

From: Joe Moharich
Sent: Monday, 30 October 2006 4:16 PM
To: Smith, Tony (MP)
Cc: Committee, JCPAA (REPS)
Subject: Fw: JSCPAA/ Defence/DMO

Dear Mr. Smith.

Further to my earlier email (below)

I hasten to state that I have no evidence of corruption within the Defence Materiel Organization DMO, nor am I aware of the existence of any such evidence.

My remarks are intended to point out that the lack of transparency in the acquisition process makes some decisions seem entirely illogical. It is the absence of explanations for decisions, inconsistencies, unexplained contract variations and refusal to enforce contract terms that invite grave suspicion. But I reiterate, I have no hard evidence of significant impropriety or corruption, nor did I know of the existence of such evidence.

Yours Sincerely.

Joe Moharich-----

Original Message -----

From: Joe Moharich
To: Tony.Smith.MP@aph.gov.au
Sent: Monday, October 30, 2006 2:23 PM
Subject: JSCPAA/ Defence/DMO

Dear Mr. Smith.

"Financial Reporting and Equipment Acquisition at the Department of Defence and the Defence Materiel Organization."

I have just recently been made aware of your enquiry. I have a background of more than thirty years as the Chief Executive of an enterprise dealing with the Department of Defence on major and minor acquisition programs. I would welcome the opportunity to appear before the JSCPAA to give evidence and to answer questions.

I hasten to state that I can be correctly described as a disgruntled "losing bidder"; my company represented Bell Helicopter Textron for the Project Air 87 Armed Reconnaissance Helicopter (ARH), tender .

I am no longer involved in Defence contracting, so I can now speak freely; that is something that persons still active in Defence are most reluctant to do because of the DMO's reputation for vindictiveness.

I assure you it is not my intention to cause any embarrassment to the government. On the contrary, my wish is that the government takes real and effective control of the DMO ,before the DMO causes further and much more serious embarrassment to

the government. Adverse comments and recommendations by the Australian National Audit Office are said to be accepted by the DMO , but there is no perceptible change in conduct. Instead of taking the DMO to task, the organization is defended by its Minister.

As I see it, the Prime Minister is now lecturing the governments of South Pacific nations on the need for good governance and probity. At the same time, his government allows the DMO to conduct its affairs in a way which invites allegations of gross incompetence ,at the best, or a lack of probity and even corruption at the worst.

The total lack of transparency in the acquisition processes the key issue. It is a widely held belief that when the DMO negotiates with a "Preferred Tenderer "the final, "negotiated "contract bears very little resemblance to what was specified in the "Request for Tender". The DMO steadfastly refuses to divulge the contents of a contract, citing "Commercial Confidentiality". Debriefs to losing bidders are invariably meaningless, with the DMO stating only that the contract was awarded on the basis of DMO's assessment that the chosen contractor offered the "Best Value for Money ". Specifics are not given. Contracts such as the Project Air 87 ARH, acquisition (previously described by the DMO's Chief Executive as a model of good contracting, was until recently claimed by DMO to be "on cost/on time ") will not deliver equipment at anything approaching the (mandatory) delivery date specified in the RFT , and the value of the contract far exceeds what was announced by the then Minister for Defence.

In announcing that Eurocopter was the successful tenderer for Air 87, the then Minister for Defence , Mr Peter Reith, said that a major factor in Eurocopter's favour was their Australian Industry Involvement (AII) undertaking to set up a commercial helicopter production line for the EC 120, in Brisbane; between 30 and 50 helicopters per year were to be manufactured.

That undertaking appears not to have been incorporated in the Air 87 acquisition contract, notwithstanding it was a major requirement in the RFT.

The Office of the Minister for Defence, stated in a letter dated 14 June 2006. " Defence has no involvement in Australian Aerospace's civil helicopter production activities"

Doubts about DMO's probity are fuelled by DMO's` refusal to enforce the contractor's obligations (Commonwealth's rights) under acquisition contracts. At a Senate Estimates hearing, at which I was present, a senior DMO bureaucrat stated it was DMO policy to "negotiate rather than litigate" Why? If a contractor will not perform as per contract, the only possible outcome is that the Commonwealth will pay more or grant some other concession. It is a widely held belief that DMO will not act against a delinquent contractor because to do so would be seen as acknowledgement by DMO that it erred in awarding the contract.

Project Air 87 is current and topical. I urge your committee to require the DMO to report to the committee , (preferably in tabular form) where key matters ,such as delivery, performance, AII etc., specified in the RFT were varied in the contract, or in subsequent contract amendments.

The situation is now such that a very large potential supplier , a US based aircraft manufacturer, has made it known that it is most unlikely they will again respond to

an Australian DMO RFT; the manufacturer has lost all confidence in the integrity of the DMO's acquisition process.

It seems illogical to hold a contractor wholly responsible. A contractor's prime objective is to maximize returns to its owner. Knowing that the DMO will not litigate or vigorously enforce contracted terms, bidders will often offer whatever they think will get them to the "preferred contractor" position so that they can negotiate in the firm belief that they can later, when a project is too far down the track to be cancelled, increase prices and vary specifications in a way that will protect their profits.

Past poor contract performance seems to have no impact on the award of further major contracts. Australian Aerospace's (Eurocopter's) known shortcomings in Air 87, seem to have been ignored in DMO awarding further contracts for utility helicopters to Australian Aerospace.

Sincerely.

Joe Moharich

PS I readily acknowledge that the government has the right and the power to direct acquisition in a way it considers to be in the best overall interests of Australia.

However, if the government chooses to direct the DMO to award a contract to a predetermined supplier, the calling of tenders is unethical, if not totally dishonest.

JM

Joe Moharich