



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE

Reference: Requests for tender for aviation contracts

MONDAY, 28 MARCH 2011

SYDNEY

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SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE

REFERENCES COMMITTEE

Monday, 28 March 2011

Members: Senator Kroger (Chair), Senator Mark Bishop (Deputy Chair) and Senators Ferguson, Forshaw, Ludlam and Trood

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Fielding, Fierravanti-Wells, Fifield, Fisher, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senators Mark Bishop, Ferguson, Johnston, Kroger and Trood

Terms of reference for the inquiry:

To inquire into and report on:

- (a) all details concerning the Department of Defence's Request for Tender (AO/014/09) for the provision of air support to the Middle East Area of Operations, and other aviation contracts let by the Commonwealth, to ensure that value-for-money will be achieved, including:
 - (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,
 - (ii) the requirements of tenders and how effectively these will be met,
 - (iii) whether the preferred respondent decision was influenced by any vested interests, outside influences or any other perceived or actual conflicts of interest,
 - (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,
 - (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,
 - (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,
 - (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, and
 - (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; and
- (b) the adequateness and appropriateness of the processes in determining:
 - (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,
 - (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),
 - (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),
 - (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), and

- (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.

WITNESSES

BARS, Mr Peter John, Partner, Deloitte Touche Tohmatsu1
FOSTER, Mr Danny, Chief Operating Officer, Pel-Air Aviation Pty Ltd.....19
KRALLIS, Mr Dennis, Partner, Deloitte Touche Tohmatsu.....1

Committee met at 9.17 am**BARS, Mr Peter John, Partner, Deloitte Touche Tohmatsu****KRALLIS, Mr Dennis, Partner, Deloitte Touche Tohmatsu**

CHAIR (Senator Kroger)—I declare open this hearing of the Senate Standing Committee on Foreign Affairs, Defence and Trade inquiring into the Department of Defence's request for tender for aviation contracts and associated issues.

Witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the grounds on which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the grounds which are claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

On behalf of the committee I would like to thank all those who have made submissions and sent representatives here today for their cooperation in this inquiry. I now welcome witnesses from Deloitte Touche Tohmatsu. The committee has received your submission as submission No. 3. Do you wish to make any amendments or alterations to your submission?

Mr Krallis—We do not.

CHAIR—Do you wish to make a brief opening statement before we go to questions?

Mr Krallis—We do. Deloitte was engaged by the Department of Defence to perform an examination of the procurement process for the request for tender for the provision of air support services to the Middle East area of operations. Peter and I were the two lead engagement partners on this examination. We thank you for the opportunity to appear before the Senate inquiry.

Deloitte were engaged on 2 September 2010, following finalisation of the terms of reference. At this stage, Defence requested that Deloitte work to a time frame of presenting a draft report on 8 September 2010. We understood that the urgency of the matter related to the fact that the current contract was due to expire on 22 October 2010 and that any delays would result in additional costs being incurred by Defence.

Due to the complexity and breadth of the examination, Deloitte was required to assemble an extensive team to enable it to undertake the work required. This team consisted of 23 senior people, including seven partners with relevant experience in procurement, aviation, audit, corporate finance, investigations and probity.

Between 2 and 8 September, members of the team worked in excess of 12-hour days, including weekends, to enable us to meet the proposed time frame. During the status update meeting on 8 September 2010, I raised a number of outstanding items, particularly with regard to the financial evaluation, which required further work and analysis to enable us to conclude. At this stage, Defence granted an extension of time, and our report was completed by the following Monday, 15 September. All outstanding items were satisfactorily addressed, which enabled us to conclude on this date.

In performing this engagement, Deloitte interviewed certain members of the tender evaluation board and relevant Defence stakeholders, read aspects of Defence's documents and policies, read the chief audit executive's draft report and working papers relevant to this scope, read the inspector-general's draft report and working papers relevant to this scope, listened to and read transcripts of certain interviews undertaken by others, read aspects of the shortlist of tenderers' responses, and supplemented the financial evaluation of the two top-ranked respondents, based on information contained in their responses. Finally, we conducted searches on public records and online media for agreed individuals and companies.

With regard to Major Charlton and representatives from Adagold, we considered the adequacy of the questions and answers obtained by Defence in their recorded transcripts and reviewed the statutory declarations provided. On this basis, we determined that we did not need to interview Major Charlton or Adagold representatives. Although we did not re-perform the tender evaluation process, we did supplement the financial evaluation performed by Defence to enable us to conclude whether Adagold had the financial capacity to deliver the services. Subsequent analysis by Defence highlighted additional potential risks relating to the financial viability and sought to mitigate these risks by seeking to execute a novation agreement between Adagold, Hi Fly and Defence and by including a performance guarantee in the deed of standing offer.

We concluded that, based on the agreed scope, work performed and the information available, nothing came to our attention to indicate that Defence should not proceed with the awarding the tender to Adagold. That is my introduction.

CHAIR—Thank you, Mr Krallis. Mr Bars, do you have anything further you would like to add?

Mr Bars—No.

CHAIR—Mr Krallis, is it unusual to be provided a scope of engagement, as you were, in the very limited time frame you have suggested and with the number of personnel that were required to undertake it? Is that unusual, in the experience of Deloitte?

Mr Krallis—It is not unusual to get significant demands on our resources. The time frame was tight, and that required us to mobilise the 23 staff to meet the time frame of delivering a draft report. That is why we had that breadth of team to deliver that work. It was a tight time frame, and we understood that was due to the fact that the current contract was to expire and that there would be additional costs incurred if there were a bridging contract.

CHAIR—Given the limitations of the scope that you were provided, is that what you would consider to be normal practice in order to conduct your review—on the basis of transcripts, not being able to interview the individuals concerned and so on? Is that normal practice?

Mr Krallis—It is normal practice for our reports to have limitations to get clarity in relation to what has been included and what has not been included within our terms of reference. So the limitations that we have outlined in our report we wanted in there to clarify what we did and did not undertake.

Mr Bars—Senator, we were not placed under any constraints by Defence in terms of whether we re-interviewed, but we looked at the stat dec and we listened to the transcripts of interviews to determine whether we wanted to ask additional questions, and to perform our scope we did not need to ask any additional questions.

CHAIR—So it was your judgment call not to interview the individuals; it wasn't because of restraint placed?

Senator JOHNSTON—Mr Krallis, thank you for coming today. What is the total value of this contract where all the options and extensions to the exercise were done?

Mr Krallis—I need to refer to Defence. I am not sure whether that is commercial-in-confidence—

Senator JOHNSTON—Not too much commercial-in-confidence here at the Senate committee, I am afraid. The taxpayer needs to know how much this contract is worth. Do you have the figure?

Mr Krallis—It is approximately \$70 million.

Senator JOHNSTON—Per annum?

Mr Krallis—Over the term of the contract.

Senator JOHNSTON—The full term of the contract—two years, plus extensions?

Mr Krallis—There are options for extensions. That does not include the extensions.

Senator JOHNSTON—What is the total figure if the extensions are included?

Mr Krallis—There are two annual extensions so, if the values remained the same, an additional \$70 million approximately.

Senator JOHNSTON—So \$140 million in total? Thank you. What is your experience as an auditor?

Mr Krallis—I have been an auditor for 15 years now. I actually lead the internal audit practice at Deloitte and I have significant experience in reviewing procurement processes, and also at one stage I led the probity team in New South Wales.

Senator JOHNSTON—So fraud is an area that you have a lot of experience in?

Mr Krallis—I had a team as part of the staff that actually specialise in investigations and fraud. They looked at aspects of the terms of reference.

Senator JOHNSTON—You received a letter of instruction?

Mr Krallis—Correct.

Senator JOHNSTON—Who is the author of that?

Mr Krallis—The key contact that I had was the Chief Auditor Executive Geoff Brown. We discussed the terms of reference with him and he actually signed the terms of reference on behalf of Defence.

Senator JOHNSTON—So he came to you and had a discussion before he formally wrote to you and said, ‘Please do the work.’

Mr Krallis—That is my understanding, yes.

Senator JOHNSTON—When was that discussion?

Mr Bars—Senator, I can help out here. Mr Brown first had contact with us on Wednesday, 1 September. In that conversation he emphasised that we would need to check on conflicts of interest with the proposed tenderers. He confirmed that it was highly sensitive. He mentioned that the work was competitive. That was the first conversation we had.

Senator JOHNSTON—Where was that conversation?

Mr Bars—It was over the telephone, Senator. I am based in Melbourne.

Senator JOHNSTON—Was there any face-to-face meeting before you received your letter of instruction?

Mr Bars—No, although we did have face-to-face meetings on the 2 September to finalise the letter of instruction.

Senator JOHNSTON—What was the date of the letter of instruction again, please.

Mr Krallis—The letter of instruction was signed on 7 September.

Senator JOHNSTON—Would you be prepared to allow the committee to see a copy of that letter?

Mr Bars—Yes.

Senator JOHNSTON—If you could table a copy for us in due course, that would be appreciated. How many contracts does Deloitte have with respect to Defence?

Mr Bars—I can take that question on notice, but I do have a reasonable idea of that. We do not have any audit contracts, as such, with Defence. We have undertaken controls work for Defence, and over the last 12 months—very roughly—we have most probably done two or three assignments with regard to IT systems controls. Our major contracted work with Defence is in assisting in the preparation of budget statements through the BORIS system where we have an ongoing contract.

Senator JOHNSTON—To a value of—approximately?

Mr Bars—Approximately, over three years, as reported in AusTender, it is 3.5-4.

Senator JOHNSTON—Million?

Mr Bars—Yes.

Senator JOHNSTON—Including the cost of this inquiry?

Mr Bars—No, that is separate. This was a one-off piece of work.

Senator JOHNSTON—This was not actually an audit, was it?

Mr Krallis—This was an examination into the process.

Senator JOHNSTON—You aware of the Australian standards with respect to auditing and/or inquiries and/or probity views?

Mr Krallis—I am.

Senator JOHNSTON—Which one does this fall under—202, 904?

Mr Krallis—It was not an external audit. It was an examination of the process. I will refer back to my notes. That actually was not performed under an auditing standard.

Senator JOHNSTON—So this was an inquiry not under an auditing standard—neither 904 nor 202. You are familiar with those standards?

Mr Krallis—I am not familiar with those standards but this was not an audit; it was an examination of the procurement process.

Senator JOHNSTON—Were you specifically directed not to conduct an audit pursuant to an Australian standard?

Mr Krallis—We were not.

Senator JOHNSTON—But you followed the letter of instruction.

Mr Krallis—We followed the agreed terms of reference.

Senator JOHNSTON—I note you have got extensive limitations set out in the very first page of your document. I note at the bottom that you say: ‘This report is intended solely for the information and internal use of the Department of Defence and the Commonwealth and should not be used or relied upon by any other person or entity.’ Does that include the parliament? Is the parliament entitled to rely upon what you have got written in your report?

Mr Bars—We will take that on notice.

Senator JOHNSTON—It is very interesting that you are employed by a Commonwealth department to prepare an inquiry, yet you had to take on notice that the parliament is going to rely on these matters.

Mr Bars—Senator, you are asking us a legal question. Neither of us are lawyers. We can take that on notice.

Senator JOHNSTON—Okay. Did you make any formal requests for further information?

Mr Krallis—Could you clarify the question?

Senator JOHNSTON—Did you make any formal requests in writing for further information?

Mr Krallis—We made a number of requests for information during the examination for various documents. We were located at defence offices so it was not in writing, but we did liaise with our key contact, Geoff Brown, to request further information.

Senator JOHNSTON—Could you provide us with a list of what further information was requested?

Mr Krallis—We actually requested a number of documents. In the appendix of our report we list the documents that we actually requested and looked at.

Senator JOHNSTON—That is the complete list. Thank you. Did you receive any redacted information?

Mr Krallis—Not that I am aware of. There was an AGS report that we were not given access to because it was privileged. So we did not see that report—

Senator JOHNSTON—Could you explain to me what you mean by privileged?

Mr Krallis—We asked for access to that report. We had initially said—

Mr Fitzgibbon—Which report?

Senator JOHNSTON—The Attorney-General’s report in the grey book.

Mr Krallis—The AGS report. We did liaise with the AGS effectively almost on a daily basis to get their views but we did not get a copy of their final report.

Senator JOHNSTON—Why not?

Mr Krallis—We were told by Defence that it was privileged.

Senator JOHNSTON—Privileged. Very good. Effectively, this was an inquiry or a review of the process, was it not?

Mr Krallis—That is correct.

Senator JOHNSTON—Looking at your experience as an auditor, could you have reworded the terms of your letter of instruction such that you could have gone wider than you did?

Mr Krallis—Within the terms of reference that was provided to us, we identified a number of scope items to address the terms of reference. We were also mindful of Defence’s request to receive a draft on 8 September, so we ensured that the terms of reference that we identified met that time frame.

Senator JOHNSTON—In retrospect, looking back on the terms of reference, were there matters that you would have liked to have enquired into that you could not have pursuant to the terms of reference?

Mr Krallis—The work that we performed provided us with sufficient information to conclude on the basis of the work that we undertook. So I am comfortable that we have done sufficient work to provide those conclusions.

Senator JOHNSTON—Did you look at examples of Adagold obtaining contracts from not only Defence but also Immigration and Prime Minister and Cabinet where it was not the lowest tenderer?

Mr Krallis—That was outside our scope.

Senator JOHNSTON—Is it relevant to the issues before you, though?

Mr Krallis—Our focus was the Middle East air operations contract.

Senator JOHNSTON—That was not my question—the integrity, esteem and propriety of Adagold. Would it have been important to your inquiries if you had been able to find a large number of highest tender offers by Adagold yet still winning the contract? Would have that have been important to you?

Mr Krallis—Not in performing the terms of reference.

Senator JOHNSTON—Would it have been important if Adagold, whilst its current managing director was in charge of the South African arm, had similarly been the highest tenderer yet received the job? Would that have been important to you?

Mr Krallis—That was one of the areas within our scope and we did look at that matter.

Senator JOHNSTON—Yes. So there was an issue where Adagold and/or the directors of Adagold South Africa had been the highest tenderer against other competitors yet received the job? Correct?

Mr Krallis—That is my understanding.

Senator JOHNSTON—So that was relevant to the Defence contract but it was not relevant for the work you were doing for Defence to look at Immigration and Prime Minister and Cabinet? Is that what you are saying?

Mr Krallis—That specific allegation was included in our terms of reference, and that is the reason that we covered that item.

Senator JOHNSTON—When an unsolicited offer was made to Defence in September 2009 by Adagold, was Mr Charlton contracted to them through his company?

Mr Krallis—My understanding is that Mr Charlton was contracted to AIS, which provided services to Adagold.

Senator JOHNSTON—Did you observe the contract?

Mr Krallis—We did not.

Senator JOHNSTON—Why not?

Mr Krallis—Mr Charlton was not a tenderer in this process.

Senator JOHNSTON—Mr Charlton was chair of the tender evaluation board at that time, was he not?

Mr Krallis—The 2005 tender process was not included in our terms of reference.

Senator JOHNSTON—I am talking about 2009, when there was an unsolicited Adagold offer. Was Mr Charlton the chair of the tender evaluation board at that time?

Mr Krallis—No. He was the chair in 2005, but the 2005 tender process was not what we looked at.

Senator JOHNSTON—And he was also in the employ of Strategic during 2005.

Mr Krallis—That was outside our scope.

Senator JOHNSTON—Do you think that would have been important to the current inquiry?

Mr Krallis—Our terms of reference specifically focused on the 2010 process.

Senator JOHNSTON—That is not the question. As an auditor, do you think that would have been important when you were looking at the veracity of this contract?

Mr Krallis—We did look at David Charlton's employment record, we reviewed his affidavit and we listened to the digital recording and transcripts of his interview and have an understanding of his employment prior to joining Defence in 2009.

Senator JOHNSTON—So you are looking at governance, process and conflicts of interest in this current contract and you say that Mr Charlton's conduct to this contract is relevant but the fact that he was the chair of the tender board in 2005 in the employ of the winning tenderer is not relevant to any of the matters currently before you. Correct?

Mr Krallis—Our scope specifically focused on the 2010 process.

Senator JOHNSTON—Why was that?

Mr Krallis—I think that is a question for Defence, Senator.

Senator JOHNSTON—Thank you. I think it is. Mr Charlton's company was called AI something. What is it called?

Mr Bars—It was employed by AIS.

Senator JOHNSTON—The shareholders are known. Who are they?

Mr Krallis—There were three shareholders for Aviation Integration Services, as mentioned on page 21 of our report.

Senator JOHNSTON—Who are they?

Mr Krallis—Aviation Integration Services, Little Pockets Pty Ltd—

Mr Bars—And AIS is a wholly owned entity of Little Pockets. It is owned equally by Mr Rowan Keast and Ms Melanie Keast.

Senator JOHNSTON—Did you interview those two?

Mr Krallis—We did not.

Senator JOHNSTON—Why not?

Mr Bars—They were not a tenderer. Adagold was a tenderer.

Senator JOHNSTON—Wasn't it important to note that, when an unsolicited offer was made by Adagold, whether or not Mr Charlton, who was working for the joint movements section, was contracted through AIS to Adagold?

Mr Krallis—As part of our terms of reference we looked at the controls and processes around confidentiality and those controls around physical documentation and electronic documentation, awareness of confidentiality and we also looked at Major Charlton's access to any of that information and concluded that we did not identify on the basis of our work any breaches of confidentiality.

Senator JOHNSTON—We will come to that in a minute. The fact is that Mr Charlton was working for Adagold when they made an unsolicited offer because he had helped them with their Danish contract, had he not, in September 2009? That is true, isn't it?

Mr Krallis—That is my understanding based on reviewing the statutory declaration.

Senator JOHNSTON—It was not until March that he declared a conflict of interest, after the terms of the tender had been settled and a plan had been made—correct?

Mr Krallis—That is my understanding.

Senator JOHNSTON—But you did not see it as important to go back and have a look at his relationship with the shareholders of Little Pockets or the contractual relationship of AIS with Adagold—correct?

Mr Krallis—We actually did look at undertaking searches of AIS and Little Pockets and the shareholders of Little Pockets. So we looked at the fit and proper searches for those companies.

Senator JOHNSTON—But the point is that that is as far as it went—just looking at the documents. You never interviewed anybody and you never got to the bottom of the relationship between Adagold and Mr Charlton while the tender was being formulated.

Mr Bars—Our role was not to carry out an investigation.

Senator JOHNSTON—So the role that you were given was not to investigate but just to review the process—correct?

Mr Bars—Our role was defined by our scope of work, yes.

Senator JOHNSTON—I come back to the point: did you find the scope of work that you were given by Defence inadequate in terms of the questions that were left unanswered through your inquiry?

Mr Krallis—The work that we performed—

Senator JOHNSTON—It is a very simple question, I think. Were you constricted by your terms of reference, given what you know now?

Mr Krallis—There were limitations placed on our report—to clearly articulate what was included and what was not included within the terms of reference. I think that was important to clarify what we had undertaken and what we had not.

Senator JOHNSTON—Is there a specific list of what was not included?

Mr Krallis—It is in our report, under the—

Senator JOHNSTON—So the limitations broadly set that. With respect to Mr Charlton and his relationship with all of the material personnel in Defence with respect to this tender, was any attempt made by you to cross-reference service records as to who Mr Charlton had served with in the past during his full-time service?

Mr Krallis—That was not within our scope.

Senator JOHNSTON—No. Would you have liked to have done that to see who he knew who was in charge of these tenders?

Mr Bars—We do address that in our report, and all of the tender evaluation board members stated that they do not have a relationship with—

Senator JOHNSTON—That is very interesting. What they state is that they do not have a personal or social relationship with Mr Charlton. That is very convenient. I am sure none of them have a personal or social relationship with him, but have they ever worked with him? Do they know him? Surely the question is, ‘Do you know or have you spoken to Mr David Charlton?’ Was that question ever asked?

Mr Krallis—That was not.

Senator JOHNSTON—Why not?

Mr Krallis—Our focus was in relation to the examination of the tender process. Our specific focus was on the submission by Adagold.

Senator JOHNSTON—Okay. How much was the value of your work? What was the rendered account to Defence for your examination of process?

Mr Krallis—Approximately \$591,000.

Senator JOHNSTON—It is very easy, with service records, to reconcile who was serving in what theatre at what time to ascertain who had come into contact with Mr Charlton. It is a very simple matter, is it not? You know the PM key system. You know all of the accounting systems and the IT systems. It is very simple, is it not?

Mr Bars—Yes, Senator, it would be possible to cross reference that data.

Senator JOHNSTON—Has anyone done that?

Mr Bars—That is a question you should refer to Defence.

Senator JOHNSTON—I will. You certainly have not done it?

Mr Bars—We have not done that.

Senator JOHNSTON—Are you familiar with the name Warrant Officer Davies?

Mr Krallis—I am.

Senator JOHNSTON—What role does he play?

Mr Krallis—I was aware he was involved in the 2005 tender process.

Senator JOHNSTON—That is right. He was Mr Charlton’s sidekick in the 2005 tender process.

Mr Krallis—I am not sure of his exact position but I know he was involved in the 2005 tender process.

Senator JOHNSTON—Did you conduct interviews with CASA?

Mr Krallis—We did not.

Senator JOHNSTON—Did you investigate the date and time of the HiFly air operator certificate?

Mr Bars—The HiFly air operator certificate was current when the tender went in. It lapsed during the tender process and was subsequently renewed on 26th of the 10th. So it lapsed during the tender process.

Senator JOHNSTON—When was the air operator certificate granted for that particular A340—I think it is a 300 aircraft?

Mr Bars—I do not know when it was granted.

Senator JOHNSTON—Not important?

Mr Bars—Under the terms of the standing offer and of the request it would be necessary for the operator to have an air operator certificate for that particular aircraft.

Senator JOHNSTON—If a CASA air operator certificate was obtained prior to the date of the release of tender for an aircraft that specifically fitted the requirements of the tender and went through very quickly—it was processed very quickly—that would be important, would it not? Wouldn't it indicate some foreknowledge?

Mr Bars—That is a question you will have to ask the operator, not us.

Senator JOHNSTON—You did not investigate any of that?

Mr Bars—We did not investigate it, no.

Senator JOHNSTON—Did you ever look at the contractual relationship between Adagold and HiFly as to the securing of that particular A340 300 aircraft and the date and time of it?

Mr Bars—No.

Senator JOHNSTON—It is important, is it not, that Adagold be seen to have their foot on this particular aircraft prior to tender? It would have indicated that they had some knowledge that this tender was coming up.

Mr Krallis—You would have to ask Adagold whether they had knowledge.

Senator JOHNSTON—So they had made an unsolicited offer in September 2009. They had secured, around about that time—the time that you do not know of—a particular aircraft and lo and behold in January, I think, a tender begins to be prepared and is released at the end of March. Am I right?

Mr Krallis—That is correct.

Senator JOHNSTON—There was a meeting between Adagold representatives and Defence in September 2009. Who was at that meeting?

Mr Krallis—I think that is a question for Defence but I understand that that Robert Barnes was there but I do not know who else was there. There was a meeting in September and I believe there was a meeting in February.

Senator JOHNSTON—Did you inquire as to who was there, what was discussed and take notes?

Mr Krallis—We did.

Senator JOHNSTON—Tell me what happened: who was there, what was said, what was the relationship, did they have lunch, what was the story?

Mr Krallis—The specific details would be a question for Defence. My understanding was that in September Adagold wanted to introduce themselves to Robert Barnes in Defence and talk about their credentials because there was a standing panel offer which was refreshed in November. They wanted to discuss the skills in their team. My understanding is that an unsolicited bid was presented to Defence in early 2010.

Senator JOHNSTON—Were you aware that other departments were using Group Captain Barnes and his logistics section at that time and that he had given numerous tenders to Adagold even prior to that?

Mr Krallis—That was not within our scope.

Senator JOHNSTON—I am not asking whether it was within your scope. Did you know about it?

Mr Krallis—I did know that Adagold had performed work for other agencies within the federal government.

Mr Bars—And in fact the standing offer was constructed to allow other Commonwealth departments to take from the standing offer.

Senator JOHNSTON—Sure. So when they met in December 2009 they were certainly no strangers? This was not an unsolicited offer in the sense that this person just walked in off the street and said, 'Here, I can help you with your Middle East contract.' This was a situation where they had had an ongoing relationship over many years—correct?

Mr Krallis—That is a question to ask Robert Barnes.

Senator JOHNSTON—I am asking what your understanding is.

Mr Krallis—That would be correct but my understanding also is, when interviewing Robert Barnes, that he had a number of panel members speak to him over his course in that role.

Senator JOHNSTON—Very good. Did you see the Inspector-General's report?

Mr Krallis—We did.

Senator JOHNSTON—Do you have a copy of it?

Mr Krallis—I do.

Senator JOHNSTON—Could you make it available to the committee?

Mr Krallis—That is a question for Defence.

Senator JOHNSTON—Do you have an objection to making it available to the committee?

Mr Bars—I think you already have it, Senator.

Senator JOHNSTON—Is any of that redacted?

Mr Krallis—Yes, a tiny bit of it is redacted.

Senator JOHNSTON—Do you know which bit? Did somebody tell you what the gap meant?

Mr Krallis—My understanding is that related to the rankings of the tenders.

Senator JOHNSTON—Did you look at the Danish complaints?

Mr Bars—Yes, we translated the Danish finding. To be completely accurate, we examined the transcript of the Defence interview. Deloitte also translated the findings of the Danish inquiry.

Senator JOHNSTON—And there were some elements of non-compliance in the Danish—

Mr Bars—I can go to the exact—

Senator JOHNSTON—I can see what you have written there. Did you actually see the commentary on what the breaches were? I think they were 15 and 16.

Mr Krallis—Fourteen.

Mr Bars—We translated minor breaches on transparency of process and reading the proposal equally, but they did not overturn the contract.

Senator JOHNSTON—No, but what specifically were the allegations from the complainant in Denmark?

Mr Krallis—It was the proponent which came second, Cimber Air.

Senator JOHNSTON—That is right and what were they complaining about?

Mr Krallis—They had 16 complaints which they raised to the Complaints Board for Public Procurement.

Senator JOHNSTON—Did you look at the 16 complaints?

Mr Bars—We did look at the 16 complaints. I do not have with me. I do not yet have it on top of my head. I can take it on notice.

Senator JOHNSTON—Could you provide us with a copy of what the 16 complaints were?

Mr Bars—We will need to translate that of course.

Senator JOHNSTON—And if you could, let us know which ones were upheld. I note you have noted which ones were upheld.

Mr Bars—Partially upheld.

Senator JOHNSTON—I want to know which ones were upheld.

Mr Bars—I think we say it in our report. Claims 1 to 13 were dismissed, 14 was partially dismissed and 15 and 16 were also dismissed.

Senator JOHNSTON—You say you read aspects of Defence documents. Why would you put the word 'aspects' in there? Were some parts of Defence documents not permitted for you to read?

Mr Krallis—That is not correct. We read the relevant sections of Defence documents.

Senator JOHNSTON—You say that you read the chief audit executive's draft report. Why was it a draft report?

Mr Krallis—That is a question for Defence, but at the time of our audit it was still draft.

Senator JOHNSTON—You also read the inspector-general's draft report, so when you read them they were all in draft form.

Mr Krallis—That is my understanding.

Senator JOHNSTON—Any idea why they were in draft form and not finalised?

Mr Krallis—My understanding was that they were continuing to conclude on those, but that is a question for Defence. It might be that they still—

Senator JOHNSTON—You did not get the impression they were waiting for you before they finalised the report in case you found something?

Mr Krallis—That could be a reason.

Senator JOHNSTON—You say you listened to and read transcripts. There were tape recordings, weren't there?

Mr Krallis—Digital tape recordings.

Senator JOHNSTON—Were there records of interviews conducted or were they conversations or meetings?

Mr Krallis—Records of interviews.

Senator JOHNSTON—Formal records of interviews conducted by Mr Jason Woods.

Mr Krallis—And Mr David Britten as well.

Senator JOHNSTON—Are you aware of their experience and qualifications with respect to conducting records of interview?

Mr Krallis—I am not.

Senator JOHNSTON—Did you not want to know about the questions that were asked?

Mr Krallis—We were satisfied that the questions asked were the questions that we would have asked in that process. Also, reviewing the statutory declarations provided, we were satisfied that we had the information needed to conclude.

Senator JOHNSTON—In the affidavits and more broadly no-one has asked whether they have come into contact with Mr Charlton. They have been asked about personal and social relationships. That is a pretty fundamental question, isn't it? 'Do you know David Charlton' was never asked. Am I right?

Mr Krallis—Adagold in their record of interview stated that they did have a relationship with AIS.

Senator JOHNSTON—But none of the departmental officers were ever asked if they knew or had any dealings whatsoever with David Charlton.

Mr Krallis—Adagold—

Senator JOHNSTON—Forget about Adagold. That is fine. I am talking about the departmental officers—the people who decide who gets the job. Were they ever asked that question?

Mr Krallis—That is a question for Defence.

Senator JOHNSTON—But it is not a question that you followed up. You specified that you did not verify information obtained through interviews, in the tender responses or through online media sources. So what Defence told you was the situation and Defence documentation presented to you you took on face value.

Mr Krallis—That is not correct. To give you an example, we did not do an external audit of the financials that were presented by the tenderers. We took them on face value.

Senator JOHNSTON—And you say:

We did not check the integrity and accuracy of the information contained in the financial viability spreadsheets ...

But you also say above that:

- We did not verify the information obtained through interviews and in the tender responses
- We did not verify the information obtained through on-line media sources

Mr Bars—If we take the tender responses first, the tender responses were extremely large documents with a lot of technical information in them. The view that we took was that, in terms of the technical evaluation of those tender responses, Defence was the appropriate party with the technical capability to evaluate them. For

example, if there were a volumetric statement about the capacity of a particular aircraft, we did not validate that that volumetric statement was correct.

Senator JOHNSTON—The tender was different from the 2005 tender. Are you aware of the differences?

Mr Bars—The primary difference was in the volumetrics.

Senator JOHNSTON—Correct. Did you investigate when the volumetrics were evolved into the plan? What date was that?

Mr Bars—It is not our job to second-guess the operational requirements of the ADF.

Senator JOHNSTON—I am not asking about that. I am asking about the process. When was the volumetric requirement inserted into the process? I am not saying whether it was good, bad or indifferent. It is there for all to see. When did it go in and where did it come from? Who initiated the change in the volumetrics into the plan?

Mr Bars—You would have to ask Defence that.

Senator JOHNSTON—You did not investigate that?

Mr Bars—No.

Senator JOHNSTON—And you did not reconcile that date and time with when Adagold made their unsolicited offer?

Mr Bars—No.

Senator JOHNSTON—Okay. Have you investigated Hi Fly's track record?

Mr Bars—What do you mean by track record?

Senator JOHNSTON—International and domestic incidents with respect to the conduct of their air operations.

Mr Bars—That is a question that you should ask both Defence and CASA. Are you asking whether we are aware of their record? Yes, we were aware of their record.

Senator JOHNSTON—And what are the incidents surrounding their record? What are the black marks?

Mr Bars—I think they had a continuous AOC. As Air Luxor in 1988 a mail aircraft under charter by them crashed. I think it was a Russian aircraft. And I think they had a hijack in the same year.

Senator JOHNSTON—Those are the only things you could find?

Mr Bars—Those are the only things that come to the top of my head.

Senator JOHNSTON—Did you look at their standing in the aviation community?

Mr Bars—No.

Senator JOHNSTON—You talked about DRMS folder. When was that first established?

Mr Krallis—The DRMS is the technology platform. I do not have the exact date when that folder was established.

Senator JOHNSTON—Did you extensively examine the full log of who had accessed the folder?

Mr Krallis—We did.

Senator JOHNSTON—Did you cross-reference that with service details to see who knew Mr Charlton?

Mr Krallis—No, we did not.

Senator JOHNSTON—Pretty fundamental, isn't it?

Mr Krallis—We confirmed with Defence that the people on the listing of who accessed that folder were part of the tender evaluation board or tender evaluation process.

Senator JOHNSTON—The board the Mr Charlton had previously been chairman of.

Mr Krallis—Mr Charlton was the chairman in 2005.

Senator JOHNSTON—Sure—but he had been chairman of the board, correct?

Mr Krallis—In 2005, not 2010.

Senator JOHNSTON—Then when did he stop being chairman of the board? Was it 2007?

Mr Krallis—When the tender was awarded in 2005.

Senator JOHNSTON—So you did not check the list of names. How many names were on that list?

Mr Krallis—I do not have the exact number, but it was a handful.

Senator JOHNSTON—Five or six names.

Mr Krallis—I can confirm if you would like.

Senator JOHNSTON—And nobody has asked any of those people if they have had any contact whatsoever with Charlton, Davies or Adagold? Those questions were not asked to your knowledge?

Mr Krallis—To my knowledge Deloitte did not ask those questions.

Senator JOHNSTON—Okay. So are you saying that the DRMS was accessible to people other than those directly involved in the tender process? I am looking at paragraph 4.2., the third dot point on your page 8. It is the Cole interview:

We were advised that key procurement documents including the Procurement Strategy, RFT and TEP were stored in a DRMS folder which was accessible to 1JMOVGP personnel only but not restricted to only those involved in the tender process ...

Mr Krallis—That is correct.

Senator JOHNSTON—How many people beyond the tender process had access to it?

Mr Krallis—We reviewed the access log and confirmed that the people who had accessed that folder were only the people who were involved in the tender evaluation process. However, you are correct in saying that the folder was accessible to the wider group.

Mr Bars—Senator, I think you are right. There was a process failure there; access should have been limited. However, in terms of the evidence of the logs, only people who should have had access to it actually had access to it.

Senator JOHNSTON—That is not the case. Other people from Joint Movement Group had access to it.

Mr Bars—But they did not access it.

Senator JOHNSTON—We do not think they did.

Mr Bars—It did not show up in the log.

Senator JOHNSTON—Is the log definitive? You tell me. You are the auditors. If I want to access it do I have to log on?

Mr Bars—This is a question you should best ask Defence. It is about the security provided by the DRNS.

Senator JOHNSTON—What does this usually mean? It says it was accessible to one joint member of personnel only but not restricted to only those in the tender processes. What does that actually mean? Does it mean members of the Joint Movement Group who were not related to the tender process had access?

Mr Bars—Yes, it does mean that.

Senator JOHNSTON—Do we have any idea of how many accessed to it?

Both **Mr Bars**—The logs show that only people who had a relevant need to access it accessed it.

Senator JOHNSTON—We say there are approximately six people.

Mr Krallis—I do not have the specific number but I can come back to you. Only people involved in the tender evaluation processes accessed the folder.

Senator JOHNSTON—Why is Mr Cole saying it was not restricted?

Mr Krallis—It was not restricted but it was later restricted on July 2010.

Senator JOHNSTON—Yes, after the horse had bolted. Before that, we looked at the logs dating back to when?

Mr Krallis—Since the creation of that folder.

Senator JOHNSTON—Which was when?

Mr Krallis—I do not have that date but I can come back to you with it.

CHAIR—Senator Johnston, do you have many more questions of these witnesses?

Senator JOHNSTON—I could go all day but I am happy for someone else to pick it up.

CHAIR—Senator Bishop.

Senator MARK BISHOP—I have a few basic questions. How would you describe the nature of your relationship with Defence in terms of the approach to this examination?

Mr Bars—Could you be slightly more specific?

Senator MARK BISHOP—Yes. The terms of reference were specific and limited. You did not have the capacity to go back into previous contracts. You have told us that the searches you did were of agreed individuals and companies and that you did not independently access other online information. Is the relationship that you had with Defence one of total independence or is it that of a client? Is it a partnership or a mutual approach?

Mr Bars—No. Defence was our client. I think we have actually provided an email to this effect. I will paraphrase Mr Brown, who is the chief audit officer there. He said if we have done a bad job, if there is something to be found, if there are issues we want you to find them. To that extent, although Defence was our client our view is that we were carrying out an independent examination.

Senator MARK BISHOP—But, having said that, if you wanted to engage in matters that were not covered by the original terms of reference but you came to a view that it might be germane or material to the inquiry, the process you would have to undergo would be to raise that with Defence and get their authority to go down that particular path.

Mr Bars—That is correct.

Mr Krallis—That did occur on 8 Wednesday when I raised a number of outstanding items that we wanted to examine further. That is why the extension was granted.

Senator MARK BISHOP—Have you seen the report from the Attorney-General's office at all?

Mr Krallis—The Government Solicitor?

Senator MARK BISHOP—Yes.

Mr Krallis—We have not.

Senator MARK BISHOP—You have not seen that at all?

Mr Krallis—I did see an earlier draft of the report, but I have not seen the final.

Senator MARK BISHOP—Mr Charlton was a central player in a range of the matters—some within your scope and some outside your scope. Did you at anytime access his email, mobile phone or landline records?

Mr Bars—Defence undertook to do a landline examination and a Defence email examination, and could not find any evidence. I acknowledge my lack of legal training in this matter. This was not a criminal investigation and therefore we did not have access to that material.

Senator MARK BISHOP—Did you seek it, apart from those two instances you have just identified by Defence?

Mr Bars—No.

Senator MARK BISHOP—Did you seek it or obtain it for Mr Charlton's principals, in particular the two shareholders in the parent company?

Mr Bars—We did not seek it, no.

Senator MARK BISHOP—In terms of Mr Charlton's employees, consultants or contractors who were working with him at germane times?

Mr Bars—No, we did not seek it.

Senator MARK BISHOP—The terms of reference were rather narrow. There was an inability to go back through 2005. There was a reliance on a lot of hard information from Defence. Did those limitations in any way limit your ability to assess the integrity of the tender process or parts of the tender process?

Mr Krallis—Our scope was very specific and it focused on the 2010 process. We have undertaken sufficient work to come to our conclusions on the 2010 process. Having said that, there are limitations within our scope which we have identified in our terms of reference.

Senator MARK BISHOP—What are those limitations?

Mr Krallis—They are contained in our report within the executive summary on page 2.

Senator FERGUSON—Did you at any stage approach Defence and seek to broaden your terms of reference once you realised you had some limitations?

Mr Krallis—No, we did not.

Senator FERGUSON—If you had limitations, why didn't you seek to broaden the terms of reference?

Mr Krallis—We believe we had undertaken sufficient work to come to the conclusions that we have within our report.

Senator MARK BISHOP—Regarding the processes within its own organisation, Defence has indicated publicly that it had identified a number of shortcomings and was going to implement some changes in the tender process. Did your company play any part in that review that led to the identification of those shortcomings?

Mr Bars—It is mentioned in our report. We did suggest that a more robust financial analysis be undertaken in future analysis. We also identified that the lack of a probity auditor for this contract was most probably not the wisest decision. They were the two principal things that we brought up.

Senator MARK BISHOP—Did you put those observations in writing or were they part of discussions with defence?

Mr Bars—They are in our report as well.

Senator MARK BISHOP—I think defence have accepted them and are moving to remedy that. On the issue of Chinese walls both within your organisation and within defence—and this applies to all big companies—is it possible to have serious, ongoing, independent review when you have Chinese walls within your own organisation?

Mr Bars—I think it is and it is something that we—

Senator MARK BISHOP—I am not inquiring into Deloitte's here; I am referring to the subject matter of the inquiry.

Mr Bars—I think it is perfectly possible to put in place an appropriate Chinese wall environment within an organisation.

Senator MARK BISHOP—When there are issues are probity and allegations of fraud and improper financial behaviour, what are the essential preconditions for an effective Chinese wall?

Mr Krallis—There are a number of controls that should be considered. One control that you would consider would be restriction to information both physically and electronically.

Mr Bars—Geographic separation is another one of the controls that you would consider.

Mr Krallis—Declarations around confidentiality, conflicts of interest and ensuring that you have a transparent process would also be in a list of controls. There are a number of public sector publications on how to best address those matters on probity.

Senator MARK BISHOP—In the context of the public sector and multi hundred million and multi ten million dollar contracts, for effective Chinese walls to work in the audit division, the probity division and the financial control divisions, do you think an effective legislative base is necessary or are internal management controls and disciplines adequate? In other words, how is Caesar independent when Caesar is investigating Caesar?

Mr Krallis—I think there needs to be regard to a number of controls whether they are legislated or not. There is a very broad array of controls that could be implemented in a broad array of different circumstances.

Mr Bars—And those controls do not necessarily have to be legislated; they can be regulations.

Senator MARK BISHOP—Regulatory?

Mr Bars—They can be regulatory or they can be internal controls. You do not necessarily have to legislate that for an organisation. This is outside of my expertise.

Senator MARK BISHOP—Mr Krallis told the committee at the beginning that he was arguably one of the most senior auditing fellows in this state and arguably in the country. By definition, dealing with both private and public sector, you deal with conflicts of interest. We both know what I am talking about. What is the optimum scenario for effective and real independence? When people go in and out of an organisation, their

material wellbeing is dependent upon relationships in that organisation. Their career path relates to that organisation. Their promotion relates to that organisation. In the public sector where financial reward is not as important as in the private sector, how are you satisfied that there is sufficient, serious, independent control?

Mr Krallis—I think the clear design and documentation of controls and the clear communication of those controls is important. Those being embedded in a culture which actually adheres to the control environment is critical.

CHAIR—Senator Bishop, we might have to leave it there. Senator Trood, can you make it reasonably quick? We are over time now.

Senator TROOD—I will do what I can, but I do have some questions. Prior to your being engaged on this contract you have done some work for Defence previously—is that right?

Mr Bars—That is correct.

Senator TROOD—Had you done any work in the area of broadly aviation contracting?

Mr Bars—We had done some work assisting Defence in the negotiation of the air sustainment contract for East Timor.

Senator TROOD—I see. How long ago was that prior to this particular contract?

Mr Bars—I can get back to you with the exact dates. It would have been 12 to 18 months.

Senator TROOD—Do you personally do a lot of work in the area of aviation charter and things of that kind?

Mr Bars—Personally, no. I do a lot of work in complex procurement and how to mitigate risks in complex procurement.

Senator TROOD—Mr Krallis, have you done much work in the area of aviation charter?

Mr Krallis—No, I have not.

Senator TROOD—Would you say that the issues raised by this contract were issues with which you were very familiar as auditors and people looking at issues of probity?

Mr Krallis—In relation to the process and the issues that were raised we are very familiar with process issues around procurement.

Mr Bars—And with the structure of how to mitigate procurement risk, we are also very familiar.

Senator TROOD—That is procurement, but what about aviation contracts within the context of the Defence department?

Mr Bars—Except for the example that I provided, no.

Senator TROOD—So you are not terribly familiar with the Defence department's procedures and things of that kind—would that be a fair statement or not?

Mr Bars—Prior to doing the work we were not familiar with the Defence department's sustainment contract, that is correct.

Senator TROOD—So, Mr Bars, when you got a telephone call from the Defence department saying, 'We'd like you to do something for us,' that was potentially opening up a new avenue of business for you—is that fair to say? There is nothing wrong with that, obviously.

Mr Bars—I am just trying to think of what actually went through my head when the telephone call came through. To be honest with you, the answer to your question is 'yes', I did actually balance significantly whether I would actually accept the work.

Senator TROOD—Why was that?

Mr Bars—Because clearly it was a very high profile problem for Defence. It had been in the paper. In terms of opening up new fields of work this type of work can often close down opportunities for you as well.

Senator TROOD—I will not ask you whether that has happened, Mr Bars! There was potential here obviously for some more business for the firm and that is fine. You were cautious about it—is that a fair statement?

Mr Bars—That would be a fair statement. I was cautious about it.

Senator TROOD—When you received this telephone call saying, ‘We want you to do this.’ presumably some bells rang about what sort of work was involved in doing the probity checks, the procurement and things of that kind, all of which was very familiar to you but not necessarily for the Defence department and not necessarily with this particular contract—none of that was particularly familiar to you.

Mr Bars—No. I need to clarify one point. I did need to determine whether my aviation skill people were available to work on this particular contract as well, but your point is correct, yes.

Senator TROOD—You were asked to do this and you gave evidence earlier that there was an intimation or an outline of the kind of work that was being asked of you. Did you in the course of that conversation make any suggestions as to where this work should run on the basis of your understanding of the usual work that takes place in these areas?

Mr Bars—I am not an auditor, so the way I handled this internally was that I spoke to Mr Krallis to work out in broad terms what this work would look like and then Defence provided us with a scope of work.

Senator TROOD—Essentially the defence department asked you to do certain work. Did you then, for example, say, ‘If you want us to do that then you are going to have to allow us to do these two or three things if you want a good job’? Was the contract essentially defined by the terms in which the defence department approached you?

Mr Krallis—The terms of reference were provided to us by Defence.

Senator TROOD—I understand that, but that was subsequent to the telephone conversation as I understand it. I am interested in whether or not the terms of reference which were provided to you subsequently were the terms of reference that Defence offered you in the very beginning or whether they were a consequence of you saying, ‘If you want us to do these things then you are going to have to allow us to do these things as well?’

Mr Bars—There were some minor modifications along those lines. We attempted to incorporate those minor modifications in outlining the scope. I think the best way of characterising it is: Defence gave us terms of reference and then we said, ‘Given that we have terms of reference what does that actually mean in terms of work that we can execute to meet those terms of reference?’ That sort of feedback loop came in some finetuning around the scope of what we would do.

Senator TROOD—Page 18 of your report goes to the matters of conflicts of interest declarations. There are four dot points there and then a paragraph that says:

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

The conflicts of interest did not cover these issues but they subsequently did. How did that happen?

Mr Krallis—That was our recommendation following the review of the conflicts of interest declaration forms.

Senator TROOD—Am I right in saying that it is your view that those matters referred to in that paragraph should have been part of the declarations of interests—is that correct?

Mr Krallis—That is correct.

Mr Bars—That is correct.

Senator TROOD—And they were not.

Mr Krallis—And they were not so they were subsequently re-signed with that clause included.

Senator TROOD—So your professional assessment is that those matters should have been in those declarations of interests and they were not.

Mr Krallis—That is correct.

Senator TROOD—Do you understand why they were not?

Mr Krallis—I do not.

Senator TROOD—Did you seek an explanation for that?

Mr Krallis—I believe it was just our experience in having seen many conflicts of interest registers that we looked to enhance that register or declaration and so we advised Defence that better practice would suggest that you would refer to suppliers.

Senator TROOD—Would it be fair to say that these declarations were incomplete?

Mr Krallis—They did not align to best practice in relation to—

Senator TROOD—If my interpretation is not correct, please correct me. My interpretation is that they did not go to what would be a critical material interest in relation to these contracts. Would that be fair?

Mr Krallis—They did not go to addressing issues of potential conflicts of interest with suppliers to—

Senator TROOD—Which were material to the contract?

Mr Bars—The conflicts of interest that were signed, in Deloitte's view, did not represent best practice because they were not complete. We pointed this out to Defence and Defence accepted that and subsequently members of the TEB signed appropriate conflicts of interest.

Senator TROOD—Perhaps you could then explain to me the paragraph on page 20 which says:

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

- the governance processes did not address adequately potential or perceived conflicts of interest in the lead up to the tender and during the tender process.

I am slightly confused here, Gentlemen, because in one paragraph on page 18 you have drawn attention to a failure with regard to the conflicts of interest declarations and in a subsequent paragraph, a couple of pages later you have essentially absolved the department of any weakness in relation to those matters. Am I misreading your report?

Mr Krallis—Senator, it was not a failure it was an enhancement to process that we recommended during the process and the process had not concluded. As that enhancement was taken up and the conflicts of interest declarations were reissued and resigned we could conclude on that basis.

Senator TROOD—But there seems to be an inconsistency between your observations in relation to these conflicts of interest declarations and your subsequent willingness in the report to say, 'We made this observation earlier but we don't think it is terribly important.'

Mr Krallis—We made the observation and the conflicts of interest declarations were updated and that issue was addressed.

Senator TROOD—That was at your suggestion subsequently, but you found that as a result of your examination.

Mr Krallis—That is right.

Senator TROOD—But at the time you undertook the inquiry they were not completed properly, were they?

Mr Krallis—To align to best practice—that is correct.

Senator TROOD—And they were not completed properly in relation to what seems to me to be a material matter. Is that a fair observation?

Mr Bars—That is an observation. Subsequent to that, all 10 members did actually sign the revised conflict of interest declarations.

Senator TROOD—Thank God for that! But why didn't they do it in the first place?

Mr Krallis—They did not have a best practice form to actually sign.

Senator JOHNSTON—And was the form retrospective?

Mr Krallis—It was.

Senator JOHNSTON—So it applied to all the work that they had done prior to the date of executing that?

Mr Krallis—Yes.

Senator JOHNSTON—Do we have advice as to its efficacy in that regard? It is a declaration made on a date subsequent to the awarding of the tender. Is that correct?

Mr Krallis—No.

Senator JOHNSTON—Well, subsequent to the selection internally of the winning tender. Correct?

Mr Bars—That is correct.

Senator JOHNSTON—There is not much difference between them.

Mr Bars—There is a lot of difference.

Senator JOHNSTON—Having determined who the winning tender is, not announcing it makes it neither here nor there. They made a determination on an erroneous declaration, according to you.

Mr Krallis—The declaration did not align to best practice.

Senator JOHNSTON—No.

Senator TROOD—Best practice requires the declaration of material questions, does it not? And these declarations did not make those declarations.

Mr Krallis—They were not complete.

Senator TROOD—And it was not just a trivial matter about which they were incomplete; they were incomplete with respect to an issue of considerable importance to the contract. Is that fair? If I am wrong, please tell me. But that seems to me to be what you are saying.

Mr Krallis—That is correct. We were looking to ensure that any conflicts of interest on third-party suppliers were brought to light and that the tender evaluation board were aware of their obligations to disclose third-party relationships. That included AIS.

CHAIR—We will leave it there, but may I encourage you to put questions on notice. That way we will be able to cover all the material, because I feel that we could go on for another hour at this rate. Thank you very much for attending the hearing.

[10.35 am]

FOSTER, Mr Danny, Chief Operating Officer, Pel-Air Aviation Pty Ltd

CHAIR—I welcome the witness from Pel-Air Aviation Pty Ltd. We have received your submission, which is submission 2. Do you wish to make any amendments or alterations to your submission?

Mr Foster—No.

CHAIR—Would you like to make a brief opening statement?

Mr Foster—Certainly, thank you. This is the first time I have appeared before a committee inquiry like this. I would like to beg your forgiveness in advance for any protocol faux pas that I may commit. I do tend to breach protocols and say things I should not at inappropriate times.

CHAIR—Not at all. They are all teddy bears up here!

Mr Foster—I am the Chief Operating Officer and also a director of Pel-Air Aviation. Pel-Air is a wholly owned subsidiary of the Rex, Regional Express airlines, group of companies. As you know, Rex is Australia's largest independent regional airline. Pel-Air is a specialist charter provider and we are the specialist charter provider division of the Rex group. We own and operate 22 aircraft and employ more than 80 staff. We are the incumbent provider for the Australian Defence Force jet support contract, which is based in Nowra. This contract is staffed by ex-RAAF and RAN fighter pilots and uses specially modified jet aircraft to simulate combat training environments for the RAAF and the Navy. We have recently been awarded the Ambulance Victoria air ambulance contract to commence in July of this year, which we are rapidly gearing up for. We also conduct fly-in fly-out for several major resource companies within Australia and we are currently awaiting the outcome of several other tenders for both federal and state governments. We have been a member of the defence standing offer panel since November 2009, so we are a recent addition to the panel.

As recorded in our submission, in 2010 we tendered for the provision of support for aviation services to the Middle Eastern theatre of operations. We were unsuccessful in that tender. We were debriefed on the outcome of the tender on 8 November last year by Group Captain Barnes by teleconference. We accepted the outcome both of that conversation and of the tender result and we accept that the winning tender presented better value for the Commonwealth than our tender did. We have no issue with that.

We have no specific knowledge of the matters that are before the inquiry with respect to that tender, other than what we have been made aware of through the media and through the submissions to the inquiry. We do note, however, as we noted in our submission, that recent tenders—and I should stress this is not in relation to the standing offer but in relation to other defence matters—have seemed to us to have included increased probity and conflict of interest clauses in the tender arrangements. We speculate that this may be due in some part to this matter. We feel it would be in the interests of the defence standing offer panel to be made aware of any policy changes so there is a uniform approach and for that to be disseminated to the standing offer panel.

We made a further submission in relation to other matters within your terms of reference, and this is specifically in relation to the Department of Immigration and Citizenship charters. We note that these charters became part of the standing offer panel at some stage last year. The exact date escapes me, but I do recall correspondence received stating that DIAC would be using the standing offer panel in soliciting for these charters.

We have noted what would appear to me to be some very strange time lines and odd behaviours with respect to the DIAC charters. At the time of our submission in February, we had not completed one DIAC charter in our own right. We have subsequently completed one, so we can say that now. We accept that in many cases we do not have the correct aircraft for the job and subsequently are excluded on that basis—which is life. We also understand that charter is a rapidly changing environment and we certainly do not pretend to understand the machinations of DIAC and how the management of illegal arrivals is actually achieved. We feel that this accounts for some of the short time lines we see but it does still raise some questions as to some of the other time lines we are seeing.

I know that some companies who are not on the standing of panel are bidding on some of the work that comes through the standing offer panel. I have been approached by charter brokers external to the standing offer panel to quote services for DIAC, which seems odd to me given that they are not on the standing offer panel. We hear anecdotally that jobs are lined up to allow for aircraft to be backloaded from various destinations. For example, if DIAC has done a charter to somewhere, a return charter is lined up for a

backload. We acknowledge that this represents good value for the Commonwealth but we question how this is possible to coordinate without parties having forward knowledge of the movements of the aircraft.

We submit that a full-time aviation probity auditor be appointed for all Commonwealth aviation related contracts. We believe that this is an industry where some people seize on the appearance of any improper behaviour. It is quite a small industry and it is an industry where people have a high knowledge of what their competitors are doing. To paraphrase someone who is smarter than I am: we believe that business should not only be conducted in a proper fashion but it is important that it be seen to be conducted in a proper fashion. So if nothing else, the appointment of a probity auditor would create an environment where there is a high degree of confidence in the process. That is my opening statement, senators.

Senator JOHNSTON—Mr Foster, thank you for coming along today. You are on the standing offer panel. You talked about a number of tenders recently not specifically related to Defence but to DIAC.

Mr Foster—Yes.

Senator JOHNSTON—You have also talked about practices. Just take us through the details of the peculiar practices that you mentioned. I think your submission adverts to short time frames.

Mr Foster—We will occasionally get a tender requested in the afternoon to be completed by the following morning, say, at 1600 to be completed by 0800, for a tender for an operation that is not actually going to be conducted for another seven to 10 days. I find it hard to understand why that would be the case unless they were trying to secure an aircraft.

Senator JOHNSTON—Who does the tender come from?

Mr Foster—DIAC.

Senator JOHNSTON—Who is administering the tender?

Mr Foster—Whoever the departmental officer is. There are usually two or three.

Senator JOHNSTON—Is there any relevance to Defence in that?

Mr Foster—No.

Senator JOHNSTON—You do not see anybody in Defence having anything to do with those contracts?

Mr Foster—No.

Senator JOHNSTON—What has been your experience with respect to those short time frames?

Mr Foster—The experience has been that they generally do not allow for an operator such as ourselves who do not have the equipment on hand for those sorts of tenders, and I mean tenders that would require jet aircraft of a certain capacity that we do not have. But we can access that capacity through commercial partners.

Senator JOHNSTON—In the last 12 months how many tenders are you talking about, roughly? You have got notes on that, haven't you?

Mr Foster—I have, yes. Up until the date of our submission we had completed 48 DIAC charters, and we had been successful in none of those.

Senator JOHNSTON—And who had been successful in the 48—do you know?

Mr Foster—We do not get knowledge of who is awarded. In the industry we only know which aircraft operated; we do not know who is controlling the aircraft.

CHAIR—Just a qualification: so for all those tenders are you saying that you may have been given only a half a day's notice or a day's notice at the most for each of those?

Mr Foster—Not on all of them. That is the bit that is difficult to understand. There is no standard process. So we will often have them over a weekend. We have notes of when we received them and when they were due.

CHAIR—What would have been the greatest period of notice, then?

Mr Foster—Two days.

Senator JOHNSTON—Who is doing the evaluation of these tender responses that you are putting in?

Mr Foster—I am unsure, but we only ever deal with whoever the departmental officer is at DIAC. I believe they run a duty system, so it is generally one individual. But when she is not on duty there is always another individual.

Senator JOHNSTON—Are you aware of Adagold doing any of these contracts?

Mr Foster—Only anecdotally. And I should state that we have actually done two on behalf of Adagold, even though we are on the standing offer panel.

Senator JOHNSTON—So you are on the standing offer panel and Adagold is tendering—using your aircraft?

Mr Foster—Occasionally, yes.

Senator JOHNSTON—How often does that happen?

Mr Foster—Probably four or five times.

Senator JOHNSTON—Goodness! So they must be more expensive than you?

Mr Foster—No. In those cases they are not, because someone like Pel-Air or any other operator would use a ground handling agent at various ports and, for ports out of Brisbane, the ground handling agent is Adagold. So if they are tendering for a contract out of Brisbane, they simply absorb their ground handling costs. So you will find that they are actually probably cheaper.

Senator JOHNSTON—Have you got any examples of where they have not been cheaper?

Mr Foster—No, I have not.

Senator JOHNSTON—You are not privy to that information?

Mr Foster—No, I am not. We do not get any feedback. For the entire panel, the entire feedback we get is: ‘You have been unsuccessful on this tender.’

Senator JOHNSTON—Who is on the panel? Rex? Pel-Air?

Mr Foster—Pel-Air is. Adagold is. I believe Independent Aviation is. There is a transport logistics company in Brisbane. I think Toll is.

Senator JOHNSTON—So five, six, seven?

Mr Foster—I think there are nine now.

Senator JOHNSTON—So there are nine on the panel. The tender comes out and is published to the panel members. And you have known a couple of circumstances where you have tendered as a panel member and Adagold have tendered using your aircraft?

Mr Foster—Yes.

Senator JOHNSTON—Did they tell you they were using your aircraft?

Mr Foster—Yes.

Senator JOHNSTON—So you are competing against your own aircraft?

Mr Foster—In those circumstances, I suppose we are. But whenever that occurs, we are fairly transparent about our ground handling costs. So that is where the disparity lies.

Senator JOHNSTON—You say that—

Mr Foster—I am sorry to interrupt, Senator. I should also add that, in those cases where Adagold have used us, it has generally been part of a wider movement for DIAC. So they may in fact have several aircraft operating, and it may well be that there is an overflow that allows for a smaller aircraft, or a change in number that allows the move from a larger aircraft to a smaller aircraft, which happens quite a lot.

Senator JOHNSTON—You say that you have noted in recent tenders there have been clauses which have changed relating to the engagement of ADF personnel.

Mr Foster—Yes.

Senator JOHNSTON—What sort of clauses?

Mr Foster—In relation to the ability to employ ADF personnel within a time frame since the completion of their employment with ADF, which is particularly relevant to us because, on the contract I mentioned earlier,

with Nowra, we only employ ex-Air Force pilots under the terms of our contract, and we actually have some contractual issues with that now.

Senator JOHNSTON—But these are retired personnel?

Mr Foster—Yes. But some of them may still—

Senator JOHNSTON—They may still be reservists?

Mr Foster—Yes, and we might have someone who is working there currently who has come to the end of their posting. They would resign and then they might end up working with us, because it is very small set of qualifications we are looking for.

Senator JOHNSTON—Are you aware of using or have you ever used David Charlton or Mr Davies?

Mr Foster—I am not aware of Mr Davies. I am aware of Mr Charlton.

Senator JOHNSTON—And what is his standard operating procedure in terms of his consultancy to you?

Mr Foster—We engaged David for, I believe, only one or two days when the tender was out to get access to the standing offer panel. It was awarded in November, so this would have been in the months preceding that.

Senator JOHNSTON—November what year?

Mr Foster—November 2009.

Senator JOHNSTON—And you secured his services to get access to the panel?

Mr Foster—I believe we secured his services to assist us with tender writing in that engagement.

Senator JOHNSTON—Tender writing for which tender?

Mr Foster—For the standing offer tender.

Senator JOHNSTON—The MEO tender?

Mr Foster—No. The positions on the panel itself were tendered in 2009. It was whilst I was at Pel-Air, but it was prior to my current appointment so I probably do not have as much information as you would want on it. But I know we used him.

Senator JOHNSTON—I see. That is fine. Are you aware of the contract to use him? Was there a contract?

Mr Foster—I could not tell you.

Senator JOHNSTON—It was for two days, and was it Mr Charlton personally or a company?

Mr Foster—I believe it was a company.

Senator JOHNSTON—Do you know the name of the company?

Mr Foster—I do not offhand. I should say that at the time that this engagement occurred it was post the collapse of Sky Air World, the company that David was involved in. We understood at the time that he was consulting—basically hanging out his shingle, I suppose. But he was consulting to a company called Regional Pacific Airlines in North Queensland.

Senator JOHNSTON—He told you of that, did he?

Mr Foster—I believe so, yes. But at the time he was there we certainly did not know he had any relationship with defence. I am not even sure he did have any formal relationship with defence at that time, but we were not aware of it if he did.

Senator JOHNSTON—Are you aware of his company?

Mr Foster—Only from reading the submission and reports—AIS.

Senator JOHNSTON—Have you ever contracted with AIS?

Mr Foster—Not that I am aware of.

Senator JOHNSTON—You suggested in your opening statement that there was foreknowledge of back loading. Just explain that to the committee. This is in relation to DIAC matters?

Mr Foster—That is in relation to DIAC. Most of the DIAC movements are between four or five set locations where the processing centres are, so it is not unusual to have more than one set of movements operating through one base at any given time. A standard movement might be from Christmas Island to Darwin. An aircraft might operate from Christmas Island to Darwin and then there might be another

requirement that comes out to go from Darwin to Perth or from Darwin to Brisbane. If that aircraft originated from Brisbane then they would use the space available on that aircraft, which would represent a saving to the Commonwealth because you do not have the positioning in either direction. In principle, I do not have a problem with that. The only issue is how you can do that without having foreknowledge of what the movements are. So whoever is making those decisions at DIAC must obviously commit to using that aircraft without going to the panel, if you follow my drift.

Senator MARK BISHOP—What is wrong with that?

Mr Foster—Nothing is wrong with it, if that is what the process is. But the understanding is that everything goes to the panel, to give everyone the opportunity.

Senator MARK BISHOP—If they have an empty plane? Say you have a plane going from Christmas Island to Darwin, its home base is Brisbane and it is going back to Brisbane and they can get one third of the price to load it up in Darwin and take it over to Brisbane. Why would they want to go to the panel?

Mr Foster—As I said, they may not want to, but we might have an empty aircraft in Darwin that is going to Brisbane as well, or someone else in the panel might. There might be another way of doing it.

Senator JOHNSTON—You mentioned bias in your submission. Is that what you were referring to?

Mr Foster—Yes. I suppose there is a perception that there are one or two operators who gain most of the flying. That is anecdotal, as I said. We do not get told who is awarded different tenders, but the marketplace intel is that there are usually one or two operators who get most of it.

Senator JOHNSTON—In the last 12 months you have tendered for 48 and got none of them?

Mr Foster—Yes, up until the time of our submission. Post that we have probably tendered for another 10 and got one.

Senator JOHNSTON—So there are 48 and you have got one out of 48, to this point in time?

Mr Foster—Yes. And we may well have been uncompetitive on all of those. But the fact is: the short time lines that you have, to tender for this work, mean that you cannot always be competitive.

Senator JOHNSTON—What do you know of Adagold? Do you know how many aircraft they have?

Mr Foster—We have a commercial relationship with Adagold in some respects. So, yes, I know quite a bit about them.

Senator JOHNSTON—What is the commercial relationship?

Mr Foster—We are an end-user of charter, so they will charter us on occasion for operations.

Senator JOHNSTON—So how many planes have they got?

Mr Foster—None.

Senator JOHNSTON—None?

Mr Foster—None that I am aware of.

Senator JOHNSTON—So they are just a broker?

Mr Foster—They are a broker.

Senator JOHNSTON—So they tender on all these jobs, and then run around and speak to the existing panel members to get their aircraft or other aircraft?

Mr Foster—Yes. They are in the business of knowing what is going on in the industry, so they have very good knowledge of what goes on in the industry. So when they tender they will have a fairly good knowledge of where aircraft are.

Senator JOHNSTON—But you say there is some bias associated with the awarding of these contracts. Just what prompts you to use the word 'bias'? That is a pretty—

Mr Foster—It is a strong word.

Senator JOHNSTON—It is a strong word, and I am interested that you put it in. Tell the committee about it.

Mr Foster—It would seem that, on occasions, the process is established in order for someone to win the job. So the short time line militates against most people being able to be awarded the job. That is what we meant by the term 'bias'.

Senator JOHNSTON—And there is no real reason for a short time line, is there?

Mr Foster—Sometimes I am sure there is, but at other times it is hard to understand a short time line for an operation that might be in seven to eight days time.

Senator JOHNSTON—What is the shortest time line you have known?

Mr Foster—Overnight—probably from 1700 at night to eight o'clock the next morning.

Senator JOHNSTON—So everyone gets a phone call at five o'clock at night—

Mr Foster—We would get an email at 1700. Everyone on the panel would get the email. In our business there are always people monitoring emails, but not in other businesses I am sure.

Senator JOHNSTON—And it closes at eight o'clock the next morning?

Mr Foster—Correct.

Senator JOHNSTON—What about during the day? Has there been opening at 11 and closing at three?

Mr Foster—Off the top of my head, I cannot recall. But certainly those sorts of time lines do not seem unusual to me.

Senator JOHNSTON—Thank you, Chair. That is enough from me.

Senator TROOD—Thanks for coming, Mr Foster. In your submission you make an observation about recent tenders having included clauses relating to the engagement of ADF personnel, but you do not elaborate on precisely the nature of those clauses. Could you just explain a little more fully what is now in the tender document that was not there previously?

Mr Foster—Sure. I have an example. I might be able to elaborate for you. Oh—I have just had an IT failure. What it would relate to is the time period in which you can engage ADF personnel following their severance with ADF, and that timetable is now, I believe, 18 months—or 12 to 18 months, depending on the circumstances—whereas we did not observe those clauses in previous tenders.

Senator TROOD—You observed the clauses if they were there, but you did not ever see them in the contracts—is that what you are saying?

Mr Foster—That is correct.

Senator TROOD—When do you think they began to appear?

Mr Foster—They seem to have been coincident with the original probity inquiry or the original media interest, and then whatever inquiries were conducted internally at that point in time. We deal with Defence, obviously, a lot, for our other contracts, and we observed a lot of caution on behalf of Defence at that point in time regarding probity.

Senator TROOD—What is the industry buzz about why these have been put in?

Mr Foster—The industry buzz is probably that it might be six years too late. I think 2005, for the previous tender, was probably where the horse might have bolted a little bit.

Senator TROOD—Is it the view of colleagues, and you particularly—obviously, you are the person giving the evidence—that there was a need for this kind of clause in these contracts? Are you saying that it was long overdue?

Mr Foster—Probably—I believe so. Like I said, it is an industry where I feel you are better off erring on the side of caution in terms of probity. It is very easy for people to make allegations, and it is an industry where people do make allegations all the time—to CASA and to everyone else. It is an industry where I feel that it is probably better to err on the side of probity.

Senator TROOD—This is long overdue, in your view?

Mr Foster—Probably, yes.

Senator TROOD—Probably?

Mr Foster—Okay—yes!

Senator TROOD—These 58 contracts, of which you have received one: your submission refers to the 48—I think I am right in saying that?

Mr Foster—Yes.

Senator TROOD—You get a telephone call saying, 'Sorry, mate, you didn't get it'?

Mr Foster—Yes, or an email.

Senator TROOD—That is all you are told, as I understand your evidence—is that right?

Mr Foster—Yes, that is correct.

Senator TROOD—You are compliant—that is, you have filled in the right forms and done all that sort of thing—I assume that is what you are saying in relation to that?

Mr Foster—Yes.

Senator TROOD—But you were just not competitive in some?

Mr Foster—Yes, that may well be the case.

Senator TROOD—Have you ever probed a little more fully as to why you have not been successful?

Mr Foster—Generally, no. My understanding is that that information is not forthcoming, but the individual in our organisation who actually handles that structurally may well inquire privately. I have not seen any formal inquiry.

Senator TROOD—Is it not material to the next contract as to whether or not you can be competitive? Would it not be helpful to know why you did not get the first 30, or the first 20 or the first 10?

Mr Foster—Now that you say that I do recall that we asked for a debrief on one of the early tenders, probably not knowing that there would be three a week for a long period of time. We did not know that they would be high frequency. We got feedback at that point in time that we were not competitive on price. In the industry—not so much the scuttlebutt—everyone is pretty familiar with DIAC being very much price driven. That is our knowledge going into it. Price in aviation is driven by availability, in some respects, so you can be price driven. But if you are not allowing people the time to formulate a better solution then you may well be creating a false market for yourself. You get the lowest tenderer for what you have asked for, which may not necessarily be the lowest tenderer for the job.

Senator TROOD—I see.

Senator MARK BISHOP—I want to go back to that discussion you had with Senator Johnston: is there anything intrinsically wrong with short-term contracts?

Mr Foster—I do not believe so.

Senator JOHNSTON—In tender periods?

Senator MARK BISHOP—Yes. If someone burns down the detention centre on Christmas Island tonight, and we have got to ship in policemen, or other personnel, or equipment, or food or supplies because they need them tomorrow morning, then there is nothing wrong with that.

Mr Foster—No, and as I said in my opening statement, I think that probably accounts for a fair percentage of it. It is the nature of charter that there are short-term requirements, and things change.

Senator MARK BISHOP—There is nothing intrinsically wrong with it, commercially?

Mr Foster—No. The problem I have with it is when it is an established practice, when that is the only way—

Senator MARK BISHOP—When it becomes the norm, not the exception?

Mr Foster—Correct, yes.

Senator MARK BISHOP—Okay. Now, about the discussion you had with Senator Trood: do you think there is a need for a full-time independent probity adviser in this area of contracting work?

Mr Foster—I think there is, yes.

Senator MARK BISHOP—Why is that?

Mr Foster—As I said, for the appearance of probity, if nothing else, I would rather err on the side of caution. I would not suggest to pre-empt what your findings are going to be, but if you could have—

Senator MARK BISHOP—This industry strikes me as being intensely competitive with a limited number of players. They all seem to have intense amounts of knowledge about the operations of their competitors. There seems to be a lot of intelligence going between industry and Defence and personnel going into and out of Defence. Do you suggest there is anything bordering on improper or illegal?

Mr Foster—I do not have any knowledge of that, no.

Senator MARK BISHOP—Why then would this committee recommend to the government that there be another layer of regulation imposed?

Mr Foster—If it could prevent an inquiry such as this then that would probably be a positive. If the level of probity were such that these questions that arise about these matters could not arise because there was a higher degree of probity to start with then I think that that is probably a reasonable reason to do it.

Senator MARK BISHOP—Do you think the limited terms of inquiry that were done by Deloitte—that is only around the 2010 tender contract—satisfied industry buzz?

Mr Foster—Probably not, but I suggest that most people did not read it, and maybe I would not have either unless I was preparing for today. I think it got some media play at the time it was released that it was a fairly favourable review and I think people probably took that onboard rather than digging into it.

Senator MARK BISHOP—Thank you, Mr Foster.

CHAIR—That concludes this morning's hearing. Thank you very much for attending. Mr Foster, I can see you did survive your first foray into a Senate hearing. Thank you very much for joining us. I also thank Mr Krallis and Mr Bars for attending this morning. Questions taken on notice are to be returned by close of business on 11 April 2011.

Committee adjourned at 11.07 am