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Australian Government
Department of Defence

Final Probity Review Report

Review Task: 11-058

**Probity Review of Tender Process for Air Sustainment
Services to the Middle East Area of Operation (MEAO)**

September 2010

**Prepared by
Audit & Fraud Control Division**

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1. Executive Summary

On 15 July 2010, the Secretary directed the Defence Chief Audit Executive (CAE) to conduct a probity review of the MEAO Air Sustainment Services contract Request for Tender (Request) AO/014/09-10 process. The probity review provided an independent assessment of the MEAO Air Sustainment Service requirements, the contract process, the outcome, the probity of the contract process and an assessment of Value For Money (VFM). This report documents the outcome of the CAE probity review.

1.1. Objectives and Scope

The probity review addressed the following questions:

1. Was the tender process sound and did it comply with Commonwealth and Defence procurement policy?
2. Were all tenderers given equal opportunity to respond to the tender and were all tenderers treated fairly and equally?
3. Were the tender evaluation and Value for Money (VFM) assessment processes thorough, free of bias and was the basis for ranking of the tenders a true representation of the tenderers' compliance with the selection criteria?
4. Did the Request period of 8 weeks provide sufficient time for tenderers to provide tenders that could meet all of the conditions of the tender?
5. Did the specified air sustainment support services relate to actual operational needs?
6. Did the specifications disadvantage any of the tenderers?
7. Is there anything identifiable in the tender process that would justify re-tender?

The detailed findings relating to these questions are discussed in Section 4.1 of this report.

In addition to assessing the fairness and compliance of the Request process, the probity review was required to address a number of specific issues and allegations relating to the tender process. The detailed findings for these allegations and issues are discussed in Section 4.2 of this report.

Due to the very limited time available to undertake the review, and together with the number and nature of the allegations, the probity review only examined the top three ranked tenderers; Adagold Aviation Pty Ltd (Adagold), Alltrans Management (Virgin Atlantic) Pty Ltd (Alltrans) and Strategic Aviation Pty Ltd (Strategic) to form an opinion about the tender process.

The probity review was subsequently expanded to include certain matters raised by the media. These matters are discussed in Section 4.2 of this report.

The CAE review focussed on the issues raised by Strategic Aviation and in the media. However, as part of the review process, it also considered the compliance of the tender process with Commonwealth and Defence Policy, as it related to these issues.

1.2. Review Opinion

Adopting the numeration above, the answers to the above questions are as follows:

1. Yes
2. Yes
3. Yes
4. Yes
5. Yes
6. No
7. No

Conclusion

The findings of the CAE Probity Review have confirmed that the tendering process for Request AO/014/09-10, for the provision of Air Sustainment Services to the Middle East Area of Operation (MEAO), was fair and complied with Commonwealth and Defence procurement policy.

The MEAO Air Sustainment Services Request was a difficult and complex contract that sought to utilise the contractual framework established under the current Air Transport Standing Offer Panel (Panel) DNL09009 to provide these services. The probity review concluded that the Panel was established to provide a contractual framework for ad hoc air charter services and that the MEAO requirements were more complex than anticipated, resulting in some inconsistencies between MEAO Request AO/014/09-10 and the Panel Deed of Standing Offer.

The probity review found deficiencies in the tender planning process and in the completeness of tender evaluation methodology and assessment documentation against the requirements of the Commonwealth Procurement Guidelines (CPGs) and the Defence Procurement Policy Manual (DPPM), but these deficiencies were not to the extent to cause the process to be suspended.

1.3. Summary of Observations

Planning for the procurement activity would have benefited from a more comprehensive procurement risk assessment that should have identified the need to appoint an independent probity advisor early in the process, as well as the need to strengthen probity management throughout the tender process. The need for this early comprehensive risk assessment was exacerbated by the tight procurement schedule driven by MEAO operational requirements and the competitive nature of the Panel members.

Further, the review found that the level of compliance and risk associated with each tender response, including the commercial viability and the tenderers' ability to deliver the contracted services, were assessed in the tender process, but could have been better documented.

1.4. Summary of Conclusions

The following table provides a summary of the conclusions of the probity review. These matters have been discussed in further detail in the body of the report (refer to Section 4):

Issue	Report Section
The decision to re-tender was based on valid commercial and operational considerations, including the likelihood of an improved 'value for money' outcome following changed aviation industry conditions due to the Global Financial Crisis (GFC), and changed Defence operational requirements, but that these decisions could have been better documented.	4.1
The specifications for the tender, including an increase in the freight capacity, were based on valid and objectively determined Defence operational and technical requirements, and were not specified to advantage or disadvantage any of the tenderers.	4.1
The tender process complied with Commonwealth and Defence procurement policy.	4.1
There was no relevant evidence to support claims that the preferred tenderer should have been excluded from the contract due to alleged corrupt behaviour in relation to dealings with the South African Defence Department.	4.2
There was no evidence that Mr David Charlton had any involvement in, or influence on, the RFT or tender evaluation process.	4.2
No evidence was found to support claims that Mr David Charlton, directly or indirectly, had privileged access to any information associated with the tender specifications.	4.2
There was no evidence to support claims that Adagold's proposed aircraft operator Hi Fly did not meet essential Australian airworthiness requirements or that it had a history of unsafe operations.	4.2
The CAE has found that an independent external probity audit of the 2005 MEAO Air Sustainment Services Request process, conducted by lawyers, Phillips-Fox, confirmed that the previous tender process was: conducted in a fair, open and transparent manner; did not disadvantage any tenderer in the tender process; and that there was nothing identifiable in the tender process that would justify a re-tender. In light of this, the CAE probity review did not perform any additional assessment of the 2005 MEAO Air Sustainment tender process.	4.2

2. Review Methodology

Due to the limited time available and the large number of allegations, the probity review focussed on the top three ranked tenderers to assess the tender process (ie Adagold, Alltrans and Strategic). The following MEAO Air Sustainment Services Request processes were assessed for objectivity and compliance against the policy framework of the *Commonwealth Procurement Guidelines (CPGs)*, the *Defence Procurement Policy Manual (DPPM)* and *Financial Management Guidance (FMG) 14 – Guidance on Ethics and Probity in Government Procurement (January 2005)*:

- a. procurement planning and industry engagement,
- b. development of tender documentation and technical specifications,
- c. procurement risk and probity management,
- d. tender evaluation and coordination of the Tender Evaluation Working Groups (TEWGs), and
- e. Value for Money (VFM) decision making process.

Documents reviewed in the conduct of the probity Review included:

- a. Tender Evaluation Plan (TEP) and acquisition strategy approval documentation,
- b. the current air sustainment contract including contract change proposals,
- c. draft conditions of contract and specifications for Request AO/014/09-10,
- d. TEWG working papers and notes,
- e. Financial Investigation Services (FIS) technical working papers,
- f. independent probity reviews relating to the 2005 and 2010 MEAO Air Sustainment Services Request processes,
- g. the Request Negotiation Directive, and
- h. various briefs.

The following people were interviewed in the conduct of the probity review of the Request process being managed at First Joint Movement Group (1JMOVGP), Headquarters Joint Operational Command (HQJOC) Bungendore:

- a. Air Commodore Peter Brennan – Director General Logistics Assurance Defence, on 21 July 2010;
- b. Mr Alan Scheckenbach - Director National Logistics, Joint Logistics Command Defence, on 9 August 2010;
- c. Financial Investigations Services personnel - Defence Plaza Sydney, on 4 August 2010;
- d. Clayton Utz probity Review staff Canberra, on 4 August 2010;
- e. LTGEN Mark Evans - Commander Joint Operation Command, on 13 Aug 2010;
- f. Mr David Charlton, aviation industry consultant Aeronautical Integration Services (AIS) Pty. Ltd., on 3 August 2010; and

- g. Mr Mark Clark (CEO), Mr Stuart Lee and Mr Anil Pattel, Adagold Aviation Pty. Ltd., on 13 August 2010.

3. Background

Air sustainment charter services in support of ADF operations in the Middle East Area of Operation (MEAO) have been provided under contract since 2005. The initial 2005 contract was for a period of six months, with the option of four six monthly extensions. The second contract (Service Order AO/052A/07-08) commenced in October 2008. Since 2005, Strategic has been the continuous provider of air sustainment services through these contracts. The current contract with Strategic expires on 23 October 2010. Pending the outcome of the probity review, the preferred tenderer, Adagold, will take over the MEAO air sustainment services, subject to successful negotiation and signing of a contract under Request AO/014/09-10. The estimated annual contract price is approximately AUD \$30.937m (exclusive of fuel costs), with a contract period of two years, plus two one year options.

4. Conclusions and Observations

4.1. Tender Process Management Findings

The following section provides more detailed information on the management of the tender process to support the probity review Summary of Conclusions in Section 1.

Was the tender process sound and did it comply with Commonwealth and Defence procurement policy? – Yes

Compliance with Legislative Obligations and Government Policies

The probity review concluded that the MEAO Air Sustainment Request process was compliant with Commonwealth and Defence procurement policy. The following aspects were noted:

Procurement Competencies

Key personnel managing the 2010 Request process and exercising Commonwealth financial delegations held the required Complex Procurement competencies and skills. The probity review identified that two Tender Evaluation Working Group (TEWG) members had not completed the final Complex Procurement module for managing contracts, but that this module was not related to, and did not in any way affect, the tender evaluation process. One Tender Evaluation Board (TEB) member (the Panel administrator) did not have Complex Procurement competencies. The DPPM mandates that staff exercising financial delegations are to have the appropriate procurement competency (eg Complex Procurement) and encourages other procurement personnel (eg tender evaluation board staff and procurement support staff) to obtain the appropriate procurement delegations, noting they should have the necessary technical/subject matter skills to assess the substance of the tendered solutions. Despite meeting the minimum DPPM requirements, the review concluded that the Air Transport Standing Offer

Panel Administrator should obtain a Complex Procurement competency (including the completing the module for managing contracts) as soon as possible. Further, this should be a prerequisite to appointing future holders of this position.

Use of an Appropriately Competitive Process

The Australian air charter market was recently re-tested by Defence with the establishment of the latest Air Transport Standing Offer Panel - DNL09009 (Panel) on 2 November 2009. The Panel establishment was conducted as a Complex Procurement open tender process, and has effectively pre-selected the air charter market for Commonwealth requirements for the period of the current Panel operation.

The 2010 Request AO/014/09-10 for MEAO Air Sustainment Services was an approach to all panel members when it was released on 29 March 2010.

The 2010 Request AO/014/09-10 demonstrated a healthy level of competitive interest, with seven out of a total of 13 panel members submitting a total of ten separate proposals. The excess number of submissions over the number of tenderers is due to some tenderers submitting multiple options.

The current Air Transport Standing Offer Panel (DNL09009) resulted in the addition of six companies to the panel in November 2009, taking the panel from seven to 13 companies. Based on this recent market testing, the probity review concluded that the utilisation of the current Panel through a competitive tendering process (ie an approach to all panel members) represented a fair and open approach to obtaining best Value for Money.

Security and Confidentiality Management

The probity review reviewed the record management processes of the Tender Team and concluded that appropriate processes and documentation handling and storage procedures have been followed throughout the tender process.

The tender planning and evaluation was undertaken within the geographically remote and highly secure Headquarters Joint Operations Command (HQJOC) facility near Bungendore, NSW. The only exception to this was the evaluation of financial aspects for Fuel and Financial Viability which were undertaken at the Financial Investigation Services (FIS) office in the Defence Plaza, Sydney. Review fieldwork at FIS Defence Plaza Sydney confirmed that appropriate mechanisms and safeguards were implemented and maintained to ensure the confidentiality and security of all tender information.

Conflict of Interest Management

The need to identify and manage potential, perceived or actual conflicts of interest was adequately addressed in the approved Tender Evaluation Plan (TEP).

Tender team members received a briefing on Conflict of Interest management and all Tender Team personnel completed and signed the required Conflict of Interest Declaration forms, albeit, part way through the tender process.

The probity review identified that when Mr Charlton first returned to Defence on 6 Jul 09 as a (part-time) reservist, First Joint Movements Group (1JMOVGP) noted his prior involvement in the 2005 MEAO tender process and his more recent involvement in the air charter industry, and appropriately chose to place him in a training and development role that had no involvement with, or access to, Air Charter operations supported by 1JMOVGP. Mr Charlton immediately and appropriately declared a potential Conflict of Interest shortly after he became aware that the request for tender had been released on 29 March 2010 and Defence acted immediately to ensure that he could have no involvement in, or contact with, the tender process. This was achieved by assigning Mr Charlton of a project in Army Headquarters on release of the tender. This re-assignment removed Mr Charlton from the 1JMOVGP organisation and premises for the duration of the tender process.

Handling of Commercially Sensitive Information

The approved Request and approved Tender Evaluation Plan (TEP) identified the following nine evaluation criteria for the 2010 MEAO Air Sustainment procurement (all criteria were equally weighted):

1. Past performance of contractual obligations of the Contractor, the Operator, or any Subcontractor.
2. The Contractor's degree of overall compliance with the requirements of the Request.
3. The Contractor's understanding of the requirements of the Request.
4. The extent to which the Contractor demonstrates how compliance with the requirements of the Request and the Deed of Standing Offer (Deed) will be achieved.
5. The extent to which the Contractor meets the technical, functional, operational, and performance requirements stated in the Request and the Deed.
6. The extent to which the Contractor is compliant with the Request and the assessed level of risk relating to the negotiation of the Request.
7. The proposed corporate structure and the financial and corporate viability of the Contractor and any proposed Operator to fulfil their obligations under the Request and the Deed.
8. The Contractor's demonstrated technical and managerial capability to meet the requirements and the Request and the Deed.
9. The fuel efficiency of the aircraft.

All tender responses were initially assessed for the completeness and compliance of their bids. The probity review identified that all Request requirements are rated as equally important and the statement of work utilised 'must' in lieu of the ASDEFCON mandated 'shall' terminology. While all bids were treated fairly, the probity review found that the tender ranking and selection process would have been strengthened by clearer definition of essential and important requirement in the Request statement of work. No tenderers were set aside during this part of this process.

The Request required an all-inclusive price for the MEAO Air Sustainment Services based on a guaranteed 65 flights per annum over the initial two year contract period. Under the Request,

fuel cost are funded by the Commonwealth; however, fuel usage of the tendered options was incorporated into the pricing and overall VFM analysis.

The probity review confirmed that tenderer commercial and financial information was extracted from the tender responses to undertake the detailed Operational/Technical and Tender Evaluation Board (TEB) compliance assessments. The Operational/Technical TEWG assessed criteria five and eight. The Financial TEWG (ie FIS located in Defence Plaza Sydney) assessed criteria seven and nine. The TEB conducted the compliance and risk assessment of tenderers against the remainder of the evaluation criteria.

Once the compliance and risk assessments were completed, the TEB, consisting of three officers (two from First Joint Movement Group, with the third being the Air Transport Standing Offer Administrator) were provided with the tenderer financial and commercial information to consolidate and determine the overall compliance and VFM ranking.

The approved Tender Evaluation Plan (TEP) appropriately identified the need to remove the commercial and financial information from the tender responses to keep this information separate from the operational and technical risk and compliance assessments. The probity review was advised by the TEB that at no stage was commercially sensitive information on any bid provided to other tenderers, or to personnel outside the Tender Evaluation Board (TEB), during the tender evaluation process.

The probity review found that the planning for the procurement was reasonable, but the timeframes were tight from the decision to re-tender on 24 March 2010 to the Effective Date for service commencement of 24 October 2010. The TEP provided reasonable detail, but could have provided more detail for the scoring and pricing model to be used to ensure a standardised and complete assessment of bids for this complex industry. The Request documentation terminology and structure would have benefitted from being updated against current ASDEFCON requirements and terminology, but it adequately covered the services to be procured. The 2010 Request activity was conducted pursuant to the Deed of Standing Offer DNL09009 and was not conducted as a separate Select Source (ie Restricted) tender that merely used the panel to approach the market. The review concluded that the Panel Deed of Standing Offer was suitable for simple charters, but may not have been suitable for the more complex air sustainment procurement activity being contracted for under the MEAO Air Sustainment Services contract (AO/014/09-10).

The probity review concluded that appropriate processes and safeguards were implemented to protect the integrity of the technical, functional and operational tender evaluation processes. The financial and commercial compliance and risk assessments were overlayed by the TEB once the operational and detailed technical compliance and risk assessments were complete. However, the reporting of this analysis would have benefitted from the production of a separate TEB report for the five requirements being assessed by the TEB, as was the case with the Financial and Technical TEWGs Reports.

Procurement Planning, Execution and Consultation

As identified earlier in this report, the probity review concluded that the tender process complied with Commonwealth and Defence Procurement and Contracting Policy. However, several

opportunities to further strengthen any future MEAO Air Sustainment tendering processes have been identified by the probity review. These opportunities include:

- a) the conduct of an improved commercial risk assessment and the appointment of a dedicated independent probity advisor prior to the release of the Tender Evaluation Plan (TEP) and Request in lieu of placing excessive reliance on the Standing Offer Panel risk assessment;
- b) better consultation by IJMOVGP in developing the Tender Evaluation Plan, including obtaining earlier Financial Investigation Service (FIS) advice on the agreed pricing model and financial evaluation processes;
- c) utilisation of standard ASDEFCON requirements, terminology and templates (where practicable) to simplify the comparative analysis of tender responses, including utilisation of the ASDEFCON pricing schedule template;
- d) improved consultation between the Technical Tender Evaluation Working Group (TEWG) and FIS staff, particularly during the tender evaluation period;
- e) a clearer explanation of the ranking in the comparative summary of the Source Evaluation Report (SER) to better communicate the processes used, the level of relative risk and the assessed mitigation strategies, as well as more clearly communicating the relative compliance aspects of each tendered option;
- f) the conduct of a price sensitivity analysis regarding the effect of changing the number of required flights from the minimum requirement of 65 flights per annum, to 80 flights per annum. (The review requested FIS to conduct this sensitivity analysis based on 80 flights and concluded that it did not materially affect the preferred tenderer ranking).

Probity Advice

As a probity measure when developing the RFT, the 2010 MEAO Air Sustainment Tender Evaluation Board (TEB) sought independent probity and legal advice from an external legal service provider, Clayton Utz via the Defence Legal Services Panel. Clayton Utz was contracted to provide legal advice on the development of the requirements and the tender process, including the Source Evaluation Report (SER).

Clayton Utz supported the initial establishment of the Air Transport Standing Offer Panel and so they were familiar with the structure of the Panel Deed and the MEAO Air Sustainment Services Request.

Audit Branch was advised by Steven Power (Clayton Utz) that the TEB Secretary SQNLDR Ben Cole discussed the appointment of an independent probity adviser midway through the process, who advised that, given the assurance that the Panel establishment process can provide, 'it would be unusual to source a probity adviser when getting something off a panel arrangement'. Steven Power further noted that 'it would be an unusual expense'.

Clayton Utz attended the MEAO Air Sustainment Industry Brief and assisted with clarification questions from the panellists. They also attended one TEB meeting to assist with Insurance and Liability questions from the prospective tenderers and provided a related summary document.

Clayton Utz provided input to the Request process and recognised that, while IJMOVGP was sourcing from an established Standing Offer Panel, the Request needed to be more robust than a standard Request under a Standing Offer.

While the advice not to appoint an independent probity adviser may have been reasonable at the time, with the benefit of hindsight, the probity review concluded that a complete risk assessment for the 2010 Request by Defence should have identified the desirability for an independent probity advisor, particularly given that the Panel is composed of highly competitive companies within an industry operating on tight margins and offering almost identical services. Also, the need for independent mediation with the current contractor Strategic as a result of a fuelling cost issue in early 2010¹ could indicate that there may have been some existing tension between the Commonwealth and Strategic, or at least the existence of a commercial difference of opinion.

TEWG Coordination

Notwithstanding the finding of compliant procurement planning and execution processes, the probity review concluded that coordination between certain elements of the Tender Evaluation Working Group (TEWG) could have been improved.

The typical pricing model for air charter services is extremely complex, consisting of many cost components such as fuel, ground handling, airport fees and charges, aircraft pre-positioning costs etc that dynamically interact. For example, twin engine aircraft are required to comply with certain operational airworthiness requirements such as Extended Twin Engine Operations (ETOPs), which restrict available flight paths and impact on fuel usage. Also, the fuel burn for a specific flight is a function of many factors, including the flight route and the percentage of maximum load carrying capacity utilised on any given flight, to maintain safe operating margins.

The probity review concluded that the tender evaluation process would have been strengthened by better consultation by the various elements of the Tender Team. This included having the Financial TEWG gaining access to, and having input into, the pricing model in the very early request planning stage, and improved access by FIS staff to the Operational/Technical TEWG during the tender evaluation phase.

Despite these identified areas for improvement, the review fieldwork confirmed that the FIS analysis treated all tendered options equally against the approved financial evaluation criteria, resulting in a fair and objective price and financial viability risk ranking.

Review fieldwork also confirmed that an appropriate level of independent quality assurance was undertaken within FIS prior to submitting the financial analysis summary to the Tender Evaluation Board. During this process, an immaterial error in the calculation of total cost for

¹ Mediation took place at start of 2010 based on fuelling costs. Contract Change Proposal No. 7 (CCP7) was a consequence of the mediation

one of the tenderers was identified by FIS. This error was appropriately advised to the TEB and the probity review, and had no impact on the overall tenderer ranking.

Were all tenderers given equal opportunity to respond to the tender and were all tenderers treated fairly and equally? - Yes.

The probity review concluded that the 2010 MEAO Air Sustainment Services Request process was conducted in a fair and impartial manner. Specifically, the review found that:

- a. Communication with stakeholders was undertaken in the same manner and within the same timeframe.
- b. Tenderer Requests for Information (RFIs) were quickly and appropriately handled in writing, and questions and responses were provided to all tenderers.
- c. The Tender Team employed a transparent written process for advising the preferred tenderer and unsuccessful tenderer status.
- d. There were well defined conditions for participation and defined and consistent commercial, technical and operational requirements as contained in the Air Services Panel Deed of Standing Offer.
- e. Requirements were clearly articulated in the Request (ie all requirements were essential) and invoked the standard Deed conditions and requirements, thereby ensuring that all existing Air Transport Standing Offer Panel members were familiar with the Request requirements – ie promoting a ‘business as usual’ approach.
- f. The evaluation criteria listed in section 9.22 of the Request were clearly communicated to tenderers, briefed during the Industry Brief, and are consistent with the guidance contained in the DPPM.
- g. The Request encouraged innovation and provided an equal opportunity for all panel members to bid by emphasising functional and performance requirements and providing a level of flexibility in relation to potentially key limiting factors, such as; the option of an Australian or Foreign Air Operator Certificate issued by the Civil Aviation Safety Authority (CASA) and options for split freight and load solutions, noting that the Commonwealth had a preference for a single point-to-point aircraft freight solution. These aspects were addressed at the Request Industry Brief.

As noted previously in this report, Review fieldwork with FIS confirmed that it had based its contract pricing analysis on the two year contract period based on a guaranteed minimum of 130 flights (ie 65 flights per annum). While the probity review noted that the pricing analysis was equitably applied, based on advice from 1JMOVGP, the more likely number will be closer to 80 flights per annum. This is based on the actual number of flights undertaken in the current contract (ie 75 flight), extrapolated to account for expected operational requirements in the next contracting period.

Given that the pricing structure for additional flights differed between the tendered options, the probity review requested FIS to re-calculate each tenderer’s costs based on 80 flights per annum. The probity review confirmed that this did not materially affect the pricing analysis, with the preferred tenderer Adagold/Hi Fly A340-300 remaining the lowest cost option by a clear margin.

Were the tender evaluation and Value for Money (VFM) assessment processes thorough and free of bias, and was the basis for ranking of the tenders a true representation of the tenderers' compliance with the selection criteria? – Yes.

All of the received bids met the conditions for participation and the initial screening process for bids was transparent, objective and based on defined evaluation criteria and conditions for participation.

The Request requirements were based on actual operational needs and on proven industry arrangements and requirements generated through recent MEAO operational experience. Based on the analysis presented by FIS and information obtained during staff interviews, the probity review concluded that the correctly sized four engined aircraft (A340-300 or similar) would offer the best VFM and operational flexibility when compared with twin engine aircraft due to the limitations of ETOPs aviation regulatory requirements, and other operational airworthiness factors. A correctly sized aircraft also offers better VFM when compared to options offering split freight/passenger solutions associated with smaller aircraft types by removing additional management overheads to the Commonwealth for separate freight solutions. Similarly, while the larger tendered aircraft types – such as the A340-600 or B777 - far exceed the specified freight and passenger requirements and provide greater flexibility, the higher operating costs of these larger aircraft tend to reduce their overall VFM when compared to the A340-300 sized aircraft. Also, beyond a given additional freight capacity, these larger aircraft do not add any tangible operational flexibility or value.

The probity review concluded that there was very little difference between the top three ranked tenderer options (Adagold/A340-300, Alltrans/Virgin Atlantic A340-600 and Strategic Aviation A340-300) and ² in the Adagold response was one of the more significant factors in awarding Adagold a superior VFM assessment when compared to the Alltrans/Virgin Atlantic A340-600 or Strategic A340-300 options.

The Tender Evaluation Board appropriately considered the commercial risk profiles of each of the tendering companies, recognising that none of the tenderers is likely to commit to a lease contract for an A340-300 sized aircraft until they had agreed a contract with the Commonwealth.

The probity review found that all tenders were treated equally in relation to the risks of securing an aircraft to support commencement of operations on the effective date of 24 October 2010, and that this was not the main discriminator in the tender ranking process.

2.

The probity review found that the Air Transport Standing Offer Panel is comprised of a mix of aircraft operators, charter companies and brokers, representing a combination of wholly Australian owned and foreign aircraft operators. The review found that the VFM process was undertaken in good faith and fairly assessed the shortlisted tenders against the approved evaluation requirements and that, as a result, the superior VFM assessment recommended a panel company (ie Adagold) offering a solution that utilised an overseas aircraft provider. There was always a chance that this would occur given the panel's composition.

Due to uncertainty over the MEAO operational air lift sustainment volumes and commitment over the two year contract period, the probity review concluded .

Did the Request period of 8 weeks provide sufficient time for tenderers to provide tenders that could meet all of the conditions of the tender? – Yes.

There was a clearly communicated tender timeframe that was tight (ie approximately eight weeks) due to MEAO operational requirements, but which was assessed as sufficient to enable a complete response to the tender requirements given the dynamic nature of the air charter industry. Comments made by an unsuccessful tenderer to Audit Branch staff indicated that the tender response timeframe was tight, but that it was achievable and not unusual for the aviation charter industry.

The probity review concluded that the tender evaluation process was conducted appropriately and the selection of the preferred tenderer, second ranked tenderer and third ranked tenderer was based on objective VFM and risk assessment processes. The probity review concluded that there is no extant Commonwealth procurement policy directing that other considerations, including Australian industry participation, outweigh VFM. While Australian industry participation and the promotion of Small to Medium Enterprises (SMEs) are important policy considerations in any Commonwealth procurement, obtaining best VFM is the core principle.

So as not to unfairly exclude other panel members, the original Request did not mandate the requirement for all Australian crews. A number of tenderers offered Australian crews in their

responses, and Australian industry participation was one of the factors that contributed to the TEB overall VFM assessment.

Did the specified air sustainment support services relate to actual operational needs? – Yes.

According to requirement 7.13(a) of the 2010 Request, the Aircraft must have:

- (i) an optimal seating capacity for at least 200 Relevant Personnel; and
- (ii) an available freight carrying capacity of at least 25,000 kg (comprising a minimum of 150m³ volumetric capacity), comprising:
 - A. capacity to hold Accompanying Baggage of at least 12,000 kg; and
 - B. a minimum useable freight capacity of 13,000 kg.

As a result of Contract Change Proposal No. 7 (CCP7), the current MEAO Air Sustainment Contractor Strategic warrants that the A330-200 has palletised freight capacity of a minimum 94 cubic metres, consisting of 8 'lower deck pallets' and 2 LD3/AKE containers. An additional 20 cubic metres of bulk hold capability is available for a total of 114 cubic metres. For one departure weekly from Australia to the MEAO, an additional 33 cubic metres of capacity for up to 6,000 kg per flight in actual or volumetric weight (167kg/m³), whichever is the greater.

Based on the current contract with Strategic (ie AO/052/07-08 as amended by CCP7), the current requirement is for 75 flights per annum, with a total of 147m³ volumetric capacity per flight. Given the maximum volumetric freight capacity of Strategic's current A330-200 aircraft is 114m³, Strategic achieves the combined passenger and freight requirements by sub-contracting to Etihad Airlines to freight-forward three pallets per week (at approx 11m³ per pallet) totalling 33m³ per week. Based on the current requirements, Strategic meets the 147m³ freight requirement by utilising a split freight and passenger solution.

Until recently, the Commonwealth had contracted civilian L100 freighter aircraft (ie civilian versions of the C130 Military Transport Aircraft) for intra-theatre freight handling between Al Minhad and Afghanistan. This was arranged as two L100 flights per week (ie four per fortnight). As an ongoing efficiency review process, 1JMOVGP reviewed the actual achieved intra theatre L100 flights and determined that due to factors beyond its control (eg delays in obtaining diplomatic clearances), only three L100 flights per fortnight were actually being achieved. This confirms that the intra-theatre freight capacity has recently been reduced by 25%.

In discussing this change, 1JMOVGP staff emphasised that the intra-theatre freight requirements are completely independent from the Australia to MEAO Theatre freight requirements. HQJOC requires the full flexibility of 150m³ freight per flight to and from the theatre of operations to meet current and anticipated operational requirements, including critical surge requirements. The reduction in the intra-theatre freight capacity was done as a cost saving measure that allows sufficient flexibility to still meet these operational requirements.

The probity review concluded that the increased key payload volumetric requirements of 150m³ and point-to-point delivery are linked to current actual Commonwealth operational air sustainment functional requirements, and were not specified to preclude the current MEAO Air Sustainment contractor Strategic, or any other tenderer. Through discussions with aviation industry personnel, the probity review found that Adagold and other panel members were aware of the increased volumetric freight requirements for the existing contract as they had observed the separate freight forwarding of MEAO freight at Brisbane Airport by Strategic via Etihad Airlines.

Did the specifications disadvantage any of the tenderers? – No.

The probity review found that the total volumetric freight capability per departure ex Australia under the current contract is 147m³. This was rounded up to 150m³ for the 2010 Request. The tender process did not preclude separate passenger and freight forwarding solutions, but indicated that a point-to-point single passenger and freight solution (ie utilising a single aircraft) represented better value for money to the Commonwealth by providing greater operational flexibility. This was the direct result of logistics complications requiring additional Commonwealth coordination and administration for separate passenger and freight solutions due to freight limitations of the current A330-200 aircraft operated by Strategic.

The MEAO Air Sustainment Services Request requirements were functionally specified and were specified in such a way as to provide flexibility for the panel members and potential solutions (including options for a CASA approved Foreign or Australian Air Operator's Certificate - AOC) and split passenger and freight options.

Is there anything identifiable in the tender process that would justify re-tender? – No.

Based on both the material the probity review team has reviewed, and information communicated through interviews, the probity review concluded that:

- a. the tender team conducted an appropriate and competitive process;
- b. the tender process was compliant with Commonwealth and Defence procurement policy, but it could have been better documented;
- c. the tender process was conducted in a fair, objective and transparent manner;
- d. the tenderers were judged against the same evaluation criteria;
- e. no tenderer was disadvantaged in the process; and
- f. nothing was identified in the requirement determination or tender processes that would justify re-tender.

Summary

In relation to the issues addressed in Section 4.1, the probity review concluded that the decision to re-tender was based on valid commercial considerations and specification requirements, including the opportunity for a significantly improved Value for Money outcome and changes to operational requirements, including an increased freight capacity and changes to the Australian operating bases. The tender process was conducted in a fair and transparent manner that complied with Commonwealth and Defence procurement policy as it related to the issues that

were examined. Despite this overall positive assessment, the review found deficiencies in the tender planning process, and in the completeness of tender evaluation methodology and assessment documentation, but concluded that these deficiencies were not to the extent to cause the process to be suspended.

4.2. Other Issues and Allegations

As part of the probity review, Audit and Fraud Control Division examined the following assertions and issues. Statements made by Mr Charlton and Mr Clarke (CEO of Adagold Aviation), and relied upon in the following text, are underpinned by Statutory Declarations:

The assertion that Adagold (and Adajet) may possibly have been removed from the Defence Tender Panel of South Africa with allegations of tender irregularities and internal assistance within the Ministry of Defence – thereby implying that Adagold may not be a fit and proper company to provide Commonwealth MEAO Air Sustainment Services.

Mr Clark advised Defence that he established Adagold Aviation (South Africa), hereafter referred to as Adagold (SA), in February 2004 after foreseeing a market for underutilised Ilyushin 76 aircraft. Adagold (SA) was a totally separate entity to Adagold Aviation Pty Ltd (Australia). For personal reasons, in April 2006, Mr Clark and his family decided to return to Australia. Mr Clark has provided evidence to Defence that he subsequently resigned as Director of Adagold (SA) on 28 February 2007³, although the remaining Directors of Adagold (SA) delayed notification of Mr Clarke's resignation (and that of a fellow Director) to the South African Companies Registrar until 5 September 2007. One of Mr Clarke's fellow directors in Adagold (SA) was a Mr Ralph "Lawrence" Pietersen.

Mr Clark has told Defence that he did not participate in any decisions relating to Adagold (SA) after February 2006. Mr Clarke acknowledged, however, that he assisted Adagold (SA) with the operational aspects of the tender response for the Democratic Republic of Congo (DRC) Ballot Distribution contract in mid 2006. Mr Clarke also advised Defence that the arrangements for his departure from Adagold (SA) included an agreement to cease using the Adagold name in favour of Adajet, which had been registered as a company name in South Africa in 2004. A change to the company records for Adajet to add Adagold (SA) manager, Mr Shaun Roseveare, as a Director with effect 28 February 2007, lends credibility to Mr Clarke's explanation for the timing and arrangements surrounding his departure from Adagold (SA).

The direct media reports of tender irregularities involving Adagold (SA) are limited to the award of contracts around mid 2006 for the delivery of ballot papers for the DRC elections. Press reports from December 2008 indicate that, following a combination of internal and external inquiries, the South African Defence Department announced that there were no grounds for concluding that tenders were improperly awarded to Adagold.

As for allegations that fellow Adagold Director, Lawrence Pietersen, was embroiled in tender irregularities for the supply of ration packs to the South African Defence Force in 2004 through

³ Mr Clarke's resignation was timed to coincide with the end of the South African financial year.
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his company, Ibhubesi Trading, the Pretorian High Court is reported to have dismissed the case against Ibhubesi in November 2006 (albeit, without ruling on the merits of the case).

In relation to the Ibhubesi ration pack tender, a commentator speculated that “if Ibhubesi was found guilty of corruption in the tender process it could be barred [under the Prevention and Combating Corrupt Activities Act of 2004] from receiving further defence force tenders for a period of up to ten years”. This appears to be the basis for alleging that Adagold (SA) may have had such a ban imposed. However, Ibhubesi was not found guilty of corruption and so there were no grounds for any such sanction to be imposed. This is indirectly confirmed in South African media reports dated 9 December 2009 and 30 April 2010, which report that the Register for Tender Defaulters remains empty. The latter report explains that, in order to be placed on the Register of Tender Defaulters, a court must first make an appropriate order. The reports quote the South African Finance Minister as saying that “currently there are no names on the register as to date no such order was issued by any court of law”.

Beyond the allegations relating to Adagold (SA) in 2006 and Ibhubesi Trading in 2004, there are no other reports of irregularities concerning the award of Defence (or Government) contracts to either Adagold (SA) or Ralph Pietersen. In each case, there appears to be no conclusive finding of wrongdoing on the part of either Adagold (SA) or Ibhubesi Trading (i.e. Lawrence Pietersen). Accordingly, Defence concludes that there is no cogent evidence to support allegations concerning tender irregularities involving Adagold (SA) or Adajet. This finding is consistent with the outcome of a similar review undertaken by the Danish Military prior to their decision to appoint Adagold to operate their Middle East airlift operations.

In light of these findings, the probity review concluded that there is no relevant evidence to support allegations concerning tender irregularities involving Adagold (SA) in South Africa.

The assertion that Hi Fly is not a Regular Public Transport (RPT) operator, which is the minimum essential requirement of the Airworthiness Protectorate for the carriage of Australian Military personnel.

The intent of an operator being approved for RPT operations is to ensure satisfactory airworthiness and safety oversight to a level commensurate with that of the Civil Aviation Safety Authority (CASA) in Australia. Most ADF aircraft are State Aircraft and come under the Operational and Technical Airworthiness Regulation requirements of the ADF. All of the aircraft offered by tenderers in the Request are Civil Registered Aircraft, therefore requiring the ADF to review and grant equivalent certifications before the aircraft can be used to support ADF air operations.

The aircraft being offered by Adagold (through Hi Fly) is a foreign owned and registered civil aircraft. Hi Fly is wet-lease⁴ operator based in Portugal. Airworthiness and safety oversight is administered through the Portuguese Civil Aviation Authority, Instituto Nacional de Aviação Civil (INAC). As a European full member of the Joint Aviation Authority, INAC is a recognised National Aviation Authority (NAA) in accordance with ADF airworthiness requirements (i.e. it meets MILAVREG 5.9 in then *ADF Airworthiness Manual – AAP 7001.048 (AM1)*).

⁴ A wet lease is a leasing arrangement whereby one airline (lessor) provides an aircraft, complete crew, maintenance, and insurance to another airline (lessee), which pays by hours operated.

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As a prospective tenderer for a charter contract, Hi Fly is required to meet all the requirements of MILAREG 5.9 (i.e. necessitating it to meet the requirements of a CASA recognised NAA and be an ADF Recognised Airworthiness Authority) and MILAREG 5.5 (covering airworthiness management of aircraft chartered in support of ADF operations) contained in the *ADF Airworthiness Manual*. MILAREG 5.5 requires the proposed aircraft offered to meet all the requirements of MILAREG 5.1 (i.e. covering registration requirements for non-state-registered aircraft), including that it be Western-built, and that the operator be approved for Regular Public Transport (RPT) operations by a National Aviation Authority.

In accordance with European Aviation Safety Agency (EASA) regulations, which are recognised by the ADF, aircraft types that qualify for an EASA Certificate of Airworthiness (CofA) are issued with a non-expiring CofA, validated annually with an Airworthiness Review Certificate (ARC).

Based on authoritative airworthiness advice from The ADF Airworthiness Certification Policy Agency (ACPA), The *Airworthiness Certificates and Certificates of Registration* provided by Hi Fly in the Adagold tender response confirm that Hi Fly has a current Air Operator's Certificate (AOC) awarded by INAC, although the validity for the proposed aircraft offered (A340, CS-TQM) expired on 15 Jun 10.

The review found that it is usual for specific leased and chartered aircraft offered in responses to requests to lapse their current certifications during the tender period. As part of the final checks before any contract is entered into with the preferred tender, the Commonwealth (through ACPA) would conduct all of the required checks to ensure the aircraft operator and the specific aircraft offered, meet all of the required operational and technical airworthiness requirements.

The review found that provided Hi Fly provide a valid INAC-certified AOC for the proposed aircraft and a current statement from INAC finding them competent to conduct Commercial Scheduled and Non-Scheduled Air Transport Operations, Hi Fly will satisfy the required ADF airworthiness requirements. Therefore, the review found that Hi Fly is expected to meet the required ADF airworthiness requirements, including certification as a Regular Public Transport Operator.

The assertion that Mr David Charlton, directly or indirectly has had privileged access to material information of relevance to the tender specification and conduct of the tender, thereby inappropriately influencing the current tender process.

It was asserted by Mr Shaun Aisen that Mr Charlton, whether directly or indirectly, had privileged access to material information of relevance to the 2010 Middle East Air Sustainment re-tender specifications. Mr Aisen further contended that Mr Charlton, while acting as a consultant for Adagold, served in a key Defence post involved with the tender. Mr Aisen also claims that Mr Charlton 'appears to have worked in a movers role at JMCC in Brisbane at Enoggera....and it appears highly likely, with Brisbane being the focus of freight exports, that there may have been undue influence to other areas of JMCC/JMOVGP/JOC of Defence's expectations – to his subsequent benefit'.

In order to address these concerns, the probity review assessed it relevant to consider the following questions:

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- a) What was Mr Charlton's role in Defence during 2009 and 2010 when the re-tender of the Middle East Air Sustainment contract was under consideration and/or development?
- b) What access did Mr Charlton have to privileged tender information, in particular the decision to re-tender and the requirements, and to personnel involved with the re-tender process?
- c) What was the extent of Mr David Charlton's involvement and communication with Adagold, or any other Standing Offer Panel companies, in relation to the re-tender of the Middle East Air Sustainment contract?

What was Mr David Charlton's role in Defence during 2009 and 2010 when the re-tender of the Middle East Air Sustainment contract was under consideration and/or development?

To address this question, the probity review conducted interviews with 1JMOVGP executive, examined PMKeyS⁵ and CENRES Pay⁶ data and formally interviewed Mr Charlton. From these inquiries it was established that Mr Charlton had no role in the management of the current MEAO Air Sustainment Services contract or any role in the development or execution of the 2010 tender process. His posting to JMCO-Brisbane during the tender development and evaluation period was functionally and geographically removed from the procurement activity which was being conducted out of the secure Headquarters of the Joint Operations Command located at Bungendore, NSW.

What access did Mr David Charlton have to privileged tender information, in particular the decision to re-tender and the requirements, and to personnel involved with the re-tender process?

The probity review established that the MEAO Air Sustainment Services tender development and evaluation activity was conducted at Headquarters (HQ) 1JMOVGP, which is located within the secure Headquarters of the Joint Operations Command located at Bungendore, NSW. The probity review assessed the physical and electronic information security and storage, and communication arrangements for HQ 1JMOVGP, in order to determine whether or not it was possible for Mr David Charlton to have gained access to any tender information prior to, or during, the conduct of the tender process.

The probity review concluded that appropriate system information security processes were implemented to safeguard sensitive physical and electronic information related to the MEAO Air Sustainment Services tender. Review of these physical and electronic security processes and records confirmed that Mr Charlton:

- had no system access to the network drives at HQJOC Bungendore containing the tender information;
- had no access to the tender information contained in the Defence Records Management Systems (DRMS);
- had no access to tender physical files located at HQJOC;

⁵ Defence personnel records management system.

⁶ Reserve pay system.

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- did not possess the required security clearances to obtain unsupervised access to HQJOC;
- did not gain physical access to the HQJOC facility during or after the tender development and evaluation period;
- was posted to training and policy duties in the Brisbane area and was therefore physically and functionally removed from HQJOC Bungendore, where the tender was being managed; and
- declared a perceived conflict of interest to his immediate supervisor on 30 March 2010 and was removed from JMCO-Brisbane shortly thereafter.

The probity review obtained captures of Mr Charlton's Defence email and ICT storage drives. A forensic examination of these failed to identify any document or communication that indicated Mr Charlton had accessed, received, or conveyed information in relation to the MEAO Air Sustainment Services contract or tender activity.

The probity review found no evidence to support claims that Mr Charlton, directly or indirectly, had access to privileged information associated with the decision to re-tender or the tender specifications for the Middle East Air Sustainment contract.

What was the extent of Mr David Charlton's involvement and communication with Adagold, or any other Standing Offer Panel companies, in relation to the re-tender of the Middle East Air Sustainment contract?

As discussed previously, the probity review obtained captures of Mr Charlton's Defence email and ICT storage drives. A forensic examination of these failed to identify any record that indicated Mr Charlton had communicated information relating to the MEAO Air Sustainment Services contract or tender activity.

The probity review conducted inquiries to identify the Defence fixed line and mobile communication services attributed to Mr Charlton during the period related to the development and evaluation of the Middle East Air Sustainment tender. Four fixed lines were identified which related to his posting with JMCO-Brisbane and Headquarters 11 Brigade.⁷ Call records for these lines were obtained and analysed using the known contact details for Adagold; including their key representatives. The probity review focussed on any communication between Mr Charlton and Adagold as it was determined that, through AIS, Mr Charlton solely assisted Adagold with its MEAO Air Sustainment Services tender response. It was established that, for the relevant period, no calls had been made from any of the Defence services attributed to Mr Charlton to Adagold.

Inquiries with the Defence Mobile Helpdesk also established that Mr Charlton was not issued with a Defence mobile telephone during the relevant period. The probity review confirmed that Mr Charlton did possess a personal mobile telephone service during the relevant period, however, due to the non-criminal nature of the inquiry the probity review was prevented from

⁷ JMCO-Brisbane 07 33327353 with access to 07 33324361
Headquarters 11 Brigade 07 33328077 with access to 07 33322461
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lawfully requesting call records for this private service under the *Telecommunications (Interception and Access) Act, 1979*.

Mr Charlton advised the probity review that:

- ‘In a civilian capacity, my primary source of income was derived from work as a consultant to the aviation industry; working for a firm Aviation Integration Services Pty Ltd (AIS).’
- ‘As a consultant, I have been involved with Adagold both as an employee of SkyAirWorld Pty Ltd and AIS. When with SkyAirWorld, I supported the Adagold bid for the Danish Defence Force, Exxon PNG in addition to numerous ad-hoc tasks. Via AIS I have supported Adagold for the ADF Middle East tender in addition to ongoing discussions with regards to a wide range of projects not relating to Defence.’
- ‘On or about the 30th March 2010, after the MEAO tender was released, AIS was approached by Adagold for services in connection with the Middle East Air Sustainment re-tender. On or about 31st March 2010, in consultation with me, AIS elected to assist Adagold with their tender in preference to the other tenderers that approached AIS for my services because at the time they appeared to be capable of making the most competent and compliant tender submission. I assisted Adagold with understanding the Commonwealth-specified requirements contained in the tender and to identify the platform(s) that could meet the specified criteria in context of operational performance and documentation. That was the extent of my role with Adagold for this tender.’
- ‘At no stage did I communicate with any tenderer, or prospective tenderer, prior to the re-tender release on 29 March 2010 about the requirements for the Middle East Air Sustainment Request For Tender (RFT) because at no stage was I aware that the Commonwealth would release a tender on the 29th March 2010 for Middle East Air Sustainment, hence I had no visibility of any actual requirement.’

In relation to their relationship with David Charlton, Mr Mark Clark of Adagold advised the probity review that:

- ‘Following the release of Request for Tender (RFT) AO/014/09-10 for the provision of Air Sustainment Support to the Middle East Area of Operation (MEAO) on 29 March 2010, Adagold approached AIS and requested the services of Mr Charlton who we regard as very good at conducting exact analysis on aircraft. Mr Charlton assisted Adagold with understanding the Commonwealth-specified requirements contained in the tender and to analyse Adagold’s decision to offer particular platform(s) that could have met the specified criteria.’

Of relevance is the fact that both Adagold and Mr Charlton made similar comments to the probity review in relation to industry awareness of the performance of the current contract. Both Mr Clark and Mr Charlton advised separately that they were aware of the increased volumetric freight requirements for the existing contract as they had observed the separate freight forwarding of MEAO freight at Brisbane Airport by Strategic via Etihad Airlines. It was

evident that at least, Mr Clark and Mr Charlton, had visibility of the fact that Strategic's current A330-200 aircraft could not meet the current MEAO freight requirements.

The probity review found no evidence that Mr Charlton, either possessed, or passed on, any information relating to the Commonwealth's intention to re-tender or the tender requirements to any tenderer, including Adagold. In fact, the evidence located by the probity review confirms that neither Mr Charlton, nor Adagold, were aware of Defence's intentions, or the specifications, until after the tender release. It is logical that their observations of the operation of the current contract accurately informed them of the likely Commonwealth freight requirements and feasible aircraft options, should the contract be re-tendered.

The probity review found that Mr Charlton provided technical support to the Adagold tender response as an employee of Aviation Integration Services (AIS) after release of the tender. Three companies (Alltrans International, Adagold and Rex/Pel-Air) approached AIS and requested technical support to their tender. It is evident that Mr Charlton, through AIS, elected to support only the Adagold bid.

The assertion that Adagold (or Hi Fly) obtained advance notice of the decision to re-tender and/or the associated tender requirements – giving Hi Fly and Adagold a commercial advantage by enabling Hi Fly (in conjunction with Adagold) to commence gaining an Foreign AOC for its A340-300 aircraft ahead of the other panel members.

As discussed above, the probity review has concluded that there is no evidence to confirm that Adagold, or Mr David Charlton, received any advance notice of the Commonwealth decision to re-tender or the associated tender requirements, or that they communicated any such information to Hi Fly.

Hi Fly's decision to amend its current Foreign Air Operator Certificate with CASA to add the A340-300 aircraft appears to have placed Hi Fly in a favourable position to offer an A340-300 aircraft to the Air Services Standing Offer Panel companies to meet the MEAO Air Sustainment Services requirements, should the contract be re-tendered. However, any such advantage obtained by this initiative could not be linked to any information obtained from, or provided by, either Mr Charlton, or the Commonwealth Tender Team. In the absence of any evidence of leaked information on the intention to re-tender or the tender requirements, the probity review concluded that Hi Fly appears to have acted on its own initiative to upgrade its FAOC certificate to include the larger A340-300 aircraft. This appears to have been a pre-emptive business decision by Hi Fly, noting their ongoing strategic partnering discussions with Adagold during 2009, engagement by Strategic in early 2010 for an aircraft during a planned maintenance interval for Strategic A330-200 aircraft and likelihood that any one of the Panel members might approach them for the larger A340-300 aircraft.

The probity review concluded that, prior to release of the MEAO Air Sustainment Services Request in March 2010, Adagold had a general arrangement with Hi Fly, with no commitment to a specific aircraft type. Had Adagold received advance notice of requirements and intention to re-tender, it is more than likely that Adagold would have secured a more specific arrangement with Hi Fly. The probity review found no evidence that Adagold initiated any action to request Hi Fly to list its A340-300 aircraft onto a Foreign AOC to meet CASA requirements in advance of the Request release date of 29 March 2010.

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The assertion by the Melbourne Age that Mr David Charlton and another ADF member of the 2005 tender advisory panel made commercial arrangements with Strategic while the 2005 tender process had yet to be concluded.

The 2005 MEAO Air Sustainment Services tender attracted significant media attention following the award of the contract to Strategic Aviation and the alleged involvement of Mr David Charlton in the process. In response to the 2005 MEAO tender allegations, Defence initiated the conduct of independent external probity review of the 2005 contract by Phillips-Fox. Given the allegations about Mr Charlton's involvement in to 2010 tender process, the 2010 probity review obtained a copy of the Phillips-Fox 2005 report and assessed its findings in the context of the current MEAO Request process. The Phillips-Fox probity review concluded that the 2005 tender process was conducted in a fair open and transparent manner, and that no tenderer was disadvantaged in the tender process. In this light, the probity aspects of the 2005 MEAO Request process were not independently reviewed by the 2010 probity review.

Mr David Charlton presided over the \$93 million collapse of SkyAirWorld last year, asserting that it is highly questionable as to whether the ADF should have any contractual relationship with any company with which Mr Charlton is involved. Additional criticisms of Mr David Charlton are his links to the (failed) Regional Pacific Airlines.

The probity review found that Mr Charlton established an airline, SkyAirWorld Pty Ltd in August 2006. In February 2009 SkyAirWorld went into voluntary administration and subsequently Mr Charlton established himself as an aviation industry consultant, working for a firm Aviation Integration Services Pty Ltd (AIS).

Based on Mr Charlton's technical advice role to Adagold, the probity review found that any links with his previous business successes or failures is not relevant to his role in providing technical advice to Adagold.

As Mr Charlton was neither a tenderer nor a subcontractor to a tenderer, the probity review determined that Mr Charlton's commercial history is not relevant to the tender evaluation process or the probity review.

Assertion linking the current ADF C17 Globe Master airlift capability with the MEAO air sustainment capability being sought under the current Request process, implying that the existing aircraft type (ie A330-200), when used in conjunction with the C17, would adequately meet the MEAO operational air sustainment requirements.

The probity review found that although there are four C17 aircraft, they are already heavily utilised by the ADF. They have limited air hours allocated each year and although they are capable to of supporting surge freight when required, the C17 fleet is currently at its limit for OP SLIPPER tasking, unless other ADF tasking or critical raise, train and sustain activities are

dropped. The probity review was advised that 'a C17 is significantly more expensive to operate than a commercial wide-bodied aircraft such as the A330 or A340 (ie a C17 is approx \$81,000 per hour at full cost recovery versus \$11,600 per hour, including fuel, for an A340). Therefore, it is more cost effective and efficient for the ADF to contract commercial airlift support in some cases.

The review concluded that the current MEAO Air Sustainment Service freight requirement of 150m³ and 25,000 kg supports valid operational requirements and needs to be satisfied independently of any C17 utilisation, and that the MEAO service provider aircraft should be of sufficient size to satisfy the air lift requirements of Request AO/014-09-10 without operational reliance on other ADF aircraft fleets, including the C17 fleet.

Assertions that Mr David Charlton was/is approaching Strategic's pilots to recruit them.

This assertion was separately put to both Mr Charlton and Adagold representatives. Both denied making any such approaches to Strategic's pilots. The probity review did not find any evidence that Mr Charlton approached Strategic Aviation or any other panel company, either acting independently, or on behalf of Adagold. Even if evidence does emerge providing evidence that Mr Charlton made offers of employment to Strategic Aviation crews, it would still need to be established as to whether or not those approaches relate to Request AO/014/09-10. In any event, as Strategic Airlines has held the MEAO Air Sustainment Services contract continuously since 2005, it would be logical that any preferred tender might look to target their skilled and experienced workforce upon winning the contract.

Claims by Mr Aisen of other airworthiness safety concerns regarding Hi Fly's operations, including inadequate crew training and crew rest issues.

The probity review noted that Strategic Aviation has a long relationship with Hi Fly, and used one of Hi Fly's A340-300 aircraft with Strategic's A330-200 aircraft was off line under going maintenance in May 2010. Without knowledge of the specific allegation from Mr Aisen regarding ongoing claimed safety concerns with Hi Fly, the probity review was not able to investigate the claims any further. However, the review found that the ADF airworthiness verification processes contained in the *ADF Airworthiness Manual* (including MILAVREG 5.5) are comprehensive and would be completed prior to entering into any contract for MEAO Air sustainment services. These airworthiness checks would address crew training and crew rest requirements.

Claims that Strategic Aviation was denied any opportunity to meet with GPCAPT Robert Barnes to discuss their concerns.

To investigate this claim, the probity review considered an e-mail from Mr Shaun Aisen to LTCOL Andrew Hall and GPCAPT Barnes at 7.22am 30 March 2010. In this Mr Aisen expressed concerns regarding the appearance that 'one Brisbane based broker [named in subsequent correspondence to be David Charlton] has possibly had a "heads up" regarding the

possibility of retender and has been actively in the market seeking Airbus A340-300 types'. In the e-mail, Mr Aisen stated an intention to 'facilitate a time to meet and discuss some concerns that I have with respect to the upcoming tender process, and 'nip a couple of issues in the bud'. Mr Aisen requested a meeting in the week commencing 12 April 2010.

LTCOL Hall responded to Mr Aisen's concerns in an e-mail dated 8 April 2010 (4.29pm). In this response, LTCOL Hall confirmed that 'the individual in question has no direct line of communication with the HQ and is not involved in the tender process'. LTCOL Hall explained the actions taken by 1JMOVGP to cease the 'parading' of the individual concerned. LTCOL Hall also addressed concerns raised by Mr Aisen regarding the Adagold unsolicited proposal and the Australianisation of the current MEAO operations, noting that 'whilst there may have been perceived pressure to provide services which are Australian and not foreign operated, there is no AS [Australian] Govt or Defence Dept policy that stipulates AS industry involvement overrides Value for Money (VFM).'

LTCOL Hall further advised Mr Aisen that GPCAPT Robert Barnes (Commander 1JMOVGP) was away from HQJOC until 12 April 2010, but should be available for a meeting on 15 April 2010. SQNLDR Ben Cole was to arrange the meeting (but not attend) and Mr Aisen was asked to send through an agenda of points to be discussed. LTCOL Hall noted that he would be absent for four weeks from 13 April (on deployment). Mr Aisen replied, and in closing wrote, 'Reference meeting with Commander, we would work with Wednesday lunchtime/early afternoon on 14th or alternatively on 20/21/22 April.'

GPCAPT Barnes advised the probity review that the meeting did not go ahead on 14 Apr 2010 and that Mr Aisen called him on 16 April 2010 regarding 'concerns in the contract'. GPCAPT Barnes could not recall the details of the conversation with Mr Aisen. GPCAPT Barnes advised the probity review that 'he [Shaun Aisen] probably requested a meeting, and I would have refused to discuss the Request with him one on one, as it could have provided him with an unfair advantage', compared to the other tenderers.'

The industry Brief was subsequently conducted on 23 April 2010. SQNLDR Ben Cole and other staff from the Strategic Lift Co-ordination Centre (SLCC) attended a regular contract management meeting with Mr Aisen on 27 May 2010, during which Mr Aisen started talking about Mr Charlton. The probity review was advised that SQNLDR Cole politely refused to engage in discussing this topic, or any aspect of the Request with Mr Aisen.

The probity review concluded that prior to, or during the Request process, it was not appropriate for GPCAPT Barnes as the Procurement Delegate to meet with Mr Aisen to discuss the F or any issues associated with Mr Charlton or potential competing tenderers, given that Strategic Aviation was the current MEAO Air Sustainment Services contractor and was likely to submit a tender for the new contract.

Summary

Regarding the allegations examined in Section 4.2, there was no evidence that Mr Charlton had any involvement in, or influence on, the RFT or the tender evaluation process. No evidence was found to support allegations that advanced notice of the tender specifications was provided to

~~AUDIT IN CONFIDENCE~~
~~COMMERCIAL IN CONFIDENCE~~

the preferred tenderer. No relevant evidence was found to support the allegations concerning tender irregularities involving Adagold Aviation (or Adajet Aviation South Africa). Finally, there was no evidence found that Adagold, or its nominated aircraft operator Hi Fly, has a history of unsafe operations or does not comply with the applicable Australian airworthiness requirements.