

Department of Defence

Examination of the procurement process for Tender RFT AO/014/09-10 September 2010

This report is intended solely for the information and internal use of the Department of Defence ("Defence") and The Commonwealth in accordance with our letter of engagement of 1 September 2010, and is not intended to be and should not be used by any other person or entity. No other person or entity is entitled to rely, in any manner, or for any purpose, on this report. While we understand that Defence may make copies of this report available to other parties, we do not accept or assume responsibility to anyone other than Defence for our work, for this report, or for any reliance which may be placed on this report by any party other than Defence.

Dr Ian Watt
Secretary of Defence
R1-5-B Sec Suite Russell Offices
Canberra ACT 2600

15 September 2010

Dear Dr Watt,

Re: Examination of the procurement process for Tender RFT AO/014/09-10

Please find attached our Report on our recently completed examination of the procurement process for Tender RFT AO/014/09-10.

We wish to place on record our appreciation of the assistance and cooperation received from Mr Geoff Brown, Chief Audit Executive, and his staff during this engagement, in particular their support at making available to us relevant information and Defence personnel. We also wish to acknowledge Mr David Brinton, Group Captain Robert Barnes, Squadron Leader Benjamin Cole and Ms Jacqueline Marsden who spent many hours assisting us with our requests and participating in interviews and meetings.

If you have any questions or wish to discuss anything raised in the Report, please do not hesitate to contact us.

Yours sincerely,



Dennis Krallis
Partner



Peter Bars
Partner

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1 Executive Summary

1. Background

The Department of Defence (Defence) retendered the Middle East Area of Operation Air Sustainment Support Contract through RFT AO/014/09-10, which was issued on 29 March 2010 and closed on 1 June 2010. This tender relates to the transportation of passenger and cargo sustainment services to the Middle East and return to Australia.

Air sustainment charter services in support of the Australian Defence Force in the Middle East Area of Operations (MEAO) have been provided by Strategic Aviation Pty Ltd (Strategic Aviation) under contract since 2005, extended in 2008 and due to expire on 23 October 2010.

Defence evaluated the tender responses and selected a preferred tenderer in July 2010. However, the appointment of the preferred tenderer as the service provider has been delayed due to recent concerns raised by a participant in the tender.

The Chief Audit Executive (CAE) and Inspector General of Defence commenced a probity audit and investigation of these allegations on 14 July 2010.

The Australian Government Solicitor (AGS) commenced a legal and legal process review of the procurement process for Tender AO/014/09-10 on 2 September 2010.

Deloitte has been requested to undertake an independent examination of certain aspects of the process followed in evaluating the tender for RFT AO/014/09-10 and commenced work on 2 September 2010.

2. Purpose and Scope

The scope of our engagement is detailed in Section 2 and has addressed the following aspects:

Tender Process

- The governance process, addressing confidentiality and conflicts of interest in the lead up to the decision to tender and during the tender evaluation process
- The decision to tender and whether it was based on achieving value for money and was not structured to disadvantage any potential tenderers
- The governance of the tender, including the existence of a Tender Evaluation Plan (TEP) and whether the TEP was adhered to.

Information from Tenderers

- The publicly information available on the top two ranked tenderers and their key personnel to identify any reputational concerns (to the extent possible to 8 September 2010)
- The financial and commercial capacity of the top two ranked tenderers based on the information provided in their tender responses
- The capacity of the top ranked tenderer to meet the quality and standard required by Defence based on the information provided in their tender responses.

Other

- Consideration of the recent issues raised in media articles regarding alleged Adagold contracts in South Africa.

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3. Work Performed

At the directive of Defence, the engagement commenced on Thursday 2 September and was completed on Friday 10 September 2010.

In performing the engagement, Deloitte:

- Interviewed certain members of the Tender Evaluation Board and relevant Defence stakeholders in the process
- Read aspects of Defence documents and policies
- Read the Chief Audit Executive's draft report and working papers relevant to the scope
- Read the Inspector General's draft report and working papers relevant to the scope
- Listened to, and read, the transcripts of certain interviews undertaken by others
- Read aspects of the shortlisted tender responses
- Supplemented the financial evaluation for the two top ranked respondents based on the information contained within their responses
- Conducted searches on public records and on-line media for agreed individuals and companies.

In performing the engagement there were a number of limitations including:

- Our work was limited to reading documents, interviews and listening to interviews performed by others
- We relied on the transcripts from interviews undertaken by others
- We did not interview any of the tenderers or Major Charlton (Charlton)
- We did not verify the information obtained through interviews and in the tender responses
- We did not verify the information obtained through on-line media sources
- We did not check the integrity and accuracy of the information contained in the financial viability spreadsheets
- We believe that the statements made in this Report are accurate, but no warranty of completeness, accuracy, or reliability is given in relation to the statements and representations made by, and the information and documents provided by Defence personnel. We have not attempted to independently verify these sources.

Specific details of the people interviewed and documents considered are provided in Appendices A and B and limitations on each area in scope are detailed in Section 4 of the Report.

The scope of this engagement did not include the examination of the 2005 MEAO Air Sustainment Support tender, extension of contract in 2008 and the retendered Air Transport Standing Offer Panel in November 2009.

4. Conclusion

Based on the work performed and the information available, nothing has come to our attention to indicate that Defence should not proceed with awarding the RFT AO/014/09-10 tender to the preferred tenderer.

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2 Scope

The scope of the engagement was to undertake an independent examination of certain aspects of the processes followed in evaluating tender RFT AO/014/09-10. The engagement addressed the following aspects of the 2010 tender process:

Ref	Terms of Reference	Deloitte Scope
4.1	The adequacy of the due diligence process around the choice of potential suppliers from the Standing Offer Panel. More specifically, whether there was existing or any subsequently discovered evidence to warrant non selection of any of the panel members.	Whether documentation exists to demonstrate that the selection of the tenderers from the Standing Offer Panel, was performed in accordance with a stated process, including documented evaluation criteria and methodology, and documentation of why Standing Offer Panel members were included in or excluded from the invitation to tender on RFT AO/014/09-10. This will include whether there is any publically available information that should have been considered to warrant non selection of Adagold
4.2	Whether the preferred respondent decision was influenced by any vested interests or outside influences.	Whether the governance processes addressed confidentiality in the lead up to the decision to tender, and during the tender review, assessment and supplier selection process, and whether, based on the information available, any confidentiality issues were identified.
4.3	Whether the services to be supplied in the contract were determined on the basis of objective and supportable, current and likely future requirements or were structured so as to unfairly advantage a particular respondent.	Whether documentation exists to demonstrate that an objective and supportable process was followed to reach the decision to proceed to tender for RFT AO/014/09-10, that the decision was on a sound value for money basis, considered potential conflicts of interest, and was not structured to disadvantage any potential tenderers.
4.4	The integrity of governance around the development of the Request for Tender and the subsequent evaluation process, and whether the governance arrangements achieved their intended purposes.	Whether documentation exists to demonstrate the existence of a plan covering the governance of the tender, including areas of probity, the evaluation criteria and procurement strategy, covering the development of the Request for Tender and Evaluation of Tenders for RFT AO/014/09-10, and whether these plans were adhered to based on the available information.
4.5	In particular, whether the governance arrangements were adequate and in fact did ensure that there were no conflicts of interest, for any people involved in the lead up to the decision to tender, and during the tender review, assessment and supplier selection process.	Whether the governance processes addressed the existence and treatment of potential or perceived conflicts of interest for any people involved in the lead up to the decision to tender, and during the tender review, assessment and supplier selection process, and whether, based on the information available, any conflicts were identified.

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Ref	Terms of Reference	Deloitte Scope
4.6	Whether the top two ranked respondents, including directors and other key personnel (whether employees, agents or contractors nominated in the tender response) for the proposed contract, are fit and proper for the purpose of contracting with the Commonwealth, to the extent possible by 8 September 2010 (and with an updated report where information becomes available subsequent to 8 September 2010).	Deloitte will agree the list of individuals concerned. Examine the public record for any reputational concerns regarding the individuals identified. Including litigation, media reports, full ASIC searches, regulatory actions or sanctions.
4.7	Whether the respondents have the financial and commercial capacity to deliver the services submitted in their responses.	Analyse the financial position and commercial capacity of the tenderers based on the information provided in their submission. Understand any arrangements of financial support as documented in their submission.
4.8	Whether the respondents have the capacity to deliver the services submitted in their responses to a quality and standard that meets the requirements of the Commonwealth.	Whether documentation exists to demonstrate the capacity of respondents to meet the quality and standard required by the Commonwealth and a review of respondents' publicly available capacity information.
4.9	Whether issues referred to in recent media articles regarding alleged Adagold contracts in South Africa are such as to warrant consideration of excluding Adagold from the procurement process, e.g. on ethical or probity grounds.	Whether during the tender evaluation process any of the issues referred to in the media regarding Adagold/AdaJet in South Africa were identified or disclosed, and whether documentation exists to show that any such issues were considered in the tender evaluation process in accordance with the Defence Procurement Policy Manual Section 5.6, paragraphs 21 to 24.
4.10	Other matters relevant to the probity of the procurement process and the respondents.	Whether documentation exists to demonstrate the existence of a plan covering the governance of the tender, including areas of probity, the evaluation criteria and procurement strategy, covering the development of the Request for Tender and Evaluation of Tenders for RFT AO/014/09-10, and whether these plans were adhered to based on the available information.

Insofar as the issues raised in the Shadow Minister for Defence's letter to the Secretary of 31 August 2010 are not covered in the above, they are explicitly addressed in Section 4.11 of the Report.

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3 Abbreviations

ACRONYM	Definition
1JMOVGP	1 Joint Movement Group
Adagold	Adagold Aviation Pty Ltd
AGS	Australian Government Solicitor
AIS	Aviation Integration Services Pty Ltd
Alltrans	Alltrans Management Pty Ltd – trading as Alltrans international
ANAO	Australian National Audit Office
AO/014/09-10	Tender relating to the provision of Air Sustainment Services to the Middle East
AOC	Australian Air Operator's Certificate
CAE	Chief Audit Executive
CASA	Civil Aviation Safety Authority
CO	Commanding Officer
Commonwealth	Commonwealth of Australia
Deloitte	Deloitte Touche Tohmatsu
Defence	Department of Defence
DPPM	Defence Procurement Policy Manual
DRMS	Defence Records Management System
FAOC	Foreign Air Operator's Certificate
GPCAP	Group Captain
HQJOC	Headquarters Joint Operation Command
JMCO	Joint Movement Control Office
LTCOL	Lieutenant Colonel
MEAO	Middle East Area of Operations
RFT	Request for Tender
SER	Source Evaluation Report
SQNLDR	Squadron Leader
Standing Offer Panel	Air Transport Standing Offer Panel
Strategic	Strategic Aviation Pty Ltd
TEO	Tender Evaluation Organisation

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ACRONYM	Definition
TEP	MEAO Air Sustainment Tender Evaluation Plan
TEB	Tender Evaluation Board
TEWG	Tender Evaluation Working Group

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4 Detailed Findings

4.1 Selection from the Standing Offer Panel

Terms of Reference	Deloitte Scope
<p>The adequacy of the due diligence process around the choice of potential suppliers from the Standing Offer Panel. More specifically, whether there was existing or any subsequently discovered evidence to warrant non selection of any of the panel members.</p>	<p>Whether documentation exists to demonstrate that the selection of the tenderers from the Standing Offer Panel, was performed in accordance with a stated process, including documented evaluation criteria and methodology, and documentation of why Standing Offer Panel members were included in or excluded from the invitation to tender on RFT AO/014/09-10.</p> <p>This will include whether there is any publically available information that should have been considered to warrant non selection of Adagold</p> <p><i>This is discussed in Section 4.9.</i></p>

Approach

The approach involved:

- Reading the Procurement Strategy for the contracting of air sustainment services for MEAO
- Interviewing key personnel to understand the process undertaken to select the tenderers from the Air Transport Standing Offer Panel (Standing Offer Panel) to tender for RFT AO/014/09-10

The publicly available information concerning Adagold is discussed in Section 4.9.

Findings

According to Mr Scheckenbach¹ all of the Standing Offer Panel members were invited to tender for the provision of air sustainment services to the MEAO through RFT AO/014/09-10.

The Procurement Strategy states that “Defence will utilise the DNL 09009 Air Lift Standing Offer Panel for procuring MEAO Air Sustainment Services” and “Defence has access to all air transport sourcing arrangements through this panel due to its composition – panel members are a mixture of charter operators and brokers. Due to the ability of panel members to source charter aircraft globally for an enduring requirement, it is considered adequate sources of supply are available through the Standing Offer for this procurement”.

Conclusion

Based on the work performed, nothing has come to our attention to indicate that the process to select all the members of the Standing Offer Panel was not appropriate.

¹ Deputy Director National Logistics, Joint Logistics Command Defence

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4.2 Governance in relation to confidentiality

Terms of Reference	Deloitte Scope
Whether the preferred respondent decision was influenced by any vested interests or outside influences.	Whether the governance processes addressed confidentiality in the lead up to the decision to tender, and during the tender review, assessment and supplier selection process, and whether, based on the information available, any confidentiality issues were identified.

Approach

The approach involved:

- Interviewing personnel to gain an understanding of the governance processes established by Defence in relation to confidentiality
- Examining supporting documentation
- Interviewing TEO members regarding confidentiality.

Findings

Key Governance Requirements for Confidentiality

In the lead up to the decision to tender, the normal confidentiality arrangements in place within 1JMOVGP and the Strategic Lift Cell (where the contract and procurement processes for the MEAO Air Sustainment Services are handled) applied.

The TEP included a number of clauses relevant to the maintenance of confidentiality of the tender process. Specifically, they included requirements that access to files and information be restricted and that all tender material be handled with appropriate security and confidentiality.

Adherence to Confidentiality Requirements

Lead up to the tender process

The interviews with personnel involved in the lead up to the decision to go to tender showed that:

- The tender planning and evaluation process took place at the geographically remote and secure Headquarters Joint Operation Command (HQJOC) facility at Bungendore NSW. During the period in question, Charlton was located at the Training Cell, Joint Movement Control Office (JMCO) Brisbane (Hall and Barnes interviews).
- In our interviews with key personnel involved in the tender planning process, they advised that they did not have a personal or social relationship with Charlton, and that as far as they were aware, nor did any of the staff within their areas of supervision (Hall, Cole and Barnes interviews).
- We were advised that key procurement documents including the Procurement Strategy, RFT and TEP were stored in a DRMS folder which was accessible to 1JMOVGP personnel only but not restricted to only those involved in the tender process (Cole interview). We were also advised that Joint Movement Coordination Centres in various capital cities and locations do not have access to DRMS (Barnes and Hall interviews).
- Defence indicated that the folder access log was reviewed in July 2010 and they confirmed that since the creation of the folder, it had only been accessed by personnel involved in the tender process. Access to the DRMS procurement folder was subsequently restricted in July 2010 (Cole interview).
- Charlton reported that he did not have access to the DRMS (Charlton Statutory Declaration, 7 September 2010).

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- Deloitte examined the DRMS access log and this examination indicated that the folder had only been accessed by Defence personnel involved in the procurement process.
- Deloitte also examined audit trails on access to the Procurement Strategy and RFT documents that were created in the lead up to the decision to go to tender, and were advised by Defence personnel that all listed individuals on the audit trail had direct involvement (and a genuine need to know) in the procurement process (Cole interview).

Charlton also made the following statements on the subject of confidentiality (Charlton Statutory Declaration 9 September 2010 and interview on 4 August 2010):

- When he was first posted to the JMCO in Brisbane, he advised his Officer in Charge of his background and his previous involvement in the airline industry. It was agreed at that time that for “appearances of probity reasons, I should not have anything to do with operational matters”. As a result, Charlton became a Training Officer and sat in an area of the Brisbane office that was non-operational. Charlton further explained that Strategic Lift is only procured in Canberra and that JMCO Brisbane’s role is to facilitate unit movements to and from operations and exercises. No procurement activity occurs at JCMO Brisbane other than the procurement of day to day office supplies (Charlton interview)
- He had no knowledge of the decision to go to tender prior to the release of the RFT. He first heard about it when he received phone calls from some Standing Offer Panel members advising him that the tender was out, a day or so before he declared a “potential conflict of interest”. He also states that he had no prior knowledge of the requirements for the tender and at one point expressed surprise at one of the tender requirements – that there was a relaxation of the Australian Air Operator’s Certificate (AOC) requirement in the previous tender to a Foreign Air Operator’s Certificate with the Australian listed airports (Charlton interview)
- He has never been to Bungendore where HQJOC is located (Charlton interview)
- Charlton stated that at no stage prior to, or after the release of the tender did he have contact with members of 1JMOVGP involved in the tender (Charlton Statutory Declaration).

Charlton specifically denied having informed Adagold or any other bidder of what the tender requirements may have been as he claimed to have had no such knowledge (Charlton interview). His involvement with the tender commenced after the release of the RFT when he was engaged (via Aviation Integration Services Pty Ltd (AIS)) to assist Adagold in their tender response – providing technical advice on candidate planes which would meet the criteria specified in the tender.

Mark Clark and other Adagold staff were also interviewed by Defence (Record of Conversation between Defence and Executive of Adagold 13 August 2010). During that interview, Adagold representatives stated that they first became aware of Defence’s intention to retender the MEAO Air Sustainment Contract the day the tender came out and that was when they first became aware of the increased payload requirement for the tender over and above the current specified requirement.

During the tender evaluation process

Interviewees advised that the relevant TEP clauses about confidentiality were complied with. An examination of who had access to the files showed that only personnel involved in the tender process and those with a genuine need to know had accessed the files (Cole and Bromwich interviews).

Limitations

The following are limitations to our work:

- We relied on the transcripts of interviews undertaken by the Audit and Fraud Control Division.

Conclusion

Based on the work performed, the information considered and the limitations, nothing came to our attention to indicate that:

- the governance processes did not address adequately confidentiality in the lead up to the tender and during the tender process
- any confidentiality issues were identified.

4.3 Decision to Tender

Terms of Reference	Deloitte Scope
Whether the services to be supplied in the contract were determined on the basis of objective and supportable, current and likely future requirements or were structured so as to unfairly advantage a particular respondent.	<p>Whether documentation exists to demonstrate that an objective and supportable process was followed to reach the decision to proceed to tender for RFT AO/014/09-10, that the decision was on a sound value for money basis, considered potential conflicts of interest, and was not structured to disadvantage any potential tenderers.</p> <p><i>Our reference and conclusions on conflicts of interest is addressed in Section 4.5</i></p>

Approach

The approach involved:

- Reading the RFT and the Source Evaluation Reports (SER)
- Interviewing GPCAP Barnes and SQLNDR Cole
- Analysing the information, focusing on three questions:
 - a) Were the services detailed in the RFT reasonable from an operational perspective and did the specifications disadvantage any of the tenderers, specifically requirement 7.13(a) aircraft seating, configuration and cargo capacity requirements?
 - b) Did the RFT period of 8 weeks provide sufficient time for all parties to provide tenders that could meet the specific requirement 9.10 Air Worthiness Certification and/or Non-Scheduled Flight Approval?
 - c) Was the decision to proceed to tender based on a reasonable expectation of achieving a better value for money outcome

Findings

- a) *Were the services detailed in the RFT reasonable from an operational perspective and did the specifications disadvantage any of the tenderers, specifically requirement 7.13(a) aircraft seating, configuration and cargo capacity requirements?*

In summary, the specification of the services relevant to our analysis was the requirement for aircraft cargo carrying capacity of at least 25,000kg (comprising a minimum of 150m³ of volumetric capacity).

The RFT did not preclude separate passenger and cargo flight options (i.e. under RFT clause 9.20, where a request may be considered that is non-compliant with one or more of the requirements), but provided an indication that a point-to-point single passenger and cargo solution (i.e. utilising a single aircraft) was likely to represent better value for money by providing greater operational flexibility.

The total volumetric cargo capability per aircraft departure for the current MEAO contract is 147m³. The RFT requirement 7.13(a)(ii) specifies that contractor aircraft must have an available cargo carrying capacity of at least 25,000kg (comprising a minimum of 150m³ of volumetric capacity).

Recent A330-200 departure reports for Strategic Aviation show full use of carrying capacity (8 pallets plus one LD3)². Further advice from the CCP Moorebank, is that since implementation in January 2010, Strategic Aviation have continually used the Etihad pallet freight forwarding service on a weekly basis³ to provide additional capacity. Furthermore, the likely ramp-down of ADF activity in the Middle East would

² Email: 'full use of carrying capacity [SEC=RESTRICTED]' from SQLNDR Cole to Mr David Brinton

³ Email: 'full use of carrying capacity [SEC=RESTRICTED]' from SQLNDR Cole to Mr David Brinton

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likely increase demand for additional cargo capacity on aircraft returning to Australia. GPCAPT Barnes confirmed that historical and forecast analysis undertaken by Defence found future cargo requirements for ramp-down activities could be as high as ~208m³ (Barnes interview).

b) Did the RFT period of 8 weeks provide sufficient time for all parties to provide tenders that could meet the specific requirement 9.10 Air Worthiness Certification and/or Non-Scheduled Flight Approval?

Defence Audit member interviews with successful and unsuccessful tenderers indicated that they acknowledged the tender response timeframe was tight but that it was achievable and not unusual for the aviation charter industry⁴. A submission made by an unnamed unsuccessful tenderer was that the timeline was insufficient to provide the opportunity to satisfy RFP criteria 9.10, attainment of an AOC (or FAOC) certified by CASA.

Obtaining an AOC can typically take between 4 to 6 months, depending on the nature of the tenderer's existing or proposed operation. Strategic Aviation also supported this timeline⁵ for attainment. Given the proposed MEAO contract commencement date of 23 October 2010, tenderers who did not possess an AOC (or FAOC) at the time of submission of their tender, would be considered non-compliant.

The TEC identified three respondents not possessing an AOC (or FAOC) – Strategic Aviation (Option 2), Air Charter Network (Option 2) and Wexco Group⁶.

c) Was the decision to proceed to Tender based on a reasonable expectation of achieving a better value for money outcome for the Commonwealth?

The global financial crisis was one of the factors that led Defence to issue the MEAO RFT as there was a belief that the market possessed a supply of underutilised charter aircraft available for potential use at lower than the currently contracted costs. In addition, the seventh round of contract change requests from the current provider suggested to Defence that it would be appropriate to test the commercial and financial viability of these changes against the market by issuing a new RFT to ensure the best commercial and financial interests of the Commonwealth were maintained (Barnes interview).

Conclusions

Based on the work performed and the information considered, nothing has come to our attention to indicate that:

- the decision to proceed to tender was not based on the expectation of achieving a better value for money outcome for the Commonwealth
- the tender was structured to disadvantage any potential tenderers.

⁴ Draft Audit Report, Audit Task: 11-058 Probity Audit of Tender Process for Air Sustainment Services to the Middle East Area of Operations (MEAO), August 2010 (prepared by Audit Branch, Audit and Fraud Control Division)

⁵ AM377749, Source Evaluation Report (SER) for Request AO/014/09-10 for the provision of Air Sustainment Services to the Middle East

⁶ AM377749, Source Evaluation Report (SER) for Request AO/014/09-10 for the provision of Air Sustainment Services to the Middle East

4.4 Governance

Terms of Reference	Deloitte Scope
The integrity of governance around the development of the RFT and the subsequent evaluation process, and whether the governance arrangements achieved their intended purposes.	<p>Whether documentation exists to demonstrate the existence of a plan covering the governance of the tender, including areas of probity, the evaluation criteria and procurement strategy, covering the development of the Request for Tender and Evaluation of Tenders for RFT AO/014/09-10, and whether these plans were adhered to based on the available information.</p> <p><i>A review of procurement process compliance with the Deed of Standing Offer under which the process was let, the Defence Procurement Policy Manual (July 2010) or the Commonwealth Procurement Manual (December 2008) is out of scope.</i></p>

Definition of governance

The Australian National Audit Office (ANAO) defines public sector governance as:

...the set of responsibilities and practices, policies and procedures, exercised by an agency's executive, to provide strategic direction, ensure objectives are achieved, manage risks and use resources responsibly and with accountability.⁷

Approach

The approach involved:

- Interviewing personnel to gain an understanding of the governance around the development of RFT AO/014/09-10 and the subsequent evaluation process
- Examining supporting documentation
- Assessing the extent to which governance requirements were adhered to.

⁷ ANAO and Department of the Prime Minister and Cabinet, 2006, *Implementation of Programme and Policy Initiatives: Making Implementation Matter, Better Practice Guide*, Commonwealth of Australia, Canberra, p.13 <http://www.anao.gov.au/uploads/documents/Implementation_of_Programme_and_Policy_Initiatives.pdf>

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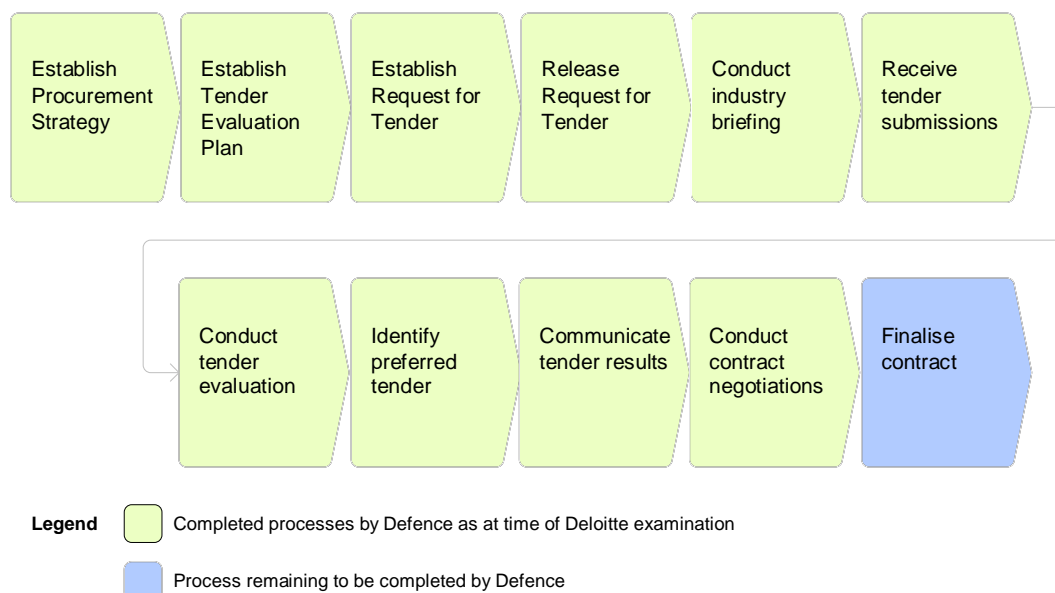
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Findings

The RFT and the tender process

The process and steps undertaken by Defence in the development of the RFT A0/014/09-10 and the subsequent tender invitation, evaluation and selection processes are outlined below:

Procurement process overview



Key Governance Requirements for RFT A0/014/09-10

The Defence governance requirements in respect of the RFT A0/014/09-10 procurement process are documented in the Procurement Strategy for the Contracting of Air Sustainment Services and the TEP.

Procurement Strategy

The procurement strategy for the Contracting of Air Sustainment Services was approved by GPCAP Robert Barnes on 24 March 2010. This document sets out the project deliverables of the procurement as being:

- Obtain a statement of funds availability
- Obtain proposal approval
- Obtain procurement approval
- Obtain delegate approval for TEP
- Conduct financial analysis planning
- Release RFT documentation
- Evaluation of Tender responses
- Obtain contract approval
- Obtain contract signatory approval from delegate⁸.

⁸ Procurement Strategy for the Contracting of Air Sustainment Services in Support of Op Slipper paragraph 14

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The procurement strategy also included in Annex A, a procurement risk management plan which covered, at a high level, nine key procurement risks, the consequences if the risks were realised, and how mitigation of each risk was to be managed.

Tender Evaluation Plan

The TEP was approved by LtCol Andrew Hall on 25 March 2010. The TEP documents the governance guiding this procurement process. The TEP sets out:

- The tender evaluation criteria
- The delegates nominated to approve actions
- The proposed timeframes for the critical steps in the procurement
- The composition and membership of the TEB and the two Tender Evaluation Working Groups (TEWG)
- The roles and responsibilities of the Chair of the TEB
- How the comparative assessment will be undertaken
- The administrative requirements handling of tender documents
- The requirements in respect of ethics, probity, fair dealing, conflicts of interest and security requirements and arrangements
- The requirements applying to the detailed evaluation of tenders, the associated methodology and the production of the Source Evaluation Report (SER)
- The steps for notification and debriefing of tenderers.

Adherence to the Governance Requirements

Procurement Strategy

The procurement strategy project deliverables were completed except for contract signatory approval, which were halted whilst Defence investigates the concerns raised by one of the tenderers.

According to personnel interviewed and an examination of documents, the majority of the risk management actions were implemented with the exception of three which were not implemented. These were conducting market research, involvement of an aviation consultant and providing advance notice to the Standing Offer Panel members prior to the release of the RFT.

Probity risks were not documented in the risk management plan and a probity plan was not documented. Subsequent to the evaluation process, the TEB members signed a conflicts of interest and probity declaration.

Tender Evaluation Plan

In respect of the requirements of the TEP, documentation and interviews support that:

- The evaluation criteria were applied in the tender evaluation process
- The delegates operated according to approval levels
- The timeframes have now been exceeded as the process has been halted whilst Defence investigates the concerns raised by one of the tenderers
- The TEB and two TEWGs were formed and performed the tasks assigned to them in accordance with TEP
- The comparative assessment was undertaken in accordance with the TEP
- The administrative requirements on file handling were followed
- Conflicts of interest declarations were completed by the TEB and TEWG members. However there was no documentation indicating that a briefing on ethics, probity and fair dealing was undertaken. Subsequent to the evaluation process, the TEB members signed a conflicts of interest and probity declaration

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- The requirements on evaluation, methodology and production of the SER were generally met
- Steps for notification have been followed although no debrief has been undertaken to date due to the current review processes being undertaken by Defence with regards to the concerns raised by one of the tenderers.

Limitations

The following are limitations to our work:

- We relied on the transcripts of interviews undertaken by the Audit and Fraud Control Division.

Conclusion

Based on the work performed, the information considered and the limitations, nothing has come to our attention to indicate that:

- there was not an adequate plan in place covering the governance of the tender
- the plan was not adhered to in all material respects.

4.5 Governance in relation to Conflicts of interest

Terms of Reference	Deloitte Scope
<p>In particular, whether the governance arrangements were adequate and in fact did ensure that there were no conflicts of interest, for any people involved in the lead up to the decision to tender, and during the tender review, assessment and supplier selection process.</p>	<p>Whether the governance processes addressed the existence and treatment of potential or perceived conflicts of interest for any people involved in the lead up to the decision to tender, and during the tender review, assessment and supplier selection process, and whether, based on the information available, any conflicts were identified.</p> <p><i>A review of compliance of conflicts of interest provisions contained within the Deed of Standing Officer under which the process was let, the Defence Procurement Policy Manual (July 2010) or the Commonwealth Procurement Manual (December 2008) is out of scope.</i></p>

Definition of conflicts of interest

The definition of conflicts of interest contained in the DPPM (3.13 para 30) is as follows:

Conflicts of interest refers to any situation where there is, or may appear to be, a conflict between an employee's personal interests and their public duties and responsibilities that can prejudice their impartiality. Defence employees are expected to avoid, or take steps to avoid, any actual, potential or perceived conflicts of interest.

Approach

The approach involved:

- Interviewing personnel to gain an understanding of the governance processes established by Defence in relation to conflicts of interest
- Examining supporting documentation
- Assessing the extent to which conflicts of interest requirements were met.

Findings

Key governance requirements relating to conflicts of interest

The TEP outlined the following steps to be taken in relation to conflicts of interest:

- Clause 18 requires the Chair to brief the TEO on the requirements of the TEP including such things as conflicts of interest
- Clause 21 requires the Chair to brief the TEO on the risks associated with real or perceived conflicts of interest prior to the evaluation. Any non-Defence personnel participating in the tender will be required to submit a statement to the effect that they have no conflicts of interest
- Clause 22 states that participants in the tender evaluation process will be advised that should a real or perceived conflicts of interest situation arise at any time over the course of the evaluation they will be required to declare this and may be required to exclude themselves from further participation in the process.

Adherence to conflicts of interest requirements

Despite the inclusion of appropriate clauses in the TEP, there was no clear evidence pointing to a specific briefing on conflicts of interest and other probity matters being undertaken in a comprehensive and documented way. Deloitte was advised that members of the TTEWG were briefed by SQNLDR Cole but

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not members of the Financial TEWG (SQNLDR Cole interview). However, all members of the TEO did sign conflicts of interest declarations to the effect that they:

- Acknowledge their obligations as a member of the Australian Public Service (APS) under the *Public Service Act 1999* or as a member of the Australian Defence Force (ADF) under the *Defence Force Discipline Act 1982* in relationship to their membership of the TEB
- Are aware that they are subject to the relevant Act whilst carrying out their duties as a TEB member
- Do not have a conflicts of interest (real or apparent) with their duties as a TEB member
- Will immediately advise the TEB Chair (or that person's supervisor or superior) if they have or become aware of any conflicts of interest (real or apparent) with their duties as a TEB member.

The conflicts of interest declaration forms did not contain a declaration in respect of possible conflicts of interest arising out of employment, prior employment or financial interests in organisations who may be potential suppliers and relationships with people who have interests in these organisations. Subsequent to the evaluation process, the TEB members signed a conflicts of interest and probity declaration that covered this.

There were some other minor issues identified with the standard form of the conflicts of interest declaration which was used including:

- All members of the TEO signed a template form which acknowledged their responsibilities as members of the TEB, despite the fact that only four were members of the TEB and seven others were involved in the TEWGs
- One civilian member completed a form titled "Conflicts of interest Declaration (ADF Member)" but which acknowledges obligations under the *Public Service Act 1999*. Another civilian completed a form titled "Conflicts of interest Declaration (ADF Member)" and struck out the reference to the *Defence Force Discipline Act 1982* and handwrote "Public Service Act".

The management of conflicts of interest issues pertaining to Charlton

Background

Charlton is a reservist who was:

- The non-voting chair of the TEB in the consideration of tenders and subsequent awarding of tender to Strategic Aviation for the airlift contract in 2005 (Scheckenbach Interview)
- A former employee of Strategic Aviation from early 2006 for a period of 8 months whose relationship with them soured upon his departure (Charlton interview)
- A director of Sky AirWorld, a company established by him in late 2006 which was placed into administration in 2009 (Charlton interview)
- A reservist working for JMCO Brisbane from June 2009 (Charlton interview)
- Working as a contractor with AIS from June/July 2009 to provide consultancy services to aviation industry clients (Charlton interview)
- Providing consultancy services through AIS to three members of the Standing Offer Panel (DNL 09009) – Adagold, Rex/Pel Air and Alltrans International – prior to the release of the RFT (Charlton interview)
- Working through AIS for Adagold to provide technical advice on candidate aircraft which would meet the specified criteria of the tender after the release of the RFT (Charlton interview).

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Lead up to the tender process

Based on Defence personnel interviewed, Defence took the following actions to address the perception of conflicts of interest in respect of Charlton upon his return to the ADF in 2009:

- Charlton stated that when he was first posted to the JMCO in Brisbane, he advised his officer in charge of his background and his previous involvement in the airline industry and it was agreed at that time that for “appearances of probity reasons, I should not have anything to do with operational matters”. As a result, Charlton became a Training Officer and sat in an area of the Brisbane office that was non-operational (Charlton interview)
- Charlton further explained that Strategic Lift is procured in Canberra and that JMCO Brisbane’s role is to facilitate unit movements to and from operations and exercises. No procurement activity occurs at JCMO Brisbane (other than the procurement of day to day office supplies). This is consistent with comments made by CPCAPT Barnes and LTCOL Hall who both indicated that JCMO Brisbane does not have access to DRMS or information contained within it relating to procurement activities undertaken by 1JMOVGP (Barnes and Hall interviews)
- Defence personnel confirmed that relevant people were aware of Charlton’s background when he sought to return to Defence in mid 2009. The then OC JMCO Brisbane had identified the potential for a conflicts of interest and took steps to remove Charlton from anything operational. He had no involvement with procurement as his role was as a Training Development Officer. (Notes of Interview between Defence Audit Branch and GPCAPT Barnes, LTCOL Hall, LTCOL Halloran and SQNLDR Cole 19 July 2010, Deloitte’s interview with LTCOL Hall 4 September 2010). Charlton’s posting to the Training Cell was confirmed by the PMKeysS Job Summary. As noted in Section 4.2 - Confidentiality, Charlton was not able to access information about the intention to tender in his roles at JMCO as he did not have access to the DRMS (see also Draft Audit Report August 2010)
- When Major Bullpitt-Troy took over from Major Rouwhorst as OC JMCO Brisbane in January 2010 she was briefed on Charlton’s history and the requirement to keep him distanced from contractual issues “relating to the A330” (Email from LTCOL Hall to Shaun Aisen 8 April 2010).

During the tender process

Charlton stated in his interview that when the tender came out in late March 2010, he declared a potential conflicts of interest because the company he consulted to had been approached by a member of the Standing Offer Panel to work on a tender⁹. Charlton emphasised in his interview that he did not believe a conflict existed because the tenders were run from Canberra and not Brisbane and there is no visibility of the process from Brisbane. However, he felt obliged to raise the potential conflicts of interest with his superiors (Charlton interview).

According to Charlton, OC JMCO liaised with “high headquarters” and a decision was made to move him from the JMCO altogether (Charlton interview, 4 August 2010).

LTCOL Hall confirmed Defence knowledge and action on the potential or perceived conflict in an email to Aisen (8 April 2010) in which he stated that in order to ensure that “there can be no further perception that (Charlton) may bias the process, (Charlton) will cease parading with JMCO Brisbane from next week until the tender process has been concluded. Although this is unnecessary, as the JMCO is not involved in the tender process, at all, it will be done to ensure that a level playing field is being maintained.”

⁹ Deloitte also reviewed Defence policies in relation to secondary employment in order to ascertain whether Charlton’s consultancy work for Standing Offer Panel members while a Reservist would be in breach of any policies. The Defence Instructions (General) revealed a policy governing *Employment and voluntary activities of Australian Defence Force Members in off duty hours* (PERS 25-2) however it only applies to Members of the ADF and Reservists employed on continuous full-time service. No other relevant policies were identified.

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A review of his attendances as a Reservist from July 2009 to July 2010 confirms that from April 2010 he only registered four days as JMCO days (Colour Calendar "Reserve Attendances- David Charlton" Audit Branch) and that on these days he was not physically present at the JMCO office but was engaged in administrative and training activities associated with his departure and with annual requirements (Charlton Statutory Declaration, 7 September 2010).

Limitations

The following are limitations to our work:

- We relied on the transcripts of interviews undertaken by the Audit and Fraud Control Division.

Conclusion

Based on the work performed, the information considered and the limitations, nothing has come to our attention to indicate that:

- the governance processes did not address adequately potential or perceived conflicts of interest in the lead up to the tender and during the tender process
- any perceived or real conflicts of interest issues that were identified have not been appropriately dealt with.

4.6 Fit and Proper in contracting with the Commonwealth

Terms of Reference	Deloitte Scope
Whether the top two ranked respondents, including directors and other key personnel (whether employees, agents or contractors nominated in the tender response) for the proposed contract, are fit and proper for the purpose of contracting with the Commonwealth, to the extent possible by 8 September 2010 (and with an updated report where information becomes available subsequent to 8 September 2010).	Deloitte will agree the list of individuals concerned. Examine the public record for any reputational concerns regarding the individuals identified. Including litigation, media reports, full ASIC searches, regulatory actions or sanctions.

Approach

The approach involved:

- Deloitte agreed¹⁰ the list of companies and individuals with Defence as follows:

Adagold

- Adagold Aviation Pty Ltd
- Nago Investments Pty Ltd
- Sudza Pty Ltd
- Mr Mark Warren Clark
- Mr Stuart Lee
- Mr Anil Patel
- Mr Paul Brinckman
- Mr Jeff Eager
- Mr Malcolm Sandford
- Mr Malcolm Af Uhr.

Alltrans

- Alltrans Management Pty Ltd
- Evergreen Container Shipping Line Pty Ltd
- Mr Barry Elliott
- Mr Stephen Ridgway.

Aviation Integration Services¹¹

- Aviation Integration Services Pty Ltd
- Little Pockets Pty Ltd
- Major David Charlton.

¹⁰ List of organisations and individuals for which searches were undertaken was agreed with Mr Geoff Brown (Chief Audit Executive – Defence) and Mr David Brinton (Director Audit Central – Defence).

¹¹ AIS was included given Charlton's involvement with AIS

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- Undertaking searches of the public record for information on the list of companies and individuals. Searches were conducted using an array of online commercial databases and various regulatory and agency web sites. The following searches were performed:

For companies:

- background on corporate entity (including ownership, subsidiaries and/or parent entities, key officers, locations) - sourced from filings maintained by ASIC using the following information:

Company Name	Australian Company Number
Adagold Aviation Pty Ltd	ACN - 102146725
Alltrans Management Pty Ltd	ACN - 106396105
Evergreen Container Shipping Line Pty Ltd	ACN - 054793501
Nago Investments Pty Ltd	ACN - 100589222
Sudza Pty Ltd	ACN -141865910
Little Pockets Pty Ltd	ACN - 111756935

- the “Enforceable Voluntary Undertaking” listed on the CASA website for mention of Adagold and Alltrans
- local, national and international press reports through Factiva¹² searches for each of the entities listed above
- civil litigation and judgement checks and identify any liens by searching the High Court and Federal Court databases and Supreme Court in each state and territory for mention of Adagold and Alltrans.

For individuals¹³:

- undertaking civil litigation and judgement checks and identify liens by searching the High Court and Federal Court databases as well as the Supreme Court records in each state and territory for each individual residing in Australia
- identifying bankruptcies through searching the Insolvency Index maintained by the Insolvency Trustee Services of Australia
- local, national and international press reports using Factiva to identify press reports
- ASIC extracts and the APRA disqualifications register.
- Examining the public record (as set out above) for any reputational concerns regarding the list of individuals and companies
- Considering the information obtained from our searches to identify whether there was anything that may lead us to believe that either of the two respondents (and/or their key personnel) were not fit and proper for the purpose of contracting with the Commonwealth.

¹² International and local media database

¹³ Mr Mark Warren Clark, Mr Stuart Lee, Mr Anil Patel, Mr Paul Brinckman, Mr Jeff Eager, Mr Malcolm Sandford, Mr Malcolm Af Uhr, Mr Barry Elliott, Mr Stephen Ridgway, Mr David Charlton.

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Fit and proper for the purposes of contracting with the Commonwealth

We have not identified any criteria that exist within the Commonwealth or within Defence that specifically sets out requirements for being “fit and proper for the purposes of contracting with the Commonwealth”¹⁴. We have been provided with a draft and undated letter (template) from the AGS entitled “Tender Probity Services” which lists a number of searches that may be conducted on organisations or individuals. The letter does not set out the implication of the findings from each of the specified searches or how such findings that might relate to a fit and proper evaluation.

Therefore, in assessing whether the respondents are “fit and proper” for the purpose of contracting with the Commonwealth, we have considered whether any information identified in the searches above could cause the Commonwealth reputational damage.

Findings

Adagold

The company is privately owned¹⁵ by:

- Mr Mark Clark (9 shares)
- Mr Stuart Lee (4 shares)
- Nago Investments Pty Ltd¹⁶ (Nago) (27 shares).

The information produced during the searches indicates that Adagold is a current creditor in a claim against an insolvent individual.

The most relevant finding from our searches relating to Adagold or Nago was a number of recent press articles in the Australian media relating to Adagold and its response to the RFT. The articles also cover Adagold’s alleged South African connections and their contract with the Danish Defence force and we comment on these allegations in Section 4.9 of this report.

The following individuals are listed in the completed request for tender and therefore have been considered as key personnel for the proposed contract and are therefore contained on the agreed list of companies and individuals.

- Mr Mark Clark – Director & CEO
- Mr Stuart Lee – Director & Group General Manager
- Mr Anil Patel – Company Secretary & Legal
- Mr Paul Brinckman – Finance & Administration Manager
- Mr Jeff Eager – General Manager - Commercial & Business Development
- Mr Malcolm Sandford – General Manager Operations & Charter
- Mr Malcolm Af Uhr – Chief Pilot.

We have undertaken searches on the individuals listed above. The information produced during the searches indicates that:

- Mr Clark is a current director of 12 entities and is a current shareholder in seven (7) entities including Adagold. Additionally, he is listed in ASIC searches as a former director and shareholder of in excess of 18 organisations
- each director of Adagold appears to be a director and/or shareholder in at least one organisation other than Adagold. Mr Clark being the most active individual in directorships and shareholdings (both current and past) as set out above
- Mr Clark, Mr Patel and Mr Eager are all current, common directors of Sudza Pty Ltd (Sudza). We have undertaken searches of this company and have established that it is owned by Meadowgarth Pty Ltd, Regae Proprietary Limited and Skatanga Pty Ltd.

¹⁴ Confirmed by way of a discussion with Mr Alan Scheckenbach Deputy Director National Logistics, Joint Logistics Command Defence.

¹⁵ As per paragraph 1.d.iii. of the Adagold completed request for tender.

¹⁶ Nago Investments Pty Ltd lists the same address as Mr Mark Clark in an ASIC “change to company details” document dated 24 May 2010. Nago Investments Pty Ltd is wholly owned by Mr Mark Clark as per ASIC search (dated 24/5/2010).

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The searches have not identified any liens, bankruptcies or disqualifications to act as a director by ASIC relating to the individuals listed above. With the exception of Adagold, we have not undertaken further searches of organisations that list the above individuals as shareholders or directors.

Alltrans

The tender was submitted by Alltrans International, which is a trading name of Alltrans Management Pty Ltd¹⁷. Alltrans is wholly owned by Evergreen Container Shipping Line Pty Ltd (Evergreen), which in turn is wholly owned by Mr Barry Elliott.

The searches indicate that neither Alltrans nor Evergreen have had any court judgements. Mr Elliot has not been found to be bankrupt, in default or disqualified to act as a director by ASIC.

Alltrans were proposing Virgin Atlantic as a subcontractor and Mr Stephen Ridgway, is he still in that position/ Chief Executive of Virgin Atlantic, signed a letter that was included in Alltrans' tender response. Therefore, he may be considered a key personnel for the proposed contract and is therefore included in the list of companies and individuals. Mr Ridgway as Chief Executive of Virgin Atlantic between August 2004 and January 2006 when Virgin Atlantic colluded with British Airways over surcharges added to ticket prices in response to rising oil prices. Virgin Atlantic came forward to the UK Office of Fair Trading (OFT) with information about pricing fixing and because of this Mr Ridgway qualified for immunity from prosecution under the OFT's leniency programme¹⁸.

AIS

In addition to the tenderers and associated individuals discussed above, we understand from the record of a conversation¹⁹ that before, during and after the request for tender was fulfilled, Charlton consulted to a company named AIS²⁰. Prior to the issue of the request for tender, Charlton consulted, through AIS, to three organisations on the Standing Offer Panel, which were Adagold, Rex²¹ and Alltrans²². At about the time the request for tender was issued, it was agreed by AIS and Adagold that Charlton would continue to consult to Adagold at the exclusion of Rex and Alltrans²³.

Charlton and AIS are contained on the agreed list of companies and individuals and therefore we have undertaken searches which indicate:

- AIS is wholly owned by an entity named Little Pockets Pty Ltd, which in turn is owned equally by Mr Rowan Keast and Ms Melanie Keast
- There have been a number of recent press articles in the Australian media relating to Charlton and his alleged involvement with this tender.

Limitations

We have not been able to complete the following as at 10 September 2010:

- Civil litigation and judgement checks have not been finalised for individuals
- The searches in relation to Mr Stephen Ridgway have been requested, but at the time of issuing this report have not been received from the United Kingdom.

Searches are ongoing.

Conclusion

Based on the work performed, the information considered and the limitations (including the uncompleted checks for individuals), nothing has come to our attention to indicate that the list of companies and individuals, are not fit and proper for the purpose of contracting with the Commonwealth.

¹⁷ As per page 4 of the Alltrans response to RFT AO/014/09-10.

¹⁸ Sourced from the OFT website (www.of.gov.uk)

¹⁹ Record of conversation between Major David Charlton and Mr Jason Woods in the presence of Mr David Brinton on 4 August 2010.

²⁰ Refer response to question 138 and question 142 of the record of conversation with Major David Charlton.

²¹ Regional Express Airlines.

²² Refer response to question 169 and question 170 of the record of conversation with Major David Charlton.

²³ Refer response to question 172 and question 173 of the record of conversation with Major David Charlton.

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4.7 Financial and commercial capacity

Terms of Reference	Deloitte Scope
Whether the respondents have the financial and commercial capacity to deliver the services submitted in their responses.	Analyse the financial position and commercial capacity of the tenderers based on the information provided in their submission. Understand any arrangements of financial support as documented in their submission.

Approach

The approach involved:

- Reading the RFT and appropriate and relevant sections of the preferred tenderers' submission
- Interviewing members of the TEO to obtain an understanding of the methodology applied in evaluating the financial viability of the respondents
- Reading certain Evaluation Committee working papers and reports
- Supplementing the financial evaluation performed by Defence based on information in the tender documents for:
 - Adagold (and Hifly)
 - Alltrans (and Virgin Atlantic and Air Partner Plc).

Findings

Request for Tender – Financial Viability

The information requirements set out in the RFT were inconsistent with the evaluation criteria included in the RFT. The evaluation criterion set out in section 9.22 (g) of the RFT notes that the proposal will be evaluated on:

The proposed corporate structure and the financial and corporate viability of the Contractor and any proposed Operator to fulfil their obligations under this Request and the Deed.

However, the RFT required only the financial statements of the Contractor to be provided within the tender documentation.

Notwithstanding this requirement, certain summarised financial information was provided by Adagold in respect of its operating partner, Hifly. Alltrans provided financial reports for Air Partners (a company listed on the London Stock Exchange) but only limited financial information for Virgin Atlantic.

Adagold

Adagold provided financial statements that were prepared by Marsh Tincknell Chartered Accountants in Queensland. The financial statements were not audited and the most recent period was a special purpose report for the nine months ended 31 March 2010.

Analysis of the unaudited financial statements provided by Adagold indicates that the business has revenue for the nine months ended 31 March 2010 of \$50.4m (year to June 2009: \$32.1m) and net profit after tax of \$7.5m (June 2009: \$0.7m). The improvement in financial performance was achieved through the increased contribution from Danish operations (\$33.1m of revenue in the nine months ended 31 March 2010).

The unaudited financial position of Adagold at 31 March 2010 shows net current assets of \$6.2m including a cash balance of \$2.9m. The company has negligible paid up capital and appears to have been financed through earnings retained in the business.

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The FIS team assessed Adagold to be of medium risk in respect of its financial viability on the basis of its own analysis. However, subsequent analysis by Defence of financial statements highlighted additional risks given the subcontractor/contractor structure of the tender response. Defence recognised the potential risks relating to financial viability and sought to mitigate the risks by seeking to execute a novation agreement between Adagold, Hifly and Defence and by including a performance guarantee in the Deed of Standing Offer.

Adagold's operating partner, Hifly

Hifly is a Portuguese private (family owned) company which obtains access to aircraft under operating lease arrangements, and then sub-leases the planes to end-users. Adagold's submission contained some information about Hifly, including a section in respect of financial information.

The financial information in relation to Hifly that was provided in the tender prepared by Adagold and included management presentations prepared by Hifly. The information provided related to the income statement and balance sheet and also included a simple cash flow forecast for the 2010 calendar year (although it was unclear whether that forecast was based on the assumption of a successful tender). Financial statements of Hifly for the year ended 31 December 2008 were subsequently provided by Adagold at the request of Defence.

The financial performance of Hifly indicates that the company has some scale but operates at low margins, reporting FY09 revenue of €51.3m (equivalent to approximately \$70m at current exchange rates) (December 2008: €34.5m) and net profit after tax (and including the impact of non-recurring items) of €188,000 or \$260,000 (December 2008: €160,000). It appears that the incremental revenue between 2009 and 2008 has been achieved at virtually no margin, as operating costs have also increased from €36.3m in 2008 to €52.5m in 2009.

The FY08 audited financial statements note that Hifly suffered a loss of €2.1m due to the collapse of an investment bank with which Hifly had lodged cash. The impact of this one-off item on the 2008 result was largely offset by €2m interest income earned. In FY09 no one-off items have been identified by Hifly, but interest income has fallen significantly, which has resulted in a similar net profit after tax.

The financial position of Hifly at 31 December 2009 indicated that the company had net assets of approximately €6m, which is consistent with the audited balance at 31 December 2008. We note that at 31 December 2008 this amount included €12.8m of debtors due from shareholders and other debtors, as well as €4.2m of unpaid share capital, a total of €16.9m. These balances appear relatively consistent in 2009 and in addition total receivables have increased from €18.1m at 31 December 2008 to €30m at 31 December 2009, primarily driven by a €6.0m increase in trade receivables.

Liabilities amounting to €8m in respect of maintenance reserves are included in the audited balance sheet as at 31 December 2008. Accrued costs increase by €9.4m between 31 December 2008 and 31 December 2009, although we do not have a breakdown of the items included in that total.

No information is provided in the 2008 audited financial statements in relation to the operating lease commitments of Hifly at that date.

Based on this analysis it appears reasonable that Adagold and Hifly are assessed by the TEWG as viable but high risk, such that a performance guarantee should be obtained from Adagold. We have seen the unsigned Deed of Standing Offer between Defence and Adagold incorporating the performance guarantee and the intended novation agreement between Adagold, Hifly and Defence. These agreements have not been signed as at the 10 September 2010.

Alltrans

Alltrans provided financial statements that were prepared by Meagher Howard & Wright Certified Practising Accountants in New South Wales. The financial statements provided for the year ended 30 June 2009 were unsigned but presented on the basis that the accounts had been audited. No more recent information was provided.

Alltrans appears to be a small company with a sole director, being Mr Barry Elliott. The business has share capital of two dollars and apparently little liquidity, including a cash balance of \$114,060. The company appears to have conducted limited aircraft chartering operations in that year, making a gross profit of \$386,234.

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The FIS team assessed Alltrans to be of high risk in respect of its financial viability on the basis of its own analysis, and noted that a performance guarantee would be required should the contract be awarded to the company.

Alltrans' operating partners, Virgin Atlantic and Air Partner

Virgin Atlantic is 51% owned by the Virgin Group and 49% owned by Singapore Airlines. The company is a large airline, primarily operating regular passenger services across North America, Europe, Africa, the Middle East and Asia.

Limited financial information was provided in respect of Virgin Atlantic. The most up to date financial information noted that the group turnover for the year ended 28 February 2008 was £2,336m and the net profit before tax for that year was £61m.

Air Partner is a UK public company listed on the London Stock Exchange (AIP) with a market capitalisation of circa £35m as quoted on the London Stock Exchange website at 5 September 2010. The primary activity of the company is aircraft chartering and brokering.

In its most recent annual financial report for the year ended 31 July 2009 the consolidated group reported revenue of £194.3m and a net profit after tax of £3.0m. Net current assets at 31 July 2009 amounted to £10.3m including a cash balance of £16.1m.

Commercial capacity to operate the contract

Both respondents have allied themselves with aircraft operators, who will source the actual aircraft to conduct the contract.

In its tender response, Adagold demonstrated an understanding of the Australian operating and regulatory environment and also demonstrated experience in military sustainment in the Middle East region. Through its previous experience conducting operations between Australia and the Middle East, Hifly demonstrated an understanding of the Australian operating and regulatory environment.

At the time of the tender Adagold had an exclusive agreement with Hifly to provide aircraft, the model selected being the Airbus A340-300 aircraft. No formal lease agreement had been entered into.

The Alltrans proposal identified contractual arrangements with Air Partner and Virgin Atlantic would be entered into to operate and source the aircraft for the contract.

Virgin has operations in Australia and therefore understands the operating and regulatory environment. Air Partner has an office in Dubai and stated expertise in operating in the Middle East.

FIS financial analysis

Examination of the workpapers prepared by the FIS team indicates that the financial information in relation to the tenderers has been analysed based on the usual relevant metrics (e.g. working capital and profitability ratios).

We note however that the risk classification adopted by the FIS team appears relatively subjective, in particular the requirement for certain proponents considered to be at the higher level of risk to be subject to a financial performance guarantee.

Limitations

The following are limitations to our work:

- Cash flow information was not provided for Adagold, Alltrans or Virgin Atlantic

Conclusion

Based on the work performed, the information considered and the limitations, nothing has come to our attention to indicate that the potential risks associated with the financial and commercial capacity of the preferred tenderer have not been recognised.

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4.8 Capacity to deliver the services

Terms of Reference	Deloitte Scope
Whether the respondents have the capacity to deliver the services submitted in their responses to a quality and standard that meets the requirements of the Commonwealth.	Whether documentation exists to demonstrate the capacity of respondents to meet the quality and standard required by the Commonwealth and a review of respondents' publicly available capacity information.

Approach

The approach involved:

- Agreeing with CAE that the scope was limited to Adagold²⁴
- Our work is limited to the information in the proposal submitted by Adagold and materials prepared by Defence in their review of the tender submissions
- Reading RFT AO/014/09-10 to determine the quality and standard required by the Commonwealth for the provision of Air Sustainment Services to the MEAO
- Reading Adagold's tender document
- Considering Adagold's capacity to meet the quality and standard required from the information contained in their submission of tender document
- Determining the measure of quality and standard for the purpose of this assessment being:
 - Technical and operational capacity
 - Financial capacity
 - Operational capability
 - Aircraft availability
 - Aircraft certification and regulatory requirements.

Our work in relation to this issue is directly referable to work performed on other issues in this report at Sections 4.3 (Decision to Tender) and 4.7 (Financial and commercial capacity).

Findings

Technical and operational

Adagold was the highest ranked proponent on the seven technical and operational criteria with an overall score of 56.3 out of 70 (based on revised total – see below). In particular, Adagold was awarded a score of 9.3 out of 10 with respect to the fifth criterion “The extent to which the tenderer meets the technical, functional, operational, and performance requirements stated in this request”.

Operational capability as set out in the proposal

The Adagold tender included a number of schedules showing aircraft specifications, route plans and fuel calculations and high level operational and information on Hifly, the proposed aircraft operator.

Adagold has an ongoing contract with the Danish government providing similar services to those requested in the tender document in question and has relevant and recent experience of operating in the region. We note that Adagold was the only tenderer which undertook a site visit to the Al Minhad airbase.

We further understand that Hifly has operated flights from Australia to the Middle East on behalf of Defence as a sub-contractor to the current operator of this service and therefore also had direct experience of the service requirements.

²⁴ Discussions held with Mr Geoff Brown (Chief Audit Executive – Defence) on the 2 September 2010.

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Aircraft availability

As noted in Section 4.7 of this Report, Adagold does not have a current lease for the aircraft which was proposed to operate under the terms of the tender. However, an exclusive agreement is in place with Hifly which gave Adagold access to a compliant aircraft. We note that Adagold made a commitment in their tender submission that a replacement aircraft would be made available should the regular aircraft be subject to maintenance or be deemed unserviceable for any other reason.

Aircraft certification and regulatory requirements

Hifly had in place the required aircraft certification, specifically in respect to airworthiness certification from CASA.

Limitations

Our work was subject to the following limitations:

- As would be expected our work does not seek to comment on the likelihood that the respondent will be successfully able to carry out operations as this will be subject to a range of future events and circumstances which are outside the scope of this report
- We have not verified representations made in Adagold's submission.

Conclusion

Based on the work performed, the information considered and the limitations, nothing has come to our attention to indicate that the preferred tenderer does not have the capacity to meet the quality and standard required by the Commonwealth to provide the contracted services.

4.9 Adagold's alleged interests in South Africa

Terms of Reference	Deloitte Scope
Whether issues referred to in recent media articles regarding alleged Adagold contracts in South Africa are such as to warrant consideration of excluding Adagold from the procurement process, e.g. on ethical or probity grounds.	Whether during the tender evaluation process any of the issues referred to in the media regarding Adagold/AdaJet in South Africa were identified or disclosed, and whether documentation exists to show that any such issues were considered in the tender evaluation process in accordance with the Defence Procurement Policy Manual Section 5.6, paragraphs 21 to 24.

Approach

The approach involved:

- Reading Defence reports including those of the Inspector General, Defence and CAE
- Reading interview transcripts with Mr Clark and person X a former member of the Danish Defence Force (who wishes to remain confidential)
- Interviewing members of the TEB
- Reading media articles from Australian, South African and Danish media to understand what allegations were made
- Interviewing the Inspector General
- Reading emails from Defence staff to the Inspector General providing information relevant to his report
- Accessing relevant Danish legal/review proceedings including decisions of the Danish Complaints Board for Public Procurement and the Pretoria High Court decision database.

Background

Mr Clark moved to South Africa and established Adagold Aviation (South Africa) as a separate legal entity to Adagold Aviation Pty Ltd in February 2004. The Directors at inception included Mr Clark and Mr Ralph (Lawrence) Pietersen.

In April 2006, Mr Clark returned to Australia and in February 2007 tendered his resignation as Director of Adagold Aviation (South Africa). This resignation does not appear to have been registered with the Registrar of Companies until September 2007.

According to Mr Clark, the severance arrangement involved Mr Clark transferring his shares to the South African shareholders on a condition that the name of the company be changed. He had never heard the name Adajet whilst in South Africa (Clark Statutory Declaration, 9 September 2010).

Mr Clark claims to have had no input into the business as a Director from February 2006 (Clark Statutory Declaration, 9 September 2010).

Allegations

Deloitte found that the allegations against Adagold/Adajet contained in the various media reports can be summarised into the following 3 allegations:

- Allegation 1 That Adagold Aviation (South Africa) won a number of contracts between 2004 and 2006, despite being the highest bidder, implying that corruption may have been involved (for example, *Defence contract scandal widens*, The Age 18 August 2010)

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- Allegation 2 That 'Adagold's African arm' became embroiled in legal action after a company (Ibhubesi Trading) also directed by one of the Adagold Aviation (South Africa) directors, Ralph Pietersen was accused by a rival of receiving beneficial treatment from South African Defence officials. It was reported that the Pretoria High Court found that the country's Defence Secretary had unfairly influenced the decision to award the contract to Ibhubesi Trading (for example, *The sky's the limit*, The Age, 2 September 2010)
- Allegation 3 That Adajet can no longer seek South African Defence business as a result of allegations made against them in relation to tendering irregularities (for example, *Key player in regional Pacific Airlines tied to a second airline collapse*, Courier Mail 23 July 2010)

Findings

Tender Evaluation Board

Key personnel involved in the tender evaluation process stated that they were not aware of the allegations involving Adagold Aviation (South Africa) contracts in South Africa at the time of the tender.

Allegations

Allegation 1: That Adagold Aviation (South Africa) won a number of contracts between 2004 and 2006, despite being the highest bidder, implying that corruption may have been involved.

Key points to note include:

- These allegations first arose in the South African media on 28 July 2006. Reading the media articles show that the only basis proposed for the suggestion that Adagold Aviation (South Africa) was involved in corrupt activity was the fact that the company won tenders for contracts despite being the highest bidder – i.e. the alleged irregularity was simply that Adagold Aviation (South Africa) bid at a higher price.
- On the 13 August 2010 in an interview with Defence, Mr Clark claims that historically the South African Defence service tended to select the lowest tenders and the shift to a more 'sophisticated' approach to tender evaluation which went beyond just pricing had resulted in disgruntled competitors who raised suspicions about the process
- South African media reports that in April 2008 an investigation by the South African Inspector General of Defence was announced into procurement activities and a number of senior officials were stood down pending the investigation. Media reports suggested that defence contractors believed this related to tender processes including for air charter services and Adajet (formerly Adagold [Aviation (South Africa)]) was mentioned (*Defence heads roll*, April 25 2008). While the Defence Secretary would neither confirm nor deny what the concerns were, the media reported in December 2008 that Defence Department said the officers were reinstated and that an investigation by external forensic audit company found no grounds for action. It was also reported that the South African Inspector General, the Auditor General and an independent investigative firm could find no irregularity (*Department of Defence reinstates duo accused of tender irregularities*, 22 December 2010).

Allegation 2 : That 'Adagold's African arm' became embroiled in legal action after a company (Ibhubesi Trading) also directed by one of the Adagold Aviation (South Africa) directors, Ralph Pietersen was accused by a rival of receiving beneficial treatment from South African Defence officials. It was reported that the Pretoria High Court found that the country's Defence Secretary had unfairly influenced the decision to award the contract to Ibhubesi Trading (The Age, 2 September 2010, *The sky's the limit*)

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Key points to note include:

- Mr Clark has stated that Adagold Aviation (South Africa) is a separate entity to Adagold
- The allegations relate to the activities of a company Ibhubesi Trading. We understand that Mr Pietersen is a director of this company and the link to Adagold Aviation (South Africa) is this common directorship by Mr Pietersen. The allegation is that there was inappropriate involvement of the South African Defence Secretary in the awarding of the tender to Ibhubesi Trading to provide ration packs to the military
- An unsuccessful tenderer, Dewina Food Consortium (Dewina), instituted proceedings against the South African Department of Defence in the Pretoria High Court and reportedly obtained an interdict (injunction) to prevent the Department acting on the contract pending resolution of the proceedings. In the course of those proceedings, Dewina submitted material which reportedly supported its claim of inappropriate interference by the Defence Secretary in the process. The media report that the matter was dismissed by the court in November 2006, reportedly because the issue became merely academic as the two-year tender period was due to expire on 8 November 2006 and would be superseded by a new tender. Accordingly, no determination was made by the court on the merits of the application or substance of the allegations
- The allegation that the Pretoria High Court found that the country's Defence Secretary had unfairly influenced the decision to award the contract to Ibhubesi Trading does not appear to be consistent with the final outcome of the Court proceedings as reported by the media. Deloitte attempted to find the decision on the Pretoria High Court in this case – both interim and final decisions – but was unable to find them despite searching the court databases for the relevant periods under the parties' names.

Allegation 3: That Adajet can no longer seek South Africa defence business as a result of allegations made against them in relation to tendering irregularities (*Courier Mail 23 July 2010, Key player in regional Pacific Airlines tied to a second airline collapse*).

Key points to note include:

- This allegation appears to have arisen out of a commentary made on the court proceedings referred to in Allegation 2. Prior to the conclusion of the proceedings, South Africa media reported a commentator noting that if Ibhubesi was found guilty of corruption in the tender process, the company and its directors could be put onto a register of tender defaulters and barred [under the Prevention and Combating Corrupt Activities Act 2004] from receiving further defence force tenders for a period of up to ten years. It was also suggested that because of the Director overlap between Ibhubesi and Adagold Aviation (South Africa), the latter company would also be barred from receiving defence contracts (*Controversial SA tender for DRC, 28 July 2006*)
- Under the Act, only the court can make an order for a company to be entered onto the register. We have not found any evidence that the proceedings by Dewina resulted in any finding of corrupt activity against Ibhubesi and there is no evidence that any court order was made. In a South African media report dated 9 December 2009 National Treasury reportedly stated that its Register for Tender defaulters remained empty (*Register for Tender Defaulters empty, 9 December 2009*)

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Danish media

Adagold was successful in being awarded a tender from the Danish Department of Defence in 2008. The contract was the subject of a complaint by a Danish Aviation firm that missed out on the contract (Defence bidders had inside help, *The Age* 2 September 2010). The CAE contacted a (former) member of the Danish Defence Force (DDF) who was the lead manager for the tender process in Denmark by phone and asked about the DDF knowledge of the South African allegations. The former DDF member advised that the South African allegations were raised with the DDF by the unsuccessful tenderer and were investigated prior to the DDF proceeding with negotiations. DDF investigations did not identify anything to confirm any of the claims that Adagold had been involved in corrupt behaviour in South Africa (Record of Conversation between Geoff Brown and X, attached to email to David Brinton 20 August 2010).

Deloitte also considered the proceedings of the Danish Complaints Board for Public Procurement in which the unsuccessful tenderer sought a review of the decision to award the contract to Adagold (Complaints Board order of 1 October 2009. *Cimber Air A / S v Defence Command (Contract Directive) Complaints Board for Public Procurement* 1st October 2009. The decision was read by Deloitte and Cimber Air's claim was wholly dismissed for claims 1 to 13 and claims 15 to 16 and partly dismissed on claim 14 (transparency of process and "reading the proposal equally"). No action was taken to change the award of the contract.

Limitations

The following are limitations to our work:

- We have only looked at publically available information
- We have not verified the information contained within the publically available information
- Deloitte was unable to locate the reports of the South African Inspector General or reports of the Pretoria High Court proceedings through the database searches provided on their respective websites.

Conclusion

Key personnel involved in the tender evaluation process stated that they were not aware of the allegations involving Adagold Aviation (South Africa) contracts in South Africa at the time of the tender.

Based on the work performed, the information considered and the limitations, nothing has come to our attention to indicate that the issues referred to in the recent media articles regarding alleged Adagold contracts in South Africa raise matters of sufficient substance as to warrant excluding Adagold from consideration in the MEAO tender process.

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4.10 Probity of the procurement process

Terms of Reference	Deloitte Scope
Other matters relevant to the probity of the procurement process and the respondents.	Whether documentation exists to demonstrate the existence of a plan covering the governance of the tender, including areas of probity, the evaluation criteria and procurement strategy, covering the development of the Request for Tender and Evaluation of Tenders for RFT AO/014/09-10, and whether these plans were adhered to based on the available information

Observations

Based on the work performed, the information considered and the limitations, nothing material has come to our attention that could improve the probity of the procurement process that has not been mentioned above.

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4.11 Shadow Minister for Defence

Deloitte Scope Response

The matters raised in the Shadow Minister for Defence's letter to the Secretary of 31 August 2010 have been covered throughout the report or in the table below. The table below references the sections of this report where the issues are addressed.

Matters raised	Responses
<i>"Mr Charlton's involvement pre RFT, post RFT and currently, the fact that he has a long and substantial relationship with Defence Logistics and particular the Joint Movement Group whilst providing professional advice to tenderers, successful or otherwise is frankly, not a good look".</i>	This issue is addressed in Section 4.2 - Confidentiality, Section 4.3 - Objective and Supportable Process and 4.5 - Conflicts of interest.
<i>Charlton's credibility based on his recent financial history.</i>	Based on discussions with Mr Geoff Brown, CAE on the 2 September 2010 it was agreed that this was not pertinent to the tender process for awarding this contract.
<i>Adagold Aviation subsidiary, Adajet's financial and corporate integrity.</i>	This issue is addressed in Section 4.6 - Fit and Proper in Contracting with the Commonwealth and Section 4.9 – Ethics and probity of Adagold's alleged South African interests.
<i>Hifly's rated performance and quality of service.</i>	<p>On the 12 July 2007 the ABC's 7.30 report raised a number of allegations about the failure of Hifly to adequately meet "aviation safety standards". The allegations were made by anonymous "former staff members" of Hifly. In summary the allegations were:</p> <ul style="list-style-type: none"> • inadequate documentation • breached airline safety training rules • inadequate crew rest • failure to log faulty equipment. <p>On the 19 July 2007 CASA conducted a Ramp Inspection of Hifly in part to determine if the allegations made in the 7.30 report were justified when compared to CASA ramp inspection requirements. Deloitte has read the inspection report. None of the allegations against Hifly were substantiated against the requirements specified for a Ramp inspection.</p> <p>In addition, the ADF team conducted a Ramp inspection of the operator on 26 July 2007 and found there to be no operational concerns. Deloitte has read the ADF report.</p>

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Appendix A – Interview List

We interviewed and/or conducted meetings with the following people in the conduct of this engagement:

Rank and Name	Position / Area	Interview date(s)
Air Commodore Peter Brennan	Director General, Logistics Assurance, Joint Logistics Command (JLC) Defence	3 September 2010
Group Captain Robert Barnes	Commander, 1 st Joint Movement Group (1JMOVGP)	5 & 7 September 2010
Lieutenant Colonel Andrew Hall	Staff Officer 1 Operations/Plans, 1JMOVGP	5 September 2010
Squadron Leader Benjamin Cole	Staff Officer 2 Strategic Lift Coordination Cell, 1JMOVGP	3, 4 & 6 September 2010

Name	Position	Interview date(s)
Mr Geoff Brown	Chief Audit Executive	2 September 2010
Mr Doug Strugnell	Principal, Financial Investigation Service	3 September 2010
Mr Ray Bromwich	Inspector General	2 & 3 September 2010
Mr David Brinton	Director, Audit Central, Audit Division	2, 3 & 6 September 2010
Mr Alan Scheckenbach	Deputy Director, National Logistics, JLC Defence	5 September 2010
Ms Jacqui Marsden	Audit Manager, Audit Central, Audit Division	2, 3 & 6 September 2010

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Appendix B – Source Documents

Document	Source
Common Documents - Defence	
AM183951 – Procurement strategy for the contracting of air sustainment services in support of OP SLIPPER – 24 March 2010	Defence
AO/01409-10 – Procurement decision record – 18 March 2010	Defence
AM214557 – Procurement approval for the provision of air sustainment services in support of OP SLIPPER – 23 March 2010	Defence
AM214585 – Procurement approval for the provision of air sustainment services in support of OP SLIPPER – 23 March 2010	Defence
Tender Evaluation Plan (TEP) – OP SLIPPER air sustainment services – 25 March 2010	Defence
Request for Tender – 23 March 2010	Defence
AM29046 – Minutes of industry briefing on AO/014/09-10 air charter services MEAO RFT – 27 April 2010	Defence
Tender closing register	Defence
AM377749 – Source Evaluation Report (SER) for Request AO/014/09-10 for the provision of air sustainment services to the Middle East – 9 July 2010	Defence
AM377749 – Source Evaluation Report (SER) for Request AO/014/09-10 for the provision of air sustainment services to the Middle East – 15 September 2010	Defence
Tender Evaluation Board Report for Request AO/014/09-10 for the provision of air sustainment services to the Middle East – 15 September 2010	Defence
Clayton Utz – 80105115/879/17061 – Advice to tender evaluation board re Source Evaluation Report – 9 July 2010	Defence
Clayton Utz – 80105115/879/17061 – Advice to tender evaluation board re proposed insurances – 9 July 2010	Defence
AM380375 – Noting brief for JCOPS: outcome of tender evaluation to AO/014/09-10 Middle East Air Sustainment Services – 9 July 2010	Defence
AM395498 – Minutes of contract negotiations – 27 July 2010	Defence
AM214585 – Contract approval for the provision of air sustainment services in support of the OP SLIPPER – 24 August 2010	Defence
Notification letters to tenders on results – 31 August 2010	Defence
Draft Audit Report – Probity Audit of Tender Process for Air Sustainment Services to the	Defence

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Document	Source
Middle East Area of Operation (MEAO) August 2010	
Alltrans Response to RFT (proposal)	Defence
Adagold Response to RFT (proposal)	Defence
Strategic Aviation Response to RFT (proposal)	Defence
Defence Procurement Manual	Defence
Annex B – RFT DNL09009 Air Transport Deed of Standing Offer Evaluation Matrix	Defence
Tender Evaluation Report for Request for Tender Air Transport Deed of Standing Offer – 6/10/2009	Defence
Commonwealth Procurement Guidelines	Defence
Draft report prepared by the Inspector General, Department of Defence (latest provided 3 September 2010) titled The Connection between Adagold (Australia) and Allegations of Tender Irregularities involving Adagold/Adajet (South Africa)	Defence
Record of conversation between Major David Charlton and Mr Jason Woods in the presence of Mr David Brinton – 4 August 2010	Defence
Record of conversation between Department of Defence and Executive of Adagold Aviation proprietary limited – 13 August 2010	Defence
Financial Evaluation Report for the Provision of OP Slipper Air Sustainment Services – 30 June 2010	Defence
Financial Evaluation Report for the Provision of OP Slipper Air Sustainment Services – 14 September 2010	Defence
Financial management Guidance No 3 – Guidance on confidentiality in Procurement Department of Finance and Deregulation, July 2007 (FMG 3)	Public
Financial management Guidance No 13 – Guidance on mandatory Procurement Procedures Department of Finance and Deregulation, July 2005 (FMG 1)	Public
Financial management Guidance No 14 – Guidance on Ethics and Probity in Government Procurement Department of Finance and Deregulation, July 2005 (FMG 14)	Public
APS Values and Code of Conduct	Public
Conflicts of interest and Probity Declarations from the TEB members and Barnes	Defence
Legal and legal process review of the procurement process for the MEAO air sustainment support contract – Australian Government Solicitor – 14/09/2010	Commonwealth Government
Common Documents – Public	
Defence contract scandal widens – 18/8/2010 < http://www.smh.com.au/national/defence-contract-scandal-widens-20100817-128jr.html >	Sydney Morning Herald
The sky's the limit – 2/9/2010 < http://www.theage.com.au/national/the-skys-the-limit-20100901-14nl2.html >	The Age
Army reservist linked to second air charter tender in Middle East – 18/8/2010 < http://www.brisbanetimes.com.au/world/army-reservist-linked-to-second-air-charter-tender-in-middle-east-20100817-128mb.html >	Brisbane Times
Defence men gave information to bidders – 2/9/2010 < http://www.smh.com.au/national/defence-men-gave-information-to-bidders-20100901-14nn1.html >	Sydney Morning Herald

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Document	Source
Concerns over Defence contract – 12/8/2010 < http://www.theage.com.au/national/concerns-over-defence-contract-20100811-11zt5.html?from=age_sb >	The Age
Defence contract scandal widens – 18/8/2010 < http://m.brisbanetimes.com.au/national/defence-contract-scandal-widens-20100817-128jr.html >	Brisbane Times
Doubts on \$90m defence air deal – 10/8/2010 < http://www.theaustralian.com.au/national-affairs/doubts-on-90m-defence-air-deal/story-fn59niix-1225903169973 >	The Australian
Defence tender up in air over leak and corruption claim – 22/7/2010 < http://www.news.com.au/national/defence-tender-up-in-air-over-leak-and-corruption-claim/story-e6frfkvr-1225895322488 >	News.com.au
Defence Media Release – Air sustainment services to the Middle East Area of Operation	Defence Media Release
4.1 Selection from the Standing Offer Panel	
Annex C FIS Air Charter Standing Offer Panel Report	Defence
Company Matrix	Defence
Original contract with Strategic Aviation and the seven subsequent contract change proposals	Defence
4.2 Governance in relation to Confidentiality	
Presentation by Adagold to Defence entitled “Middle East Sustainment Aircraft” dated February 2010	Defence
Email from Andrew Hall to Shaun Aisen in the regards to Tender AO/014	Defence
Email from Brinton: 1JMOVGP response to Feb Adagold Unsolicited proposal	Defence
Statutory Declaration - Mark Warren Clark, 9 September 2010	Defence
Statutory Declaration - David John Charlton, 9 September 2010	Defence
Audit Trail Records for Procurement Strategy Document and RFT	Defence
DRMS Access Log for AO/014/09-10	Defence
4.3 Decision to Tender	
Application for a non-scheduled flight permission – <i>Civil Aviation Act 1988</i> , Section 25	CASA
Formula Summary Air Charter 2010 – 3 August 2010	Defence
Emails with CASA regarding COA, AOC and registry of air crafts	Defence
Email: ‘full use of carrying capacity SECRESTRICATED’ from SQNLDR Cole to Mr David Brinton	Defence
4.4 Governance	
Defence Procurement Process - 2010-09-07	Defence
Defence Governance Working Paper - 2010-09-07	Defence
Notes from discussion with Steven Power, Partner, Clayton Utz on 3 August 2010	Defence

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Document	Source
SER – TTEWG Report – 9 July 2010	Defence
SER – TTEWG Report – 15 September 2010	Defence
4.5 Governance in relation to Conflicts of interest	
Conflicts of interest Declaration (ADF Member)	Defence
Reserve Attendances – David Charlton	Defence
Defence Instructions – Employment and voluntary activities of Australian Defence Force Members in off-duty hours	Defence
Defence Instructions – Notification of Post Separation Employment	Defence
4.6 Fit and Proper in contracting with the Commonwealth	
ASIC searches on Adagold Aviation Pty Ltd,	ASIC
A bankruptcy search on Malcolm Af Uhr	National Personal Insolvency Index
An historical personal name extract for: AF UHR, MALCOLM from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
ASIC report dated 30/7/2010 containing the annual report to creditors of Sky Air World Pty Ltd	ASIC
Media searches for David Charlton	Factiva
An historical personal name extract for: CHARLTON, DAVID JOHN from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
ASIC report dated 8/4/2009 containing the minutes of the first meeting of creditors - Sky Air World Pty Ltd (Administrator appointed)	ASIC
ASIC report dated 12/5/2009 containing the minutes of the second meeting of creditors - Sky Air World Pty Ltd (Administrator appointed)	ASIC
ASIC report dated 10/5/2010 containing the accounts and statements of Sky Air World Pty Limited for the period from 28/10/2009 to 27/4/2010	ASIC
A bankruptcy search on Mark Warren Clark	National Personal Insolvency Index
An historical personal name extract for: CLARK, MARK WARREN from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
An historical occupancy search 8 Logan Clear Mountain, Qld 4500	National Personal Insolvency Index
Media searches for Mark Clark in Australia	Factiva
A bankruptcy search on Jeffrey Raymond Eager	National Personal Insolvency Index
An historical personal name extract for: EAGER, JEFFREY RAYMOND from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
The LinkedIn web page for Jeffrey Raymond Eager	LinkedIn
Media searches for Jeffrey Eager	Factiva
A bankruptcy search on Stuart Barry Lee	National Personal Insolvency Index

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Document	Source
An historical personal name extract for: LEE, STUART BARRY from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
Media searches for Stuart Lee in Australia	Factiva
An historical personal name extract for: PATEL, ANILKUMAR VALLABH from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
A bankruptcy search on Anilkumar Vallabh Patel	National Personal Insolvency Index
Media searches for Anil Patel	Factiva
Federal court searches for Alltrans Management Pty Ltd , Evergreen Container Shipping Line Pty Ltd and also Adagold Aviation Pty Ltd	Federal Court
ASIC searches on Sudza Pty Ltd	ASIC
An historical personal name extract for: SANDFORD, MALCOLM from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
A bankruptcy search on Malcolm Sandford	National Personal Insolvency Index
Media searches for Malcolm Sandford	Factiva
A search of VIRGIN ATLANTIC LIMITED current and past directors	ASIC
ASIC Historical Company Extract for ALLTRANS MANAGEMENT PTY LTD	ASIC
Media searches for Alltrans Management Pty Ltd and Alltrans International	Factiva
ASIC Historical Company Extract for EVERGREEN CONTAINER SHIPPING LINE PTY. LTD	ASIC
D&B Individual Public Record Enquiry for Barry Edward Elliott	DBCC
An historical personal name extract for: ELLIOTT, BARRY EDWARD from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
An historical personal name extract for: TADROS, FRANK from ASIC setting out shareholdings, and Directorships / Secretariat roles (past and current)	ASIC
Land and property information search for Barry Elliott	Globalx
Media searches for Barry Elliott	Factiva
ASIC searches on Little Pocket Pty Ltd, returning a document dated 11/11/2004	ASIC
ASIC searches on Aviation Integration Service Pty Ltd, returning documents dated	ASIC
4. 7 Financial and Commercial capacity	
Adagold Pricing	Adagold
Service Provider Pricing spreadsheet	Defence
Tender Response – Alltrans Management	Defence
Adagold Financial Statements for periods ending 31/3/2010, 30/6/2009, 30/6/2007	Accountants of Adagold
Letter from Alltrans to Defence regarding Middle East Sustainment Flights	Alltrans
Alltrans Financial Report for the year ended 2009 and 30/6/2007	Alltrans
Air Partner Annual report 2009	Air Partner
Air Partner Financial Statement	Air Partner

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Document	Source
Virgin Atlantic Financial Statistics	Virgin Atlantic
Singapore Airlines annual report 2009/10	Singapore Airlines
4.8 Capacity to Deliver the Services	
Certain documents listed in the general section and Section 4.7	
4.9 Adagold's alleged interests in South Africa	
Ratpack suppliers lock horns - 21 Dec 2004 < http://www.news24.com/SouthAfrica/News/Ratpack-suppliers-lock-horns-20041221 >	News24
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4.10 Probity of the Procurement Process	
Refer to documents listed under 4.4	
4.11 Shadow Minister for Defence's letter	

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Document	Source
Ramp Inspection Report	Defence
Deed – Annex A to Sect 5 Chap 1 - Charter Aircraft selection and ramp inspection determination	Defence
Letter from Shadow Minister for Defence to Secretary of Defence	Defence

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Appendix C - Chronology of Events

Timeline	Event
June 2008	Defence signs 2008 contract with Strategic Aviation for the provision of air sustainment charter services in relation to Service Order AO/052A/07-08.
24 October 2008	Commencement date for 2008 contract with Strategic Aviation.
Between 24 October 2008 and 2009	Defence and Strategic Aviation agree on seven Contract Change Proposals that provided amendments to the 2008 contract.
March 2009	Defence extends contract with Strategic Aviation for 12 months.
4 September 2009	Adagold representatives met with Defence personnel to discuss a range of issues. One issue related to Adagold planning to present an unsolicited proposal to provide air sustainment charter services.
October 2009	Defence establishes need for retender in relation to the provision of air sustainment charter services due to changes in operational requirements and commences procurement process (e.g. preparation of tender related documents and discussions with Clayton Utz).
November 2009	Standing Offer Panel was established with thirteen providers.
10 February 2010	Adagold presents unsolicited proposal to Defence entitled 'Middle East Sustainment Aircraft' that presents new options for Defence at better prices for the air sustainment charter services to the Middle East.
18 March 2010	Defence approves Procurement Decision to retender provision of air sustainment charter services.
23 March 2010	Defence approves Request for Tender (RFT) under Service Order AO/014/09-10.
24 March 2010	Defence approves Procurement Strategy for the retender of air sustainment charter services. Defence commenced to draft Procurement Strategy in October 2009.
25 March 2010	Defence approves Tender Evaluation Plan.
29 March 2010	Defence issues RFT to Global Air Lift Standing Offer Panel members (panel members).
30 March 2010	Major Charlton declares a potential conflict of interest in his role as a member of the Joint Movement Control Office in Brisbane.
30 March 2010	Strategic Aviation representatives approach Defence to discuss their concerns with the upcoming tender process.
23 April 2010	Defence conducts Industry Briefing with panel members.

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Timeline	Event
Between 23 April 2010 and 1 June 2010	Defence provides additional tender clarifications at request of panel members through Request for Information (RFI).
1 June 2010	RFT closing date.
2 June 2010	Defence commences tender evaluation process.
9 July 2010	Defence approves Source Evaluation Report (SER) and identifies Adagold as the preferred tender.
9 July 2010	Defence provides verbal notification to Adagold that they are the preferred tender.
9 July 2010	Defence provides verbal notification to Strategic Aviation that they have been unsuccessful.
9 July 2010	Clayton Utz provide letter outlining their review of the draft SER and the issues identified.
12 July 2010	Defence formally communicates to all participating tenderers on tender results.
14 July 2010	Shaun Aisen from Strategic Alliance writes a formal letter to the Inspector-General expressing his concerns regarding the tender results.
19 July 2010	Audit & Fraud Control Division commences probity audit of tender process.
20 July 2010	Defence issues a media release setting out that concerns with the tender process were raised with the Inspector-General of Defence by Strategic Aviation.
27 July 2010	Defence conducts initial contract negotiations with Adagold.
16 August 2010	PriceWaterhouseCoopers commences independent peer review of the probity audit conducted by Audit & Fraud Control Division.
24 August 2010	Defence approves contract for the provision of air sustainment charter services with Adagold. Contract with Adagold has not been signed.
2 September 2010	Australian Government Solicitor commenced a legal and legal process review of the procurement process for Tender AO/014/09-10.
2 September 2010	Deloitte commenced an examination of the procurement process for Tender AO/014/09-10.

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