

Fraud in the Procurement of the Compliance Platform
(Fraud and Corruption in UNDP Somalia Remittance Programme - Section 16)

1. Attempted fraud after my termination

- 1.1. In March 2007 PayQuik, a U.S.-based IT firm, was selected through a competitive bidding process to supply, install and maintain a common money transfer platform for SOMTA members. The aim of the platform is to strengthen the capacity of the Somali remittance companies to comply with anti-money laundering and countering terrorist financing regulations by screening clients against 28 global sanction lists and creating permanent and secure audit trails of all transaction details.
- 1.2. UNDP issued a purchase order for \$637,500 and a schedule of payments to PayQuik in May 2007 (see Annex 83). This was followed by a formal ownership transfer of the platform to SOMTA by UNDP on 20 June 2007 (see Annex 84). As a condition of the transfer agreement, SOMTA was required to enter a contract with PayQuik and to take full responsibility for the implementation of the platform. Although the ownership of the platform was transferred to SOMTA, the platform funds were still kept by UNDP and the agreement was to release agreed instalments to PayQuik once milestones approved by SOMTA Council are achieved.
- 1.3. Providing guidance and technical support necessary for the implementation of the platform was one of my main responsibilities until November 2007, when my contract was unexpectedly terminated for my whistleblowing. This was a critical time in the procurement of the platform as SOMTA was engaged in negotiations with PayQuik on a complex contract process involving software license agreement, sub-licenses agreement for individual companies and SOMTA and a long-term maintenance and technical support agreement. Until Senior Management decided to end my contract, the plan was that I would continue supporting SOMTA until the full implementation of the platform was independently certified and all payments made to the vendor. It was envisaged that once the contracting was finalised, the actual delivery and implementation of the platform would take between six and nine months.
- 1.4. According to the purchase order, the release of the first payment to PayQuik was subject to a number of conditions including the signing of a contract, bank guarantee provided by PayQuik and procurement of servers and Oracle licenses by PayQuik.
- 1.5. Although PayQuik formally agreed to the schedule of payments and signed the purchase order in May 2007, they started informal negotiations in June 2007 with UNDP management on how they could get 100% of the payments in advance even before a contract was signed. In an email dated 4 June, Joseph Perpiglia of PayQuik requested a phone call to management “*with regard to drawing 100% of the funding for this project*” (see Annex 78). Although I was responsible for the project and was the key technical person for both UNDP and SOMTA, I was not copied on this email. However, I established from colleagues in UNDP that there had been discussions on advance payment, in breach of the Purchase Order conditions and UNDP procurement rules. As a result, both the SOMTA chairman and I sent protest emails to KNS and Eric (see Annex 78) who in response to our complaints shared the correspondence between management and PayQuik with the SOMTA chairman.
- 1.6. UNDP rules on advance payments are very clear. According to the rules, “*no contract or purchase order shall be made on behalf of UNDP requiring an advance payment(s) for goods or the performance of contractual services*” except in exceptional circumstances where normal

commercial practice or the interests of UNDP so require. If the contract calls for an advance exceeding \$30,000, the supplier is required to provide a bank guarantee and *“The advance payment, in all cases, should not exceed 20 percent of the total contract amount ... Any interest earned by a payee on an advance payment by UNDP shall be recoverable and, when paid to UNDP, credited to miscellaneous income in the UNDP accounts”*.

- 1.7. When my intervention led to the failure of the advance payment negotiations with management, PayQuik started to raise the issue of some upfront payments at the signing of the contract with the chairman and myself in July 2007. At the time both the chairman and I made it very clear to PayQuik that no payment could be made until: (i) SOMTA and PayQuik exchanged a contract, (ii) PayQuik purchased servers, Oracle licenses and other operating systems with an estimated value of \$95,000 for SOMTA as per agreement; and (iii) PayQuik provided SOMTA a standard bank guarantee for \$63,750 (i.e. 10% of the contract amount) using the Performance Security Form in the RFP.
- 1.8. On 28 June 2007 the chairman requested that PayQuik submit a bank guarantee immediately. Our understanding at the time was that as per the RFP, PayQuik should have issued the bank guarantee within 30 days of the Purchase Order. However, PayQuik has successfully argued that in the absence of a contract either with UNDP or SOMTA, their bank would not be in position to issue a guarantee. They suggested that this should wait for the signing of the contract. SOMTA accepted this and requested that PayQuik provide the guarantee as soon as the contract was signed. The PayQuik agreement to provide the bank guarantee was crucial because this requirement had been “forgotten” by UNDP management when they issued the purchase order and so PayQuik assumed that this was no longer a requirement, despite the fact this was a condition in the RFP as required by UNDP procurement rules for all contracts worth more than \$500,000. On 7 July 2007 the chairman notified Eric that PayQuik had agreed to fulfil the bank guarantee condition (see Annex 78).
- 1.9. In August 2007 I sent a draft contract prepared by a SOMTA lawyer to PayQuik. In early October PayQuik came back to me with a completely new one-sided contract containing many clauses that contravened RFP requirements. I advised the chairman and SOMTA Council to reject it and asked PayQuik to use the earlier draft prepared by the SOMTA lawyer as a basis for negotiations. On 4 November 2007 PayQuik resubmitted the same version of their draft contract with minor amendments.
- 1.10. I raised contracting problems and the delays this was creating with Eric at the end of October when I was in Nairobi but he said that since my contract was ending I should leave this to the SOMTA chairman, although he knew that SOMTA was not in a position to effectively negotiate with PayQuik or manage technical issues involved. The reason why I was attached to SOMTA in the first place was because the organisation had no technical or professional staff. More importantly, the RFP was issued by UNDP and this was a UNDP procurement process.
- 1.11. As soon as my contract ended, Eric started new negotiations with PayQuik and decided to conclude an agreement without the approval of SOMTA Council. Through a series of intensive discussions an agreement was reached to release an advance payment of \$477,041 (about 75% of the license fee) to PayQuik before it fulfilled any of the conditions such as a contract, bank guarantee or purchase of servers and software. It was clear to Eric that the Council would not approve paying PayQuik such a large advance in the absence of a contract, so the decision was made to keep them in the dark. The regular SOMTA Council meetings were first suspended while PayQuik negotiations were going on. For about eight weeks after the termination of my contract in November the only meeting that took place was on 5 December, which I had with the

Council. In this meeting the chairman did not turn up, presumably to avoid questions about the platform and the draft contract.

- 1.12. By mid January 2008 I learned from UNDP sources that Eric was planning to release the advance payment to PayQuik without the approval of the Council. So I alerted the Council members, who were already suspicious of the total lack of information about the project activities.
- 1.13. The outcome of the secret negotiations was an advance payment of \$477,041 to PayQuik. Eric needed some sort of documentation to help justify this unusual payment. So the help of SOMTA chairman he secretly commissioned FMK Solutions, an IT consultancy firm based in London, to do a “*user-acceptance*” test. In the platform implementation plan, it was the responsibility of the remittance companies’ IT engineers (i.e. SOMTA IT team) and the actual users of the system to carry out the user-acceptance test once the solution was installed at the SOMTA hosting site. The “*user-acceptance*” test commissioned was carried out without the knowledge of the Council and the ultimate users and it was conducted at a PayQuik hosting site. In the rush to release the payments before anyone else knew it, Eric and the chairman hired the IT consultancy firm without going through the normal procurement procedure in violation of UNDP procurement rules. In the meantime, the SOMTA lawyer, who advised against making any payment without an enforceable contract to PayQuik, was asked to prepare “heads of terms” in the absence of a proper contract. The “heads of terms” proposed an interim payment of \$477,041 to PayQuik as a payment on trust prior to the completion of the contract (see Annex 79 for an early draft of the “heads of terms” before PayQuik lawyers made amendments).
- 1.14. The SOMTA lawyer and the IT consultants were pressured and told by Eric and the chairman that the industry was going to lose the platform money unless this payment was released urgently to PayQuik. Apparently PayQuik also decided not to continue negotiations on the contract since they were going to get this large sum of money in advance without a contract. Eric and the chairman received the consultants’ report on 20 January 2008 and shared it with PayQuik. However, the IT consultancy report was not what Eric was expecting as it concluded that the system was still in the very early stages of development and that, in its present stage, it does not even meet the minimum requirements in the RFP. Most importantly, it did not justify any advance payment. Nevertheless, Eric went ahead with his decision to release the payment to PayQuik.
- 1.15. The plan was to exchange the “heads of terms” on 25 January 2008 and to release the payment on the same day. However, there was a last minute hitch. For anti-money laundering purpose, the SOMTA lawyer, who is based in London, said he needed to identify the SOMTA company directors before the transaction could take place. Apparently he established from the register of UK companies that the SOMTA chairman was not one of the company officials. So he requested that the chairman provide him the details of the two SOMTA company directors based in London and ask them to provide the lawyer their IDs and copies of utility bills. The chairman and Eric, who were desperately trying to conduct this transaction secretly, were told that this is mandatory in the UK and there is no way this can be avoided. To complicate matters, one of the two directors, Mahamud Haji Abdalle, is the UK representative of one of two Council members who called the vote of no confidence for the chairman. On the same day he lost the vote of no confidence from his company, Amal Express, the chairman sent an email to Mahamud Haji Abdalle and the other director and asked them to identify themselves and contact the lawyer. He followed the email with urgent phone calls warning the two directors that unless they did this immediately, SOMTA was going to lose the money. Since SOMTA Council based in Dubai is responsible for day-to-day activities of the organisation, the two directors in London were not

aware of the meeting that took place in Dubai on the same issues and concerns raised by the Council.

- 1.16. Mahamud Haji Abdalle thought this very unusual and he told the chairman that he would consult me about this issue. Mahamud was not aware of my formal complaint about the Programme, but the chairman briefed him about it and advised him not to share this information about the platform with me. Like the rest of SOMTA, I had a very good professional relationship with Mahamud and this conversation only made him more determined to seek my advice even before he spoke to his CEO in Dubai. Before he phoned me he received a call from the SOMTA lawyer who also had discussions with Mahamud and told him to provide his ID. The lawyer told him if it was not possible for him to meet him on Friday 25 January, he would be prepared to meet him on Sunday afternoon in order to save this money for the industry. The lawyer was genuine and he believed what Eric and the chairman told him. Mahamud tentatively agreed to meet the lawyer at 3:00pm on Sunday at the lawyer's office at Fleet Street (City of London) – something that Mahamud thought was extremely unusual.
- 1.17. Mahamud phoned me on 25 January and told me about his discussions with the chairman and lawyer and asked for my advice. I told him what was going on and advised him to contact SOMTA Council members urgently to get their instructions. Mahamud immediately spoke to the Council members and found out this was an attempted fraud. On the same day he sent a letter to the lawyer (see Annexes 80) and notified him that neither the two directors in London nor the Council was aware of what was going on and therefore, as an official of the company, he formally requested that the lawyer stop the transaction.
- 1.18. The chairman and Eric were still determined to go ahead with their decision to release the payment so they asked the lawyer to issue the “heads of terms” under a different Dubai-based entity (Somta free zone company). Somta free zone company (FZC) is a service firm established to provide limited services for the industry. The SOMTA chairman is one of two partners of this company. The Somta FZC license was going to expire in the second week of February and the Council decided that they no longer needed the services of this company and were not going to renew its license. At this stage the lawyer got suspicious and he wrote to the chairman asking him to identify himself and the new company that he wants to use by midday Monday 28 January; if he failed to, the lawyer said that he would cease to act on the matter (see Annex 81).
- 1.19. Having found out this attempted fraud, the Council members wrote to Eric and demanded that no payments should be made to PayQuik without written approval from the Council. They notified him that they were kept in the dark for nearly two months. Sh Esse, the vice-chairman, also phoned Eric and asked him to explain the proposed release of payment to PayQuik. Eric explained his actions by saying that this was the only way he could secure the funds. Sh Esse asked him to formally write to the Council for his reasons.
- 1.20. On 26 January 2008 Eric wrote to all SOMTA members threatening them that unless they agreed to the release of advance payment to PayQuik, they would lose the funds for the platform. In the email he said that “*I would like to confirm that UNDP will be in no position to guarantee any availability of funds to finance the electronic platform purchased from Pay Quik, beyond 31 January 2008*” (see Annex 82). He deliberately misrepresented the findings of the IT consultants and claimed that “*An independent IT assessment of the progress of implementation of the platform estimated the delivery rate of implementation at around 65%*”. On the basis of this he suggested payment of 65% (which he said should replace the figure in the “heads of terms”) of the fees agreed with PayQuik immediately. He tried to justify all this by saying that the UNDP “*financial system automatically cancels all unliquidated obligations in*

our system by 31 January 2008". There is no basis to this claim. FSDP had up to 30 September 2008 to fully utilise all commitments in the system and even this could have been extended as EC, which funds the project, had agreed to extend the deadline if the work cannot be completed on time.

- 1.21. Eric followed up this email with frantic phone calls on Saturday and Sunday (26-27 January) to some of the Council members to try to convince them to authorise the release of payment without a contract. He also asked Abdullahi Sh Ali (who since November has been working closely with Eric on this project) to join him and warn SOMTA of the likely consequence of the Council's reluctance to approve the payment.
- 1.22. On 26 January 2008 I managed to get copies of the IT consultancy report, Eric's email and some correspondence from the SOMTA lawyer. It became clear that this was fraud. So I drafted a note for the Council members and gave them evidence showing that this was in clear breach of UNDP rules and regulations. I also confirmed to them that EC will not agree for the funds to be spent on any other activity and that as KNS and I told them many times, they have up to 30 September 2008 to fully utilise the funds committed in the system.
- 1.23. At a crisis meeting on 28 January 2008, the Council accepted my advice and resisted Eric's appeal on behalf of PayQuik. They adopted my note as Minutes of the Meeting and sent it to Eric and copied to Bruno (see Annex 82). They explained that because of the absence of a contract, the failure of the system to meet minimum RFP requirements, absence of the agreed bank guarantee and servers and operating system, they could not agree to his proposal for advance payment.
- 1.24. When the Council email exposed the fallacy of his argument, the deception and secret deals, Eric simply changed tact and praised the decision of the Council. In his email on 28 January 2008, he agreed that he would keep the funds provided that they release the first payment by 31 March 2008. However, he still argued that the first two payments of 20% and 30% in the Purchase Order payment schedule should be made as soon as possible "*as Payquik has already worked a lot on the platform*" (see Annex 82). But how can he make the claim that "*PayQuik has already worked a lot on the platform*" when FMK Solutions, the independent consultants, said that the platform does not even meet the qualifying requirements in the bidding documents?
- 1.25. Eric and the chairman knew only too well the many reasons why an advance payment should not be made to PayQuik. First, the report they secretly commissioned showed that the system does not even meet the minimum qualifying conditions required by the RFP. A key condition in the RFP that I was involved in its drafting with a UNDP IT consultant in 2006 was that "**the product offered should have been completely developed, tested and ready for immediate implementation. SMTs [Somali money transmitters] will not be subjected to Unit Testing, Alpha testing or Beta testing. The product offered should be the general version of release by the vendor as of 31 October 2006 and all the mandatory specifications mentioned in this RFP should be available in the product version as of 31 October 2006.**" (<http://www.iapso.org/supplying/procurement-notice-view.asp?id=2701>).
- 1.26. The independent consultants found that "**Much of the functionality appears to be still being developed and requires more development time. In our assessment the system looks to be in a late alpha stage of development and requires further work to reach beta level**" (see Attachment E). This effectively means that the system should be rejected because the PayQuik response to the RFP said that the system was in general release and all that it needed was some limited customisation rather than full scale development. This raises a question about why Eric,

who was involved in the selection process and knew very well of the RFP requirements, would read this report and use it to argue for the advance payment of 65% of the license fee to the vendor.

- 1.27. Second, the advance payment was in breach of the purchase order schedule of payments. According to the purchase order accepted by PayQuik, the first payment of 20% can be made only after PayQuik supplies servers and operating systems, including Oracle, and adequately tests at a hosting site selected by SOMTA. The second payment of 30% is also subject to the successful installation, customization of the platform at SOMTA site and training of company IT engineers.
- 1.28. Third, as a condition of the RFP, PayQuik was required to provide a performance guarantee within 30 days of the signing of the contract and before they commence the implementation of the platform. This was also a condition before any payment was released. PayQuik agreed in July 2007 that they would provide SOMTA a standard bank guarantee for \$63,750 (i.e. 10% of the contract amount) using the Performance Security Form in the UNDP/SOMTA RFP. The bank guarantee is particularly important because PayQuik is a relatively small IT company which scored low in the vendor viability assessment. It is also important to note that in 2006 PayQuik had a County Court Judgement for unsettled bill of \$23,888.17. It is particularly troubling that Eric was prepared to pay such a large sum of money in advance to such a company.
- 1.29. Fourth, the contract negotiations between SOMTA and PayQuik were at a critical stage as PayQuik proposed unacceptable clauses that contravene some of the key requirements in the RFP. Paying \$414,050 (65% of the fee) to PayQuik in the middle of the negotiations would have denied SOMTA of their key bargaining chips, especially when PayQuik was responsible for the delay in concluding the contract.
- 1.30. While the Council and I have succeeded to foil this attempted fraud, about \$45,000 of the project's funds were wasted in legal fees and the IT consultants in this process. With the instruction of Eric, the chairman has used funds provided by UNDP through a micro-capital grant without the knowledge or approval of the Council. Also, as I learned from the Council, without the approval of the Council and in breach of the terms of the Micro-capital Grant Agreement between SOMTA and UNDP, Eric released \$102,000 (two instalments of \$51,000 each) and paid it into the Somta FZC account on 28 January 2008.

2. Fraudulent Payment in April 2008

- 2.1. When Eric's various strategies for finding a way of releasing advance payment to PayQuik failed to work, he just simply decided to release the payment. In a blatant violation of UNDP procurement rules and regulations, a fraudulent payment of \$382,200 (i.e. about 60% of the license) was made to PayQuik before it fulfilled any of the conditions such as a contract, bank guarantee or purchase of servers and software. Eric released this payment with full knowledge that the system does not even meet the minimum qualifying conditions required by the RFP and therefore should have been rejected. The transaction details are as follows:

Amount: \$382,200

Vendor: Payquik.com, Inc., 150 Monument Road , Bala Cynwyd , Pa 19004

Date of Payment: 3 April 2008

Voucher No: 00022161

Vendor No: 0000001956

Project Code: 00036033

- 2.2. Given the SOMTA Council's refusal to approve the release of any payment to PayQuik, Eric justified this by claiming that he was "reimbursing" the company for the cost it incurred up to the end of March 2008. In his email to SOMTA members on 26 January 2008, he warned them that unless they approved an advance payment of 65%, "*UNDP will cancel the purchase order with Pay Quick and reimburse the company for the investment made until today, i.e. pay 65% of the total amount*". However, when the Council wrote to him on 28 January 2008 they notified him that in addition to the absence of an agreed contract the PayQuik system currently does not even meet the minimum qualifying conditions required by the RFP.
- 2.3. In the long history of fraud and corruption in this programme, this latest one stands out from the earlier ones for several reasons. First, as the ownership of the platform was formally transferred to SOMTA, it was for SOMTA to negotiate a contract and approve any payment to the firm subject to the agreed terms and conditions in the UNDP/SOMTA RFP. The transfer of ownership document signed by SOMTA and Eric on 20 June 2007 says "*The United Nations Development Programme hereby transfers and Somali Money Transmitters Association hereby accepts full title and ownership of the money transfer platform procured from PayQuik*" (see Annex 84). In this fraud, Eric overruled the owners of the platform who clearly said that the system does not meet the RFP conditions.
- 2.4. Second, this fraud was foiled in January when Eric attempted to secretly release an advance payment of up to 75% of the license fee to PayQuik. Project expenditure report in 2008 shows that on 28 January 2008, a payment of \$477,041.25 (i.e. about 75% of the fee) was processed. This was cancelled on the same day when SOMTA Council wrote to Eric and Bruno and formally demanded that no payment should be made to PayQuik. In the email, SOMTA Council provided the reasons why this proposed advance payment was in breach of the UNDP/SOMTA RFP.
- 2.5. Third, in a letter dated 21 March 2008, GAP General Counsel notified the Ethics Adviser this attempted fraud involving the money transfer platform and the new attempts by UNDP to release this payment fraudulently. The letter said "*a staff member who had repeatedly retaliated against Mr. Ahmed (and informed him that his contract would not be renewed), started secret negotiations with PayQuik, the platform vendor, and decided to release \$446,250 in advance payment to the supplier without the knowledge of the SOMTA Council and before SOMTA or UNDP signed a contract or the supplier fulfilled any of the other prerequisite conditions*". I also raised this with the Ethics Adviser who told me on a phone that he flagged this and other on-going violations for an urgent review. Two weeks after this letter warned UNDP of the attempted fraud, this latest fraud was allowed to take place.
- 2.6. Fourth, PayQuik was acquired by Citigroup and that the solution PayQuik was offering to SOMTA was discontinued. In January 2008 when PayQuik was acquired by Citigroup¹, the solution PayQuik originally proposed for SOMTA, QuikAgent, was discontinued. According to the information on Citi's website, the company now offers QuikRemit solution, which had been rejected earlier by SOMTA when PayQuik first proposed it in 2006. Further, according to the Terms and Condition of the UNDP/SOMTA RFP, PayQuik was required to request written consent from SOMTA before it was acquired by Citigroup. The RFP said "*The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of SOMTA*" (<http://www.iapso.org/supplying/procurement-notice->

¹< http://www.citibank.com/transactionservices/home/about_us/press_room/archives/2008/2008_0206.jsp>

[view.asp?id=2701](#)). According to court documents filed at the District Court of Delaware regarding a dispute between Citigroup and PayQuik shareholders, the acquisition agreement was executed on 18 October 2007². PayQuik failed to disclose this crucial information to SOMTA. SOMTA had not received any request for an assignment to a successor, and this breach of the RFP conditions meant the bidding process should have been re-opened and the purchase order to PayQuik cancelled. Following the acquisition of the company by Citigroup, PayQuik no longer existed as a separate legal entity when the payment was made.

2.7. On 9 May 2008 I learned that the payment of \$382,200 was by a dollar cheque and that it was available at the UNDP Finance Office to be collected and cashed at Standard Chartered Bank in Nairobi – the only place in Kenya where such cheques can be cashed. On the same day GAP notified this fraud to OIOS. It is also important to note that issuing a dollar cheque for PayQuik violates country policy. A memo from Sergio Valdini on the issue of dollar cheques says “*due to increasing attempts of fraud in the case of dollar cheque payments, all such payments will be done through Electronic Fund Transfer (EFT) modality ... In exceptional cases (duly authorised by either the RR, CD or a DCD) when a payment has to be made by a dollar cheque, the staff member must sign a declaration letter (attached) that s/he as soon as possible will cash the cheque in Standard Chartered Bank in Nairobi, possibly at the Westland branch (no mail / post of cheques allowed either by pouch or any other mean)*”.

2.8. Closure of the project: A September 2008 letter from the UNDP Ethics Adviser said that OAI found that the Country Office “*received instructions in the spring of 2007 from RBAS [UNDP Regional Bureau for Arab States] to close the project, given the high levels of risk.*” The UNDP intervention in the Somali remittance industry was mandated and supported by the UN Security Council³ and therefore it is not clear why the implementation of a platform aimed to help prevent the abuse of Somali financial services by terrorists would have possibly posed “high levels of risk” to UNDP. It is clearly because of fraud – rather than the purported “risk” – that the platform project was shelved and the vendor was paid USD \$382,200.

² <<http://newsroom.law360.com/articlefiles/122379-fesnakcomp.pdf>>

³ <<http://www.un.org/News/Press/docs/2002/SC7346.doc.htm>>.