of the Fifth Committee and the Vice-Chairman of the ACABQ.

109. Further, the UNJSPF managers and most UNJSPF staff told ID/OIOS that Staff Members 1 and 2 had a personal interest in complaining against the UNJSPF management because they had either pending appeals against management and/or felt that they were not treated fairly. ID/OIOS finds that while staff have the right to address complaints, this right should be exercised in a manner consistent with their obligations as staff members.

110. Despite these issues, many UNJSPF staff interviewed did feel that there is insufficient communication between managers and staff and that there is a lack of transparency, especially in recruitment and promotion cases as well as in extension of employment beyond retirement age. Most added that more action in this respect was needed on the part on the OHRM.

#### Specific cases

111. Although several examples of perceived favouritism as regards promotions were provided to ID/OIOS investigators, numerous comments were made about one particular case involving an alleged intimate affair between a supervisor and his/her subordinate, and also about the manner in which the UNJSPF management handled it.

112. The interviewees commented that the supervisor in question failed to maintain proper boundaries between his/her professional and personal life and exhibited bias in the performance assessment of the subordinate whom he/she favoured, which had a negative effect on the workplace environment of that office.

113. After the alleged affair ended, ID/OIOS was told that the supervisor harassed the subordinate and denied him/her a promotion. The interviewees further advised that the relationship between the two staff was well known in that office and that it adversely effected the normal relationship within that particular unit. Several interviewees added that the above mentioned subordinate staff surreptitiously taped his/her supervisor and played the tape to “whoever wanted to listen.”

114. The OIOS subsequently learned that although both the UNJSPF management and OHRM were aware of the alleged affair, the supervisor left the UNJSPF and no formal inquiry was initiated on the matter.

## **VII. Recommendations**

115. In light of the evidence adduced, the OIOS offers the following recommendations:

Recommendation 1: It is recommended that appropriate action be taken regarding IMSS Officer. (ID Rec. No. IV05/543/01)

Recommendation 2: It is recommended that appropriate action be taken regarding Operations Officer. (ID Rec. No. IV05/543/02)

Recommendation 3: It is recommended that appropriate action be taken regarding Procurement Official 1. (ID Rec. No. IV05/543/03)

Recommendation 4: It is recommended that the UNJSPF CEO ensures that all UNJSPF staff members guard against actions that might lead to perceived or actual conflict of interest situations. (ID Rec. No. IV05/543/04)

Recommendation 5: It is recommended that Consultant Company and Consultant Company President be struck as UN vendors and not be offered any more work by UNJSPF after the expiration of its current contract. (ID Rec. No. IV05/543/05)

Recommendation 6: It is recommended that the UNJSPF ensures that funds be withheld from payment of invoices due under Amendment 2 to the Second Contract to Consultant Company in compliance with Article 3, Guarantee of Performance, of said contract. (ID Rec. No. IV05/543/06)

Recommendation 7: It is recommended that the Procurement Department remind requisitioners of the need to adhere to instructions for the segregation of responsibilities between the requisitioning and procurement entities. (ID Rec. No. IV05/543/07)

Recommendation 8: It is recommended that there be more involvement by OHRM in staff issues at the UNJSPF to ensure fairness in all staff decisions and that OHRM assists UNJSPF management to resolve the festering feelings of mistrust which exist amongst UNJSPF staff. (ID Rec. No. IV05/543/08)

Recommendation 9: It is recommended that any contracting and procurement activities undertaken by the CEO of the UNJSPF comply with the Pension Board's directive that they be limited and only under exceptional circumstances. (ID Rec. No. IV05/543/09)

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