



**Australian Government**

**Department of Defence**

Ministerial and Executive  
Coordination and Communication

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FASMECC/OUT/2011/32

Dr Kathleen Dermody  
Committee Secretary  
Senate Standing Committee on  
Foreign Affairs, Defence and Trade  
Parliament House  
CANBERRA ACT 2600

**DEPARTMENT OF DEFENCE REQUEST FOR TENDER FOR THE PROVISION  
OF AIR SUPPORT TO THE MIDDLE EAST AREA OF OPERATIONS**

Dear Dr Dermody,


On 28 November 2010, Senator Helen Kroger wrote to the Minister for Defence, The Honourable Stephen Smith MP, inviting the Minister or department to make a written submission on the matter of the Inquiry into the Department of Defence's Request for Tender (A0/014/09) for the provision of air support to the Middle East Area of Operations.

Please find enclosed the Defence Submission to the Senate Foreign Affairs, Defence and Trade References Committee and other documentation as requested in the *Terms of Reference*.

One of the requested documents, the Chief Audit Executive Probity Review (*Probity Review of Tender Process for Air Sustainment Services to the Middle East Area of Operation*, September 2010), is provided with annotations to the markings of 'Audit-in-Confidence' and 'Commercial-in-Confidence'. The document is provided with redactions of material at pages 11, 14 and 15. These redactions are made on the basis that the information discloses the substance of legal advice provided by Clayton Utz, a private legal firm on the Defence Legal panel, which is subject to legal professional privilege. In several instances Defence is waiving legal professional privilege on some of the legal advice which has been received. However, Defence considers that legal professional privilege should not be waived in relation to the advice which has been redacted because, among other things, the advice relates to the ranking of the tenderers. It is not Defence practice to disclose details of the ranking of unsuccessful tenderers and to publicly compare their bids. The disclosure of the legal advice could harm the interests of the Commonwealth as it would involve disclosing sensitive confidential commercial information of unsuccessful tenderers and may affect the willingness of tenderers to respond to Defence tenders in the future, or may influence how tenderers respond to future requests for tender. Relevantly, the Commonwealth Procurement

Guidelines specifically recognise in paragraph 7.28 the obligation on agencies to keep unsuccessful submissions confidential after the award of the contract to the supplier.

If you would like to discuss further, please do not hesitate to contact Ms Karen Creet, Assistant Secretary Ministerial and Executive Support Branch on (02) 6265 4414.



**Neil Orme**  
First Assistant Secretary  
Ministerial and Executive Coordination and Communication

01 March 2011

Attachments:

- A. Defence Submission, including Executive Summary, 1 March 2011
- B. PricewaterhouseCoopers Independent Peer Review of the Department of Defence – Audit and Fraud Control Division’s Probity review concerning the Provision of Air sustainment Services to the Middle East Area of Operations, 8 October 2010
- C. Request for Tender for provision of air charter services between Australia and the Middle East Area of Operations, 29 March 2010
- D. Air Transport Deed of Standing Offer
- E. Probity Review of Tender Process for Air Sustainment Services to the Middle East Area of Operation, September 2010, with redactions

**DEFENCE SUBMISSION TO THE SENATE FOREIGN  
AFFAIRS, DEFENCE  
AND TRADE REFERENCES COMMITTEE**

**DEPARTMENT OF DEFENCE'S  
REQUEST FOR TENDER  
FOR  
AVIATION CONTRACT AND ASSOCIATED ISSUES**

**1 March 2011**

**DEFENCE SUBMISSION TO THE SENATE FOREIGN AFFAIRS, DEFENCE  
AND TRADE REFERENCES COMMITTEE**

**DEPARTMENT OF DEFENCE'S REQUEST FOR TENDER FOR AVIATION  
CONTRACT AND ASSOCIATED ISSUES**

**EXECUTIVE SUMMARY**

1. In 2005 Defence commenced the regular use of large passenger aircraft charter to move troops, stores and equipment to and from the Middle East Area of Operations (MEAO). This alleviated an ADF lift capability shortfall caused by the fleet drawdown and eventual withdrawal of the Boeing 707 from RAAF service. The C-130 Hercules and C-17 Globemaster fleets are optimised for use as cargo aircraft, rather than for passengers. Contracting a regular charter service provides greater control over movement of passengers and freight. Longer-term charter also provides a more effective service and better value for money than ad-hoc arrangements.
2. The first long term contract was awarded in April 2005, to Strategic Aviation Pty Ltd (Strategic Aviation). Strategic Aviation was then awarded subsequent contracts, after competitive tender, in 2006 and 2008, with associated contract extensions.
3. During the Global Financial Crisis, excess capacity emerged in the global commercial air charter industry. Even though the contract with Strategic Aviation had another one year option available under the then contract, Defence decided to re-test the market both to take advantage of the economic climate on the global aviation industry to obtain better value for money, and to re-baseline the contract in light of the number of variations to the 2008 contract. In March 2010 a request for tender was provided to all suppliers on the Air Standing Offer Panel. As part of the new tender, Defence took the opportunity to update its operational and freight requirements to reflect the now greater volumes being handled. The contract was subsequently awarded in October 2010 to Adagold Aviation Pty Ltd (Adagold). Compared to the previous contract with Strategic Aviation, the new contract represented an annual saving to Defence of \$16 million or 32%.
4. In August 2010, Mr Shaun Aisen, from Strategic Aviation, raised concerns with the way that both the air sustainment tender process was managed and the alleged involvement of Mr David Charlton in the contracting process. In response, Defence suspended the contracting process and commenced a series of reviews into the contract.
5. Reviews were conducted by the Defence Chief Audit Executive (CAE Probity Review), PricewaterhouseCoopers (PwC Review), Deloitte Touche Tohmatsu (Deloitte Examination), and the Australian Government Solicitor (AGS Legal Review). All three of the reviews of the tender process, that is, the internal review (CAE Probity Review) and the two external reviews (Deloitte Examination and AGS Legal Review) concluded there was no reason to not award the contract for air sustainment services to the MEAO to Adagold. These reviews did not identify any issues that would invalidate Defence's decision to select Adagold as the preferred tenderer or that the decision was not fair and defensible. The review by PricewaterhouseCoopers (PwC) was an independent peer review of the CAE Probity Review that confirmed that review to be thorough and robust.

6. The reviews confirmed that the tender was structured on sound commercial considerations, and resulted in significantly improved value for money. Defence's decision to utilise the Air Standing Offer Panel for potential providers was also deemed appropriate as it provided a valid, existing legal procurement framework with standardised terms and conditions with which to engage air charter services.

7. The reviews indicated that Defence personnel adhered to Commonwealth and Defence Procurement Policy and governance arrangements during the tendering process.

8. Allegations concerning Mr David Charlton: The reviews concluded that Governance processes for the tender had appropriately addressed confidentiality matters both in the lead up to the tender and during the procurement process, and that appropriate measures were in place to address the identification and management of potential, perceived or actual conflicts of interest. The reviews confirmed that there were no vested interests, outside influences or any other perceived or actual conflicts of interest during the procurement process.

9. The reviews could not identify any evidence to support allegations made against Mr Charlton in relation to the 2010 tender. Mr Charlton is a member of the Australian Army Reserve and has worked at different times in the air charter industry. When Mr Charlton returned to Army Reserve duties in July 2009 Defence ensured he was not in a position to influence the tender. The reviews concluded that the actions taken to distance Mr Charlton from the tender process were timely and effective.

10. Adagold's business in South Africa: Claims have been made concerning Adagold's business activities in South Africa. The allegations suggest that the company's business dealings in South Africa are sufficient to warrant its exclusion for consideration for the air sustainment services contract on ethical or probity grounds. The Deloitte and CAE Probity Reviews concluded that there was insufficient evidence to support these allegations.

11. Adagold's suitability to be a contractor to the Commonwealth: Deloitte also conducted 'fit and proper' checks on Adagold and confirmed it to be a fit and proper contractor, with the financial and commercial capacity to fulfil the contract.

12. Lessons Learned: Defence's analysis and the reviews identified room for improvement in Defence's contracting process. Defence is already implementing changes to its tender process in several respects, including:

- a. Appointing independent probity advisers for all significant, complex procurements.
- b. Further developing a Centre of Excellence to support a more robust and consistent commercial approach to Non Equipment Procurement.
- c. Strengthening the policy framework and Defence Industry requirements for the management of the employment of Reservists and their declarations of potential conflicts of interest.

**DEFENCE SUBMISSION TO THE SENATE FOREIGN AFFAIRS, DEFENCE  
AND TRADE REFERENCES COMMITTEE**

**DEPARTMENT OF DEFENCE'S REQUEST FOR TENDER FOR AVIATION  
CONTRACT AND ASSOCIATED ISSUES**

**Background on the Request for Tender (RFT AO/014/09-10) for the provision of  
air support to the Middle East Area of Operations**

*Changing requirements for air sustainment*

1. The Australian Defence Force (ADF) commenced operations to the Middle East Area of Operations (MEAO) in 1990 during Gulf War I. However, since the early 2000's there has been an increased requirement to sustain deployed forces using air and sealift to move personnel and equipment into and out of the MEAO. There has been a progressive increase in the frequency and the capacity of these air and sea lift services, driven by increased load requirements.<sup>1</sup> The increase in demand for air and sea lift is a result of the increased numbers of personnel and equipment committed to Afghanistan operations since 2005 and the associated increase in both operational tempo and complexity.

2. With the withdrawal from service of the Air Force's Boeing 707 aircraft,<sup>2</sup> which had a capacity to carry up to 158 passengers or up to 30 000 lbs of cargo in the hold and on 11 pallets<sup>3</sup>, the ADF no longer had the ability to move large numbers of personnel and their equipment over large distances (that is, intercontinental distances). This resulted in the ADF relying more heavily on commercial air assets (charter or commercial airline services) to provide airlift support to Operations and Exercises.

3. The ADF's fleet of C130 Hercules and, in more recent years, C17 Globemaster aircraft, are fully tasked assets with little availability to carry out new tasking without reprioritisation or cancellation of other priority tasks. Current tasking includes operations (Operations Slipper<sup>4</sup>, Astute and Anode), Exercises, Raise Train and Sustain requirements, and contingency tasking, such as support for humanitarian assistance and disaster relief incidents (for example, Operations Pakistan Assist II, Queensland Flood Assist and Yasi Assist). Furthermore, the C130 Hercules and the C17 Globemasters are designed for the carriage of heavy and bulky cargo and are not suitable for the long range carriage of personnel, when compared to modern commercial passenger aircraft. They are also more expensive to operate and, as a result, the ADF will normally look to utilise commercial carriers for recurring movement of personnel and their equipment.

4. Consequently, commercial air assets have become an integral component of the support infrastructure to the ADF operations in the MEAO. Initially, the movement of

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<sup>1</sup> Air freight requirements in particular, have risen from approximately 110 m<sup>3</sup> in 2005 to 147 m<sup>3</sup> during 2010, and 150 m<sup>3</sup> in 2011.

<sup>2</sup> Gradual withdrawal, with the last aircraft retiring in June 2008.

<sup>3</sup> On the Boeing 707 cargo could be carried in the hold and internally on pallets. This meant that there was a range of combinations of passengers and cargo.

<sup>4</sup> Under Operation Slipper, Australian forces contribute to the North Atlantic Treaty Organisation - led International Security Assistance Force in Afghanistan.

personnel and their equipment was facilitated through commercial scheduled services with freight, cargo and vehicles being moved by a combination of ADF<sup>5</sup> aircraft and chartered aircraft<sup>6</sup>. Commercial and military sealift has also been used for vehicles and cargo. Currently, low priority stores and equipment to the MEAO are moved by commercial sea container.

5. Airlift support to the ADF in the MEAO is a difficult and complex task. It includes coordination of parking and arrival (slot) times at Al Minhad airbase in the United Arab Emirates, complex load variations, and Diplomatic Clearances for specialised military cargo (munitions of war). All aircraft (ADF and ADF chartered) moving to and from the MEAO require Diplomatic Clearances which involve significant lead times (from three to six weeks) and require negotiation by overseas Australian Embassy staff to meet the specific requirements of all countries over-flown or transited.

#### *Move to single contract for air sustainment services*

6. By 2005 Defence concluded that improved value for money could be obtained, and greater flexibility in the use of ADF strategic lift assets could be achieved, by chartering a large passenger aircraft to move troops, stores and equipment to and from the MEAO. By chartering an aircraft, the ADF gained full control of movement, including the ability to utilise military airfields within the MEAO, thus significantly enhancing the security and force protection of ADF personnel and materiel. It also eliminated difficulties in obtaining large block bookings on the commercial airline services for moving large groups of personnel in and out of the MEAO (up to 200 personnel per flight). These benefits were all in addition to a superior value for money proposition for Defence, compared to ad hoc charters.

7. Prior to April 2005 small numbers of troops were transported to and from the MEAO using chartered aircraft<sup>7</sup>. Larger numbers<sup>8</sup> were carried either by commercial airline services<sup>9</sup> or through ad hoc aircraft charters. In April 2005, a contract<sup>10</sup>, to perform this service was awarded to Strategic Aviation Pty Ltd (Strategic Aviation), utilising an Airbus A330-300 aircraft<sup>11</sup>. Strategic Aviation was awarded subsequent contracts by competitive tender (2006 and 2008) and associated contract extensions, using the same aircraft type<sup>12</sup>. A chronology of key events since the award of the 2008 contract is attached at Annex A.

#### *Decision to re-test the market*

8. There were a number of reasons why Defence decided in 2009 to retest the market. Firstly, in 2008, the Global Financial Crisis led to a significant reduction in demand for international passenger air travel, falling aviation industry profitability, idle

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<sup>5</sup> C130 Hercules.

<sup>6</sup> Soviet made Antonov AN12 and AN124 and Ilyushin IL76.

<sup>7</sup> Soviet built Ilyushin IL76, chartered through Adagold Aviation Pty Ltd.

<sup>8</sup> For example deployments and redeployments of entire units.

<sup>9</sup> These services were provided by Emirates and Etihad Airways.

<sup>10</sup> The initial contract was for six months with up to three, six month extensions.

<sup>11</sup> The Airbus A330-300 has a load capacity of 11 pallets.

<sup>12</sup> Noting that a Contract Change Proposal on the 2008 contract provided the option of using an Airbus A330-200 aircraft, which can carry 8 pallets.

aircraft, and falling charter rates. In the last quarter of 2009, the Commander at Headquarters 1<sup>st</sup> Joint Movement Group (HQ1JMOVGP) concluded that this excess capacity in the market provided an opportunity for Defence to potentially achieve a significant cost reduction in the MEAO air sustainment charter. This decision was supported by a recent agreement by Department of Finance and Deregulation to multi-year funding of the contract which raised the possibility of obtaining greater value for money opportunities in an aircraft market already depressed by global economic conditions.

9. In addition, by re-tendering the contract Defence could bring into the contract a number of new or updated terms and conditions, many of which had been brought into the 2008 contract by way of variations. The 2008 contract made provision for an initial 12 month period with two, one year extension options. The exercise of the first option in 2009, required significant changes to the original contract structure caused by a number of fundamental Defence and contractor initiated amendments, necessary to cope with changed force dispositions and other operating factors. By late 2009, the 2008 contract had already had six Contract Change Proposals (CCPs) with a seventh change being negotiated. These CCPs, particularly the last one, had significantly altered the contract in the areas of fuel allocations, routing, block hours flown and pricing structure. In this last CCP, Defence had also agreed to a Strategic Aviation proposal to substitute the Airbus A330-300 with an Airbus A330-200 from 29 September 2009, on the basis of a price reduction, increased range of the aircraft (improving force protection by eliminating a refuelling stop in Male), and that the freight shortfall would be met by Strategic Aviation organising three pallets per week to be moved at their expense.

10. The additional complexities, costs and continuing delays implicit in the load splitting solution, due to the use of the Airbus A330-200 aircraft, also underpinned the retendering decision and its timing. Hence, the way to ensure best value for money for the Commonwealth was to re-test the market through the issue of a new Request for Tender.

11. In November 2009, the finalisation and release of a new Air Standing Offer Panel consisting of 13 panel members (as opposed to the earlier panel that had seven members) suggested to HQ1JMOVGP it could expect a good response to the Request for Tender. Consequently, it was decided to go back to the market and retender to all suppliers on the Air Standing Offer Panel.

#### *Request for Tender for air sustainment services*

12. Preparation of the tender process commenced in late 2009 with the Request for Tender being issued to all panel members of the Air Standing Offer Panel on 29 March 2010 (RFT AO/014/09-10). Tenders closed on 1 June 2010 with seven panel members submitting a total of 11 tender solutions for evaluation. These included one bid from Adagold Aviation Pty Ltd (Adagold) utilising an Airbus A340-300, and two bids from Strategic Aviation, one utilising an Airbus A340-300, and one utilising an Airbus A330-200. The final selection and approval of the Source Evaluation Report occurred on 9 July 2010<sup>13</sup>.

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<sup>13</sup> A Source Evaluation Report is a report documenting the evaluation and outcome of a tender. It provides an explanation of how the evaluation has been conducted, summarising the responses received; the outcomes of screening and short-listing processes; the strengths and weaknesses of the tenders; key



13. The original Source Evaluation Report selected Adagold as the preferred tenderer, as their tender offered a substantial cost saving over the second and third ranked tenders. There was only a minor difference between the next two placed tender responses. The contract was awarded to Adagold in October 2010 for two years, with two, one year extension options. Under this contract, Adagold utilises a single Airbus A340-300 aircraft<sup>14</sup> capable of meeting the ADF's weekly passenger and freight uplift requirements.

14. The award of the sustainment contract to Adagold's single aircraft solution overcame the load splitting solution devised under the previous arrangement agreed with Strategic Aviation. Under this previous arrangement freight that could not be accommodated on Strategic Aviation's Airbus A330-200 aircraft, was consigned separately to Dubai, imposing considerable coordination and management overheads and additional road transport resources. On a number of occasions this separately shipped freight was subjected to significant delays as result of host nation commercial customs restrictions. Use of the single state-designated aircraft confers diplomatic status and ensures concessional treatment that exempts freight from customs restrictions and associated clearance delays.

#### *The Australian air charter industry*

15. The Australian air charter industry is very small, competitive, operates on tight margins, and is not well placed to meet the services required by the ADF. The major Australian airlines (Qantas and Virgin Blue) are generally not competitive in tenders for services required by the ADF. They have limited capacity to provide aircraft for charter, usually have higher overheads and do not as a matter of course, have spare aircraft regularly available for service when required by the ADF. In addition, there are few Australian based airframes with seating for more than 100 passengers, available from the smaller operators such as Strategic Aviation, Skytraders Pty Ltd, Alliance Airlines, and Airnorth. Consequently, when Defence issues a Request for Tender to move large numbers of passengers (in excess of 100) and baggage in support of an Operation or Exercise, the operators and air charter brokers are all competing for the same limited aircraft resources. This makes for competitive behaviour, including in areas other than price, reinforced by the fact that a number of companies have significant experience with ADF charters, and closely monitor competitors' activities.<sup>15</sup>

16. For example, the reviews conducted on the 2010 Request for Tender for the provision of air support to the MEAO confirmed that Adagold was aware of the ADF's broad MEAO requirements before the tender was issued, as it had provided a charter

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risks and other problems identified; and issues in the value for money comparison (including those that will need to be negotiated).

<sup>14</sup> The Airbus A340 can carry 253 passengers, 43 tonne payload, and is capable of flying direct from Darwin to Al Minhad Air Base, and meets the 150 m<sup>3</sup> requirement.

<sup>15</sup> As an example, the Chief Audit Executive Probity Review noted comments from a former Strategic Aviation employee that confirmed it was common industry knowledge that Strategic Aviation was meeting its MEAO Air Sustainment contract requirements through an arrangement to freight forward three additional aircraft pallets of cargo with Etihad Airlines on weekly basis to the MEAO. (CAE Probity Review, p 23-24, and Record of Telecon with former Strategic Aviation employee, dated 26 July 2010).

service to the MEAO for the ADF between 2000 and 2005.<sup>16</sup> In addition, in 2009, as a business development strategy, Adagold carried out its own MEAO support assessment in conjunction with Hi Fly – Transportes Aereos, S.A. (Hi Fly). As a licensed aircraft operator in Australia, Hi Fly had serviced the Strategic Aviation MEAO contracts with Airbus A330 aircraft between 2005 and 2009 and, again in May 2010, when Strategic Aviation chartered a Hi Fly Airbus A340 during scheduled maintenance on its own Airbus A330. As part of their 2009 assessment, Adagold submitted an un-solicited offer for MEAO air charter support to the ADF in February 2010.<sup>17</sup> This offer was not taken up or pursued further by Defence because the ADF had an existing contract with Strategic Aviation. Adagold was advised that it would be notified at the same time as all other potential tenderers, if Defence decided to retender for the contract.<sup>18</sup>

### **Internal and external reviews of the request for tender**

17. There have been a number of independent internal and external reviews into the 2010 tender process, initiated as a consequence of written allegations made to the Inspector-General of Defence on 14 July 2010 by Mr Shaun Aisen, then Executive Director of Strategic Aviation; further allegations made to Defence by Mr Aisen in nine representations between 16 July and 18 August 2010; and the media (the Courier Mail 21 July 2010, and Daily Telegraph 22 July 2010).

18. Mr Aisen's representations included:

- a. questions concerning whether an Army Reservist, Mr David Charlton, had privileged access to information relating to the request for tender process, which he passed on to the preferred tenderer, a company to whom he had previously provided consultancy services;
- b. questioning the preferred tenderer's use of a charter company, Hi Fly, which purportedly failed to meet essential Australian airworthiness requirements, had a history of unsafe operations and had previously provided unsatisfactory MEAO charter services to the ADF; and
- c. concerns regarding the justification for an increased freight capacity specification in the request for tender.

19. Media concerns included:

- a. allegations that an air charter company with connections to Adagold, called Adagold/Adajet South Africa, together with one of its Directors, had improperly obtained a contract with the South African Defence Force and had been banned from receiving government contracts in that country;

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<sup>16</sup> Using Antonov AN12 and Ilyushin IL76 aircraft.

<sup>17</sup> Adagold advised that, since its unsuccessful bid for the 2005 contract, it had been focused on winning the contract in the future.

<sup>18</sup> It is worth noting, however, that the submission did contribute to the ADF's increased awareness that the market for charter aircraft was becoming increasingly competitive, as well as providing current market information on the likely costs for chartering a larger A340 aircraft.

- b. allegations of impropriety surrounding the award of the 2005 contract for ADF Air Sustainment Services to Strategic Aviation;
- c. suggestions that selection of the Adagold/Hi Fly consortium would have an adverse impact on Australian jobs and the overall economy; and
- d. allegations concerning Mr Charlton, including his ownership of a failed commercial air charter business.

20. In response to these allegations, the Secretary of Defence initiated a series of reviews. The independent internal and external reviews undertaken were:

- a. *Chief Audit Executive Probity Review of Tender Process for Air Sustainment Services to the MEAO*, September 2010 (CAE Probity Review);
- b. *PricewaterhouseCoopers independent peer review of the Department of Defence – Audit and Fraud Control Division’s probity review concerning the Provision of Air Sustainment Services to the MEAO*, 8 October 2010 (PwC Review)<sup>19</sup>;
- c. *Deloitte examination of the procurement process for RFT AO/014/09-10*, 15 September 2010 (the Deloitte Examination); and
- d. *The Australian Government Solicitor’s legal and legal process review of RFT AO/014/09-10*, 15 September 2010 (AGS Legal Review).

21. One internal review (CAE Probity Review) and two external reviews (Deloitte Examination and AGS Legal Review) concluded that there was no reason to not award the contract for air sustainment services to the MEAO, to Adagold. The PwC Review was an independent peer review of the CAE Probity Review that confirmed that the review was thorough and robust.

#### *CAE Probity Review and PwC Review*

22. On receiving allegations concerning the tender process, the Secretary of Defence asked the Chief Audit Executive to undertake a systematic assessment of the MEAO air sustainment requirements, the contract process, the outcome, the probity of the contract process and an assessment of value for money. The CAE Probity Review focused on the specific allegations that had been made about the 2010 tender process. The review concluded that:

- a. the decision to re-tender was based on sound commercial considerations, including: a significantly improved value for money outcome; changes to operational requirements, including an increase in freight capacity; and changes to the Australian operating bases (adding Brisbane to Sydney);
- b. the tender process complied with Commonwealth and Defence procurement policy;

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<sup>19</sup> That is, an independent peer review of the CAE Probity Review.

- c. there was no evidence that Mr David Charlton had any involvement in, or influence on, the Request for Tender or the tender evaluation process;
- d. there was no evidence to support allegations concerning tender irregularities involving Adagold/Adajet (South Africa);
- e. the 2005 MEAO Air Sustainment Service tender process was subject to an independent probity review by Phillips-Fox, which concluded that it was conducted in a fair, open and transparent manner, and that no tenderer was disadvantaged in the tender process<sup>20</sup>; and
- f. Mr Charlton's commercial history and the economic/employment effects of selecting the Adagold/Hi Fly consortium were irrelevant to, and therefore beyond the scope of, the probity review.

23. In addition to the CAE Review, Defence engaged PwC to independently review Defence's process for reviewing this probity matter, to ensure it was thorough and robust. The PwC Review advised that the CAE Probity Review was conducted in a complete and impartial manner, and in particular in a manner that was consistent with the following six principles underpinning ethics and probity in Government procurement:

- a. fairness and impartiality;
- b. consistency and transparency of process;
- c. use of an appropriately competitive process;
- d. appropriate security and confidentiality arrangements;
- e. identification and management of actual and potential conflicts of interest; and
- f. compliance with legislative obligations and Government policies.<sup>21</sup>

24. The PwC Review was conducted along side the CAE Probity Review in August 2010. Two Directors and one Partner worked on the review. PwC charged a fixed contracted amount of \$20,625 (GST Inclusive) for this engagement, calculated on an estimated eleven days of work, and provided at a substantially reduced standard rate under a co-source internal audit services contract.

#### *Deloitte Examination and AGS Legal Review*

25. On completion of the CAE Probity Review and on receipt of PwC advice, the Secretary of Defence forwarded a submission on 26 August 2010 to the then Minister for Defence, Senator John Faulkner, detailing the outcome of the audit. Senator

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<sup>20</sup> On that basis, the 2005 tender process was not reviewed by the CAE Probity Review.

<sup>21</sup> These six principles are referred to in *Financial Management Guidance No. 14 – Guidance on Ethics and Probity in Government Procurement January 2005*.

Faulkner noted Defence's intention to proceed to contract with Adagold, subject to Department of Prime Minister and Cabinet's agreement, and he requested that a copy of the Ministerial Submission be provided to the opposition Spokesman for Defence, Senator David Johnston, under Caretaker Provisions. This was provided on 27 August 2010.

26. Senator Johnston raised additional concerns during a meeting on 31 August 2010. Senator Johnston subsequently wrote to the Secretary of Defence (copy attached at Annex B). The Secretary of Defence then convened an internal meeting on the same day (31 August 2010) to discuss and develop the terms of reference for additional independent probity reviews before any decision was to be made to proceed with Adagold.

27. On 2 September 2010, the Secretary engaged Deloitte Touche Tohmatsu (Deloitte) and the Australian Government Solicitor (AGS) to independently examine specific aspects of the tender process. The terms of reference for the Deloitte and AGS reviews were specifically drafted to address the concerns raised by Senator Johnston.

28. The AGS Legal Review was conducted from 2 to 15 September 2010. AGS was engaged from the Legal Services Panel at a cost of \$74,203 (GST Inclusive).<sup>22</sup> The majority of the services were performed by a Chief Counsel, working with a Senior Associate. Specifically the AGS was asked to provide advice on the following:

- a. whether the procurement process complied with Deed of Standing Offer under which the process was let;
- b. whether the procurement process complied with Commonwealth and Defence procurement policy;
- c. whether the procurement process and the selection of the preferred respondent was fair and defensible; and
- d. the legal risks of not proceeding to contract with the preferred respondent, and what options are there for contracting with a different provider.

29. Deloitte was engaged from the Management Consultancy Panel, after consultation with Ernst & Young and KPMG, who were both conflicted out of the review. Work commenced on 2 September 2010 and the report was released on 15 September 2010. The cost of the Deloitte Examination was \$591,820 (GST Inclusive). During the course of the engagement Deloitte appointed the number of staff needed in order to deliver the outcome in the limited time available. 23 staff were involved, of which seven were partners, seven were directors and nine others were senior staff, with their time worked on the assignment totalling 996 hours.

30. Defence had conveyed to Deloitte and the AGS the importance of completing the reviews as expeditiously as possible, while emphasising to Deloitte that the audit assignment should not be compromised in any respect by artificial constraints, time or

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<sup>22</sup> For clarification, a purchase order of \$77,000 was raised for these services, however, the actual cost of the services was \$74,203.

otherwise. Timeframes were set in order to avoid disruption to the critical air sustainment services, to take advantage of greater load requirements, and to minimise the additional costs associated with an interim solution. Defence was entering into a 'Relief in Place' period (a change over of deployed personnel), during which higher demands are placed on air services. A short term contract to cover these additional demands was estimated to cost an additional \$1 million for each week of delay (over and above the existing contract rate), commencing 22 October 2010. This estimation was based on the comparison of a long term contract versus an ad hoc charter.

31. Due to the importance of this assignment and acknowledging the concerns expressed by Defence, as noted above, Deloitte committed to only appoint very senior staff with the appropriate experience on the assignment. In addition they committed to work the hours necessary to get the review completed in the time frame requested by Defence.

32. As required by the Accounting Professional and Ethical Standards Board, in its Confirmation Letter, Deloitte is obliged to set out both the scope of work as well as any limitations that they, Deloitte, wish to define. To ensure absolute clarity, and to comply with the Accounting Professional and Ethical Standards Board, the Deloitte Confirmation Letter contained, a number of limitations. Specifically, Deloitte affirmed that they:

- a. limited their examination to reading documents, interviews and listening to interviews performed by others;
- b. relied on the transcripts from interviews undertaken by others;
- c. did not interview any of the tenderers or Mr Charlton;
- d. did not verify the information obtained through interviews and in the tender responses;
- e. did not verify the information obtained through on-line media sources;
- f. did not check the integrity and accuracy of the information contained in the financial viability spreadsheets; and
- g. provided no warranty of the completeness, accuracy, or reliability in relation to the statements and representations made by, and the information and documents provided by Defence personnel, and did not independently verify Defence sources.

33. It is important to emphasise that, in addition to re-stating the terms of reference, to avoid any doubt as to the scope of their work, professional service providers usually include a section in the confirmation letter specifically referencing what they will not be doing. This gives the customer, in this case Defence, the opportunity to come back and amend the scope of the assignment to add things that they may not have considered. For this assignment Defence saw no need to change the scope, as Deloitte had included all the areas of work that were listed in the terms of reference for the assignment. Further, for this assignment Deloitte was aware that the review would have an audience

beyond Defence and appreciated the need to very clearly differentiate between what they were requested to do in their terms of reference and what was out of their scope. And, finally, the majority of limitations clarified that the Deloitte Examination was not intended to duplicate work already done by the Chief Audit Executive or AGS unless Deloitte considered that necessary. The limitations in no way impacted on the completeness or thoroughness of Deloitte's work as outlined in their terms of reference, nor did they impinge on Deloitte's ability to undertake their assignment in full.

34. Defence made it clear that Deloitte and AGS were to be given complete and unfettered access at all times to all tender and probity review documentation and personnel who participated in the Request for Tender.<sup>23</sup> Based on their terms of reference, Deloitte undertook a comprehensive review of the tender and probity review documentation, and conducted a series of detailed interviews with probity review and tender evaluation staff to arrive at their findings. Deloitte also undertook additional financial evaluation procedures to supplement the work performed by Defence in relation to the financial viability and fit and proper assessments for Adagold and Alltrans.

35. The Deloitte Examination and the AGS Legal Review did not identify any issues that would invalidate Defence's decision to select Adagold as the preferred tenderer or that the decision was not fair and defensible. Further, they did not identify any evidence of bias in the process, any outside influence that could have compromised the overall selection process, or any reason that would suggest Adagold was not a fit and proper organisation. These findings were consistent with, and affirmed those of, the CAE Probity Review.

36. Defence is of the firm view that, in a complex and serious matter such as this, and given the total contract price of \$62 million over a two year contract period, it was necessary to engage highly skilled personnel to independently review the tender process. Deloitte, AGS and PwC were all able to bring significant expertise and resources to review the tender process within tight time constraints. The level of expertise and the extent of Deloitte's review work to re-confirm the internal CAE Probity Review findings represented value for money.

37. While the reviews did find some opportunities to improve processes, they concluded that these opportunities for improvement in no way alter the view that the process was complete and thorough, or give cause to question the decision to rate Adagold as the preferred tenderer.

38. In conjunction with the reviews, the Tender Evaluation Board convened to re-validate the Source Evaluation Report. This re-validation was completed on 15 September 2010. The re-validated Source Evaluation Report confirmed Adagold as the preferred tenderer, however, it reversed the order of the second and third preferred tenders. This re-ordering occurred because of the correction of a minor mathematical error in the totalling of evaluation scores.<sup>24</sup> This error had no effect on Adagold's

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<sup>23</sup> Confirmed by Deloitte in an email dated 3 December 2010.

<sup>24</sup> The table presenting the value for money index ranking contained a calculation error, but this did not impact the overall outcome of the tender process. The table containing the seven technical evaluation criteria did not correctly sum the scores of the seven individual components. The spreadsheet omitted the score for the final criterion (that is, 'The extent to which the contractor is compliant with this request and

ranking and therefore its selection as preferred tenderer and similarly had no effect on the overall process as, had negotiations with Adagold failed, then tender negotiations would have had to have been carried out with second and third ranked tenderers in parallel due to their bids being so close in terms of their assessed value for money.

39. Due to delays caused by the need to investigate the allegations raised by Mr Aisen and the media, Defence entered into short-term contract arrangements with Strategic Aviation to continue to provide MEAO air sustainment services from 23 October 2010 to 22 November 2010. Following the Minister for Defence's approval to proceed with an interim contract on 6 October 2010, and a briefing to Senator Johnston on 15 October 2010, Defence entered into a two-year contract with Adagold on 22 October 2010, with the contract commencing on 23 November 2010.

### **Allegations of perceived and actual conflicts of interest**

40. The only allegation of a perceived or actual conflict of interest during the 2010 tender process arose in respect to Mr David Charlton. During the tender process Defence took adequate actions to ensure that Mr Charlton was not in a position of perceived or actual conflict of interest.

41. Facts surrounding Mr Charlton, in respect to these allegations, are as follows:

- a. Mr Charlton served as a Captain (Australian Army Reserve) on continuous full time service at HQ1JMOVGP during 2005 and 2006;
- b. he was employed in the contracting cell of HQ1JMOVGP in early 2005 and was the non-voting Chairman of the 2005 tender board which selected Strategic Aviation as the preferred tenderer for the 2005 MEAO Air Sustainment Contract;
- c. during 2005 he deployed overseas to the Joint Movement Coordination Centre in the MEAO;
- d. upon return from deployment he ceased continuous full time service in the Army in early 2006, was posted to a Army Pool position and became an employee of Strategic Aviation for approximately eight months;
- e. was not employed in a Reserve capacity during the period spanning the 2006 and 2008 competitive tenders for air sustainment services;
- f. on 12 January 2007 he transferred to the Inactive Army Reserve;
- g. Mr Charlton left Strategic Aviation, and established SkyAirWorld during 2007 where he was a director until the company was placed into administration early in 2009;

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the assessed level of risk relating to the negotiation of this request'). The impact of this error did not impact the ranking of Adagold because it was the highest ranked respondent on that criterion.



- h. during 2009, he provided consultancy services through Aviation Integration Services Pty Ltd to three members of the Standing Offer Panel – Adagold, Rex/Pel Air and Alltrans – prior to the release of the Request for Tender (RFT AO/014/09-10) in March 2010. He also supported Adagold’s successful bid for a tender for the Danish Department of Defence in 2008;
- i. on 24 June 2009, after advising his availability for service, he was transferred by the Army Personnel Agency (Brisbane) to the active Army Reserve and was posted to a Training Officer position at Joint Movement Control Office Brisbane, but didn’t perform any duties as an active Reservist until 6 July 2009;
- j. in his capacity as a consultant, he provided technical advice on candidate aircraft which would meet the specified criteria of the Request for Tender (RFT AO/014/09-10), after its release in March 2010, in particular for Adagold through Aviation Integration Services; and
- k. after the release of the Request for Tender (RFT AO/014/09-10), in March 2010, he performed part time Army Reserve duties in Army Standby Staff Group within Headquarters 11 Brigade, although his posting order formally remained Joint Movement Control Office Brisbane until 1 July 2010.

42. Upon Mr Charlton commencing work in an active Reserve capacity with the ADF in July 2009, Defence took immediate and effective actions to ensure that Mr Charlton was not in a position where concerns of perceived or actual conflicts of interest could be raised in respect to his Army service. The Officer Commanding Joint Movement Control Office Brisbane, being cognisant of Mr Charlton’s previous work in the commercial air lift industry, ensured that Mr Charlton remained solely in his training officer role in the training and development section of the Brisbane office. Mr Charlton was purposely kept away from all operational matters at Joint Movement Control Office Brisbane, including anything to do with the Strategic Aviation operation of its 2008 contract.

43. Joint Movement Control Office Brisbane’s role is to facilitate unit movements to and from operations and exercises within its area of responsibility<sup>25</sup> No procurement activity occurs at Joint Movement Control Office Brisbane (other than the procurement of day to day office supplies), and they had no involvement with the RFT AO/014/09-10.

44. When there was a change over of Officer Commanding Joint Movement Coordination Office Brisbane in January 2010, the new Officer Commanding was fully briefed on Mr Charlton’s history and the measures in place to keep him distanced from operations and any issues relating to the operation of MEAO air sustainment contract through Brisbane. The new Officer Commander maintained these measures until Mr Charlton’s departure from the unit.

45. Furthermore, Mr Charlton, in his Reserve capacity had no access to Defence electronic systems or documentation relating to RFT AO/014/09-10. Joint Movement

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<sup>25</sup> Southern Queensland - 22 Degrees South to 30 Degrees South and bounded by the SA/NSW and SA/QLD borders.

Control Office Brisbane does not have an electronic Document Records Management System (DRMS) nor does it have a link or access to the HQ1JMOVGP DRMS or any electronic information contained within it relating to procurement activities undertaken by HQ1JMOVGP. Key procurement documents for RFT AO/014/09-10 were stored in a DRMS folder which was accessible to personnel employed in HQ1JMOVGP Bungendore but not accessible to Joint Movement Control Office personnel elsewhere in Australia. When checked during the CAE Probity Review, electronic records confirmed that the applicable DRMS files had only been accessed by HQ1JMOVGP personnel actually involved in the tender process.<sup>26</sup> Mr Charlton therefore had no electronic access to any tender documentation for RFT AO/014/09-10. Similarly it was confirmed during the CAE Probity Review that Mr Charlton has at no stage visited HQ1JMOVGP Bungendore, so he could not have had any opportunity to access the documents stored there.

46. Defence considers that the actions taken to distance Mr Charlton from the RFT AO/014/09-10 process were timely and effective. Defence acted immediately and appropriately to ensure that Mr Charlton's work as a Reservist was completely removed from the tender process, which was further enhanced by him not having access to relevant electronic systems or being located in the same area as those working on the tender.

47. On 2 September 2010, The Age journalist, Richard Baker, wrote two articles in which he alleged that two (then) ADF members, Mr Charlton and Mr John Davies, had assisted Strategic Aviation to win the 2005 MEAO Air Sustainment Services contract by providing it with 'inside' information about the tender process. Mr Baker linked this allegation to the fact that both Mr Charlton and Mr Davies took up senior management positions with Strategic Aviation after the contract was awarded. Although Defence was aware that Mr Charlton and Mr Davies had accepted employment with Strategic Aviation, Defence had not previously been aware of any allegations that Strategic Aviation had received 'inside' information in its bid for the 2005 contract. Defence assessed that, if proven, the allegations would give rise to a range of possible criminal offences, and due to the seriousness of the allegations referred the matter to the Australian Federal Police on 10 September 2010. As this matter continues to be the subject of ongoing investigations by the Australian Federal Police, it is inappropriate to comment further on this matter.

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<sup>26</sup> Access checks involved reviewing the electronic system audit logs available within the DRMS, to verify that only authorised personnel accessed these documents.

## **PART A – ENSURING VALUE-FOR-MONEY WILL BE ACHIEVED**

***“(i) the adequacy of the due diligence process around the choice of potential suppliers from Standing Offer Panels and, more specifically, whether there was existing or any subsequently discovered evidence to warrant non-selection of any of the panel members, or whether the information obtained should have resulted in further inquiry and investigation”***

48. The Defence decision to utilise the Air Standing Offer Panel for potential providers of air sustainment services to the MEAO was appropriate and aligned with the purpose for which the Standing Offer Panel was established. The Deloitte Examination, and legal advice at the time, supported this procurement approach.

49. All thirteen members of the Air Standing Offer Panel were invited to tender for the provision of air sustainment services to the MEAO through RFT AO/014/09-10. The utilisation of the Standing Offer Panel through a competitive tendering process (that is, an approach to all panel members) represented a fair and open approach to obtaining best value for money.

50. The Air Standing Offer Panel was established on 2 November 2009, by Defence’s Strategic Logistics Branch, from a Complex Procurement open tender process. This process effectively pre-selected the air charter market for Commonwealth requirements for the period of the current panel operation. Panel members are a mixture of charter operators and brokers. Due to panel members being able to source charter aircraft globally for an enduring requirement it was considered that adequate sources of supply were available through the Air Standing Offer Panel.

51. Use of the panel provides a valid legal procurement framework with standardised terms and conditions with which to engage the air charter services. The specialised nature of services required (that is, a complete door to door solution rather than simply an aircraft operator) are better met by the specialised nature of the panel. Further, this panel, since its inception had previously been successfully used for Defence charters of this nature.

52. Defence is not aware of any existing or any subsequently discovered evidence to warrant the non-selection of any panel members. The unsubstantiated allegations raised in respect of conflicts of interest, and a connection between Adagold and contracts in South Africa are addressed below in this submission.

***“(ii) the requirements of tenders and how effectively these will be met”***

53. The aircraft uplift requirements of RFT AO/014/09-10 were that the proposed aircraft must:

- a. have optimal seating capacity for at least 200 Relevant Personnel;
- b. have an available cargo carrying capacity of at least 25,000 kg (comprising a minimum of 150 m<sup>3</sup> of volumetric capacity), comprising capacity to hold Accompanying Baggage of at least 12,000 kg and a minimum useable cargo capacity of 13,000 kg;

- c. be configured for aero medical evacuation; and
- d. must carry a minimum of four onboard stretchers that are available for use at all times.

54. The ability of the tenderers to meet the requirements of the request for tender was assessed as part of the tender evaluation process. Although ideally the successful tenderer would meet all the specified requirements using a single aircraft solution, innovative solutions (for example, a combination of passenger/cargo aircraft with a freight forwarding solution) were not excluded at any point in the tender evaluation process.

55. All tenders submitted were evaluated against these basic requirements.

56. Furthermore, the requirements stipulated in the Request for Tender have all been realised in the current contract for air sustainment services in the MEAO. Adagold is currently meeting those requirements with services having been provided in a timely fashion. The first formal performance review occurred on 18 February 2011; there were no significant issues and Defence is satisfied with Adagold's performance.

***“(iii) whether the preferred respondent decision was influenced by any vested interests, outside influences or any other perceived or actual conflicts of interest”***

57. Governance processes for RFT AO/014/09-10 appropriately addressed confidentiality in the lead up to the tender and during the tender process and measures were in place to address the identification and management of potential, perceived or actual conflicts of interest. Defence is not aware of any evidence to indicate that there were any vested interests, outside influences or any other perceived or actual conflicts of interest during the procurement process.

58. The Tender Evaluation Plan included clauses on the maintenance of confidentiality of the tender process, including requirements that access to files and information be restricted and that all tender material be handled with appropriate security and confidentiality. Key procurement documents including the Procurement Strategy, Request for Tender and Tender Evaluation Plan were stored in a DRMS folder which was accessible to all personnel employed in HQ1JMOVGP Bungendore, but no other Defence personnel or Joint Movement Control Office personnel elsewhere in Australia. When specifically checked during the CAE Probity Review, electronic records confirmed that the applicable files had only been accessed by HQ1JMOVGP personnel actually involved in the tender process. From July 2010 access to the folder was further restricted to limit access only to HQ1JMOVGP personnel directly involved in RFT AO/014/09-10 and no other personnel in HQ1JMOVGP. The tender planning and evaluation was undertaken within the geographically remote and highly secure Headquarters Joint Operations Command 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 office in the Defence Plaza, Sydney, where tender deliberations were conducted in a secure area and all tender documentation was secured when not being assessed to ensure the confidentiality and security of all tender information. Furthermore, during the CAE Probity Review

the Tender Evaluation Board advised that at no stage was commercially sensitive information on any bid provided to other tenderers, or to personnel outside the Tender Evaluation Board, during the tender evaluation process.

59. The Tender Evaluation Plan adequately addressed the identification and management of potential, perceived or actual conflicts of interest. Tender Team members received a briefing on conflict of interest management. None of the personnel involved in the Tender Team declared any conflicts of interest and all signed Conflict of Interest Declarations. All Tender Team personnel, except the Financial Tender Evaluation Working Group, completed and signed the required Conflict of Interest Declaration forms before commencing their evaluation process. The Financial Tender Evaluation Working Group signed their Conflict of Interest Declaration Forms part way through the tender process, on 24 June 2010, before they completed their deliberations and made their recommendations.

*“(iv) the role of departmental personnel in the tender processes and their adherence to the Commonwealth’s procurement policy, as well as any conflict of interest issues arising from the tender process and if any perceived or actual conflicts were declared”*

#### **Role of departmental personnel in the tender processes and their adherence to Commonwealth procurement policy**

60. Defence personnel adhered to Commonwealth and Defence Procurement Policy during the tendering process for RFT AO/014/09-10 for the provision of air sustainment services to the MEAO. This conclusion is supported by both the AGS Legal Review and the CAE Probity Review.

61. In its legal review, AGS further advised that Defence itself must be satisfied that the preferred contractor represents value for money in order to comply with the Commonwealth Procurement Guidelines. Defence is satisfied that it has achieved value for money with the preferred contractor, Adagold, now providing services according to requirements and at a contract cost that is an estimated \$32 million less than continuing with the previous arrangements.<sup>27</sup>

62. AGS also noted that an independent probity adviser was not appointed for the tender. Although not mandatory, it recommended probity advice where the size, complexity, sensitivity and potential risk justifies such an appointment. At the time, the Proposal Approver for the tender, did not consider that an external probity adviser was required as the existing Air Standing Offer Panel was being accessed. HQ1JMOVGP has since amended its business practice to appoint external, independent probity advisers for all significant, complex procurements.

63. Although reaching the conclusion that the tender process was fair and complied with Commonwealth and Defence Procurement Policy, the CAE Probity Review also found some deficiencies:

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<sup>27</sup> This is based upon an estimated \$98 million expenditure (over two years) if the previous contract had been extended with Strategic Aviation (noting that there was actually only one more one year option), the new contract cost of \$62 million over two years and that the new contracted aircraft would actually use about \$4 million more fuel.

- a. the tender planning process included tight timeframes from the decision to re-tender on 24 March 2010 and Effective Date for service commencement of 24 October 2010;
- b. the Tender Evaluation Plan could have been strengthened by providing more detail for the scoring and pricing model to ensure a standardised and complete assessment of bids for this complex industry;
- c. the tender ranking and selection process would have been strengthened by clearer definition of essential and important requirements in the Request statement of work; and
- d. the Request for Tender documentation terminology and structure would have benefitted from being updated against current ASDEFCON<sup>28</sup> requirements and terminology, even though the method was sound.

64. These deficiencies, however, were not to the extent to cause the process to be compromised and therefore suspended, or to reach the conclusion that Commonwealth or Defence Procurement Policy had not been followed.

65. The tender process that was followed by Defence is detailed below.

66. The approved Request and approved Tender Evaluation Plan identified the following nine evaluation criteria for the tender (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.

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<sup>28</sup> ASDEFCON is a suite of tendering and contracting templates used within Defence.

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.

67. A Tender Evaluation Board was convened by HQ1JMOVGP with representation from the Air Standing Offer Panel administrator. The Operational/Technical Tender Evaluation Working Group was established from within HQ1JMOVGP. The Financial Tender Evaluation Working Group role was fulfilled by the Defence Materiel Organisation's Financial Investigation Service located in Sydney. The Tender Evaluation Board conducted the compliance and risk assessment of tenderers. Commercial and financial information was extracted from the tender responses prior to undertaking the detailed Operational/Technical and Tender Evaluation Board compliance assessments, to ensure that evaluators only received information relevant to their areas of evaluation.

68. The Defence Procurement Policy Manual mandates that staff exercising financial delegations are to have the appropriate procurement competency (for example, Complex Procurement in the case of the MEAO Air Sustainment Request for Tender) and encourages other procurement personnel (for example, tender evaluation board staff and procurement support staff) to obtain the appropriate procurement delegations, noting they should also have the necessary technical/subject matter skills to assess the substance of the tendered solutions. Key Defence personnel managing this tender process and exercising Commonwealth financial delegations held the required Complex Procurement competencies and skills. Two Tender Evaluation Working Group members had not completed the final Complex Procurement module for managing contracts, but this module was not related to, and did not in any way affect, the tender evaluation process. One Tender Evaluation Board member (the Panel administrator) did not have Complex Procurement competency, but as this person was not exercising delegations it was not mandatory that he have the competency.

69. All tender responses were initially assessed for the completeness and compliance of their bids. All Request requirements were rated as equally important.

70. The Request for Tender 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 for Tender, fuel costs are funded by the Commonwealth; however, fuel usage of the tendered options was incorporated into the pricing and overall value for money analysis to ensure that comparison of projected fuel costs for each tender response was treated equally.

71. The Operational/Technical Tender Evaluation Working Group assessed criteria five and eight (see paragraph 66 above for criteria). The Financial Tender Evaluation Working Group assessed criteria seven and nine. The Tender Evaluation Board conducted the compliance and risk assessment of tenderers against the remainder of the evaluation criteria. Once the compliance and risk assessments were completed, the Tender Evaluation Board, was provided with the tenderer financial and commercial information to consolidate and determine the overall compliance and value for money ranking. It is worth noting that all respondents were assessed equally, however, during the evaluation process it became evident that six of the submissions failed to meet all

the selection requirements and were rated as non-preferred. This rating did not exclude them from the assessment process. It was merely a means of differentiating between those submissions that met all the evaluation criteria and those that did not. To reiterate, the ranking of 'not preferred' did not preclude respondents from the overall assessment process.

**Any conflict of interest issues arising from the tender process and if any perceived or actual conflicts were declared**

72. No conflicts of interest were declared by personnel involved in the tender process. Alleged conflict of interest issues relating to Mr Charlton are addressed earlier in this submission.

*“(v) the methodology and adequacy of the decision processes and 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”*

73. The specification of the services for the tender was objective and supportable, based on current and likely future operational requirements, and based on an expectation of achieving an improved value for money outcome for the Commonwealth.

74. The total volumetric cargo capability of the Strategic Aviation Airbus A330-200 aircraft under the 2008 contract was 114 m<sup>3</sup>. An additional 33 m<sup>3</sup> was being moved by Strategic Aviation freight forwarding arrangements under the provisions of the 2008 contract, providing a total capacity of 147 m<sup>3</sup><sup>29</sup>. By 2009 the original contract provisions no longer met ADF requirements due to changes in troop dispositions, routes and cargo increases, as well as value for money considerations. RFT AO/014/09-10 took these factors into account and specified that the contracted aircraft must have an available cargo carrying capacity of at least 25,000kg (comprising a minimum of 150 m<sup>3</sup> of volumetric capacity). This requirement was based on historical data of ADF requirements and projected freight increases associated with proposed force structure changes, such as the introduction of Heron<sup>30</sup> and C-RAM<sup>31</sup>. The aircraft load planning sequence requires that passengers and baggage are calculated first, then the remaining cubic capacity is assigned to freight, shipped from the Cargo Consolidation Point in the Defence National Storage and Distribution Centre. This procedure ensures that the aircraft is nearly always filled to cubic capacity. Notwithstanding this process, under the 2008 contract, there was a requirement to make arrangements for the movement of excess freight, beyond the capacity of the contracted aircraft.

75. The Commonwealth stated at the Industry Briefing on 23 April 2010 that whilst a single aircraft solution was preferred, it would consider innovative cargo solutions such as multiple aircraft, or aircraft plus freight forwarding. The claims from Strategic Aviation that the increase in freight requirement was intended to exclude their aircraft was not relevant because the aircraft being used under the 2008 contract was already well short of the existing 147 m<sup>3</sup> required to handle the current cargo loads. The tender

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<sup>29</sup> Contract Change Proposal No. 7 dated 5 Mar 10, increased the freight requirement to 147 m<sup>3</sup>.

<sup>30</sup> Heron is an unmanned aerial surveillance aircraft.

<sup>31</sup> C-RAM is Counter Rocket, Artillery and Mortar early Warning System.



bid from Strategic Aviation using the Airbus A330-200 aircraft, with less than the required payload, supplemented by the freight forwarding of some cargo, was considered by the Commonwealth, in competition with the other tenders. After evaluation, both of the Strategic Aviation tender bids<sup>32</sup> were found to be less competitive on a number of criteria, but particularly on a value for money basis.

76. The Request for Tender period was eight weeks, and did not unfairly advantage a particular respondent. In examining this aspect, the Deloitte Examination noted that 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 industry.

***“(vi) the integrity of governance around the development of Request for Tenders and the subsequent evaluation process, and whether the governance arrangements achieved their intended purposes, including the processes to manage perceived and actual conflicts of interests”***

77. There were appropriate governance arrangements in place for RFT A0/014/09-10, in accordance with the Defence Procurement Policy Manual, and it is apparent from supporting documentation that these arrangements were adhered to.

78. Detail of the procurement process, governance arrangements and the outcomes of the Deloitte Examination of governance arrangements follow.

79. The procurement process followed was:

- a. establish Procurement Strategy,
- b. establish Tender Evaluation Plan,
- c. establish Request for Tender,
- d. release Request for Tender,
- e. conduct industry briefing,
- f. receive tender submissions,
- g. conduct tender evaluation,
- h. identify preferred tender,
- i. communicate tender results,
- j. conduct contract negotiations, and
- k. finalise contract.

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<sup>32</sup> Actual ranking of the Strategic Aviation bids for an Airbus A330-200 and an Airbus A340-300 is commercial in confidence information.

80. The Defence governance requirements in respect of the RFT A0/014/09-10 procurement process were documented in the Procurement Strategy for the Contracting of Air Sustainment Services and the Tender Evaluation Plan.

81. The Procurement Strategy for the Contracting of Air Sustainment Services was approved by the Proposal Approver on 23 March 2010. This document set out the project deliverables of the procurement as being:

- a. obtain a statement of funds availability,
- b. obtain proposal approval,
- c. obtain procurement approval,
- d. obtain delegate approval for the Tender Evaluation Plan,
- e. conduct financial analysis planning,
- f. release Request for Tender documentation,
- g. evaluation of Tender responses,
- h. obtain contract approval, and
- i. obtain contract signatory approval from delegates.

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

83. The procurement strategy project deliverables were completed and the majority of the risk management actions were implemented with the exception of three which were not implemented. These risks and the reasons they were not implemented are as follows:

- a. Conducting market research. The use of Air Standing Offer Panel was considered to meet the market research requirements for this tender.
- b. Involvement of an aviation consultant. The use of the Air Standing Offer Panel in addition to the aviation experience of the Tender Evaluation Board members provided a sufficient level of expertise.
- c. Providing advance notice to the Standing Offer Panel members prior to the release of the Request for Tender. Given the comparatively short time period for the whole tender process the option of providing advance notice was considered not viable.

84. The Deloitte Examination noted that probity risks were not documented in the risk management plan and a probity plan was not documented. This aligns with the Proposal Approver's decision that an external probity adviser was not mandatory and not required as the existing Air Services Standing Offer Panel was being accessed. Therefore, it was assessed there was no requirement to include this in the risk management plan.

85. The Tender Evaluation Plan was approved by HQ1JMOVGP on 25 March 2010. The Tender Evaluation Plan documents the governance guiding this procurement process. The Tender Evaluation Plan set out:

- a. the tender evaluation criteria;
- b. the delegates nominated to approve actions;
- c. the proposed timeframes for the critical steps in the procurement;
- d. the composition and membership of the Tender Evaluation Board and the two Tender Evaluation Working Groups;
- e. the roles and responsibilities of the Chair of the Tender Evaluation Board;
- f. how the comparative assessment will be undertaken;
- g. the administrative requirements for handling of tender documents;
- h. the requirements in respect of ethics, probity, fair dealing, conflicts of interest and security requirements and arrangements;
- i. the requirements applying to the detailed evaluation of tenders, the associated methodology and the production of the Source Evaluation Report; and
- j. the steps for notification and debriefing of tenderers.

86. In respect of the requirements of the Tender Evaluation Plan, the evaluation criteria were applied in the tender evaluation process and the Delegates operated within their approved delegation levels. The Tender Evaluation Board and two Tender Evaluation Working Groups were formed and performed the tasks assigned to them in accordance with Tender Evaluation Plan. The comparative assessment was undertaken in accordance with the Tender Evaluation Plan and the administrative requirements on file handling were followed. Conflicts of Interest declarations were completed by the Tender Evaluation Board and Tender Evaluation Working Group members, however there was no documentation indicating that a briefing on ethics, probity and fair dealing was undertaken. The Financial Tender Evaluation Working Group members signed their conflict of interest and probity declarations during their evaluation process but before they finalised their deliberations and made their recommendations. The requirements on evaluation, methodology and production of the Source Evaluation Report were generally met, but they identified that documentation of the process would have been strengthened by the production of a separate Tender Evaluation Board report

for the five criteria assigned to the Tender Evaluation Board, in the same way that separate evaluation reports were produced for the Financial and Operational/Technical Tender Evaluation Working Groups. Steps for notification have been followed and a debrief has been provided for unsuccessful tenderers.

87. HQ1JMOVGP, during its pre-tender deliberations, found no actual conflicts of interest with any of its Tender Team members. It determined, however, that there was potential for a perceived conflict of interest to exist through the posting of Mr Charlton (in his Reserve capacity) and Defence acted appropriately to separate Mr Charlton for any access to, or involvement in, the tender process. Alleged conflict of interest issues are addressed earlier in this submission.

***“(vii) whether the governance arrangements were adequate and in fact did ensure that there were no perceived or actual 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 processes”***

88. Governance arrangements for RFT AO/014/09-10 were appropriate and the process for signing conflict of interest declarations ensured there were no perceived or actual conflicts of interest during the procurement process. The conclusion is supported by the Deloitte Examination.

89. The Defence Procurement Policy Manual defines conflicts of interest 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.*<sup>33</sup>

90. The Tender Evaluation Plan for RFT AO/014/09-10 outlined the following steps to be taken in relation to conflicts of interest:

- a. The Chair is required to brief the Tender Evaluation Team on the requirements of the Tender Evaluation Plan including such things as conflicts of interest.<sup>34</sup>
- b. The Chair is required to brief the Tender Evaluation Team 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.<sup>35</sup>
- c. 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.<sup>36</sup>

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<sup>33</sup> Defence Procurement Policy Manual, 1 December 2010, 3.13 para 30.

<sup>34</sup> Tender Evaluation Plan for RFT AO/014/09-10, Clause 18.

<sup>35</sup> Tender Evaluation Plan for RFT AO/014/09-10, Clause 21.

<sup>36</sup> Tender Evaluation Plan for RFT AO/014/09-10, Clause 22.

91. All members of the Tender Evaluation Team signed conflicts of interest declarations although they were not provided a specific briefing on conflicts of interest and other probity matters. The conduct of a separate probity briefing is considered best practice only and is not a mandatory requirement of the Commonwealth Procurement Guidelines or the Defence Procurement Policy Manual. Specific requirements of the Defence Procurement Policy Manual on conflicts of interest, the Tender Evaluation Plan and the Conflict of Interest declaration forms, combined with coverage of this issue in complex procurement training, provided adequate information on the obligations of the Tender Team in respect of probity matters

***“(viii) whether the respondents, including directors and other key personnel (whether employees, agents or contractors nominated in the tender response) for the proposed contracts, are fit and proper for the purpose of contracting with the Commonwealth and the adequacy and methodology of this process”***

92. All panel members of the Air Standing Offer Panel were selected through an open Request for Tender process by Strategic Logistics Branch, Joint Logistics Command, in November 2009 using Defence Procurement Policy Manual procedures. Panel members were therefore considered by the HQ1JMOVGP to be fit and proper entities for the purpose of contracting with the Commonwealth with no further checks being carried out.

93. Deloitte identified this as insufficient for the adequate evaluation of tender evaluation criterion seven<sup>37</sup> and conducted, as part its review, a ‘fit and proper’ check of the top two ranked tenderers. Due to the complexity of conducting these checks, and the time constraints, a value for money consideration was made to limit ‘fit and proper’ checks to the top two ranked tenderers, and not to extend this activity to other ranked tenderers. Defence subsequently relied upon the checks conducted during the Deloitte Examination. Separately, Deloitte conducted checks on Aviation Integration Services - the company through which Mr Charlton consulted to three organisations on the Air Standing Offer Panel (Adagold, Rex and Alltrans). This was considered prudent in view of the allegations of conflicts of interest raised in relation to Mr Charlton.

94. The Deloitte Examination undertook searches of the public record for Adagold, Alltrans, and Aviation Integration Services. Searches were conducted using an array of online commercial databases and various regulatory and agency web sites. For companies this included:

- a. background checks on corporate entities (including ownership, subsidiaries and/or parent entities, key officers, locations), sourced from filings maintained by Australian Security and Investments Commission;
- b. checks of the “Enforceable Voluntary Undertaking” listing on the Civil Aviation Safety Authority website for mention of Adagold and Alltrans;

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<sup>37</sup> Evaluation Criterion 7 of the Request for Tender is “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.”

- c. searches for local, national and international press reports through Factiva<sup>38</sup>; and
- d. civil litigation and judgement checks, as well as, and identifying 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.

95. For individuals this included:

- a. undertaking civil litigation and judgement checks and identifying 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;
- b. identifying bankruptcies through searching the Insolvency Index maintained by the Insolvency Trustee Services of Australia;
- c. searches of local, national and international press reports using Factiva;
- d. Australian Securities and Investments Commission extracts and the Australian Prudential Regulation Authority disqualifications register;
- e. examining the public record (as set out above) for any reputational concerns regarding the list of individuals and companies; and
- f. considering the information obtained from searches to identify whether there was anything that may lead to a belief that either of the two respondents (and/or their key personnel) were not fit and proper for the purpose of contracting with the Commonwealth.

96. In assessing whether the respondents are ‘fit and proper’ for the purpose of contracting with the Commonwealth, the Deloitte Examination considered whether any information identified in the searches could cause the Commonwealth reputational damage.

97. The Deloitte Examination found nothing to indicate that those companies and individuals were not fit and proper for the purposes of contracting with the Commonwealth. Detail of the searches and results are included in the Deloitte Examination report at section 4.6. Despite the necessary time constraints in relation to searches on Adagold, Alltrans, and Aviation Integration Services, Defence is satisfied with the thoroughness of the searches and results, such that it can safely rely on the conclusions reached. The Chief Audit Executive remained close to and received regular status briefings from Deloitte on the conduct of searches and results. In addition the Chief Audit Executive advised Deloitte that they should not compromise the quality of the audit to meet the time constraints.

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<sup>38</sup> An international and local media database.

## **PART B – THE ADEQUACY AND APPROPRIATENESS OF THE PROCESSES**

*“(i) whether the respondents and associated companies supplying services to the respondents have the financial and commercial capacity to deliver the services submitted in their responses”*

98. Based on the evaluation done by Defence’s Financial Investigation Services, and work done by the Deloitte Examination in conducting ‘fit and proper’ checks, as well as risk mitigation strategies, Defence is satisfied that the preferred tenderer, Adagold, and associated companies, have the financial and commercial capacity to deliver the air sustainment services to the MEAO.

99. In accordance with the approved Tender Evaluation Plan, Defence’s Financial Investigation Service assessed the costs associated with the fuel efficiency of the tendered aircraft as well as assessing the proposed corporate structure and the financial and corporate viability of the contractor and the aircraft operator to fulfil their obligations under the Request for Tender and the Deed of Standing Offer. The Deloitte Examination found some deficiencies in relation to the Financial Investigation Service assessment of operator viability, including the absence of ‘fit and proper’ checks on key personnel, with these deficiencies representing an incomplete assessment against criterion seven<sup>39</sup>. To ensure all aspects of criterion seven were addressed, this assessment was subsequently completed by Deloitte, and the Financial Tender Evaluation Working Group re-convened to review its recommendations. The additional assessment work did not change the ranking of the preferred tenderer, but reversed the ranking of the second and third ranked tenderers due to the detection and correction of a minor error in the totalling of evaluation scores.

100. The Deloitte Examination assessed whether the respondents and associated companies supplying aviation services to the respondents had the financial and commercial capacity to deliver the services submitted in their responses, and found nothing to indicate that the potential risks associated with the financial and commercial capacity of the preferred tenderer, Adagold, had not been recognised.

101. The Financial Investigation Service team assessed Adagold to be of medium risk in respect of its financial viability on the basis of its own analysis. However, subsequent analysis through the Deloitte Examination of financial statements highlighted additional risks given the subcontractor/contractor structure of the tender response. Following this, Defence recognised the potential risks relating to financial viability and sought to mitigate the risks by seeking to execute a novation agreement between Adagold, Hi Fly and Defence<sup>40</sup> and by including a performance guarantee in the Deed of Standing Offer.

102. Adagold’s operating partner, Hi Fly is a Portuguese private (family owned) company which obtains access to aircraft under operating lease arrangements, and then sub-leases the aircraft to end-users. Deloitte conducted an analysis of Hi Fly’s financial statement and confirmed that it was reasonable that the Tender Evaluation Working Group assessed Adagold and Hi Fly as viable but high risk, such that a performance

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<sup>39</sup> Evaluation Criterion 7 of the Request for Tender is “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”.

<sup>40</sup> The agreement allows Defence to novate the contract to Hi Fly should Adagold become insolvent.

guarantee should be obtained from Adagold. Subsequent to the Deloitte Examination a performance guarantee of \$2 million underwritten by the Commonwealth Bank of Australia has been obtained by Adagold.<sup>41</sup>

103. More detail on the Deloitte's assessment of financial and commercial capacity of respondents is in the Deloitte Examination at 4.7.

***“(ii) whether respondents have the capacity to deliver the services submitted in their responses to a quality and standard that meets the requirements of the Commonwealth and its regulatory authorities and, if so, whether the department was fully satisfied with the services provided by their appointed foreign carrier when they last provided such services (Request for Tender AO/014/09)”***

104. Adagold has been delivering the air sustainment services into the MEAO as required since 23 November 2010. This outcome was anticipated from the tender process and supported by the Deloitte Examination which found nothing to indicate that Adagold did not have the capacity to meet the quality and standard required by the Commonwealth to provide the contracted services.

105. Adagold was evaluated by the Tender Evaluation Board against RFT AO/014/09-10 and found to meet all the conditions necessary to provide the required services for the new contract that commenced in November 2010. This included certification by the Civil Aviation Safety Authority in their issuing of Foreign Air Operators Certificate (FAOC) to the allocated Hi Fly aircraft.

106. Adagold was the highest ranked proponent on the seven technical and operational criteria. The detailed Adagold tender response included a number of schedules showing aircraft specifications, route plans and fuel calculations and high level operational and information on Hi Fly, 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. Adagold was the only tenderer which undertook a site visit to the Al Minhad airbase. Hi Fly had operated flights from Australia to the MEAO on behalf of Defence as a sub-contractor to Strategic Aviation and therefore also had direct experience of the service requirements.

107. Adagold, at the time of the tender, did not have a current lease for the aircraft it proposed to operate under the terms of the tender. It is not unusual, however, for any of the tendering aircraft broker companies to commit to the lease of an aircraft from a third party operator unless the broker had a signed contract with the Commonwealth. Nonetheless, in its tender response Adagold provided a letter indicating that an exclusive agreement was in place with Hi Fly, which gave Adagold access to a compliant aircraft. Adagold also 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. At the time of responding to the tender, Hi Fly had in place the required aircraft certification, specifically in respect to airworthiness certification from Civil Aviation Safety Authority. This certification routinely lapsed during tender evaluation and was renewed

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<sup>41</sup> The performance guarantee provides financial compensation up to a maximum of the amount guaranteed, should the contractor fail.



by the Civil Aviation Safety Authority prior to the Commonwealth entering into a contract with Adagold.

108. Once the specific aircraft registration numbers are provided, Defence works in close consultation with the Civil Aviation Safety Authority to ensure the nominated aircraft meet all of the applicable Australian and Defence airworthiness requirements. Adagold satisfied all of the relevant airworthiness requirements prior to the Commonwealth entering into a contract on 22 October 2010.

109. Furthermore, Adagold had a history of having satisfactorily provided air charter support to the ADF since the early 2000's including the provision of Antonov AN12 and Ilyushin IL76 aircraft support to and from the MEAO during Operation Catalyst, prior to commencement of a new contract with Strategic Aviation in 2005. Finally, they have been providing the MEAO air sustainment services satisfactorily since November 2010.

***“(iii) whether the department is in a position to guarantee the security status of all foreign personnel involved in the air-transportation of troops between mainland Australia and its deployment base adjacent to a war zone (Request for Tender AO/014/09-10)”***

110. The *Aviation Transport Security Act 2004* and *Aviation Transport Security Regulations 2005* require all aviation industry participants operating in Australia to have an approved Transport Security Program. Hi Fly, Adagold's aircraft operator, has an Australian Civil Aviation Safety Authority approved Transport Security Program which is currently being collated by Adagold for issue to all respective agencies including HQ1JMOVGP. All Hi Fly aircrew (flight and cabin crew) are screened by Hi Fly before being issued with an approved Aviation Identity Card as required by INAC (the Portuguese equivalent to the Civil Aviation Safety Authority) in a similar process to other international carriers worldwide.

111. With regard to MEAO Air Sustainment Contract, host nation access requirements govern access to Al Minhad Air Base for all personnel including contractors. There is no host nation security vetting requirement.

***“(iv) whether issues relating to respondents, or their related companies of their contracts in South Africa are such as to warrant their exclusion for consideration on ethical or probity grounds (Request for Tender AO/014/09-10)”***

112. Adagold is the only respondent of which Defence is aware has an alleged contractual relationship in South Africa. The Deloitte Examination and the CAE Probity Review examined these allegations, and separately and independently concluded that there was insufficient evidence to support the allegations. On that basis Defence has no reason to exclude Adagold on ethical or probity grounds.

113. In representations made to Defence following the announcement of Adagold as the preferred tenderer for RFT AO/014/09-10, the then Executive Director of Strategic Aviation Group Pty Ltd, Mr Shaun Aisen, drew attention to several South African on-line media articles that reported alleged irregularities in the awarding of various contracts by the South African Defence Force. Some of these articles made reference to

the (then) South African arm of Adagold Aviation (later renamed Adajet Aviation). The remaining articles made reference to other companies with connections to a co-director of Adagold South Africa, Mr Ralph "Lawrence" Pietersen.

114. By way of background, Mr Marcus Clark (the Chief Executive Officer of Adagold) moved to South Africa and established Adagold Aviation (South Africa) as a separate legal entity to Adagold Aviation Pty Ltd (referred to as 'Adagold' throughout this submission' in February 2004. Adagold Aviation (South Africa) is not a subsidiary company to Adagold.

115. The Directors of Adagold Aviation (South Africa) 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). During the CAE Probity Review, Mr Clark's letter of resignation, dated 28 February 2007 was sighted. 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 and he told Defence that he did not participate in any decisions relating to Adagold (South Africa) after February 2006, although he assisted Adagold (South Africa) with the operational aspects of its tender response for the Democratic Republic of Congo Ballot Distribution contract in mid 2006.

116. Key personnel involved in the tender evaluation process RFT AO/014/09-10 stated that they were not aware of the allegations involving Adagold Aviation (South Africa) contracts in South Africa at the time of the tender.

117. Allegations against Adagold/Adajet (South Africa) contained in the various media reports included:

- a. 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.
- b. 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, Mr 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.
- c. 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.

118. Details on Deloitte's consideration of the allegations are the following.<sup>42</sup>

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<sup>42</sup> *Deloitte Report - Examination of the procurement process for Tender RFT AO/014/09-10*, dated 15 September, at 4.9.

## **Allegation 1**

119. This allegation first arose in the South African media on 28 July 2006<sup>43</sup>. The media article shows 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. On the 13 August 2010, in an interview with Defence, Mr Clark claimed that historically the South African Defence service tended to select the lowest tenders. 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. In April 2008, South African media reported<sup>44</sup> that the South African Defence Secretary had placed the top three officials responsible for procurement ‘on leave’ amid an investigation by the South African Inspector General of Defence. Media reports suggested that defence contractors believed this related to tender processes including those processes for air charter services, and Adajet (formerly Adagold [Aviation (South Africa)]) was mentioned. While the South African Defence Secretary would neither confirm nor deny to the media what his concerns were, the media reported in December 2008<sup>45</sup> that the Defence Department had announced that 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.

## **Allegation 2**

120. Mr Clark has stated that Adagold Aviation (South Africa) is a separate entity to Adagold. This allegation relates to the activities of a company Ibhubesi Trading. 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 South African Defence Secretary in the process. The media reported 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.<sup>46</sup> Accordingly, no determination was made by the court on the merits of the application or substance of the allegations.

121. 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

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<sup>43</sup> Mail & Guardian Online article <http://www.mg.co.za/article/2006-07-28-controversial-sa-tender-for-drc>

<sup>44</sup> Mail & Guardian Online article <http://www.mg.co.za/article/2008-04-25-defence-heads-roll>

<sup>45</sup> DefenceWeb article

[http://www.defenceweb.co.za/index.php?option=com\\_content&task=view&id=911&Itemid=375](http://www.defenceweb.co.za/index.php?option=com_content&task=view&id=911&Itemid=375)

<sup>46</sup> Financial Mail article <http://secure.financialmail.co.za/06/1110/fox/ffox.htm>

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**

122. 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. Under the Act, only the court can make an order for a company to be entered onto the register. Deloitte did not find 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<sup>47</sup> National Treasury reportedly stated that its Register for Tender defaulters remained empty.

123. 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. A former Danish Defence Force member (who was the lead manager for the tender process in Denmark) has advised Defence’s Chief Audit Executive that the South African allegations were raised with the Danish Defence Force by the unsuccessful tenderer and were investigated prior to the Danish Defence Force proceeding with negotiations. Danish Defence Force investigations did not identify anything to confirm any of the claims that Adagold had been involved in corrupt behaviour in South Africa. 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. The decision was dismissed on all claims with the exception of a partial dismissal on one claim (transparency of process and “reading the proposal equally”). No action was taken to change the award of the contract.

124. In conclusion, it is apparent that the collection of South African media articles that Mr Aisen drew to the attention of Defence was both highly selective and potentially misleading. Taken in isolation, these articles painted a somewhat limited and potentially distorted picture of the matters they were reporting because in every instance there were later media articles available that shed a different light on those matters.

125. Moreover, and of particular significance, the media reports focussed on by Mr Aisen that directly relate to Adagold Aviation (South Africa) are limited to those that report on the allocation of contracts in mid 2006 for the delivery of ballot papers for the Democratic Republic of Congo elections. Later press reports from December 2008 identified by Defence and Deloitte report that, following a combination of internal and

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<sup>47</sup> [http://www.defenceweb.co.za/index.php?option=com\\_content&view=article&id=5793:register-for-tender-defaulters-empty&catid=47:Logistics&Itemid=110](http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=5793:register-for-tender-defaulters-empty&catid=47:Logistics&Itemid=110)

external inquiries, the South African Defence Department announced that there were no grounds for concluding that tenders were improperly awarded to Adagold Aviation (South Africa).

126. As for the allegations that fellow Adagold Aviation (South Africa) Director, Mr Pietersen, was embroiled in tender irregularities for the supply of ration packs to the South African Defence Force in 2004 through 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).<sup>48</sup>

127. Beyond the allegations relating directly to Adagold Aviation (South Africa) in 2006 and Ibhubesi Trading in 2004, there are no other reports of irregularities concerning the award of Defence (or other Government) contracts to either Adagold Aviation (South Africa) or Mr Pietersen. In each case, there appears to be no conclusive finding of wrongdoing on the part of either Adagold Aviation (South Africa) or Mr Pietersen, by the South African authorities. Accordingly, Defence concluded that there is no compelling evidence to support allegations concerning tender irregularities involving Adagold Aviation (South Africa) or Mr Clark. This finding is consistent with both the conclusions independently reached by Deloitte and the outcome of review undertaken by the Danish Defence Force prior to its decision to appoint Adagold to operate their Middle East airlift operations.

***“(v) any other matters relevant to the probity of the procurement processes and the respondents, including the appointment of a permanent and independent probity auditor to oversee the awarding of all aviation contracts by the Commonwealth”***

128. At the time the contract for air sustainment services in the MEAO was let, the Defence Procurement Policy Manual, indicated that an external probity adviser for acquisitions of this nature was not mandatory. Noting the concerns raised with respect to this contract, HQ1JMOVGP has amended their business practices to ensure the appointment of an external, independent probity adviser for all future significant, complex procurements. For example, in the recent Rotary Wing services charter QINETIQ was appointed as an independent probity adviser throughout the tender process.

### **Improvements to procurement practices undertaken by Defence**

129. Since the Defence White Paper 2009, Defence has implemented a number of initiatives to improve Non Equipment Procurement (NEP) across Defence, most significantly being the establishment of a Centre of Excellence for NEP. Additional initiatives are being implemented over the next six months to further improve NEP.

130. The following key NEP initiatives have already been implemented to enhance governance to provide a more robust commercial approach in a compliant and consistent manner:

- a. Establishment of the position of Non-Equipment Chief Procurement Officer (NECPO) on 1 July 2010 with responsibility for providing high level advice

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<sup>48</sup> Financial Mail article <http://secure.financial.mail.co.za/06/1110/fox/ffox.htm>

and assistance to all Groups and Services undertaking non equipment procurement and contracting activities.

- b. NECPO endorsement for all Defence NEP spending proposals valued over \$1 million prior to obtaining Proposal Approval from the relevant delegate. This practice is now well embedded in Defence and there is a notable increase in the approaches to the NECPO for a range of procurement advice. This will provide greater transparency of the procurement activity and provide additional rigour and assurance regarding compliance with relevant Commonwealth legislation, policies and reporting obligations.
- c. Establishment of a working group of key NEP stakeholders to coordinate and resolve issues arising from the implementation of the NECPO responsibilities and the framework for the Centre of Excellence, Simple Procurement Business Centre and initiatives to achieve targets for savings in NEP under Defence's Strategic Reform Program;
- d. Launch of the NEP Website on 17 August 2010 to provide a 'one-stop shop' for policy and process guidance, checklists, templates and links that cover the end-to-end procurement cycle. Actual hits on the NEP Website for the period 1 July 2010 to end of January 2011 were in excess of 25,000.
- e. A whole-of-portfolio sourcing approach is being scoped as a preferred procurement and contracting strategy for various NEP categories to leverage Defence's purchasing power, ensure rationalisation of existing procurement arrangements and address Defence requirements on a whole of portfolio basis (for example, Defence standing offer panel arrangement for office furniture and minor goods inventory);
- f. Establishment of a Simple Procurement Business Centre on 1 February 2011 to facilitate optimised processing efficiency, leverage Defence's purchasing power, and improve consistency and productivity through rigorous process management which will reduce transaction costs.

131. Further initiatives have been developed and will be implemented over the next six months to improve procurement and contract management initiatives in NEP in Defence include:

- a. Improving the management and procurement processes in the various NEP categories to ensure risks are more effectively managed throughout the procurement life cycle and better value for money is achieved. NEP categories include, Travel, Garrison Support, Building Maintenance, Advertising, Removals, Health, Furniture & Office Supplies etc. The agreement and implementation of a NEP category management model will assist in achieving the cost control and reduction recommendations of the Strategic Reform Program for NEP.
- b. Advise and assist key stakeholders and practitioners regarding strategic and operational NEP matters to standardise and streamline the NEP and contracting practices across Defence, and ensure Defence is investing resources where they have the highest priority and value. NECPO will

publish the Defence Annual Procurement Plan on AusTender to provide greater transparency of planned NEPs. NECPO will provide advice and assistance in drafting tender documentation, publishing on AusTender and evaluating tenders.

- c. Implement status reporting on all major NEPs to be presented to the NEP Committee chaired by the Deputy Secretary Defence Support. This will provide greater visibility across Defence of the high risk NEP contracts over \$1million.
- d. Transition Simple Procurement that is currently undertaken in a number of regional centres around Australia to a single Simple Procurement Business Centre. Following the completion of the transition of the regional work, Defence Support Group will commence the transition of the other Groups and Services' Simple Procurement to the Business Centre. This activity is expected to take a couple of years.
- e. Ensure that a focus is placed on recruiting and maintaining suitably skilled procurement professionals.
- f. Procurement Governance Framework and Responsibilities: Apply a Gate Review process for major acquisition projects across Defence. Such a Gate Review would be neither an audit nor a detailed technical review, and would not be intended to be onerous on the Defence Groups and Services, and it is not intended to delay the tender process. It would focus on important procurement process and probity issues relevant to a particular 'gate' and information already developed or expected to be developed, without requiring new documentation to be produced.<sup>49</sup>
- g. Proposed Lead Procurement Responsibility for major acquisition projects: A financial threshold will be determined for major acquisition projects, above which lead responsibility for conducting such procurement processes would be undertaken by expert procurement teams under delegation from the Secretary/Chief of the Defence Force in consultation with the sponsoring Defence Group or Service.

### **Initiatives to strengthen Defence post separation employment policy**

132. Prompted by Defence's analysis and the independent reviews of the tender for air sustainment services to the MEAO, Defence has examined its post separation policy regime.

133. Defence has identified ways to strengthen the regime, for implementation in mid to late 2011 through:

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<sup>49</sup> The approach is consistent with the Department of Finance and Deregulation (Finance) Gateway Process used to strengthen the oversight and governance of major projects to deliver agreed projects in accordance with the stated objectives, on-time and on-budget. In the past three years Finance has conducted a total of 88 reviews in the areas of ICT, construction and other High Risk projects. Of the 88 reviews conducted across the FMA Act Agencies, two were conducted for Defence which related to ICT.

- a. Creating greater awareness in Defence of existing policy and practice requirements, particularly for Reservists, including:
  - (i) establishing a Defence post separation employment intranet page; and
  - (ii) ensuring that Reservists are made aware of their obligations in relation to conflict of interest.
- b. Reviewing ASDEFCON<sup>50</sup> provisions to further clarify and strengthen probity arrangements in Defence and Defence Industry, and. reinforce the education in Defence and Defence Industry of these provisions. In particular, the ASDEFCON review will focus on:
  - (i) reviewing the application of the 'Use of Former Defence Personnel' and 'Post Defence Separation Employment' provisions in the conditions of tender and conditions of contract respectively; and
  - (ii) whether provisions need to be strengthened to ensure application to reservists.
- c. Strengthening the policy around employing Reservists on continuous full-time service to require that potential conflicts of interest are declared prior to contract commencement.
- d. Updating the Defence policy framework to include additional requirements and guidance on post separation employment mitigation measures, drawing on those detailed guidelines that are already included in the Defence Materiel Organisation policy.<sup>51</sup>

**Annexes:**

- A. Chronology of Events, dated 15 December 2010
- B. Letter from Senator the Hon David Johnston to Dr Ian Watt, dated 31 August 2010
- C. Procurement Risk Management Plan, dated 23 March 2010

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<sup>50</sup> ASDEFCON is a suite of tendering and contracting templates used within Defence.

<sup>51</sup> Defence Materiel Instruction (PERS) 1/2007.



### Chronology of Events

2 Jul 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 Oct 2008	Commencement date for 2008 contract with Strategic Aviation
Between 21 Oct 2008 and 5 Mar 2010	Defence and Strategic Aviation agree on seven Contract Change Proposals that provided amendments to the 2008 contract
22 Apr 2009	Defence extends contract with Strategic Aviation for 12 months until 23 Oct 2010
4 Sep 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. Note that most contractors (air, road, rail and sea) normally meet with Defence once a year to maintain relationships
Oct 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). Defence commenced to draft Procurement Strategy in October 2009
Nov 2009	New Standing Offer Panel was established with thirteen panel members
10 Feb 2010	Adagold submits 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 Mar 2010	Defence approves Procurement Decision to retender provision of air sustainment charter services
23 Mar 2010	Defence approves Request for Tender (RFT) under Service Order AO/014/09-10
24 Mar 2010	Defence approves Procurement Strategy for the retender of air sustainment charter services
25 Mar 2010	Defence approves Tender Evaluation Plan
29 Mar 2010	Defence issues RFT to Air Lift Standing Offer Panel members (DNL 09009)

30 Mar 2010	Major Charlton verbally declares a potential conflict of interest in his role as a member of the Joint Movement Control Office in Brisbane
30 Mar 2010	Strategic Aviation representatives approach Defence to discuss their concerns with the upcoming tender process
23 Apr 2010	Defence conducts Industry Briefing with panel members
Between 23 April 2010 and 1 June 2010	Defence provides additional tender clarifications at request of panel members through Request for Information (RFI)
1 Jun 2010	Tenders close
2 Jun -8 Jul 10	Tender Evaluation process
9 Jul 10	Clayton Utz provides letter outlining their review of the draft SER and the issues identified
9 Jul 10	Defence finalises Source Evaluation Report (SER) and identifies Adagold as the preferred tenderer.
9 Jul 10	Defence provides verbal notification to Adagold that they are the preferred tender
9 Jul 10	Defence provides verbal notification to Strategic Aviation that they were not the preferred tenderer
12 Jul 10	Defence formally communicates to all participating tenderers on tender results.
14 Jul 10	Shaun Aisen from Strategic Aviation writes a formal letter to the Inspector-General expressing his concerns regarding the tender results
14 Jul 10	Shaun Aisen from Strategic Aviation writes a formal letter to the Inspector-General expressing his concerns regarding the tender results
15 Jul 10	Audit & Fraud Control Division CAE Probity Review task raised and task scoping commenced
19 Jul 10	Audit & Fraud Control Division commences CAE Probity Review probity audit of tender process to address the allegations. Initial meeting with 1 <sup>st</sup> Joint Movements Group staff.
20 Jul 10	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 Jul 10	Defence conducts initial contract negotiations with Adagold
16 Aug 10	PricewaterhouseCoopers commences independent peer review of the CAE Probity Review conducted by Audit & Fraud Control Division
2 Sep 10	Australian Government Solicitor commenced a legal process review of the procurement process for Tender AO/014/09-10
2 Sep 10	Deloitte commenced an examination of the procurement process for Tender AO/014/09-10
6-15 Sep 10	Re-validation of original Source Evaluation Report (SER) and subordinate documents raised during the original tender evaluation process
15 Sep 10	Re-validated Source Evaluation Report (SER) approved
21 Sep 10	Request for Tender for Interim MEAO Contract AO/010/10-11 issued for four flights between 26 October 2010 and 4 November 2010
7 Oct 10	MEAO Interim contract AO/010/10-11 Contract Change Proposal 1 signed for four flights between 9 November 2010 and 18 November 2010.
19 Oct 10	Senate Estimates queries MEAO Air Sustainment processes
20-21 Oct 10	Minister for Defence approves contract signature
22 Oct 10	MEAO Air Sustainment Contract AO/014/09-10 signed by Adagold and ADF
23 Oct 10	MEAO Air Sustainment Contract AO/052A/07-08 concludes
26 Oct 10 – 4 Nov 10	Four flights under Interim MEAO Contract AO/010/10-11
9 Nov 10 – 18 Nov 10	Final four flights under Interim Contract AO/010/10-11
23 Nov 10	MEAO Air Sustainment Contract AO/014/09-10 first flight

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**SENATOR THE HON DAVID JOHNSTON**

SHADOW MINISTER FOR DEFENCE  
SENATOR FOR WESTERN AUSTRALIA

**RECEIVED**  
31 AUG 2010  
SECRETARY'S OFFICE  
1510

**PRIVATE AND CONFIDENTIAL**

Dr Ian Watt

Secretary of Defence

R1-5-B Sec Suite Russell Offices

ACT 2600

31 August 2010

Dear Dr Watt

Thank you for making the time this morning to brief me on the 'MEAO Air Sustainment Support Contract', it was much appreciated.

As I indicated to you during those discussions, I am primarily concerned with Defence's reputation and image, in entering a contract in all of the circumstances of this matter.

All of the information that I currently have relating to this contract causes me some considerable concern.

Quite apart from questions around Mr Charlton's involvement pre-RFT, post RFT and currently, the fact that he has a long and substantial relationship with Defence Logistics and particularly the Joint Movement Group whilst providing professional advice to tenderers, successful or otherwise is frankly, not a good look.

Further to this, his recent financial history, both in his private corporate capacity and in meeting contractual obligations to the Commonwealth are again cause for considerable concern.

Turning to Adagold Aviation. This organisation and its South African subsidiary Adajet have a most chequered and worrying history in terms of their financial and corporate integrity given the matters surrounding litigation and injunctive relief in the Pretoria High Court.

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I have no doubt that Geoff Brown and his audit team did a highly professional and competent examination of the process, but this is not the point. A contract as problematic as I perceive this one to be, will surely have everybody getting the process one hundred per cent correct.

I will not go into the issues surrounding the financial backing of and relationships with the South African connections, but I am sure that they will embarrass the DOD into the future.

Almost as a subsidiary issue (but nevertheless of primary concern to me), is that Hifiy's rated performance and quality of service have already been questioned both generally within the industry and more particularly in a 2007 news report on ABC television.

The fact that Mr Charlton had the audacity to appear on national television in a disguise saying and doing what he said and did must surely have alarm bells ringing at Russell.

In line with the several other concerns that I disclosed to you in this morning's meeting I confirm that under no circumstances whatsoever would I be seen to be acquiescing in the acceptance or execution of this contract.

Yours faithfully,

D.A.L. Johnston

Senator for WA and Opposition Spokesperson on Defence.

cc Sen Faulkner.

**PROCUREMENT RISK MANAGEMENT PLAN, dated 23 March 2010**

<b>Risks</b>	<b>Consequences</b>	<b>Management of Risks</b>
Terms and conditions unacceptable to suppliers	Too few bids, tender responses with too many clauses, increased costs	Understand commercially acceptable terms through market research. Use standard conditions from the SO Agreement, and consult legal advice
Insufficient responses	Low value for money due to low number of responses. Retendering of procurement required, delay to introduction of service	Provide advance notice to suppliers, release procurement plans prior to RFT. Give sufficient time (the longer the better) for tenderers to provide complete responses, to engage potential subcontractors
No responses from known high quality suppliers	Value for money not achieved	Research the market. Ensure all SO Panel members get request documentation
Requirement not fully understood	Procurement does not meet SOW, procurement process derives no benefit	SOW to be analysed and approved by third party aviation consultant. Functional and performance requirements clearly articulated
Narrow specification	Reduced competition and lack of innovative and alternative solutions	Define outcomes rather than product or service
Imprecise specification	Variation in responses, resulting in difficulty to evaluate, and failure to meet needs	Approach procurement services branch, DMO, to review RFT documentation prior to release
In appropriate product or service selected	Procurement does not meet need	Criteria is to appropriate, well defined and measurable.
Evaluation takes too long	High cost to Defence in continuing current contracting method, and to suppliers in sourcing assets	Procurement timeline to be realistic, all personnel and resources involved in tender evaluation are to be identified prior to tendering.
Procurement cost exceeds allocation	Procurement is cancelled, Air transport assets continue to be incorrectly allocated	Thorough market research through hiring of aviation consultants required to ensure appropriate funds are available prior to tendering