



INTERNAL AUDIT DIVISION

AUDIT REPORT

Contracts for power generation and the rental of generators in MINUSTAH

**Significant delay in the implementation of a
power generation pilot project in MINUSTAH
resulted in the Mission's prolonged rental of
generators**

25 November 2009

Assignment No. AP2008/683/10

United Nations  Nations Unies

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

OFFICE OF INTERNAL OVERSIGHT SERVICES · BUREAU DES SERVICES DE CONTRÔLE INTERNE
INTERNAL AUDIT DIVISION · DIVISION DE L'AUDIT INTERNE

TO: Mr. Hédi Annabi
A: Special Representative of the Secretary-General,
MINUSTAH

DATE: 25 November 2009

REFERENCE: IAD: 09- 03150

FROM: Fatoumata Ndiaye, Acting Director
DE: Internal Audit Division, OIOS

Fatoumata

SUBJECT: **Assignment No. AP2008/683/10 – Audit of contracts for power generation and the rental of generators in MINUSTAH**
OBJET: **generators in MINUSTAH**

1. I am pleased to present the report on the above-mentioned audit, pursuant to the request of the Controller, dated 4 August 2008.
2. Based on your comments, we are pleased to inform you that we will close recommendations 4 and 5 in the OIOS recommendations database as indicated in Annex 1.
1. In order for us to close the remaining recommendations, we request that you provide us with the additional information as discussed in the text of the report and also summarized in Annex 1.
3. Your response indicated that you did not accept recommendations 2 and 3. In OIOS' opinion however, these recommendations seek to address significant risk areas. We are therefore reiterating them and requesting that you reconsider your initial response based on the additional information provided in the report.
4. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as high risk (i.e., recommendations 1 and 4), in its annual report to the General Assembly and semi-annual report to the Secretary-General.

cc: Mr. Luiz Carlos Da Costa, Principal Deputy SRSG, MINUSTAH
Mr. Paul Aghadjanian, Chief of Mission Support, MINUSTAH
Mr. Swatantra Goolsarran, Executive Secretary, UN Board of Auditors
Ms. Susanne Frueh, Executive Secretary, Joint Inspection Unit
Mr. Seth Adza, Chief, Audit Response Team, Department of Field Support
Mr. Moses Bamuwamye, Chief, Oversight Support Unit, Department of Management
Mr. Byung-Kun Min, Special Assistant to the USG, OIOS
Ms. Eleanor T. Burns, Chief, Peacekeeping Audit Service, OIOS

INTERNAL AUDIT DIVISION

FUNCTION

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CONTACT INFORMATION

ACTING DIRECTOR:

Fatoumata Ndiaye: Tel: +1.212.963.5648, Fax: +1.212.963.3388,
e-mail: ndiaye@un.org

CHIEF PEACEKEEPING AUDIT SERVICE:

Eleanor T. Burns: Tel: +1.212.963.2792, Fax: +1.212.963.3388,
e-mail: burnse@un.org

EXECUTIVE SUMMARY

Audit of contracts of power generation and the rental of generators in MINUSTAH

Pursuant to the request of the Controller, dated 4 August 2008, OIOS conducted an audit of contracts of power generation and the rental of generators in the United Nations Stabilization Mission in Haiti (MINUSTAH). The overall objective of the audit was to assess whether the management of power generation and rental of generator contracts was effective and in compliance with the United Nations regulations and rules. A review of the solicitation process was not included in the audit. The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

MINUSTAH was selected by the United Nations Procurement Division (UNPD) for the pilot turnkey power generation project, whereby the Mission would purchase power based on kilo-watt-hours, a new concept being considered by the United Nations. Under this new concept, the Mission would discontinue renting generators once the power generation project was completed. In October 2004, UNPD initiated the procurement for the generation of power and subsequently made a split award, on a 70/30 per cent bases, to two competitors, Vendor A and B respectively. The following conditions were identified relating to the procurement and management of the contract:

- During the start-up phase, the Mission was not in a position to accurately determine its power requirements, rendering the initiation of the power generation project premature. For example, the request for proposal for the power generation project called for power at 158 locations of the Mission, but 80 per cent of those locations had still not been clearly identified at the time of the audit;
- The Mission did not conduct a formal cost-benefit analysis to establish the most cost effective method for procuring power;
- Insufficient planning resulted in significant delays in implementing the project, negating the expected gains of the power generation contract. More than 85 per cent of the 26 task orders issued to Vendor A had been delayed for several months. At least five task orders had been delayed for more than seven months each. Vendor A signed the contract more than two years after it was awarded and Vendor B, which was also renting generators to the Mission, had not signed the power generation contract; and
- The Mission had not determined and claimed compensatory damages estimated at \$1,072,721.

OIOS made five recommendations to address the weaknesses identified by the audit and to further improve the management of the generators rental and power generation contracts in MINUSTAH.

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I. INTRODUCTION

1. Pursuant to a request of the Controller, the Office of Internal Oversight Services (OIOS) conducted an audit of contracts for power generation and the rental of generators in the United Nations Stabilization Mission in Haiti (MINUSTAH). The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing.

2. MINUSTAH was selected by United Nations Procurement Division (UNPD) for the pilot turnkey power generation project, whereby the Mission would purchase power based on kilo-watt-hours, a new concept being adopted by the United Nations. In mid-2004, the Mission started deploying troops and assumed two contracts from the Multinational Interim Force for the rental of generators from Vendors B and C. In October 2004, the Department of Management initiated procurement for the generation of power and subsequently made a 70/30 split award to two competitors, Vendor A and Vendor B respectively. The power generation contract was expected to replace the generator rental contracts. Vendor A signed the power generation contract on 4 April 2007, more than two years after the contract was awarded. However, at the time of the audit, Vendor B, which was also renting generators to the Mission, had not signed the power generation contract.

3. The generator rental contracts were expected to be replaced by power generation contracts. The Mission informed OIOS that the power generation project was initiated due to the approved reduction in the initial staffing level, i.e., the reduced capacity of the Engineering Section which went from 204 posts to 104 posts. In view of the pilot project, six posts for generator mechanics had been allocated to the Engineering Section.

4. Payments made by MINUSTAH to Vendors A, B and C from June 2004 to December 2008 for the rental of generators and power totalled \$24 million distributed as shown in Table 1.

Table 1: Expenditure for power generation and rental of generators for the period June 2004 to December 2008

Vendor	Contract Type	Amount Paid (\$)
A	Power Generation Only	10,140,740
B	Rental of Generators	7,372,324
C	Rental of Generators	6,548,855
Total		24,061,919

Comments made by MINUSTAH are shown in *italics*.

II. AUDIT OBJECTIVES

5. The main objectives of the audit were to:
- (a) Assess if the solicitation and management of the power generation and rental of generators contracts by MINUSTAH complied with relevant United Nations regulations and rules;
 - (b) Evaluate the factors which delayed the implementation of the turnkey power generation project; and
 - (c) Review the procedures that the Mission applied to determine and recoup appropriate compensatory damages.

III. AUDIT SCOPE AND METHODOLOGY

6. The audit covered the generators rental and power generation contracts and focused on the solicitation of the contracts during the period 2004 to 2008. More specifically, the audit focused on the processes carried out by the Mission including planning, cost-benefit analysis and requirements identification of the power generation contracts, and the management of generators rental and power generation contracts.

7. The request of the Controller for the present audit resulted from concerns expressed by the Headquarters Committee on Contracts (HCC) regarding the solicitation and management of the contracts. The audit did not cover the solicitation activities performed by UNPD or seek to establish the basis of UNPD's selection of MINUSTAH to pilot the turnkey power generation project.

8. The audit methodology involved the review of the United Nations contracts with Vendors A, B, and C, review of pertinent records, analysis of data, and interviews with the personnel responsible for related functions.

IV. AUDIT FINDINGS AND RECOMMENDATIONS

A. Acquisition planning and solicitation

Inadequate requirement identification and untimely cost-benefit analysis

9. The request for proposal for the power generation project, dated 5 October 2004, states that the successful bidder would provide power to 158 locations of the Mission, but 127 (80 per cent) of those locations had not been clearly identified as at the date of the audit. OIOS notes that Vendor A revised its technical proposal at least four times in response to changes in the Mission's power requirements. The Mission informed that the frequent changes in requirements were necessary given the dynamic nature of the realities of the Mission during the start-up phase, particularly where field conditions were not

known and readily available. Notwithstanding the lack of clarity on the Mission's power requirement, UNPD proceeded by making a 70/30 split award to two competitors, Vendor A and B respectively. OIOS noted that the 127 locations that had not been clearly identified were included in the award made to Vendor A.

10. In August 2008, the Mission conducted an after-action review (AAR) of the pilot power generation project for the period April to August 2007. The review concluded that after two years of awarding the power generation contract to Vendor A, a number of issues were still not clarified. The Mission was taking appropriate steps to resolve the issues identified by its AAR. However, in OIOS' view, the cost-effectiveness of the power generation project depends on a clear identification of the Mission's power requirements both in terms of locations and power, and the cost-benefit analysis of the current sources of power supply; notably generator rentals and the procurement of power services.

11. OIOS inquired about documentation regarding the planning, including the cost-benefit analysis, of the power generation project, but was instead provided with the cost-benefit analysis of MINUSTAH's electric power supply that was jointly conducted in July 2007 by the Engineering Section in MINUSTAH, and Special Support Services and DFS at Headquarters. The analysis provided by the Mission in support of the power generation project was performed three months after the power generation contract was signed by Vendor A and the United Nations, and was therefore not relevant to the decision to establish the turnkey power generator contract.

12. The Mission has a window of opportunity prior to exercising the option of the one year extension period of Vendor A's contract to prepare a cost-benefit analysis, including identifying all relevant locations with actual power data requirements. The result of this analysis would be considered in the next competitive bidding procurement exercise upon contract expiration.

13. The Mission explained that there were a number of reasons why a cost-benefit analysis was not done at the start of the Mission, and that outsourcing was the only practical solution at the time. The reasons were that: (a) the Mission lacked resource capacity to support its power needs; (b) data to carry out a scientific cost-benefit analysis was absent; and (c) the Mission's power needs to cater to three different voltages and two different frequencies were unique.

Recommendations 1 and 2

The MINUSTAH Office of Mission Support should:

- (1) Determine and consolidate, in a comprehensive document, the power requirements for each location and site of the Mission for use when reviewing the option of extension of the power generation contracts or when considering a new procurement exercise; and**

(2) Conduct a cost-benefit analysis and take immediate action to establish cost-effective arrangements for the provision of power to the Mission.

14. *The MINUSTAH Administration accepted recommendation 1 and stated that the power loads and requirements were updated based upon the Mission's known needs.* Recommendation 1 remains open pending receipt of documentation reassessing the Mission's power generation needs and evidence of its use to inform contract extensions or any new bidding exercise.

15. *The MINUSTAH Administration did not accept recommendation 2 and stated that a cost-benefit analysis was carried out as soon as it was feasible by the Engineering Section in consultation with the Mission.* OIOS notes the explanations provided justifying why the cost-benefit analysis was done later and not at the start-up phase. However, given the significant and frequent changes in requirements that may affect the overall cost of the project, further analysis is needed to ensure that the most cost-effective arrangement is in place, taking into consideration experience gained and lessons learned. OIOS is therefore reiterating recommendation 2 and requesting Management to reconsider its initial position. Recommendation 2 remains open pending receipt of evidence that the Mission has conducted a cost-benefit analysis and used it as a basis for the next bidding exercise or contract extension.

Non-implementation of 30 per cent of the power generation contract

16. In October 2004, the Department of Management initiated procurement for the generation of power and subsequently made a 70/30 split award to two competitors, Vendor A and Vendor B respectively. Vendor A signed the power generation contract on the 4 April 2007, more than two years after the contract was awarded. However, at the time of the audit in 2009, Vendor B, which was also renting generators to the Mission, had not signed and therefore had not executed the power generation contract.

17. OIOS took note that the delays in signing the contracts were primarily caused by the time that was spent by the Mission, UNPD and HCC on one side and Vendor's A and B on the other, to clarify issues of the power generation contract, such as technical, liability and indemnity provisions, minimum guaranteed amounts, determination of terms such as "relocation site" and "first time establishment" of a site, and final determination of locations.

18. As a result, delays in finalizing the contracts have significantly negated the expected gains of discontinuing the rental of generators. Pending the conclusion of the contracts, MINUSTAH continued to rent generators from Vendor B and C under the old arrangement which was not based on competitive bidding.

Recommendation 3

(3) The MINUSTAH Office of Mission Support should immediately address the circumstances surrounding the delay in contract signing by Vendor B.

19. *The MINUSTAH Administration did not accept recommendation 3 and stated that UNPD processed this contract. The Mission had not contributed to the delays which were mainly driven by liability issues (legal).* OIOS maintains that factors such as the development of requirements, determination of locations, power loads, etc., were within the ambit of the Mission and that these also contributed to the overall delays in the finalization and implementation of the contract. OIOS is therefore reiterating recommendation 3 and requesting Management to reconsider its initial position. Recommendation 3 remains open pending receipt of evidence that the Mission has conducted a review to identify lessons that could inform similar procurement processes at the Mission level in the future, including requirements development.

B. Contract management and administration

Delays in implementing 70 per cent of the power generation contract

20. The management and administration of the contracts for generator rentals and power generation were not effective, resulting in significant delays in the implementation of the majority of the task orders issued to Vendor A. The implementation of 23 of the 26 (more than 85 per cent) task orders initiated since the inception of the contract had been delayed for several months – at least five task orders were delayed by more than seven months. Annex 2 summarizes the performance as well as the delays in the implementation of the power generation contract by Vendor A.

21. Notwithstanding the delays that were brought to the attention of Vendor A through performance meetings, the Mission had not determined and claimed the appropriate amounts of compensatory damages from Vendor A as at the date of the audit. The Chief Engineer had estimated \$1,072,721 in liquidated damages for delays caused by the vendor. However, the vendor had not been required to pay assessed liquidated damages due to concerns raised by the Legal Section of the Mission in April 2008 regarding the legal basis of the claims.

22. According to the Legal Section of the Mission, the provisions of Article 12.2 of the contract, which were applicable in this case, were not those providing for liquidated damages for delay but those which addressed, by exception, the case where the United Nations has had to obtain the services from an alternative source. Based on this interpretation, the Legal Section concluded that the United Nations is entitled to demand payment from Vendor A for (i) the amounts invoiced by Vendors B and C for their services to the United Nations as a result of the delays by Vendor A, for the period from the expiration of the 21-day time period specified in Article 4.3 as it may be amended until the time when Vendor A commenced to supply MINUSTAH with power in accordance with the

contract; plus (ii) any other costs incurred by the United Nations to continue the rental of generators from these two vendors.

23. MINUSTAH transmitted the above mentioned legal opinion in a fax dated 25 September 2008 to UNHQ but failed to propose the amount of compensatory damages to be claimed from the vendors. OIOS noted that Vendor A, UNPD and DFS had agreed in a meeting held on 29 March 2007 to extend the deadline for mobilization from 21 days, as indicated in the contract in Article 4.3, to 60 days. However, the decision to extend the mobilization deadline to 60 days was not reflected in the contract and is therefore not binding.

24. In the view of OIOS, the Mission should have activated the demand payment clause, in accordance with the contract terms and as per legal advice. The Mission explained that due to conflicting clauses in the contract regarding the effective date of the contract (dates of acceptance of task order versus acceptance of implementation plan), the accurate computation of the cost could not be determined at that time.

Recommendations 4 and 5

The MINUSTAH Office of Mission Support should:

(4) In consultation with the United Nations Procurement Division, immediately exercise the demand payment clause to recover costs incurred relating to the failure of Vendor A to meet the first-time establishment timeline; and

(5) Address the circumstances surrounding the delays in the implementation of the power generation contract by Vendor A.

25. *The MINUSTAH Administration accepted recommendation 4 and stated that while the Mission did not exercise the demand payment clause, the cost for alternative power has been adjusted in accordance with Article 12 "Liquidated Damages" of the Contract, since this option was considered more appropriate. These were the basis of negotiations held in UNPD in March and April 2009 which culminated into Amendment 5, as reflected in the approval of the Department of Management. OIOS reviewed a copy of Amendment 5 of the contract as well as the relevant HCC minutes and confirmed that an adjustment relating to compensatory damages in the amount of \$1.5 million was taken into consideration. Based on actions taken by MINUSTAH, Recommendation 4 has been closed.*

26. *The MINUSTAH Administration accepted recommendation 5 and stated that these issues were discussed, by the UN's negotiation team comprised of the Engineering Section, UNPD, Office of Legal Affairs and MINUSTAH's Procurement, Legal and Engineering Sections, and considered when preparing the above-mentioned Amendment 5 of the contract. UNPD processed the contract. As previously stated, the Mission had not contributed to the delays which were mainly driven by liability issues (legal). OIOS reviewed a copy of*

Amendment 5 of the contract as well as the relevant minutes of the HCC and confirmed that the factors contributing to the delays in implementation were addressed, including gaps in actual versus estimated power consumption based on an over-estimation of the size of generators deployed and readiness of some locations. OIOS acknowledges steps taken towards implementing this recommendation. Based on actions taken by MINUSTAH, Recommendation 5 has been closed.

Invoice processing

27. OIOS reviewed the Mission's invoice processing, including the spreadsheets prepared by the Mission comparing the amounts invoiced by the vendor and the relevant provisions of the contract. There were a number of over billings by the vendors, but these excessive charges were detected by the Mission in a timely manner and therefore not paid to the vendor. As at the date of the audit, the Mission identified over billing totaling approximately \$690,000 relating to charges for fuel and taxes which are not allowed by the contract. In these regards, OIOS assesses the Mission's processes and procedures for reviewing invoices as adequate and effective.

V. ACKNOWLEDGEMENT

28. We wish to express our appreciation to the Management and staff of MINUSTAH for the assistance and cooperation extended to the auditors during this assignment.

STATUS OF AUDIT RECOMMENDATIONS

Recom. no.	Recommendation	Risk category	Risk rating	C/O ¹	Actions needed to close recommendation	Implementation date ²
1	The MINUSTAH Office of Mission Support should determine and consolidate, in a comprehensive document, the power requirements for each location and site of the Mission for use when reviewing the option of extension of the power generation contracts or when considering a new procurement exercise.	Operational	High	O	Receipt of documentation reassessing the Mission's power generation needs and evidence of its use to inform contract extensions or any new bidding exercise.	September 2009
2	The MINUSTAH Office of Mission Support should conduct a cost-benefit analysis and take immediate action to establish cost-effective arrangements for the provision of power to the Mission.	Operational	Medium	O	Reconsideration of recommendation. Receipt of evidence that the Mission has conducted a cost-benefit analysis and used it as a basis for the next bidding exercise or contract extension.	
3	The MINUSTAH Office of Mission Support should immediately address the circumstances surrounding the delay in contract signing by Vendor B.	Operational	Medium	O	Reconsideration of recommendation. Receipt of evidence that the Mission has conducted a review to identify lessons that could inform similar procurement processes at the Mission level in the future, including requirements development.	
4	The MINUSTAH Office of Mission Support should, in consultation with the United Nations Procurement Division, immediately exercise the demand payment clause to recover costs incurred relating to the failure of the Vendor A to meet the first-time establishment timeline.	Financial	High	C	Action taken.	Implemented
5	The MINUSTAH Office of Mission Support should address the circumstances surrounding the delays in the implementation of the power generation contract by Vendor A.	Financial	Medium	C	Action taken.	Implemented

1. C = closed, O = open

2. Date provided by MINUSTAH in response to recommendations.

Delays in the final readiness of site locations

Task Order No	MINUSTAH LOCATION	Site due to be Operational (after 60 days)	Site actually Operational on Date	Number of days over due	
1	2007-001A	MHQ Christopher Pap	14-Jul-07	18-Sep-07	66
2	2007-002A	MHQ Christopher Pap	14-Jul-07	18-Sep-07	66
3	2007-003A	Log Yard PaP I	28-Oct-07	12-Oct-07	0
4	2007-004	Log Yard PaP II	14-Jul-07	12-Oct-07	90
5	2007-006	Camp Charlie Kitchen	14-Jul-07	13-Oct-07	91
6	2007-007A	Cap Haitian RTK Compound	28-Oct-07	26-Feb-08	121
7	2007-008	Fort Liberte	25-Aug-07	21-Jan-08	149
8	2007-009A	Cap Haitian Coast Guard			pending
9	2007-010A	Cap Haitian Camp Hertz -Warehouse	28-Oct-07	21-Feb-08	0
10	2007-0011A	Cap Haitian Heli Pad -- HLS			pending
11	2007-012A	Cap Haitian TPT Workshop	28-Oct-07	27-Feb-08	122
12	2007-013A	Ken Koff OBLEON CITS Radio Site	28-Oct-07	25-Feb-08	120
13	2007-014A	Mirebalais	28-Oct-07	24-Apr-08	179
14	2007-015	Gonaives RHQ	8-Sep-07	23-May-08	258
15	2007-016A	Gonaives Arg Batt	28-Oct-07	23-May-08	208
16	2007-017	Gonaives Pak Batt	8-Sep-07	23-May-08	258
17	2007-018A	St Marc	28-Oct-07	20-Mar-08	144
18	2007-019A	Port de Paix	28-Oct-07	11-Jun-08	227
19	2007-020A	Hinche	28-Oct-07	31-Mar-08	155
20	2007-021	Camp Charlie ACCOM	9-Sep-07	11-Feb-08	155
21	2007-022A	Les Cayes	28-Oct-07	7-Dec-07	40
22	2007-023	Jacmel	9-Sep-07	22-Apr-08	226
23	2007-024A	Jeremie	28-Oct-07	24-Apr-08	179
24	2007-025A	Miragoane	28-Oct-07	26-Mar-08	150
25	2007-26A	Ounaminthe UNPOL	14-May-08	21-Apr-08	0
26	2007-027A	Log Base Water			pending