

Chapter 2

Background to the 2010 tender process

2.1 In this chapter, the committee provides the context for its examination of the 2010 tender process. It gives a brief history of the delivery of air sustainment services to the MEAO and also identifies the main entities and individuals involved in or associated with the 2010 tender process.¹ The chapter concludes with the committee's observations on the nature of the commercial air charter industry in Australia and the likely problems it posed for the tender process.

The delivery of air sustainment services to the MEAO

2.2 For many years, Defence has engaged private air charter companies to transport personnel and equipment to and from the MEAO. Defence informed the committee that 'commercial air assets have become an integral component of the support infrastructure to the ADF operations in the MEAO'.²

2.3 Defence identified two broad reasons for this practice. Firstly, since the early 2000s, there has been a progressive increase in the frequency and capacity of strategic air lift requirements, as a result of 'the increased numbers of personnel and equipment committed to Afghanistan operations...and the associated increase in both operational tempo and complexity'.³

2.4 Secondly, the gradual retirement of the Royal Australian Air Force (RAAF) Boeing 707 aircraft—which was completed in 2008—has resulted in greater reliance on commercial airlift support. According to Defence, the retirement of the Boeing 707 aircraft meant that the ADF no longer had the ability to move large numbers of personnel and their equipment over intercontinental distances. It noted that the ADF's current fleet of aircraft—including the C130 Hercules and, more recently, the C17 Globemaster—are 'fully tasked assets' with limited availability to carry out new tasking.⁴ Defence noted further that these aircraft are not suited to the long-range carriage of personnel, because they are designed to transport heavy and bulky cargo. It also stated that these aircraft are more expensive to operate compared to the purchasing of commercial charter services.⁵

1 For convenience, a list of key entities and personnel is provided at Appendix 4 to this report.

2 Department of Defence, *Submission 5*, Attachment A, p. 1.

3 Department of Defence, *Submission 5*, Attachment A, p. 1.

4 Department of Defence, *Submission 5*, Attachment A, p. 1.

5 Department of Defence, *Submission 5*, Attachment A, p. 1. See further Department of Defence Audit and Fraud Control Division, *Final probity review report: probity review of tender process for air sustainment services to the Middle East Area of Operations (MEAO ('AFCD Review'))*, Review Task 11-058, September 2010, pp. 25–26.

The move to a single contract for air sustainment services from 2005

2.5 Initially, the recurring movement of personnel and their equipment to and from the MEAO was provided through a combination of commercial scheduled services⁶ and chartered aircraft.⁷ Freight and cargo were moved by a combination of ADF and commercial aircraft, and commercial and military sea lift.⁸

2.6 In 2005, Defence identified opportunities to achieve greater value for money by moving to a single contract for air sustainment services. The preferred solution was the chartering of a large passenger aircraft to move troops, stores and equipment to and from the MEAO.⁹ Further benefits identified with this solution included:

- enhancing security and force protection of ADF personnel and materiel, as charter arrangements provided the ADF with full control of movement, including the ability to utilise military airfields within the MEAO; and
- avoiding difficulties associated with obtaining large 'block' bookings on commercial scheduled services.¹⁰

2.7 In April 2005, the first single air sustainment services contract was awarded to the charter broker company Strategic Aviation Pty Ltd (Strategic). The contract term was for six months with options for up to four, six-month extensions, one of which was exercised by Defence.¹¹ The published value of the contract was \$22.1 million (2005 value).¹² Strategic performed this contract utilising a chartered Airbus A330-300 aircraft operated by the Portuguese carrier, Hi Fly Transportes Aereos SA of Lisbon (Hi Fly).¹³

2.8 Following a decision by Defence to re-tender the contract, Strategic was awarded subsequent contracts in 2006 and 2008.¹⁴ The 2006 contract term was six

6 Defence advised that these services were provided by Emirates and Etihad Airways: Department of Defence, *Submission 5*, p. 2 (footnote 9).

7 Defence advised that chartered aircraft included Soviet-made Antonov AN12 and AN 124 and Ilyushin IL 76: *Submission 5*, pp. 2 (footnotes 6 and 7), 28. Adagold Aviation was among the contractors who chartered these aircraft: Senator the Hon Robert Hill, Minister for Defence, *Senate Hansard*, 8 September 2003, p. 14506.

8 Department of Defence, *Submission 5*, Attachment A, p. 2.

9 Department of Defence, *Submission 5*, Attachment A, pp. 1–2.

10 Department of Defence, *Submission 5*, Attachment A, p. 2.

11 Australian Government Solicitor, *Legal and legal process review of the procurement process for the Middle East Area of Operation (MEAO) Air Sustainment Support Contract* ('AGS Review'), 15 September 2010, p. 3; AFCD Review, p. 7.

12 Department of Defence, *Contracts Listing for 1/7/2004 to 30/6/2005, Senate Order on Departmental and Agency Contracts*, p. 44.

13 Mr Shaun Aisen, *Proof Committee Hansard*, Canberra, 29 March 2011, p. 4; Department of Defence, *Submission 5*, Attachment A, p. 5.

14 Department of Defence, *Submission 5*, Attachment A, p. 2.

months with options for up to four, six-month extensions.¹⁵ The published value of the contract was \$34.4 million (2006 value) which covered 168 days.¹⁶ The 2008 contract term was 12 months, with two, one-year extension options—one of which was exercised by Defence in 2009.¹⁷ Strategic performed these contracts using a combination of chartered Airbus A330-300 aircraft operated by Hi Fly,¹⁸ and, subsequently, aircraft operated by Strategic, including an Airbus A330-200.¹⁹ The latter aircraft was employed following a contractual amendment agreed on 5 March 2010.²⁰ The amendment enabled a load-splitting solution, whereby Strategic moved 114m³ of freight using the A330-200 aircraft, and forwarded the remaining 33m³ of freight separately.²¹

Re-test the market in 2009

2.9 Defence elected to re-test the market in 2009.²² In November of that year, it established an Air Transport Standing Offer Panel pursuant to a deed of standing offer.²³ Defence intended to use this Panel, which consisted of a mixture of charter operators and brokers, for the procurement of air sustainment services to the MEAO.²⁴ According to Defence the decision to use the air standing offer panel for potential providers was appropriate as it provided a 'valid existing legal procurement

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- 15 Lieutenant-General Ken Gillespie, Vice Chief of Defence Force, *Committee Hansard*, Estimates, 1 November 2006, p. 85.
- 16 Department of Defence, *Contracts Listing for 1/7/2005 to 30/6/2006*, Senate Order on Departmental and Agency Contracts, p. 243. As an indication of the value of the contracts Defence's contracts listing shows contracts with Strategic valued at \$28.6 m, duration 212 days, commencing on 25 October 2005; \$34.4 m, duration 168 days, commencing 25 April 2006; \$42.8 m, duration 186 days commencing 26 October 2006; \$32 m, duration 213 days commencing 1 April 2007; and \$35.5 m, duration 187 days commencing on 24 April 2008.
- 17 Department of Defence, *Submission 5*, Attachment A, p. 3. The Department of Defence, *Contracts Listing for 1/7/2008 to 30/6/2009*, Senate Order on Departmental and Agency Contracts shows contracts with Strategic valued at \$100 m, duration 890days, commencing on 16 May 2008 and \$122 m, duration 395 days, commencing 1 October 2008, pp. 213, 358.
- 18 Dr Brendan Nelson, MP, answer to question on notice, *House of Representatives Hansard*, 12 September 2007, p. 207; Lieutenant-General Ken Gillespie, Vice Chief of Defence Force, *Committee Hansard*, Estimates, 1 November 2006, p. 85.
- 19 Department of Defence, *Submission 5*, Attachment A, p 5; Department of Defence, *Response to Questions on Notice, Supplementary Budget Estimates 2010-2011*, response to question (b).
- 20 Contract Change Proposal No 7, dated 5 March 2010, cited in Department of Defence, *Submission 3*, Attachment A, p. 19.
- 21 Department of Defence, *Submission 3*, Attachment A, p. 19.
- 22 The reasons for doing so are summarised in: Department of Defence, *Submission 5*, Attachment A, pp. 2–3 and discussed in chapter 3.
- 23 Department of Defence, *Submission 5*, Attachment A, pp. 2–3.
- 24 See for example, Deloitte, 'Examination of the procurement process for Tender RFT AO/014/09-10 September 2010, p. 7.

framework with standardised terms and conditions with which to engage air charter services'.²⁵

2.10 A request for tender (RFT AO/014/09-10) was released to the 13 suppliers registered on the panel on 29 March 2010, with a closing date of 1 June 2010.²⁶ From the 11 solutions submitted by seven panel members, charter broker Adagold Aviation Pty Ltd (Adagold) was identified as the preferred tenderer on 9 July 2010. Its tender response involved a single aircraft solution using an Airbus A340-300. The aircraft is provided by Hi Fly, with whom Adagold has an exclusive access agreement.²⁷

2.11 The contract was signed on 22 October 2010, with services commencing on 23 November 2010.²⁸ The contract term is two years, with options for two, one-year extensions.²⁹ The estimated annual contract price is approximately \$30.9 million (2010 value), excluding fuel costs, or over \$122 million over the four years.³⁰

2.12 Due to delays associated with the awarding of the 2010 contract, consequent upon reviews of the 2010 tender process, Strategic was awarded an interim contract to provide air sustainment services to the MEAO. This contract operated from 23 October 2010 to 22 November 2010.³¹ The 2010 tender process is examined in detail in chapters 3-7 of this report.

The nature of the Australian air charter industry

2.13 The committee heard evidence that the Australian air charter industry comprises a limited number of suppliers—predominately small-to-medium enterprises—with intense competition between them.³² The committee was further informed that 'it is common government practice to contract with an air charter

25 Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 46.

26 Department of Defence, *Submission 5*, Attachment A, pp. 3–4.

27 Department of Defence, *Submission 5*, Attachment A, p. 4.

28 In October 2010, Strategic was awarded an interim contract for flights from 23 October to 22 November 2010, pending finalisation of the 2010 tender process: Department of Defence, *Submission 5*, Attachment A, p. 11, Annexure A.

29 Department of Defence, *Submission 5*, Attachment A, p. 4.

30 AFCD Review, p. 7. See also Department of Defence, *Submission 5*, Attachment A, p. 10 and Department of Defence, *Response to Questions on Notice, Supplementary Budget Estimates 2010-2011*, response to question (bb) (Defence identified the contract price as \$62 million over the two-year term).

31 Department of Defence, *Submission 5*, Attachment A, p. 11; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 49.

32 Department of Defence, *Submission 5*, Attachment A, p. 4; Mr Danny Foster, Pel Air Aviation, *Proof Committee Hansard*, Sydney, 28 March 2011, p. 20. See further, AFCD Review, p. 12: 'the [Air Transport Standing Offer Panel] is composed of highly competitive companies within an industry operating on tight margins and offering almost identical services'.

management company rather than directly with aircraft operators'.³³ Indeed, membership of the Air Transport Standing Offer Panel includes a combination of charter managers or 'brokers' and operators.³⁴ The committee also heard evidence of personnel movement between suppliers, and between the ADF and suppliers.³⁵

2.14 In its submission to the inquiry, Defence provided the following assessment of the Australian air charter industry:

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...

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.³⁶

2.15 A number of tenderers supported this view, describing the industry as 'cut-throat' and noting that 'people have a high knowledge of what their competitors are doing' and 'some people seize on the appearance of any improper behaviour'.³⁷

Controversies associated with previous air sustainment contracts

2.16 Consistent with the nature of the air charter industry, arrangements for the delivery of air sustainment services to the MEAO have attracted controversy. For example, in 2002-2003 concerns were raised about the airworthiness of the Soviet-

33 Department of Defence, *Response to Questions on Notice, Supplementary Budget Estimates 2010-2011*, response to question (bb); Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 48.

34 See *Air Transport Deed of Standing Offer*, 2 November 2009 (AusTender SON179438).

35 For instance, the committee heard evidence of multiple movements between suppliers by persons associated with the 2010 tender process. See for example: Major David Charlton, Statutory Declaration 7 September 2010, [5], [6], [9]; Strategic Aviation, *Submission 6*, p. 2; AFCD Review pp. 23-25; Deloitte Review, pp. 42, 51-52; Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, pp. 4-5; 8-9; Mr Shaun Aisen, letter to Inspector-General, Department of Defence, 14 July 2011, p. 2.

36 Department of Defence, *Submission 5*, Attachment A, p. 4.

37 Mr Danny Foster, *Proof Committee Hansard*, 28 March 2011, p. 20; confidential correspondence to the committee, March 2011.

built aircraft chartered by contractors including Adagold.³⁸ Probity related concerns were raised with Defence following the awarding of the 2005 contract.³⁹ In 2006, complaints surfaced about the non-use of Australian pilots.⁴⁰ In 2007, allegations were made regarding non-compliance with aviation safety regulations.⁴¹ In the latter incident, the contractor, Strategic, maintained that it was a victim of 'a commercially motivated campaign to discredit' the company.⁴²

2.17 Recent allegations, which have received media attention, have surfaced which again cast doubts over the integrity of the tender process for the 2005 contract.⁴³ This matter is currently the subject of an investigation by the Australian Federal Police (AFP).⁴⁴

2.18 Against this troubled background, serious questions have now been raised about the probity of the 2010 tender process involving allegations of the unauthorised disclosure of confidential tender information to the successful tenderer. Indeed, even before Defence released the request for the 2010 contract, the incumbent contractor, Strategic, had expressed concerns about a previous employee, Major David Charlton, who was then working as a Reservist in 1st Joint Movement Group (1JMOVGP).⁴⁵

Companies involved in the 2010 tender process

2.19 The major companies associated with the allegations made in respect of the 2010 tender process are:

- the former contract holder and unsuccessful tenderer, Strategic;
- the current contract holder, Adagold; and

38 Senator the Hon Alan Ferguson, *Committee Hansard*, Estimates, 4 June 2003, pp. 408–409; Senator the Hon Robert Hill, Minister for Defence, *Senate Hansard*, 8 September 2003, pp. 14506–14507.

39 Confidential correspondence to the committee, March 2011.

40 Phillip Coorey, 'We're barred from flying troops—pilots', *Sydney Morning Herald*, 2 May 2006, p. 6 (referring to a complaint made by the Australian Federation of Air Pilots to the then Minister of Defence, the Hon Brendan Nelson MP).

41 The '7.30 Report', transcript, 'Troop Transport company failing aviation safety standards, former staff say', 12 July 2007.

42 The '7.30 Report', transcript, 'Troop Transport company failing aviation safety standards, former staff say', 12 July 2007.

43 See for example, Richard Barker, 'The sky's the limit', *Age*, 2 September 2010, p. 13.

44 Defence indicated that it referred the matter to the AFP on 10 September 2010, following media reports alleging collusion between two former ADF members and Strategic: Department of Defence, *Submission 5*, Attachment A, p. 13. See further, Department of Defence 'Referral of matters regarding the 2005 Defence contract for air support services to the Middle East Area of Operations to the Australian Federal Police' Media Release MECC 428/10, 13 September 2010.

45 Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 11. Email Shaun Aisen to Lieutenant Colonel Andrew Hall, 30 March 2010.

- Hi Fly, the Portuguese operator that provides the aircraft for Adagold in the 2010 contract under an exclusive access agreement between itself and Adagold.

Strategic Aviation Pty Ltd

2.20 Strategic is an Australian proprietary company limited by shares, registered on 23 March 1993.⁴⁶ Its founder and former Executive Director is Mr Shaun Aisen.⁴⁷ Its Chief Executive Officer is Mr David Blake.⁴⁸ The company's advertised services include facilitating ad-hoc charter services and specialist project cargo flights.⁴⁹ Strategic is a division of the Strategic Aviation Group Pty Ltd,⁵⁰ which includes three companies—Strategic Aviation (as the aircraft charter brokerage, logistics and cargo solutions arm), Strategic Airlines (as the commercial airline arm providing regular public transport and charter services)⁵¹ and Strategic Europe (as the charter and wet lease⁵² arm within Europe).⁵³

Previous MEAO experience

2.21 Strategic was the successful tenderer for the 2005, 2006 and 2008 contracts to provide air sustainment services to the MEAO. Over this period, it used a combination of an A330-300 aircraft operated by Hi Fly, and its own fleet of aircraft to carry both troops and stores to and from the Middle East.⁵⁴ Strategic has also provided services

46 Australian Securities and Investments Commission, extract from National Names Index, accessed 7 April 2011.

47 According to media reports, Mr Aisen resigned in February 2011: Matt O'Sullivan, 'Strategic feeling the pressure', *Age*, 14 March 2011, p. 3.

48 Mr Shaun Aisen and Mr David Blake, *Proof Committee Hansard*, 29 March 2011, p 1.

49 Strategic Aviation Pty Ltd, website, http://www.flystrategic.com.au/About_Us.aspx (accessed 6 December 2010).

50 The Strategic Aviation Group is an Australian proprietary company limited by shares, registered on 15 September 2008: Australian Securities and Investments Commission, extract from National Names Index, accessed 7 April 2011.

51 Strategic Airlines is an Australian proprietary company limited by shares, registered on 16 May 2008: Australian Securities and Investments Commission, extract from National Names Index, accessed 7 April 2011.

52 In broad terms, a 'wet lease' refers to the leasing of an aircraft with crew, often also including maintenance and insurance. See further: CASA 'Assessing aircraft leases prior to adding aircraft to an AOC', Regulatory Policy CEO-PN007-2010 (July 2010), p. 6.

53 Strategic Aviation Group, 'Strategic Airlines Strengthens Management Team', media release 19 October 2010, p. 2.

54 Department of Defence, *Submission 5*, Attachment A, p. 5; Department of Defence, *Response to Questions on Notice, Supplementary Budget Estimates 2010-2011*, response to question (b).

to other Australian Government agencies participating in the Air Transport Standing Offer Panel arrangement, including the Department of Immigration and Citizenship.⁵⁵

2.22 In February 2009, the Chief of the Defence Force stated that Defence had been 'very satisfied' with Strategic's contractual performance.⁵⁶ The committee was, however, made aware of three issues arising in the course of these contracts.

2.23 Firstly, the AFCD review of the 2010 tender process mentioned the need for independent mediation between Strategic and Defence in early 2010, as a result of a fuelling cost issue. The review suggested that this disagreement 'could indicate that there may have been some existing tension between the Commonwealth and Strategic, or at least the existence of a commercial difference of opinion'.⁵⁷ The review noted that the seventh contract change proposal agreed to by the parties was a consequence of the mediation.⁵⁸ It also appears to the committee that there was growing dissatisfaction with the load-splitting solution.⁵⁹

2.24 Secondly, the committee is also aware that an unsuccessful tenderer in the 2005 tender process raised concerns about matters of probity during that process. Defence engaged legal firm Phillips Fox (now DLA Piper) to undertake a probity review of the process. The review found that no issues arose in the 2005 tender process that would justify a re-tender. As noted earlier, complaints relating to the provision of insider information in the 2005 tender process were referred to the AFP for investigation on 10 September 2010, following the publication of allegations in media reports on 2 September 2010.⁶⁰

2.25 Thirdly, the committee was made aware that Defence, in the course of performing the 2008 contract, sought Strategic's advice about possible alternative technical solutions to the 2008 arrangements. Mr Aisen gave evidence to the committee that Defence indicated to Strategic that it regularly received approaches from other panel members about different aircraft solutions. It sought Strategic's advice, as the incumbent contractor, about some of these solutions. This included a

55 See for example, Department of Immigration and Citizenship, *Report on Senate Order on Departmental and Agency Contracts*, 1 January-31 December 2010, pp. 63-64.

56 Foreign Affairs, Defence and Trade Legislation Committee, Estimates, *Committee Hansard*, 25 February 2009, p. 97.

57 AFCD Review, p. 12.

58 AFCD Review, p. 12 (footnote 1).

59 See for example, Group Captain Robert Barnes, Statutory Declaration signed 20 April 2011, [2]-[5]; Jo-Anne Pope, Statutory Declaration signed 14 April 2011; Joshua Prucha, Statutory Declaration signed 14 April 2011.

60 Department of Defence, *Submission 5*, Attachment A, p. 13. See further, Department of Defence 'Referral of matters regarding the 2005 Defence contract for air support services to the Middle East Area of Operations to the Australian Federal Police' Media Release MECC 428/10, 13 September 2010; Richard Barker, 'The sky's the limit', *Age*, 2 September 2010, p. 13.

request for advice about an Airbus A340-300 aircraft option, with a payload of 42,000 kg—the specification which was ultimately included in the 2010 request.⁶¹

Adagold Aviation Pty Ltd

2.26 Adagold is an Australian proprietary company limited by shares, registered on 12 September 2002.⁶² Its Executive Director and Chief Executive Officer is Mr Mark Clark.⁶³ Adagold is an aviation brokerage and management service company and, as such, does not hold ownership interests in aircraft. It obtains the aircraft identified in its tender responses through other suppliers.⁶⁴ As noted above, Adagold is providing services under the 2010 contract using the Portuguese operator, Hi Fly, with whom it has an exclusive access agreement in relation to an Airbus A340-300 aircraft. The arrangements in respect of the 2010 contract are examined in detail in chapters 3–7 of this report.

2.27 Adagold's advertised range of domestic and international services include aviation consultancy; services to the mining and resources sectors; VVIP⁶⁵ and diplomatic services; contract aircraft and management services; and supporting specialised government and military operations.⁶⁶

Previous MEAO experience

2.28 Adagold has previously delivered air sustainment services to the ADF on numerous occasions. Between 2000 and 2005, Defence used Adagold for the regular movement of sustainment stores between Australia and various points in the MEAO.⁶⁷ Although it carried small numbers of troops, the primary contracted services were the carriage of vehicles and heavy cargo that could not be transported by other means into

61 Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 12.

62 Australian Securities and Investments Commission, extract from National Names Index, accessed 7 April 2011; Mr Mark Clark, Statutory Declaration, 7 September 2010; Deloitte Report, p. 23.

63 Mr Mark Clark, Statutory Declaration, dated 7 September 2010; Deloitte Report, p. 23; Adagold, 'About us', <http://www.adagold.com.au/about.asp> (accessed 25 November 2010).

64 Mr Geoffrey Brown, Chief Audit Executive, Department of Defence, *Committee Hansard*, Estimates, 19 October 2010, p. 61. See further, Adagold, 'Capability statement', <http://www.adagold.com.au/capability.asp> (accessed 7 April 2011).

65 'Very, Very Important Person'—a term used in the aviation industry to describe persons afforded a status beyond that of 'VIP', for example heads of state, and government or defence force principals.

66 Adagold, 'About us', <http://www.adagold.com.au/about.asp> (accessed 25 November 2010). See further, Judy Hinz, '2010 Defence SME Top 20', *Australian Defence Magazine*, December 2010–January 2011, p. 61.

67 Department of Defence, *Submission 5*, Attachment A, pp. 4–5.

theatre. Adagold used the Latvian operator, Inversija, which used the Soviet-built aircraft, Antonov AN12 and Ilyushin IL76, to provide the service.⁶⁸

2.29 Defence noted further instances of Adagold's 'relevant and recent experience' of operating in the Middle East region, as well as its close monitoring of the market.⁶⁹ They included:

- an ongoing contract with the Danish government, 'providing similar services to those requested in [the 2010 tender]';⁷⁰
- undertaking a site visit to the Al Minhad airbase;⁷¹
- conducting its own MEAO support assessment in conjunction with Hi Fly in 2009;⁷² and
- monitoring the operations of the incumbent contractor, Strategic. This included, for example, observing the separate forwarding of MEAO freight at Brisbane Airport via Etihad Airlines.⁷³

2.30 An example of Adagold's active lobbying occurred in February 2010 when the company submitted an unsolicited proposal for the Middle East Area of Operations (MEAO) air sustainment services.⁷⁴ This action followed an earlier visit by representatives of Adagold to the Head Quarters Joint Operations Command Facility at Bungendore where they engaged in a 'broad discussion about aircraft logistics requirements' with personnel from the Joint Movements Group.⁷⁵

2.31 Defence informed the committee that representatives of Adagold had told it that since 2005 the company had 'been focused on winning the contract in future'.⁷⁶ Indeed, according to Mr Clark, Adagold had been studying the market since October 2009 and had submitted its unsolicited proposal as 'part of its business development'. In his view, this placed Adagold 'in a position to move quickly when the tender was released'.⁷⁷

68 *Committee Hansard*, Estimates, 4 June 2003, pp. 406–410; *Senate Hansard*, 8 September 2003, pp. 14505–14506; Department of Defence, *Submission 5*, Attachment A, pp. 4–5, 28.

69 Department of Defence, *Submission 5*, Attachment A, p. 27.

70 Department of Defence, *Submission 5*, Attachment A, p. 27.

71 Defence advised that Adagold was the only tenderer to have done so: Department of Defence, *Submission 5*, Attachment A, p. 27.

72 Department of Defence, *Submission 5*, Attachment A, p. 5.

73 This was stated to have provided visibility of the increased volumetric freight requirements and the fact that Strategic's A330-200 aircraft could not meet those requirements: AFCD Review, p. 23.

74 Department of Defence, *Submission 5*, Attachment A, p. 5.

75 Mr Warren Clark, Statutory Declaration, signed 7 September 2010.

76 Department of Defence, *Submission 5*, Attachment A, p. 5 (footnote 17).

77 Mr Warren Clark to the Committee, 4 May 2011.

2.32 As a member of the Air Transport Standing Offer Panel, Adagold has also provided charter services to other Australian Government agencies participating in the panel arrangement.⁷⁸ This included multiple contracts administered by the Department of Immigration and Citizenship.⁷⁹

Relationship between Adagold and Hi Fly

2.33 It is evident that Adagold and Hi Fly enjoyed a close commercial relationship in the lead-up to the 2010 tender. This is evidenced in their strategic partnership discussions, including their joint MEAO support assessment in 2009.⁸⁰ According to the Defence Audit and Fraud Control Division (AFCD) probity review of the procurement, prior to the release of the RFT in 2010, Adagold had a 'general arrangement' with Hi Fly, in the event that the contract was re-tendered, but 'no commitment to a specific aircraft'.⁸¹ As discussed subsequently in this report, allegations regarding the precise nature of the relationship between Adagold and Hi Fly were made to Defence and were considered in reviews of the tender process.

Performance of the 2010 contract

2.34 Defence indicated that, to date, it is satisfied with the services performed under the 2010 contract, which came into operation on 23 November 2010.⁸²

Hi Fly Transportes Aereos, SA

2.35 Adagold's operating partner, Hi Fly, is a Portuguese private (family owned) company that operates worldwide and specialises in the wet leasing of long haul, wide-body aircraft.⁸³ Its Managing Director is Mr Paulo Miripuri.⁸⁴

2.36 Hi Fly obtains access to aircraft under operating lease arrangements and then subleases the aircraft to end users.⁸⁵ Hi Fly subleases a fleet of Airbus wide-body aircraft, mainly on long haul operations across Europe, the Middle East, the Far East, Australia and Africa. The company states that it is certified and authorised to fly into

78 The Deed of Standing Offer identifies the Attorney-General's Department and the Department of Immigration and Citizenship as 'participant agencies' eligible to utilise the panel arrangement: *Air Transport Deed of Standing Offer*, 2 November 2009 (AusTender SON179438).

79 See for example, Department of Immigration and Citizenship, *Report on Senate Order on Departmental and Agency Contracts*, 1 January–31 December 2010, pp. 1–2.

80 AFCD Review, p. 24; Department of Defence, *Submission 5*, Attachment A, p. 5.

81 AFCD Review, p. 24.

82 Department of Defence, *Submission 5*, Attachment A, p. 28; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 46.

83 Department of Defence, *Submission 5*, Attachment A, p. 26; Deloitte Review, p. 26.

84 As advised by Defence in correspondence to the committee secretariat, 1 December 2010.

85 Department of Defence, *Submission 5*, Attachment A, p. 26; Deloitte Review, p. 26.

the USA.⁸⁶ Hi Fly identified other areas of its operational experience and expertise as including Africa, Central America, the Caribbean and South America.⁸⁷ At the time of writing, its fleet included six Airbus wide-body, long range, last generation aircraft of the following models: Airbus A310 (two aircraft); Airbus A330 (two aircraft); and Airbus A340 (two aircraft).⁸⁸

Regulatory compliance

2.37 Hi Fly holds an Air Operator's Certificate (AOC) issued by the civil aviation authority of Portugal, INAC. It has held the relevant Australian certification—a Foreign Aircraft Air Operator's Certificate (FAAOC)—issued by the Civil Aviation Safety Authority (CASA) since 2004.⁸⁹ Its current FAAOC was issued on 26 October 2010 and is current between 1 November 2010 and 31 October 2011, subject to Hi Fly's ongoing INAC certification during this period.⁹⁰

2.38 CASA explained that an AOC—granted under s 27 of the *Civil Aviation Act 1988*—authorises carriers to provide civil air service operations in accordance with the conditions prescribed by the AOC.⁹¹ Certification conditions include compliance with designated Aviation Safety Rules,⁹² and with all other applicable provisions of the Civil Aviation Act, the *Civil Aviation Safety Regulations 1998* and the *Civil Aviation Orders*.⁹³

2.39 CASA explained further that FAAOCs are a type of AOC 'covering the operation of foreign registered on-flights that are not undertaken wholly within Australia, and are undertaken as part of a flight into or out of Australian Territory'.⁹⁴ CASA advised the committee that on 23 April 2010, Hi Fly applied to add an A340 aircraft to its AOC which CASA varied on 4 May. On 21 July 2010, Hi Fly applied to add a Danish registered A340 to its AOC.⁹⁵

86 Hi Fly website, <http://www.hifly.aero/company.aspx> (accessed 6 December 2010).

87 Hi Fly website, <http://www.hifly.aero/company.aspx> (accessed 6 December 2010).

88 Hi Fly website, <http://www.hifly.aero/company.aspx> (accessed 6 December 2010). These six aircraft are listed on Schedule 1 to Hi Fly's FAAOC issued by CASA: Air Operator's Certificate AOC # 1-BOV6-09, issued 26 October 2010.

89 Mr Adam Anastasi, Civil Aviation Safety Authority, *Proof Committee Hansard*, 29 March 2011 p. 39.

90 Air Operator's Certificate AOC # 1-BOV6-09, issued 26 October 2010.

91 Civil Aviation Safety Authority, *Submission 7*, pp. 1–2.

92 Defined in s 3 of the Civil Aviation Act as provisions of that Act and the Civil Aviation Orders that relate to safety.

93 Civil Aviation Safety Authority, *Submission 7*, p. 2, citing s 28 of the Civil Aviation Act.

94 Civil Aviation Safety Authority, *Submission 7*, p. 2, citing s 27AE of the Civil Aviation Act.

95 Civil Aviation Safety Authority, answer to question taken on notice.

Previous MEAO experience

2.40 Hi Fly has a history of providing services to the ADF to and from the MEAO, through servicing contracts awarded to members of the Air Transport Standing Offer Panel. It supplied an Airbus A330 used by Strategic between 2005 and 2009, and an Airbus A340 in May 2010 during scheduled maintenance of one of Strategic's A330 aircraft.⁹⁶

Involvement in the 2010 contract

2.41 Hi Fly has an exclusive access agreement with Adagold to provide the Airbus A340 aircraft for the performance of the 2010 contract. Defence advised the committee that Adagold also made a commitment in its tender response to providing contingency arrangements that ensured the availability of a replacement aircraft should the regular aircraft become unavailable.⁹⁷

2.42 Further to the findings of the AFCD and Deloitte Reviews (discussed in chapters 5 and 6), Adagold was required to and obtained a performance guarantee of \$2 million, underwritten by the Commonwealth Bank of Australia. This provides Defence with financial compensation of up to \$2 million should Adagold fail to perform—for example, in the event of aircraft unavailability.⁹⁸ Defence further informed the committee that it has executed a novation agreement between itself, Adagold and Hi Fly. This agreement enables Defence to 'take over the contract and have the aircraft supplied directly to Defence and bypass Adagold' should it fail to perform—for example, in the event of insolvency.⁹⁹ Both the performance guarantee and novation agreement were obtained subsequent to preferred tenderer status.¹⁰⁰

96 Department of Defence, *Submission 5*, Attachment A, p. 5.

97 Department of Defence, *Submission 5*, Attachment A, p. 27.

98 Department of Defence, *Submission 5*, Attachment A, p. 26. Defence advised the Legislation Committee that the value of the performance guarantee was 'assessed on the basis that [it] would cover the cost of another short-term contract in the event of [the] contract falling over': Mr Geoffrey Brown, Chief Audit Executive, *Committee Hansard*, Estimates, 19 October 2010, p. 67.

99 Mr Geoffrey Brown, Chief Audit Executive, *Committee Hansard*, Estimates, 19 October 2010, p. 68; Department of Defence, *Submission 5*, Attachment A, p. 26.

100 In its submission, Defence stated, '...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 so sought to mitigate the risks by seeking to execute a novation agreement between Adagold, Hi Fly and Defence.' *Submission 5*, p. 26.

Individuals involved in the 2010 tender process

Mr Shaun Aisen, Strategic

2.43 Mr Shaun Aisen founded Strategic Aviation in 1991 and resigned as its Executive Director in February 2011. He was the company's point of contact with the ADF for the MEAO tender processes.¹⁰¹ Mr Aisen raised several probity related concerns about the 2010 tender process, which set in train a number of reviews and examinations. These representations and reviews are discussed in chapters 4-6 of this report.

Major David Charlton

2.44 Mr David Charlton (referred to as Major Charlton throughout this report) also has a long connection with the tendering processes for air sustainment services to the MEAO.

ADF engagement—1995–2005

2.45 Major Charlton is a member of the Australian Army Reserve. He joined the Reserve in 1995 and was initially posted to 11 Movement Control Group, predecessor of 1st Joint Movement Group (1JMOVGP). Between November 2001 and April 2003 he was posted to Joint Movement Control Office (JMCO), Sydney, a sub-unit of 1JMOVGP. On or about April 2003, he was posted to the Headquarters. After a period of Reserve service, he commenced a period of continuous full-time service as Senior Officer (SO) 3 and SO2 Strategic Lift, responsible for supporting the charter activities for air, land and sea on behalf of the ADF.¹⁰² On 22 June 2005, Major Charlton was deployed to the Middle East on Operation Catalyst as Officer Commanding Joint Movements Co-ordination Centre, MEAO. He returned to Australia on 2 November 2005.¹⁰³

2.46 On 7 September 2010, Major Charlton signed a statutory declaration detailing his involvement in the ADF and the civil aviation industry, as relevant to the matters under consideration in respect of the 2010 tender process. The committee was informed that an initial draft of the statutory declaration was undertaken by the Director of Investigations within the Office of the Chief Audit Executive, Department

101 Strategic Airlines, website http://flystrategic.com.au/About_Us.aspx (accessed 6 December 2010). Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 1.

102 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [1]–[3].

103 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [4].

of Defence. The draft was based on transcripts of interviews of Major Charlton conducted by the Office.¹⁰⁴

Civilian employment—2006–2009

2.47 Although he did not mention the fact in his statutory declaration, Major Charlton was the non-voting chair of the Tender Evaluation Board in the 2005 tender process, which selected Strategic as the preferred tenderer.¹⁰⁵ On or about 5 January 2006, Major Charlton ceased active Reserve service and was appointed General Manager, Strategic Aviation. Before taking up this position, he spoke with Group Captain Peter Brennan about his intentions and employment options and consulted the relevant Defence Instruction for post-separation employment.

2.48 In August 2006, Major Charlton resigned from Strategic Aviation and established his own airline, Sky Air World Pty Ltd. Major Charlton stated that Sky Air World supported Adagold's bid for a Danish Defence Force air sustainment services contract, discussed opportunities relating to an Exxon project in Papua New Guinea, and had involvement in numerous ad hoc tasks unrelated to Defence tenders.¹⁰⁶ In February 2009, Sky Air World entered voluntary administration.¹⁰⁷

ADF re-engagement—2009–2010

2.49 Major Charlton sought to re-engage with the Army Reserve in 2009 following the appointment of administrators to Sky Air World. On 23 March 2009, he was advised of a position within JMCO, Brisbane. Major Charlton was posted to the position of Training Officer on 24 June 2009. This role involved managing the training of members of the unit and supporting corporate governance activities—in particular the re-writing of Standing Orders. Major Charlton stated that he had no role

104 The statutory declaration was tabled at the Legislation Committee's Supplementary Budget Estimates hearing of 19 October 2010. Major David John Charlton, Statutory Declaration, signed 7 September 2010, [1]. Dr Raymond Bromwich, *Proof Committee Hansard*, Canberra, 29 March 2011, pp. 80–81.

105 Deloitte Review, p. 18.

106 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [13].

107 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [7]. See further, Australian Securities and Investments Commission, Extract from National Names Index, accessed 13 April 2011. Media reports indicate that the Commonwealth was among the company's unsecured creditors, in respect of a 2008 contract administered by the Attorney-General's Department for the provision of air transport services to the Indian Ocean Territories. See Richard Barker, 'The sky's the limit', *Age*, 2 September 2010, p. 13. See further Joint Standing Committee on the National Capital and External Territories, *Inquiry into the changing economic environment in the Indian Ocean Territories* (April 2010), p. 140; Attorney-General's Department, Annual Report 2009-10, p. 166.

in, or visibility of, the air sustainment procurement being undertaken by 1JMOVGP.¹⁰⁸

2.50 Strategic gave evidence to the committee that it became aware of Major Charlton's return to 1JMOVGP in June 2009 and had 'continuing conversations' with Defence expressing its concerns.¹⁰⁹ These matters were considered in external reviews of the tender process, the findings of which are outlined subsequently in this report.

Civilian employment—2009–2010

2.51 While serving with JMCO, Major Charlton was also employed in a civilian capacity as a consultant to the aviation industry for the firm Aviation Integration Services Pty Ltd (AIS).¹¹⁰ According to Major Charlton, on his posting to JMCO, he discussed this employment with the then Officer Commanding (OC) JMCO Brisbane, Major Tamara Rouwhorst.¹¹¹

2.52 Major Charlton stated that, following the release of the Request for Tender (RFT) on 29 March 2010, AIS was approached by some members of the Air Transport Standing Offer Panel to request his services in providing technical assistance on their tender responses. He identified these panel members as Adagold, Rex/Pel-Air and Alltrans International.¹¹²

2.53 On or about 31 March 2010, AIS elected to assist Adagold with its tender response. Major Charlton stated that the basis for this decision was that Adagold 'appeared to be most capable of making the most competent and compliant tender submission'. He described his role as assisting Adagold with understanding the tender requirements, and identifying the 'platforms that could meet the specified criteria in the context of operational performance and documentation'.¹¹³

Declaration and management of potential conflict of interest in relation to the 2010 tender process

2.54 On 31 March 2010, following the release of the RFT on 29 March 2010, Major Charlton declared a potential conflict of interest to the OC JMCO Brisbane,

108 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [8], [9], [10], [11].

109 Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 11.

110 AIS is an Australian proprietary company limited by shares. It was registered on 30 March 2009: Australian Securities and Investments Commission, Extract from National Names Database, accessed 14 April 2011. The company is wholly owned by an entity called Little Pockets Pty Ltd, which is in turn owned equally by Mr Rowan Keast and Ms Melanie Keast: Deloitte Review, p. 24.

111 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [7], [9].

112 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [10], [14].

113 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [14].

Major Lara Bullpitt-Troy. He was directed to cease parading at JMCO Brisbane, effective from 1 April 2010. On 13 April 2010, Major Charlton commenced parading as a visitor at the Directorate of Army Safety Assurance, followed by Headquarters, 11 Brigade while awaiting further instructions.¹¹⁴

2.55 Major Charlton made the following declarations:

- He had no contact with members of HQ1JMOVGP involved in the 2010 tender process prior to or after the release of the RFT.
- He does not have a professional or social relationship with any member of HQ1JMOVGP involved in the MEAO contract.
- At no stage was he provided with information or advice from any source in relation to Defence's intention to re-tender the MEAO contract.
- At no stage prior to 29 March 2010 was he provided with information or advice from any source in relation to the requirements or specifications for the 2010 RFT.
- At no stage prior to 29 March 2010 did he have access to information relating to the requirements or specifications for the 2010 RFT.
- At no stage did he communicate with any tenderer or prospective tenderer prior to the release of the RFT on 29 March 2010 about the tender requirements, because he had no knowledge of them or the imminent release of the RFT.¹¹⁵

2.56 The committee examines Major Charlton's connection to the 2010 tendering process in detail in chapters 3–7 of this report.

Relationship between Mr Aisen and Major Charlton

2.57 A number of media articles published in September 2010 reported on allegations of serious impropriety relating to the 2005 tender process.¹¹⁶ It was alleged that Major Charlton and another member of 1JMOVGP, Warrant Officer John Davies, provided privileged information to directors of Strategic prior to the release of the 2005 RFT.¹¹⁷

2.58 As noted earlier, Major Charlton worked for Strategic in 2006 before establishing Sky Air World. In his statutory declaration, Major Charlton stated that his relationship with Strategic 'soured' following his departure from the company in 2006,

114 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [10], [12]

115 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [17]–[22].

116 Richard Barker, 'The sky's the limit', *Age*, 2 September 2010, p. 13; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 46.

117 Richard Barker, 'The sky's the limit', *Age*, 2 September 2010, p. 13; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 46.

because a number of Strategic staff resigned to take up employment at Sky Air World.¹¹⁸

2.59 According to Mr Aisen, Mr Charlton was the former Strategic employee who appeared on the 7.30 Report in 2007 under the pseudonym 'Charlie' and 'specifically derided' Strategic in relation to its compliance with aviation safety requirements.¹¹⁹ Mr Aisen made further allegations to Defence and in his evidence to the committee, that Major Charlton, or Adagold, approached Strategic employees to offer them employment with Adagold in preparation for its response to the 2010 RFT.¹²⁰ Major Charlton denied these allegations in his statutory declaration, and stated that he had no recollection of speaking with officers from Strategic since leaving its employ.¹²¹

2.60 It should be noted that Group Captain Robert Barnes, Commander 1st Joint Movement Group, stated that around August-September 2009 he became aware of Major Charlton's work with 1JMOVGP in 2005 and his subsequent involvement in the aviation industry. He noted that Major Charlton 'had worked for Strategic Aviation and had departed there, I am told—it is hearsay—under unfavourable circumstances'.¹²² Group Captain Barnes further understood that Major Charlton 'took a number of Strategic Aviation people with him' when he established Sky Air World.¹²³

2.61 Mr Aisen informed the committee that from June 2009 Strategic became concerned about an ongoing relationship between Mr Charlton and Adagold while he was employed as a reservist in a group which oversaw tender specifications, tender documentation and contract. He indicated that during the later part of 2009, Strategic had 'spoken with Defence by phone on many occasions highlighting its concern that "Mr Charlton was back"'.¹²⁴

Mr Mark Clark, Adagold

2.62 Mr Mark Clark is the Executive Director and Chief Executive Officer of Adagold.¹²⁵ He made a statutory declaration on 7 September 2010 addressing his

118 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [4]–[6].

119 Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, Inspector-General, Department of Defence, 21 July 2010.

120 Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 5; Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, Inspector-General, Department of Defence, 14, 16 July 2010; Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, Chief Audit Executive, Department of Defence, 18 August 2010.

121 Major David John Charlton, Statutory Declaration, signed 7 September 2010, [16].

122 Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, p. 64.

123 Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, p. 68.

124 *Committee Hansard*, 29 March 2011, pp. 8, 9 and 11.

125 Mr Mark Clark, Statutory Declaration, 7 September 2010; Deloitte Report, p. 23; Adagold Aviation, 'About us', <http://www.adagold.com.au/about.asp> (accessed 25 November 2010).

work with Adagold, his association with Major Charlton, the company's involvement in the 2010 tender process, and allegations of the company's links to suspected tender irregularities in certain procurements conducted by the South African Government.¹²⁶

Relationship with Major Charlton

2.63 Mr Clark stated that he had known Major Charlton since 2003–2004 from his role in 1JMOVGP when Adagold provided MEAO sustainment services in the period of or about 2002–2005. Mr Clark also spoke to Major Charlton on a number of occasions in his capacity as a Sky Air World employee with a view to exploring opportunities unrelated to any possible Defence work.¹²⁷

2.64 During February–March 2009, Mr Clark spoke to Major Charlton about aviation related matters including an Exxon project in Papua New Guinea but stated that at no time was Major Charlton engaged as a consultant in 2009. In 2010, they again spoke about opportunities for Exxon in Papua New Guinea.¹²⁸

Contact with Defence prior to the release of the 2010 RFT

2.65 Mr Clark stated that on 4 September 2009, he and Adagold General Manager Mr Jeff Eager attended Headquarters, Joint Operations Command, Bungendore. They met with members of 1JMOVGP, including Group Captain Robert Barnes and Lieutenant Colonel Andrew Hall, Staff Officer, 1JMOVGP. According to Mr Clark, the meeting canvassed 'a general introduction and broad discussion about aircraft logistics requirements'. He indicated that the Joint Movements Team 'provided limited responses in relation to current arrangements, other than to confirm that they were always open to receiving general information about options that might provide better value to the Commonwealth'.¹²⁹

2.66 Mr Clark undertook to provide Defence with an unsolicited written proposal, which was submitted on 10 February 2010. He stated that Adagold did not receive any feedback from Defence other than an acknowledgement of receipt and that Major Charlton was not involved in the development of the unsolicited proposal.¹³⁰

126 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010. The statutory declaration was tabled at the Legislation Committee's Supplementary Budget Estimates hearing of 19 October 2010: Mr Geoffrey Brown, *Committee Hansard*, Estimates, Canberra, 19 October 2010, p. 111. The committee was informed that an initial draft of the statutory declaration was undertaken by the Director of Investigations within the Office of the Chief Audit Executive, Department of Defence. The draft was based on transcripts of interviews of Mr Clark conducted by the Office: Dr Raymond Bromwich, *Proof Committee Hansard*, 29 March 2011, pp. 80–81.

127 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [2], [3].

128 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [5], [6].

129 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [12].

130 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [15], [16].

Involvement in the 2010 tender process

2.67 In his statutory declaration, Mr Clark stated that following the release of the RFT for the 2010 tender process on 29 March 2010, Adagold approached AIS and requested the services of Mr Charlton, whom it regarded as 'very good at conducting exact analysis on each aircraft'.¹³¹

2.68 According to Mr Clark, at no stage prior to the release of the RFT:

- was he, or any other representative of Adagold, made aware of the tender specifications;¹³²
- did he, or any other representative of Adagold, know of the Commonwealth's intention to re-tender the MEAO contract or receive any information regarding re-tender requirements;¹³³
- did he, or any other representative of Adagold, communicate with Major Charlton about the tender specifications or the Commonwealth's requirements for the RFT;¹³⁴
- did he, or any other representative of Adagold, communicate with any member of Defence about the tender specifications or the Commonwealth's requirements for the RFT.¹³⁵

2.69 Mr Clark stated that at no stage did Adagold request Hi Fly to approach CASA to upgrade its FAAOC to include the Airbus 340-300 aircraft.¹³⁶

Conclusion

2.70 In this chapter, the committee has highlighted a number of important characteristics of the commercial air charter industry, which were known to Defence prior to the commencement of the 2010 tender process. These characteristics include:

- the small and extremely competitive nature of the industry, evidenced by
 - the active market monitoring and lobbying activities of suppliers, including an unsolicited proposal;
 - a history of personal animosity between some companies;
 - proponent grievances about previous tender processes;

131 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [7].

132 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [8].

133 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [9].

134 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [10].

135 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [11].

136 Mr Mark Warren Clark, Statutory Declaration, signed 7 September 2010, [20].

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- the movement of Major Charlton between civilian employment in the industry and an area of Defence (Joint Movement Control Office, Brisbane) that was a sub unit of 1JMOVGP responsible for conducting the 2010 tender for air sustainment services;¹³⁷
 - the concerns expressed by the incumbent contractor, Strategic, about Major Charlton's re-engagement in 1JMOVGP;
 - the movement of staff between suppliers; and
 - Major Charlton's acrimonious relationship with Strategic.

2.71 Probity risk management is a key theme in the committee's inquiry. These industry characteristics arguably provided signs of the probity risks inherent in the procurement—in particular, the risks of:

- perceived conflicts of interest and breaches of confidentiality arising from personnel movement; and
- proponent grievances about these matters, based on the highly competitive nature of the industry and complaints made about previous tender processes.

2.72 Clearly, there were warning signs for Defence indicating that it should approach this tender with extra care and diligence. Defence's identification and management of the probity risks associated with this tender process is examined in subsequent chapters. In the following chapters, the committee outlines the factual narrative of events occurring in the lead-up to, during and following the 2010 tender process.

137 Dr Watt, *Committee Hansard*, 29 March 2011.

Part II

Factual narrative of events

Chapters 3–7 provide a factual account of the events and procedures of the tender process from its inception to its conclusion. They examine the lead-up to the tender, the approach to market, the tender evaluation and the awarding of the contract.

This part of the report covers the concerns raised about the integrity of the process and the four subsequent reviews that were conducted during the tender process. It provides the evidentiary basis for the committee's findings and recommendations produced in Part III on specific matters of concern identified in the tender process.

