



**Independent peer review of the  
Department of Defence - Audit and Fraud  
Control Division's probity review  
concerning the Provision of Air  
Sustainment Services to the Middle East  
Area of Operations (MEAO)**

**8 October 2010**

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## Table of Contents

|          |  |           |
|----------|--|-----------|
| <b>1</b> | <b>Executive Summary</b> .....                       | <b>2</b>  |
| <b>2</b> | <b>Background</b> .....                              | <b>4</b>  |
| <b>3</b> | <b>Approach to the Independent Peer Review</b> ..... | <b>5</b>  |
| <b>4</b> | <b>Observations</b> .....                            | <b>7</b>  |
|          | <b>APPENDIX A</b> .....                              | <b>10</b> |

# 1 Executive Summary

Pursuant to our engagement letter dated 18 August 2010, PricewaterhouseCoopers (PwC) has been engaged to conduct an independent peer review of the probity review process undertaken by the Australian Government Department of Defence's (Defence) Audit and Fraud Control Division (AFCD) with respect to the Provision of Air Sustainment Services to the Middle East Area of Operations (MEAO) during August 2010.

## Background

Allegations from a participant in the re-tender of the MEAO contract raised concerns as to the conduct and access to information of a currently engaged Reservist member in the procurement process. The main allegations centred around: advance notification of the decision to re-tender; the potential for the specifications to disadvantage some of the tenderers; and that there was undue influence in the tender evaluation process that impacted the outcome. As a result of the allegations made, and given the high profile of the sustainment support services provided to the MEAO, the decision was taken by the Secretary of Defence to conduct an internal probity review into the procurement process. The probity review has been undertaken by Defence's Chief Audit Executive and AFCD.

## Objectives of the independent peer review

PwC was contracted to perform an independent peer review which involved providing ongoing feedback and guidance (where necessary), in the event that any general omissions and/or potential issues in the conduct of the probity review were identified. The independent peer review focused on the probity review processes completed by AFCD in August 2010. No re-performance of any of AFCD's procedures has been undertaken by PwC. The PwC review did not repeat the tender evaluation process and does not provide an opinion on the tender evaluation decisions or the ranking of MEAO Air Sustainment Services tenderers.

## Results of the independent peer review

A summary of the observations that were made while conducting the independent peer review are detailed within Section 4 of this report. In accordance with the Terms of Reference at Appendix A, all our observations were discussed and agreed with AFCD staff throughout the review and in our exit meeting. These observations were acted upon prior to finalisation of the AFCD Probity Review Report dated September 2010. A brief summary of the nature of the observations and lessons learnt are noted below:

## AFCD Probity Review Process Observations and Lessons Learnt

1. Normal practice involves the development of an appropriate probity review methodology prior to commencing a probity review; however time constraints prevented a formal plan from being developed prior to commencement of this review. Instead, the probity review methodology was prepared concurrently with the performance of the review. The AFCD review team was able to demonstrate that all the expected processes that would reasonably be included in a probity review were undertaken by the time their report was issued. The AFCD review team were also able to demonstrate that they had followed the principles established in 'Guidance on Ethics and Probity in Government Procurement January 2005 – Financial Management Guidance No.14.
2. A listing of all key stakeholder personnel should be included in the AFCD report detailing who they are and whether they were interviewed or not. Mr Shaun Aisen from Strategic Aviation was not interviewed and a statement addressing his exclusion should be included in the AFCD report.

3. A table of key dates should be included in the AFCD report to assist users with understanding key points in the procurement.
4. Commentary discussing the work undertaken by the Inspector General, Mr Ray Bromwich with respect to investigating Mr David Charlton's handling of procurement documents and/or related information should be included in more detail. Access to procurement documentation was a key allegation and as such demonstrating the activities undertaken to address the allegation should be made.
5. Commentary addressing the unsolicited bid received from Adagold should be included as this bid could be seen as the catalyst for the decision to re-tender the MEAO.
6. The Inspector General, Mr Ray Bromwich commented on the receipt of two unsolicited calls to the Chief Audit Executive, Mr Geoff Brown. Formally recording the source and content of these calls was advised during the independent peer review. AFCD recorded details of the two calls in their working papers, but not the report, as the calls were not considered relevant to that document.

## Conclusion

PwC has conducted an independent peer review of the probity review procedures. Therefore, we have not re-performed any of the probity review processes nor has PwC conducted any investigation into the allegations made that prompted the need for the internal Defence probity review.

Based on the interviews we conducted with key personnel, a review of their working papers and a review of their probity review processes, we are satisfied that the probity review was conducted in a manner that was consistent with the 6 key principles underpinning ethics and probity in procurement as set out in Financial Management Guidance No. 14 and referred to in section 3 of this report.

The peer review provides a reasonable basis for assessing the procedures followed and observations made in the probity review; and whether reasonable grounds upon which to recommend that a more detailed review should be undertaken existed. It is important to note however that reliance has been placed on the representations made by Defence staff during interviews and on the content of working papers (including – reports, emails, records of interviews and review notes) provided in support of the probity review. PwC has not verified any information (whether verbal or in written form) given to us relating to the services.

Though we have noted some observations, our review of the work undertaken by AFCD has not identified any significant issues, unreasonable observations or deficiencies in their probity review process, which would lead us to conclude that the probity review has not been conducted in an impartial manner.

We are satisfied that the probity review was conducted in a manner that was consistent with the 6 principles identified as underpinning ethics and probity in Government procurement. The probity review has essentially followed the 'good procurement process' discussed in Financial Management Guidance No.14.

In performing the services, PwC has not: (i) carried out an audit or other assurance engagement in accordance with applicable professional standards; or (ii) attempted to detect fraud or accept responsibility for detecting fraud.

As this engagement was not an audit, no opinion is provided in relation to the processes undertaken by the Tender Evaluation Board, their assessment or decisions made.

## 2 Background

Air Sustainment Services to the Middle East Area of Operations (MEAO) is a critical logistical contract managed by First Joint Movements Group (1JMOVGP) that provides air lift sustainment and services in support of the MEAO. The current contract, entered into on 24 October 2008 (extended for 12 months) and due to expire on 23 October 2010, has since been re-tendered and a preferred tenderer has been determined. It is considered essential by Defence that a contract with the preferred tenderer is entered into as soon as possible to ensure no disruption to the current MEAO air sustainment support provided.

Recent allegations from a participant in the re-tender of the MEAO contract and media allegations raised concerns as to the conduct of, and access to, tender information by a currently engaged Reservist member (Mr David Charlton) working in the Brisbane Office of the Joint Movement Group, but outside the MEAO operation. The main allegations centred around: advance notification of the decision to re-tender; the potential for the specifications to disadvantage some of the tenderers; and that there was undue influence in the tender evaluation process that impacted the outcome. As a result of the allegations made, and given the high profile of the sustainment support services provided to the MEAO, the decision was taken by the Secretary of Defence to conduct an internal probity review into the procurement process. The probity review has been undertaken by Defence's Chief Audit Executive, supported by investigation staff from the Audit and Fraud Control Division. The AFCD probity review focussed on the assessment of the fairness and compliance of the Request for Tender process and specific allegations surrounding the tender process.

### A Summary of AFCD's Probity Review Approach

Due to time constraints, the internal probity review focussed on the top three ranked tenderers when assessing the tender process. MEAO Air Sustainment Services, Request For Tender (RFT) processes were assessed by AFCD for objectivity and compliance against the policy frameworks of the *Commonwealth Procurement Guidelines (CPGs)*, the *Defence Procurement Policy Manual (DPPM)* and *Financial Management Guidance No. 14 – Guidance on Ethics and Probity in Government Procurement January 2005*. The MEAO RFT processes assessed were:

- procurement planning and industry engagement;
- development of tender documentation and technical specifications;
- procurement risk and probity management;
- tender evaluation and coordination of the Tender Evaluation Working Groups (TEWGs); and
- the value for money decision making process.

In addition, the Probity Review Team reviewed a number of key documents and interviewed key personnel involved in the RFT process (refer to the probity review Final Review Report for further details).

### **3 Approach to the Independent Peer Review**

Our approach to the independent peer review has focused on conducting interviews with key Defence Executive and Probity Review Team members, reviewing relevant source documentation including probity review working papers, and reviewing the process that AFCD followed. A key focus of the AFCD probity review was to assess objectivity and compliance against the following 6 principles referred to in Financial Management Guidance No. 14 that underpin ethics and probity in procurement being:

- fairness and impartiality;
- consistency and transparency of process;
- use of an appropriately competitive process;
- appropriate security and confidentiality arrangements;
- identification and management of actual and potential conflicts of interest; and
- compliance with legislative obligations and Government policies.

AFCD structured their review in a manner that was consistent with the above 6 principles and approached the review, conducted their fieldwork and structured their report and work papers.

#### **Peer Review Overview**

Having gained an understanding of the approach taken by AFCD structuring their review in a manner that was consistent with the 6 principles outlined within FMG No.14, our peer review focused on conducting the following activities:

- Interviews with key personnel.
- Review of probity review work papers.
- Review of probity review processes undertaken.

The Australian Public Service (APS) personnel involved in the probity review that were contacted for interview were:

- Geoff Brown – Chief Audit Executive.
- David Anderson – Assistant Secretary Audit.
- David Brinton – Audit Director Central (Probity Review Team Leader).
- Jacqui Marsden – Audit Manager Central (Probity Review Team).
- Ray Bromwich – Inspector General.
- Jason Woods – Director Investigations and Recovery (assistance to the Probity Review Team).

The interviews were conducted to ascertain:

- the individual's understanding of what led to the probity review and the associated risks to the Commonwealth if the allegations proved to have substance;
- the individual's understanding of the probity review objectives and processes and what their role was;
- the application of FMG 14 probity principles to the conduct of the internal Defence probity review;
- if any inconsistencies existed with respect to the information provided by interviewees;
- whether individuals had any concerns relating to how the probity review progressed; and

- whether individuals were kept informed throughout the probity review regarding the issues/risks detected.

In addition, more detailed discussions and questions were put to the members of the Probity Review Team as they were the key staff undertaking the majority of review field work. Our enquiries focused on specifics of the probity review to assess that:

- all reasonably expected probity review processes had been identified and addressed;
- the appropriate sections involved in the RFT had been identified for interview;
- responses to questions and records of interviews had been retained; and
- sufficient evidence had been maintained to support the statements made in the probity review report.

While some observations/suggested lessons learnt have been made, interviews with Defence personnel did not identify any significant inconsistencies with respect to their understanding of the probity review risks, objectives, processes or the primary issues raised with respect to the MEAO Air Sustainment Services RFT process. All staff commented that they felt appropriately informed throughout the process. In addition, no significant omissions in the probity review process were detected and the statements made in the probity review report were considered to be consistent with, and supported by, the evidence obtained.

## 4 Observations

### AFCD Probity Review Process – Observations and Lessons Learnt

Points for consideration regarding improving/strengthening the AFCD probity review were identified during the course of the independent peer review and were communicated to the Probity Review Team. The Probity Review Team was aware of the observations made and agrees with the comments made.

| Ref | Observation   | AFCD Management Comment   |
|-----|---|---|
| 1   | <p>Due to the time constraints that impacted this probity review, a probity review methodology (including reference to a risk assessment) was not documented in a review plan prior to commencing the probity review.</p> <p>It is noted that the probity review, which was not part of an established review plan, arose from unforeseen external allegations that warranted immediate attention. As such the probity review activities (methodology) were developed concurrently during the fieldwork.</p> <p>The review team was able to demonstrate that all the expected processes that would reasonably be included in a probity review were undertaken by the time their report was issued. The review team followed the principles established in 'Guidance on Ethics and Probity in Government Procurement January 2005 – Financial Management Guidance No.14, and also structured their probity review report in line with the FMG No. 14.</p> <p>Normal practice would be to develop an appropriate review methodology prior to commencing a review. This is especially important for a probity review that must clearly demonstrate the review teams approach to addressing the following principles<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>• fairness and impartiality;</li> <li>• consistency and transparency of process;</li> <li>• use of an appropriately competitive process;</li> <li>• appropriate security and confidentiality arrangements;</li> <li>• identification and management of actual and potential conflicts of interest; and</li> <li>• compliance with legislative obligations and Government policies.</li> </ul> <p>A good process maximises effectiveness by producing quality outcomes against stated objectives.</p> | <p>Agree with observation.</p>  |
| 2   | <p>Include a listing of all personnel identified for interview.</p> <p>Shaun Aisen from Strategic Aviation has not been interviewed.</p> <p>We suggest that it would be useful to understand who the</p>  | <p>Agree with observation.</p> <p>In the lead up to, and during the course of, the AFCD probity review, Mr Aisen sent nine separate</p> |

<sup>1</sup> Guidance on Ethics and Probity in Government Procurement January 2005 – Financial Management Guidance No.14



| Ref | Observation  | AFCD Management Comment  |
|-----|--|--|
|     | <p>stakeholders are and which ones have and have not been interviewed.</p> <p>In the interest of being seen to conduct a fair and transparent process, consideration should be given as to how to address the issue of not having interviewed Shaun Aisen.</p>   | <p>e-mails to Defence in which he clearly set out his concerns. While Mr Aisen's initial e-mail stated that he had "other" concerns to raise and indicated a preparedness "to elaborate on them, should you so wish", his subsequent e-mails detailed his further concerns. At no time did Mr Aisen seek to be interviewed but adopted the course of detailing his concerns in writing through emails. It was apparent from his emails that he had expressed the totality of his concerns, demonstrated by the fact that in later contacts there was repetition of issues. Consequently, the full nature and scope of Mr Aisen's concerns and allegations was self-evident from his various email correspondence. On that basis the view was taken that there was no material benefit in interviewing him, noting the limited time available for the probity review and the scope of matters to be examined.</p> |
| 3   | <p>Time lines of key dates would assist users of the probity review report.</p> <p>We suggest that it would be useful to show the key dates to demonstrate to users what occurred at what point in time, particularly with respect to David Charlton and where and when he was working for Defence.</p>  | <p>Agree with observation. Report now includes a chronology of dates.</p>  |
| 4   | <p>Include commentary detailing the work undertaken by the Inspector General with respect to investigating David Charlton's handling of procurement documents or related information.</p> <p>We suggest it would be beneficial to comment on the H: drive and email searches for relevant documentation either sent or received. Comment on inability to access FIS data in Sydney or procurement data managed on the Defence Records Management System (DRMS) at Head</p> | <p>Agree with observation. Report now includes at section 4.2 a detailed account of the IG's work.</p>   |

| Ref | Observation   | AFCD Management Comment   |
|-----|---|---|
|     | Quarters Joint Operations Command (HQJOC).  |   |
| 5   | <p>Include commentary addressing the unsolicited bid received from Adagold.</p> <p>This bid could be seen as a catalyst for the decision to re-tender the MEAO and it would be useful to demonstrate to the users of the Probity Review Report what work had been undertaken by HQJOC prior to this bid arriving.</p> | <p>Agree with observation.</p> <p>Report now includes commentary on this observation.</p>   |
| 6   | <p>Two unsolicited calls were made to the CAE, Geoff Brown. One from an ex-Strategic Aviation Finance Officer and one from the CEO of another firm tendering.</p> <p>We suggest that it may be beneficial for the Director Investigations and Recovery to obtain statements from these sources on record.</p>         | <p>Agree with observation.</p> <p>Details have been included in work papers but not in the report as they were not considered relevant.</p> |

## **APPENDIX A**

**PwC's Terms of Reference for the independent peer review of the Department of Defence - Audit and Fraud Control Division's probity review concerning the Provision of Air Sustainment Services to the Middle East Area of Operations (MEAO)**

18 August 2010

Mr David Anderson  
Assistant Secretary Audit  
Audit Branch  
Campbell Park Offices  
CP3-2-133  
CANBERRA ACT 2600

Dear Mr Anderson

**Re: Probity Audit – Provision of Air Sustainment Support to the Middle East Area of Operations (MEAO) – independent peer process review**

We refer to the Department of Defence's (Defence) request to conduct an independent peer review of the probity audit process currently being completed by Audit and Fraud Control Division (AFCD) in relation to the provision of Air Sustainment Support to the MEAO tender process following whistleblower allegations.

The following terms of reference document sets out the independent peer review approach and scope to be completed by PricewaterhouseCoopers (PwC), including nominated key personnel and the estimated number of days.

**Overview**

AFCD has been instructed by the Secretary of Defence to conduct a probity audit of the Request for Tender (RFT) relating to the provision of Air Sustainment Support to the MEAO following complaints regarding the tender process.

Conducting a probity audit requires the provision of a high level of transparency and accountability by auditing the procurement processes to verify that they were consistent with government regulations,<sup>1</sup> policy,<sup>2</sup> principles, and best practice guidelines. As such, the independent review will involve assessing the process by which AFCD determined whether complete and confirmed integrity, uprightness and honesty was upheld throughout the tendering and tender evaluation stages.

<sup>1</sup> Including, but not limited to the Australian Government's financial framework (e.g. the *Financial Management and Accountability Regulations 1997* and the *Commonwealth Procurement Guidelines*).

<sup>2</sup> Including the *Defence Procurement Policy Manual (DPPM)* and *Australian Standard for Defence Contracting (ASDEFCON)*.

## Independent review approach

PwC's methodology for the independent review of AFCD's probity audit process will be supported by a detailed test program covering each major phase of the probity audit. In broad terms, our review will involve conducting interviews with probity audit team members, reviewing relevant source documentation, audit workpapers, and assessing the process by which AFCD determined whether the following principles that underpin ethics and probity were upheld throughout the tendering and tender evaluation stages:

- fairness and impartiality;
- consistency and transparency of process;
- use of an appropriately competitive process;
- appropriate security and confidentiality arrangements;
- identification and management of actual and potential conflicts of interest; and
- compliance with legislative obligations and Government policies.

## Scope

The independent peer review will focus on the probity audit process completed by AFCD to assess each of the above mentioned principles that underpin ethics and probity which are explained in Financial Management Guidance 14 *Guidance on Ethics and Probity in Government Procurement* published by the Department of Finance and Deregulation January 2005. This will cover the tendering and tender evaluation stages. PwC will not provide an opinion on the tender evaluation decisions and eventual ranking of the respective MEAO Air Sustainment Support tenderers.

The peer review process will involve delivery of the following:

- Regular ongoing feedback and guidance (where necessary) through a suite of formal meetings to be held on a timely basis as observations and potential issues arise; and
- Formal lessons learned document that identifies key findings and residual matters arising from the independent peer review of the probity audit process.

## Key Persons (Section 4 of the Tasking Statement)

The personnel identified for the performance of the contract is:

| Name                          | Position             | Role   |
|-------------------------------|----------------------|--|
| Hamish Robertson              | Director             | Lead PwC Director responsible for conducting the independent peer review of the probity audit process. |
| Steve Baker and James Barrett | Partner and Director | QA over planning, fieldwork and final deliverables and liaison between PwC and AFCD.                   |

## Quotation (Section 7 of the Tasking Statement)

We confirm that subject to clause 5.1 of the Conditions of the Deed, the contract price shall not exceed \$20,625.00 (i.e. \$18,750.00 excluding GST) payable upon satisfactory

delivery of the independent review report and submission of a correctly rendered invoice. We have assumed a maximum number of days of 11.0 at the following mix.

| Services as per Statement of Requirement            | % Mix of Staff | \$<br>(GST Incl)   |
|---|----------------|--------------------|
| Partner / Director                                  | 100%           | \$1,875.00         |
| Senior Manager                                      | -              | -                  |
| Manager   | -              | -                  |
| Supervisor  | -              | -                  |
| Senior Auditor                                      | -              | -                  |
| Auditor   | -              | -                  |
| <b>Calculated Daily Rate for Independent Review</b> | <b>100%</b>    | <b>\$1,875.00</b>  |
| <b>Contract Price – 11.0 days @ \$1,875.00</b>      |                | <b>\$20,625.00</b> |

## Timing

We anticipate commencing the independent audit review fieldwork during the week ending 20 August 2010 with the objective of completing and submitting our lessons learned document to the Chief Audit Executive before 27 August.

If you have any queries regarding PwC's proposed terms of reference please do not hesitate to contact either James Barrett or myself.

Yours sincerely,

Steve Baker  
Partner

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PricewaterhouseCoopers is committed to providing our clients with the very best service. We would appreciate your feedback or suggestions for improvement. You can provide this feedback by talking to your engagement partner, calling us within Australia on 1300 792 111 or visiting our website <http://www.pwcfeedback.com.au/>

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