



INTERNAL AUDIT DIVISION

REPORT 2017/056

Audit of ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali

The Mission needs to ensure ex post facto procurement cases are justified and requirements to obtain technical clearance, local procurement authority, advice from the relevant contracts committees and approval from appropriate officials are complied with

23 June 2017

Assignment No. AP2016/641/09

Audit of ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali

EXECUTIVE SUMMARY

The objective of the audit was to assess the adequacy and effectiveness of governance, risk management and control processes over ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). The audit covered the period from 1 July 2013 to 28 February 2017 and included review of processing and reporting of ex post facto cases, as well as concerns raised by the Headquarters Committee on Contracts related to construction of camps at Douentza and Gossi.

While there was still a compelling need for the Mission to establish full operational capacity more than a year after it was established, the need for ex post facto approval for a number of procurement activities, including the construction of camps in Douentza and Gossi valued at \$9.4 million, was not justified. OIOS noted, however, that MINUSMA had taken action to improve reporting of ex post facto cases and minimize their number.

OIOS made four recommendations. To address issues identified in the audit, MINUSMA needed to:

- Implement procedures to establish eligibility of procurement cases for exigency and establish responsibility and accountability;
- Implement an effective mechanism for estimating project costs as part of the source selection planning process and preparing request for technical clearance;
- Implement effective procedures for documenting justification for deviating from the evaluation criteria set out in the source selection plan; and
- Take appropriate action regarding the abandoned construction work at Gossi to avoid further financial losses.

MINUSMA accepted the recommendations and has initiated action to implement them.

CONTENTS

	<i>Page</i>
I. BACKGROUND	1
II. AUDIT OBJECTIVE, SCOPE AND METHODOLOGY	1-2
III. OVERALL CONCLUSION	2
IV. AUDIT RESULTS	2-7
A. Reporting requirements	2
B. Processing of ex post facto cases	3-5
C. Other matters related to camp construction in Douentza and Gossi	5-7
V. ACKNOWLEDGEMENT	7
ANNEX I Status of audit recommendations	
APPENDIX I Management response	

Audit of ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali

I. BACKGROUND

1. The Office of Internal Oversight Services (OIOS) conducted an audit of ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).
2. MINUSMA was established by Security Council resolution 2100 dated 25 April 2013 and commenced operations on 1 July 2013. The subsequent Security Council resolution (2164 dated 25 June 2014) required the Mission to reach its full operational capacity as soon as possible. In order to achieve this, MINUSMA established a deployment plan that required the establishment of a headquarters in Bamako, six regional offices in Gao, Timbuktu, Kidal, Mopti, Tessalit and Menaka along with 15 military camps and guest houses to accommodate civilian staff and staff officers. This plan was constantly reviewed and revised due to changes in the security situation.
3. An ex post facto case is a procurement action, whether a written contractual instrument exists or not, in which goods or services were partially or fully furnished prior to submitting the procurement action to the Local Committee on Contracts (LCC) and/or Headquarters Committee on Contracts (HCC), and/or approval of appropriate officials, i.e., the Director of Mission Support or the Assistant Secretary-General for Central Support Services (ASG/OCSS). An ex post facto case must be justified by an exigency, which is defined as an exceptional, compelling, emergent need or situation of force majeure not resulting from poor planning or management or from concerns over the availability of funds that will lead to serious damage, loss or injury to property or persons, if not addressed immediately. The Procurement Manual provides the following considerations that should be taken into account when determining whether the ex post facto action was justified, whether: (a) not taking action on an ex post facto basis would have seriously jeopardized the operational capability of the Mission or would have endangered the lives, health or safety of its personnel; (b) the matter resulting to the case was beyond the reasonable control of the officers involved; and (c) the action occurred during the start-up of the Mission.
4. From 1 July 2013 to 28 February 2017, MINUSMA processed 53 ex post facto cases with a total value of \$35 million.
5. Comments provided by MINUSMA are incorporated in italics.

II. AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

6. The objective of the audit was to assess the adequacy and effectiveness of governance, risk management and control processes over ex post facto procurement cases in MINUSMA.
7. This audit was added to the 2016 risk-based work plan of OIOS: (a) following a request from ASG/OCSS for an audit of two ex post facto procurement cases related to horizontal construction works on a 150-person camp at Gossi and a 700-person camp at Douentza with a combined not-to-exceed (NTE) amount of \$9.4 million; and (b) due to the large number of ex post facto cases processed by the Mission during the first few years of the Mission's establishment.
8. OIOS conducted the audit from November 2016 to February 2017. The audit covered the period from 1 July 2013 to 28 February 2017 and included: reporting of ex post facto cases, processing of ex

post facto cases, and other matters raised by the HCC related to the camp construction works at Douentza and Gossi.

9. The audit methodology included: (a) interviews of key personnel; (b) review of relevant documentation including reports and minutes of committees on contracts; (c) review of the performance evaluation of contractors; and (d) review of a judgmental sample of 29 ex post facto cases with the NTE amount of \$34.1 million as well as the two other cases referred by ASG/OCSS.

III. OVERALL CONCLUSION

10. While there was still a compelling need for the Mission to establish full operational capacity more than a year after it was established on 25 April 2013, the two ex post facto cases related to the construction of camps in Douentza and Gossi as well as a number of other cases were unjustified. While MINUSMA has taken action to record all ex post facto cases, improve reporting of these cases and minimize their number, it still needs to adequately assess and establish the eligibility of procurement actions for exigency.

IV. AUDIT RESULTS

A. Reporting requirements

Reporting of ex post facto procurement cases had improved

11. The MINUSMA Director of Mission Support has the delegated authority to procure goods and services of up to \$1 million for core requirements and \$0.5 million for non-core requirements. The Procurement Manual requires MINUSMA to provide a quarterly report to the ASG/OCSS through the Under-Secretary-General for the Department of Field Support (USG/DFS) within 15 days of the end of each quarter on all ex post cases within the threshold of the Mission's delegation of procurement authority.

12. OIOS review of all 14 quarterly reports of the Mission's ex post facto cases for the period from July 2013 to February 2017 indicated that MINUSMA did not report 6 of the 31 ex post facto cases to the USG/DFS. These cases included an agreement for common services signed in 2014 with a United Nations agency valued at \$1 million and contracts for: (a) satellite phone services valued at \$250,000 signed in 2014; (b) the rental in 2013 of a vehicle valued at \$58,186; and (c) engineering works valued at \$117,354.

13. In 2015, the MINUSMA Procurement Section, to address the weakness in monitoring procurement cases, established the Supply Chain Quality Assurance Unit responsible for recording all procurement cases and making sure that the reports of core requirements and ex post facto cases submitted to the USG/DFS were complete and accurate. OIOS review of the register of MINUSMA ex post facto procurement cases showed that as of 30 April 2017, the Mission had not processed any ex post case since 1 July 2016, indicating a significant reduction in the frequency of ex post facto cases. As a result of the action taken, OIOS did not make a recommendation related to the reporting of ex post facto procurement cases.

B. Processing of ex post facto cases

There was a need to improve compliance with the requirements for ex post facto procurement cases

14. The Procurement Manual and the standard operating procedures for technical clearance require MINUSMA, prior to initiating a procurement action for engineering projects, to obtain technical clearance from the United Nations Global Service Centre (UNGSC) and a Local Procurement Authority (LPA) from the United Nations Procurement Division when a procurement is expected to exceed the Mission's delegated authority. The HCC recommendation and ASG/OCSS approval are required prior to any contractual commitment being made above the Mission's delegation of authority. The Procurement Manual requires the Mission to use ex post facto cases as rare exceptions; and when an ex post facto case occurs, provide written justification explaining why timely presentation to the L/HCC was not possible, identifying the causes for the ex post facto case, and proposing how to address the cause in order to avoid its recurrence.

- (a) The ex post facto cases related to the two procurement actions for camp construction work in Douentza and Gossi were unjustified

15. MINUSMA commenced operations on 1 July 2013; however, it was not until December 2014 that the Mission completed its concept of operations and deployment plans, conducted the necessary feasibility studies and identified suitable land for construction projects to enable a complete set of technical documents, including cost estimates, for the camps in Douentza and Gossi. These technical documents included: scope of works, bills of quantities, drawings and specifications.

16. On 31 December 2014, MINUSMA issued requests for proposals (RFPs) for horizontal construction works in Douentza and Gossi for the deployment of troops. The RFPs were issued prior to obtaining the required technical clearance from UNGSC and LPAs from the Procurement Division. Subsequently, MINUSMA requested technical clearance from UNGSC on 6 January 2015 and received clearance on 30 January 2015, and requested LPAs from the Procurement Division on 4 February 2015 and received the approval on 13 February 2015.

17. MINUSMA took the decision to issue the RFPs without the necessary clearance and approvals as they considered the camp construction work in Douentza and Gossi as falling under an exigency because the Mission assessed the need to urgently: establish camps to respond to Security Council resolution 2164 dated 25 June 2014 which required the Secretary-General to take the necessary steps to enable MINUSMA to reach its full operational capacity as soon as possible; and provide accommodation to contingents living in harsh and substandard accommodations. MINUSMA was also of the view that the process for technical clearance did not apply to these cases because there was a compelling need for camps and the Mission had experienced engineers. Additionally, MINUSMA was of the view that technical clearance and approval of LPA would delay the initiation of the procurement action and that the procurement process would be cancelled if the technical clearances and LPAs were not granted. In a note to file dated 29 December 2014 that was approved by the Director of Mission Support the Mission stated that the requirement for technical clearance did not apply to these cases because there was a compelling need for camps and the Mission had experienced engineers.

18. MINUSMA awarded the two contracts to the same vendor on 18 March 2015 for the NTE amount of \$7.1 million for the camp on Douentza and \$2.3 million for the camp in Gossi. The award of the contracts was completed prior to review of the L/HCC and approval of ASG/OCSS, also citing exigency of service. The procurement cases were subsequently submitted to the LCC on 7 April 2015 and HCC on 19 May 2016 as an ex post facto case.

19. Therefore, based on the evidence available, OIOS concluded that considering the timelines from the establishment of the Mission in July 2013 to the initiation of the RFP in December 2014 and award of contract in March 2015, these two ex post facto cases could have been avoided and could not be justified as an exigency, considering that the RFP was initiated almost 18 months after the establishment of the Mission. Also, the cited concerns regarding possible delays in the required clearance and approval procedures were unfounded, as technical clearance from UNGSC was provided within 24 calendar days, and the LPA from the Procurement Division only took 9 days. These approvals could have been sought in December 2014 when the RFP was being developed, or the RFP could have been issued a few weeks later in January 2015 after the requisite approvals had been granted. Moreover, the HCC returned its decision on the ex post facto cases within 19 days of receiving the cases. Therefore, it is unlikely that the HCC process would have significantly impacted on the timeliness of the procurement process.

20. Additionally, the procurement process implemented by MINUSMA was not done in a timely manner, as it took the Mission 77 calendar days from the date it issued the RFP to the date the contract was awarded, and a further 96 calendar days to the date when the projects started. The camp construction works started on 22 June 2015, almost two years after the establishment of the Mission and one year after Security Council resolution 2164 was issued on 25 June 2014 that required the Mission to reach its full operational capacity as soon as possible. The works were completed on 10 March 2016.

(b) A number of other ex post facto cases were unjustified

21. A review of a sample of 29 ex post facto cases, minutes of meetings of the L/HCC, and record of justifications provided for ex post approvals of procurement cases indicated that the Mission had submitted to the HCC for advice and approval by the ASG/OCSS all 8 cases where the individual monetary value of the procurement exceeded the threshold of the Mission's delegation of authority. However, many of these ex post facto cases were not adequately justified and could have been avoided. For instance, MINUSMA:

- Unduly delayed renewing the contract for the rental of trucks resulting in the LCC reviewing the contract renewal after the contract had expired. The Procurement Section advised that the contract was expected to end when the Mission received its new trucks; however, the receipt and inspection of the new trucks took longer than anticipated. OIOS was of the view that the Mission could have initiated renewal of the rental contract taking into consideration its average procurement lead time;
- Did not timely amend the contract for waste water collection and treatment valued at \$1.5 million before it expired on 30 June 2015. The LCC reviewed the contract amendment on 14 July 2015 on an ex post facto basis;
- Processed one ex post facto case for the provision of sea freight and delivery of prefabricated accommodations valued at \$1.4 million as a result of poor planning; and
- Submitted to the LCC two other ex post facto cases for engineering works valued at \$900,000 as a result of the Mission's inadequate monitoring of contract implementation. Following an informal request of the Chief Engineer and without approval of the Director of Mission Support, the contractor performed additional work. The Chief Engineer advised that these works were needed to enhance the security and the helipad infrastructure of the camps. MINUSMA amended the contracts to increase their NTE amounts.

22. The above occurred mainly due to poor planning and a lack of capacity in self-accounting units to monitor their contracts. To address the weaknesses identified, the Mission established a Contract Management Unit in April 2015, but only promulgated standard operating procedures for the Unit in January 2017 to perform: ongoing monitoring and management of the vendors' obligations, services or works including quality, timelines, prices, payment and discounts; and the administrative aspects of the contracts such as contract amendment or extension. In February 2017, the Unit initiated a training programme to improve the capacity of self-accounting units in monitoring the implementation of their respective contracts. The Director of Mission Support also issued an interoffice memorandum reminding self-accounting units about the Procurement Manual requirements and United Nations financial rule 101.2 against the excessive use of ex post facto cases. Based on the actions taken, OIOS did not make a recommendation related to the need for measures to minimize the number of ex post facto cases. The record of MINUSMA ex post facto procurement cases also indicated that, for fiscal year 2016/17, the Mission had not processed any ex post facto procurement case as of 30 April 2017.

(1) MINUSMA should establish and implement procedures to assess and establish the eligibility of procurement actions for exigency and establish responsibility and accountability for non-compliance.

MINUSMA accepted recommendation 1 and stated that it would prepare a matrix for determining whether a procurement case falls within the definition of exigency set out in the Procurement Manual. Recommendation 1 remains open pending receipt of evidence that the Mission has implemented a matrix for assessing and establishing the eligibility of procurement cases for exigency.

C. Other matters related to camp construction work at Douentza and Gossi

Solicitation requirements were complied with but cost estimates were unreasonable and deviation from established criteria needed to be justified, documented and communicated to potential vendors

23. The Procurement Manual states that ex post facto procurement cases may be accepted under exceptional circumstances, provided that all other United Nations procurement practices and procedures have been followed. The HCC on 19 May 2016 raised questions about the solicitation processes and cost estimates used for the two procurement actions for camp construction work at Douentza and Gossi. The HCC also questioned the ability of the contractor to perform its obligations on the contracts and requested MINUSMA to confirm the completion of tasks assigned to the contractor. To address these requirements, OIOS reviewed the solicitation process, source selection planning, evaluation of bids and evaluation of the contractor's performance.

(a) The Mission complied with United Nations solicitations requirements

24. The Procurement Manual requires the Mission to: invite a minimum of 20 vendors for goods or services estimated between \$1 and \$5 million and 25 vendors for goods or services above \$5 million; allow prospective vendors 30 to 90 days to prepare and respond to formal solicitations including requests for proposal; and post a request for expression of interest through the United Nations Global Market for a period ranging from two to four weeks, depending on the circumstances of the case.

25. A review of procurement files indicated that the Mission had complied with United Nations solicitation requirements by publishing its request for expression of interest for 14 days (5 to 19 November 2014) through the United Nations Global Market, inviting 54 vendors from 14 countries to

submit their proposals, and allowing vendors 35 days (31 December 2014 to 4 February 2015) to submit their proposals.

(b) Cost estimates in source selection plans and request for technical clearance were unreasonable

26. The Mission complied with the requirement for source selection planning; however, the cost estimates for bills of quantities in source selection plans and request for technical clearance from UNGSC were significantly higher than the NTE amounts of the contracts as the Mission estimated: (a) \$8.3 million for the camp at Douentza but the contract was awarded for \$7.1 million; and (b) \$4.8 million for bills of quantities for the camp at Gossi but the contract was award for \$2.3 million. These differences related to inaccurate quantities for some materials and inaccurate unit prices of other materials. This occurred mainly because the Mission did not implement an effective process for estimating project requirements.

(c) Justification of deviation from the evaluation criteria set out in the source selection plan was not documented

27. A review of the technical evaluation process for the two contracts indicated that the Mission had constituted technical evaluation teams for the procurement actions and established appropriate evaluation criteria and methodology. The technical criteria included the ability of the contractor to execute the construction projects within the required timeframe and the camps quality requirements. The evaluation team assessed that three of seven vendors passed the technical criteria. The Mission also constituted a commercial evaluation team comprising two procurement officers who recommended the award of the contract to the qualified bidder with the best value for money proposal. The Mission sent a notification letter to the winning contractor on 3 April 2015 for the construction of the camps in Douentza and Gossi.

28. OIOS noted that while the source selection plans included nine mandatory technical criteria, the technical evaluation team evaluated all bids against eight criteria. The Mission advised that it changed the technical criteria during the solicitation process to increase the number of vendors to participate in the bidding process. However, the justification for the change was not documented and there was no evidence that: (a) potential vendors were notified of the change; and (b) the change impacted on the number of bids received. As a result there was a risk that this change unfairly benefited certain bidders since the evaluation team did not evaluate the bids against the excluded criterion. The failure of MINUSMA to control deviations from technical criteria reduced transparency and fairness in the procurement process, which may reduce the ability of the Organization to achieve best value for money.

(2) MINUSMA should implement a mechanism for the estimation of the costs of projects as part of the source selection planning process and the preparation of request for technical clearance.

MINUSMA accepted recommendation 2 and stated that it would ensure that all designs are backed up with bills of quantity with cost estimates for every project. Recommendation 2 remains open pending receipt of evidence that MINUSMA has implemented effective procedures for the estimation of project costs.

(3) MINUSMA should establish and implement procedures for the documentation of justification for deviation from the evaluation criteria set out in the source selection plan.

MINUSMA accepted recommendation 3 and stated that it would implement procedures for the documentation of justification for deviation from evaluation criteria set out in source selection plans. Recommendation 3 remains open pending receipt of evidence that the Mission has

implemented effective procedures for the documentation of justification for deviation from evaluation criteria set out in source selection plans.

The contractor for camp construction work at Douentza and Gossi had satisfactorily completed the works but the camps were not ready for use due to the fault of the Mission

29. The Procurement Manual requires the Mission to adequately evaluate vendors' performance.

30. MINUSMA evaluated the performance of the contractor for camp construction works at Gossi and Douentza and issued certificates of final completion dated 21 April 2016. The certificates stated that the horizontal and transition works assigned to the contractor were satisfactorily completed and all defects identified during the final inspection conducted on 16 April 2016 for the camp of Douentza and 21 April 2016 for the camp of Gossi had been rectified and certified as completed. However, at the time of the audit in January 2017, the two camps were not yet ready to accommodate troops. This was because the Engineering Section had not completed the remaining vertical works at Douentza due to delays in the delivery of prefabricated accommodations resulting from constraints related to the movement of goods. Moreover, the Mission abandoned construction work on the prefabricated camps at Gossi in December 2016 after spending \$2.6 million due to changes in the risk profile in the area of operations, indicating that the camp was no longer necessary, and hence the need to refocus its efforts and resources to higher risk areas. Consideration may be given to handing over the camp to the government. In the meantime, according to the Mission's 2016 concept of operations, two other camps valued at \$11.1 million are expected to be handed over to the government including Lere valued at \$6.9 million and Ber valued at \$4.2 million.

(4) MINUSMA should take appropriate actions regarding the abandoned construction work at Gossi to avoid further financial losses.

MINUSMA accepted recommendation 4 and stated that it was awaiting decision to finalize the hand-over of the camps that were no longer in use or would not be used by MINUSMA. Recommendation 4 remains open pending hand-over of the camp of Gossi to the host government.

V. ACKNOWLEDGEMENT

11. OIOS wishes to express its appreciation to the management and staff of MINUSMA for the assistance and cooperation extended to the auditors during this assignment.

(Signed) Eleanor T. Burns
Director, Internal Audit Division
Office of Internal Oversight Services

STATUS OF AUDIT RECOMMENDATIONS

Audit of ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali

Rec. no.	Recommendation	Critical ¹ / Important ²	C/ O ³	Actions needed to close recommendation	Implementation date ⁴
1	MINUSMA should establish and implement procedures to assess and establish the eligibility of procurement actions for exigency and establish responsibility and accountability for non-compliance.	Important	O	Receipt of evidence of establishment and implementation of matrix to assess the eligibility of procurement cases for exigency	31 July 2017
2	MINUSMA should implement a mechanism for the estimation of the costs of projects as part of the source selection planning process and the preparation of request for technical clearance.	Important	O	Receipt of evidence that the Mission has established procedure for the estimation of the costs of the projects.	31 July 2017
3	MINUSMA should establish and implement procedures for the documentation of justification for deviation from the evaluation criteria set out in the source selection plan.	Important	O	Receipt of evidence that the Mission has established procedure to document any deviation from the evaluation criteria.	31 July 2017
4	MINUSMA should take appropriate actions regarding the abandoned construction work at Gossi to avoid further financial losses.	Important	O	Receipt of evidence that the Gossi camp has been handed over to the host country.	30 June 2017

¹ Critical recommendations address critical and/or pervasive deficiencies in governance, risk management or control processes, such that reasonable assurance cannot be provided with regard to the achievement of control and/or business objectives under review.

² Important recommendations address important (but not critical or pervasive) deficiencies in governance, risk management or control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

³ C = closed, O = open

⁴ Date provided by MINUSMA in response to recommendations.

APPENDIX I

Management Response

Management Response

Audit of ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali

Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
1	MINUSMA should establish and implement procedures to assess and establish the eligibility of procurement actions for exigency and establish responsibility and accountability for non-compliance.	Important	Yes	CPO	31 July 2017	MINUSMA will establish a matrix and shared with all Cost Centers, for determining whether a situation or need falls within the definition of exigency set out in the Procurement Manual
2	MINUSMA should implement a mechanism for the estimation of the costs of projects as part of the source selection planning process and the preparation of request for technical clearance.	Important	Yes	Chief, Engineer	31 July 2017	All designs in MINUSMA are backed up with Bills of Quantity with cost estimations for every project. Scope of works are developed for bidding purposes and are evaluated based on cost estimates.
3	MINUSMA should establish and implement procedures for the documentation of justification for deviation from the evaluation criteria set out in the source selection plan.	Important	Yes		31 July 2017	MINUSMA accepts the recommendation and will establish appropriate procedure to document justifications for any deviation from the evaluation criteria.
4	MINUSMA should take appropriate actions regarding the abandoned construction work at Gossi to avoid further financial losses.	Important	Yes	Chief PS	Fully implemented	MINUSMA has taken practical steps to handover the camps that are no longer in use or will not be used by MINUSMA to the Government of Mali. (Attached are: note to the SRSG and list of equipment and infrastructure that could be part of the handover). Once the political decision is made

¹ Critical recommendations address critical and/or pervasive deficiencies in governance, risk management or control processes, such that reasonable assurance cannot be provided with regard to the achievement of control and/or business objectives under review.

² Important recommendations address important (but not critical or pervasive) deficiencies in governance, risk management or control processes, such that reasonable assurance may be at risk regarding the achievement of control and/or business objectives under review.

Management Response

Audit of ex post facto procurement cases in the United Nations Multidimensional Integrated Stabilization Mission in Mali

Rec. no.	Recommendation	Critical ¹ / Important ²	Accepted? (Yes/No)	Title of responsible individual	Implementation date	Client comments
						the attached documents would be submitted to the Claims and Property Survey Unit for review by the LPSB and further forwarding to ASG OCSS for final approval of the gift/donation to the Government of Mali.