

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2015 - 2016
Infrastructure and Regional Development

Question no.: 112

Program: Operational Search for MH370

Division/Agency: Australian Transport Safety Bureau

Topic: MH370 Search Procurement

Proof Hansard Page: 101 (19 October 2015)

Senator Xenophon, Nick asked:

Senator XENOPHON: May we get a copy of that technical advice and all the other material that you relied on before you made your decision as to which search company that you went to and the equipment used?

Mr Foley: We can certainly provide that documentation. We have it in existence, of course. It is part of the tender assessment process. The normal, if you like, commercial-in-confidence rules apply, which do not apply here.

Answer:

Please refer to the answer for Question on Notice 114.

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Senator Xenophon, Nick asked:

Senator XENOPHON: I am not interested so much as to what each of them were going to charge for it. I am interested in the technical assessment of those.

Mr Foley: In assessing the tender we firstly did not consider price at all. The panel was blind to the price of the bids until such time as we had actually assessed their technical merit. Once we had assessed their technical merit, taken advice on the technical merit of the various bids from an expert, we then—

Senator XENOPHON: Who was that expert?

Mr Foley: He is currently contracted to us as our sonar expert. His name is Andrew Sherrell who worked, amongst other things, on finding Air France 447.

Senator XENOPHON: So, you will provide us with that information.

Answer:

Please refer to the answer to Question on Notice 114.

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Senator Gallacher, Alex asked:

Senator GALLACHER: Just on MH370, could you supply on notice what you can about the tender process, the technical advice and the cost, because you may or may not be aware that there are people giving a lot of different senators—coalition, opposition and cross-bench senators—a very different view of what you are actually doing there. It is not a complimentary view, and it does not appear to be sour grapes. It appears to be a very different technical assessment, so you are going to need to justify your contract, your decisions, or at least publicly make them available to us, because we are getting an information source which is contrary to what you are saying. Are you aware of that?

Mr Dolan: We are aware that there is some fairly public commentary about an alternative approach to this. We have paid attention to that. Every time the question that has been asked of us as to whether our techniques are up to the necessary standards, we have provided the information. I am very happy to provide that information to the committee. I am very happy to provide a separate briefing to committee members if they wish it.

Answer:

The Request for Tender (RFT) for the provision of services relating to the search for Malaysia Airlines Flight 370 (MH370), RFT No. 570-04, was released as an open approach to market on 4 June 2014 via AusTender with a closing date of 30 June 2014. The information within and accompanying the RFT was prepared with the intention of ensuring an open and impartial procurement process, fair to all potential respondents. Schedule 1 of the RFT is the Statement of Requirements (SOR) which contains the detailed technical specifications to which each tenderer responded ([Attachment A](#)).

The development of the tender SOR was the result of careful consideration and considerable consultation with experts in deep water search and recovery operations. The search for Air France 447 (AF447) off the coast of Brazil from 2009 to 2011 is the most analogous deep water search operation for an aircraft in recent times. While preparing the SOR, the ATSB's operational search team consulted extensively with France's Bureau d'Enquêtes et d'Analyses pour la Sécurité de l'Aviation Civile (BEA), the organisation responsible for the AF447 search and recovery, and also the leader of the AF447 search and recovery operation, Dr David Gallo, Director of Special Projects at Woods Hole Oceanographic Institute in the USA. Very early in the procurement process the ATSB contracted sonar expert Mr Andrew Sherrell, who was responsible for the sonar data analysis in the search for AF447, initially to act as technical adviser for the MH370 search tender and then later in an ongoing role as the search data quality assurance manager with the ATSB's operational search team.

Careful consideration was given to the available equipment and methods for conducting the search of the seafloor in a very large area (60,000 km² at that time) with water depth expected to be up to 6000 m with unknown currents, bottom topography and composition in often poor weather conditions in a very remote area. While the operational search team hoped the aircraft would be found quickly, planning focused on selecting an effective, efficient method to search the seafloor in an operation which may take a very long time. The SOR defined the standards against which all search tenders were assessed including vessels, personnel, systems and equipment

Key points to note in the SOR relating to the search method and equipment are:

- the feature detection capability, or resolution, of 2 cubic metres which must be achieved by the search system which was conservatively selected on the basis that the B777 engines (which may well be some of the largest pieces of debris) are approximately 3 m x 3 m x 4 m

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with the aerodynamic cowlings in place. If just the core of the engine remains this can be further reduced to 1 m x 1 m x 2 m.

- a practical test in deep water to demonstrate that the search system would reliably detect targets of 2 cubic metres at the range scales to be used in the search.
- other requirements in the SOR related to the vessels to be used, the processing, storage, transmission and security of the sonar data, and the organisational systems and plans to be put in place to manage the search with a particular focus on risk mitigation and the occupational health and safety of the search crews.

With respect to the search systems, the feature detection capability of a conventional side scan sonar system is dependent on the number of “pings” on a target of a given size which is related to the frequency of the acoustic transmission (number of pings emitted per second) and the speed of the acoustic emitter (and receiver) through the water. Coverage rates are a function of the effective range of the acoustic transmission (swath) and the speed of the emitter through the water. Lower frequency systems have greater range but produce less “pings” on a target of a particular size for a given speed. Therefore the frequency, feature detection capability and rate of coverage of sonar devices are all related.

Once a minimum feature size to be detected is defined, in this case 2 cubic metres, there is an optimal frequency range and therefore coverage rate associated with the choice. The search systems chosen use 75 kHz side scan sonar transducers and are operated at speeds up to 3 knots with a moderate swath width. Other search systems offered in the tender were lower frequency and therefore had higher maximum swath widths but these systems needed to be operated at slower speeds and at less than their respective maximum range scales to achieve the required resolution.

Other important coverage considerations for the sonar search systems are the “blind spot” in side scan sonar coverage in the nadir area directly beneath the vehicle and the positioning of the vehicle, both of which have an impact on the amount of overlap required between adjacent search lines and therefore the overall seafloor coverage rate.

The vehicles (both deep tow and autonomous underwater vehicle or AUV) currently used in the search by Fugro Survey Pty Ltd (Fugro) use an independent sonar instrument to cover the nadir area (a multi-beam echo sounder) whereas other systems offered in the tender rely on a high proportion of overlap between the adjacent search lines to cover the nadir area. Similarly, more accurate positioning of the vehicle requires less overlap at the edge of the sonar swath to ensure complete coverage between search lines. The Fugro search vehicles are positioned using a combination of instruments on the surface vessel and underwater vehicle. An inertial navigation system in the search vehicle provides primary positioning which is corrected to an accuracy of around 50 metres using a very long range ultra-short baseline (USBL) acoustic positioning system to provide a very accurate position solution even in the deep waters of the search area.

While most of the other deep tow systems offered in the tender were also equipped with USBL systems, the ultra-deep water in the search area, where the deep tow vehicle may be up to 9 km behind the search vessel, is beyond the effective range of most of these systems. The effectiveness of any USBL system is also compromised when it is mounted on an acoustically noisy vessel. The Fugro vessels, which are also used for hydrographic survey work, are designed and built to be acoustically quiet and therefore the USBL positioning systems have been found to be very reliable and accurate.

The tender also stipulated an average coverage rate of 5000 square kilometres every 25 days ([Attachment B](#)). The overall rate of coverage is not only dependent on the coverage rate of the search system when it is operational but also on the overall proportion of operational time in the search area and the time lost due to end-of-line turns (8-12 hours for each turn with the deep tow systems), weather, equipment or other down time, and the time taken to transit to and from port (usually Fremantle) for re-supply.

The proportion of operational time in the search area is maximised by extending the vessel endurance (42 days in the case of the current search vessels) minimising the transit time to and from the search area (it is normally 6 days to transit to and from the search area) and minimising down time in the search area. The overall search organisation takes into account expected weather in the search area with search activity increased in the better

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weather months. Operational tasking aims to minimise end-of-line turns by tasking the deep tow vehicles to search on very long lines. Vessel and equipment downtime is minimised by having well maintained and reliable vessels and equipment and sufficient spare parts and expertise on board to effect running repairs while in the search area. The selection of industry standard deep tow vehicles means that spare parts and complete deep tow vehicles are readily available.

A crucial part of the ATSB's operational search team's work is overseeing the collection and analysis of the sonar data. This starts with the acquisition of the sonar data which is monitored by a highly experienced ATSB contracted sonar data analyst and/or geophysical surveyor on the vessel (client representative) who works with the Fugro mission crew to oversee the entire operation. The client representative ensures the tow fish or AUV is being operated at the correct speed, altitude and range scale and is collecting 'fit for purpose' quality data. They also check the correct positioning of each search line and that there is appropriate overlap between adjacent swaths.

Initial analysis on board each vessel also identifies any sonar contacts of preliminary interest. The data is then streamed from the vessel, via satellite, to the Fugro data analysis team in Perth where it is carefully analysed for quality, coverage and contacts by a team of sonar data specialists and geophysicists. The data is then streamed to the ATSB's office in Canberra and to the ATSB's search data quality assurance manager in the USA. The data is once again checked for quality, coverage and contacts with geospatial information systems (GIS) staff in Canberra integrating the search data into coverage maps, including the bathymetry information, and preparing the data for storage. Following all of these processes, the search data is independently analysed a final time for quality, coverage and contacts by another very experienced sonar data analyst in the USA. The experts from the USA offer over 50 years of combined experience in looking for and locating lost aircraft and other items on the seafloor. The quality assurance system for the sonar data is expert, meticulous and thorough.

The relevant sections of the Tender Evaluation Report are at [Attachment C](#). The reports sets out the process and method by which the tenders were assessed and includes a summary of the tender evaluation panel's findings on each preferred tender including the sonar expert's advice. Some information not directly relevant to the scope of the QoN has been redacted from the report given the likely impact the public release of this information would have on the ongoing business of one or more of the tender respondents. The assessment of the three most technically capable tenders is included for comparison. These submissions being from: Fugro Survey Pty Ltd; Svitzer Salvage Australasia Pty Ltd; and Phoenix International Holdings Inc. The Svitzer Salvage Australasia Pty Ltd submission proposes, as a subcontractor, Williamson and Associates who have been vocal critics of the techniques used in the search since the search contract was let to Fugro Survey Pty Ltd.

Included as [Attachment D](#) is the Ernst and Young independent probity report on the procurement processes and contract letting for RFT No. 570-04.

[Attachment A](#): RFT No. 570-04 Schedule 1- Statement of Requirements

[Attachment B](#): RFT No. 570-04 Attachment 3 - KPIs

[Attachment C](#): RFT No. 570-04 Tender Evaluation Report (with redactions)

[Attachment D](#): RFT No. 570-04 EY Probity Report

Schedule 1 - Statement of Requirements

BACKGROUND:

On 8 March 2014, a Boeing 777 aircraft, operated as Malaysia Airlines Flight 370, carrying 12 Malaysian crew members and 227 passengers, disappeared during a flight from Kuala Lumpur to Beijing (MH370).

Through the analysis of available satellite, radar and other data, it has been determined that MH370 is likely to be in the southern Indian Ocean within Australia's search and rescue zone.

In accordance with Annex 13 to the Convention on International Civil Aviation (the Chicago Convention), Malaysia, as the State of registry for the aircraft, is the State conducting the investigation into the occurrence involving the disappearance of MH370. In accordance with the provisions of Annex 13, Australia as the State closest to the likely location of MH370, has offered its continuing assistance.

It has been decided between Malaysia and Australia, that Australia will lead the search for MH370. This arrangement includes Australia contracting the commercial services required to undertake the search operation.

The Australian Transport Safety Bureau (ATSB) is the Australian agency responsible for the seafloor search. The ATSB is seeking to contract services in accordance with the Statement of Requirements to:

- A. search for and locate MH370 within the defined Search Area on the sea floor;
- B. if located, map and obtain optical imaging (photograph or video) of the aircraft debris field.

ATSB SUPPLIED INFORMATION:

The ATSB advises that the Search Area will be an area up to 60 000 km² in the Southern Indian Ocean. Further work is being done to refine the Search Area. As soon the information about its location is confirmed and verified, it will be made available to the Tenderers and the public. At this time the ATSB is providing a map in the Attachment to this Statement of Requirements, showing an arc along which the Search Area will be located.

The ATSB is separately sourcing services to complete bathymetric surveying of the Search Area. Some bathymetric information may be provided to the Tenderers if it becomes available during the Tender. Full Bathymetric information for the Search Area will be progressively made available to the preferred Contractor.

STATEMENT OF REQUIREMENT DESCRIPTORS:

<i>Descriptor</i>	<i>Meaning</i>
<i>Critical</i>	<i>Requirements described as Critical are extremely important to the solution being sought. It is expected that tenderers will address these requirements to an extremely high standard ensuring that all claims are substantiated. Any failure to address these requirements may result in the tender being non-preferred.</i>
<i>Most Important</i>	<i>Requirements described as Most Important are integral to the solution being sought. It is expected that tenderers will address these requirements to a very high standard ensuring that all claims are substantiated. Any failure to address these requirements may result in the tender being non-preferred.</i>
<i>Highly Desirable</i>	<i>Requirements described as Highly Desirable are important to the solution and should be highly regarded but they may not be integral or critical to the overall solution. Any failure to address these requirements will greatly diminish the potential scoring ability of the tender overall.</i>
<i>Desirable</i>	<i>Requirements described as Desirable are an expressed wish or request that the ATSB has a preference for obtaining within the solution but the solution could be acceptable and/or sound without the particular elements. Any failure to address these requirements may diminish the potential scoring ability of the tender overall.</i>

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
1. STATEMENT OF WORK			
<p>1.1 The Contractor will provide the Services in accordance with a Statement of Work (SOW) addressing this Statement of Requirements (SOR).</p>	<p>Critical</p>	<p>The Tenderer should submit a proposed SOW which addresses this SOR and includes proposed search methodology and plans.</p> <p>Tenderers should detail their understanding of the purpose for which the Services are being provided, particularly with regard to the families of persons on board MH370 and with regard to improving the future of aviation safety.</p> <p>The SOW proposed by the Tenderer will be used during Contract negotiations to draft an agreed SOW for Schedule 2 of the Draft Contract.</p> <p>Tenderers should have regard to the Draft Contract when drafting the SOW, ensuring the Tenderer uses terminology consistent with the Draft Contract. The Tenderer should ensure provisions in the Draft Contract referring to the SOW are</p>	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement addressed.	Advise where in the proposed Statement of Work this information can be found.
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2. TENDERER'S EXPERIENCE

2.1	The Contractor will provide an outline of their previous experience in undertaking services that are similar or relevant to the Services.	Highly Desirable	The Tenderer should submit a record of previous contracts undertaken by the tenderer in search operations and its ability to co-ordinate a large scale multi Vessel operation.
2.2	The Contractor to nominate the personnel who will run the operation and the roles they may play along with previous record and experience of undertaking these roles.	Most Important	<p>Tenderer should nominate their management structure. Tenderer should provide details of the qualifications and experience of personnel running the operation, including project manager, subsurface search equipment operators, data analysts, masters and officers of vessels.</p> <p>The tenderers should advise which personnel will be Key Personnel, consistent with the Draft Contract.</p> <p>Note: The information provided will be relevant as Acceptance Criteria for the purposes of the Draft</p>

REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement Contract.	Advise where in the proposed Statement of Work this information can be found.
2.3	The Contractor to provide two referees for evidence and record of the Contractor's prior experience in a similar operation.	Highly Desirable	Tenderers should provide an outline of the previous operations and contact names, email addresses and telephone numbers of two applicable referees.	
3. SCOPE OF WORK/METHOD				
3.1	The Contractor will commence the search for MH370 in the Search Area as soon as possible, but no later than one month after signing the contract.	Most Important	Tenderer should advise the date by which the search in the Search Area can commence. Tenderer should provide a mobilisation plan (see item 11.1 of this SOR).	
3.2	The Contractor will be able to complete a search of the entire Search Area within 300 days of commencement of the search.	Most Important	Tenderer should provide information about the method to be used to search the Search Area within the timeframe, including expected coverage, on average, per day. The tenderer will have to allow for such things as weather, vessel port calls	

REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
			and equipment downtime for maintenance. The tenderer will provide information as to how scheduling for these will be planned and managed. The tenderer should provide an explanation of how the process will ensure that all areas in the Search Area will be searched. Tenderer should provide information as to how their assets will be organised and managed to complete the search of the Search Area within the timeframe.	
3.3	The Contractor will be able to positively identify MH370 in whole or in part.	Critical	Tenderer should provide information as to its proposed assets and method for positively identifying MH370 in whole or in part.	
3.4	The Contractor will be able to map the wreckage field.	Critical	Tenderer should provide information as to its proposed assets and method for mapping the wreckage field.	
3.5	The Contractor will be able to obtain imaging of MH370 (in whole or in part) which will allow assessment to be made	Critical	Tenderer should provide information as to its proposed assets and method for obtaining imaging which will allow	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
<p>about any future recovery of:</p> <ul style="list-style-type: none"> (a) Human remains; (b) Cockpit Voice Recorder and Flight Data Recorder; and (c) Significant components of the aircraft or cargo specified in consultation with Australian and Malaysian authorities which may be relevant to an investigation. 		for assessments to be made about any future recovery activity.	
3.6 During the search, identification, mapping and obtaining imaging, the Contractor will provide information and reports regularly to the ATSB on the Australian mainland (see Part 14 of this Statement of Requirements).	Critical	Tenderer should, in their methodology, detail how they intend to transfer information to the ATSB. The method should take into account costs and capabilities of equipment while ensuring the Commonwealth is able to receive the information in a timely manner.	
3.7 The Contractor will respond to priority search requirements (Search Zones), determined by the ATSB, including the order in which Search Zones within the Search Area are covered.	Critical	Search Zones within the Search Areas will be prioritised by the ATSB. Tenderer should include in their SOW, planning and methods to allow the ATSB to provide direction with respect to prioritised Search Zones. Tenderers should take into account	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
		that while it is expected that ATSB representatives will be on board the Vessel(s), the directions will come from ATSB officers based in Canberra Australia.	
<p>3.8 Prior to reaching the Search Area, the Contractor will perform a full equipment sea-trial demonstrating equipment to be used during the search. This includes all deck operations, Subsurface Equipment, and data analysis. All equipment shall be operational with a high level of confidence in its condition. A full functioning test to a depth of at least 300 metres will be needed to ensure the equipment's operational integrity and demonstrate the personnel and data collection methods to be used.</p> <p>A suitable test site with similar bottom conditions to the Search Area, along with potential man-made objects may be included in this sea-trial as part of the equipment and methodology verification test.</p>	Critical	Tenderers should devise a test in the SOW to demonstrate its capabilities, as set out in this SOR, to the satisfaction of the ATSB.	

REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
4. ORGANISATIONAL STRUCTURE FOR THE DELIVERY OF THE SERVICES				
4.1	The Contractor will provide, coordinate and be responsible for all Vessels, Equipment, Contractor Personnel, providing the Services, logistics, consumables, analysing and ensuring the quality of the Search Data, and providing Deliverables to the ATSB.	Critical	Tenderer should describe their systems for search and asset coordination, (including personnel) and management and logistical support structures. Have regard to Part 10 of this SOR 'Organisational Systems'.	
4.2	Where the Contractor requires subcontractors to provide the Services , the Contractor will contract and manage the subcontracts to provide the Services.	Most important	Tenderer should provide details of any proposed subcontractors. Where a subcontractor will be used to provide any part of the Services this should be indicated, addressing the subcontractor's capability and capacity as part of the Tenderers response. Have regard to 11.6 of this SOR.	
5. VESSELS				
<i>Note: The information provided may be relevant as Acceptance Criteria for the purposes of the Draft Contract.</i>				
5.1	The Contractor will conduct the search using search Vessel(s) and support vessels capable of:		Tenderer should provide the details of vessels to be used as part of the Tenderer's search method.	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
		<p>Information provided should allow completion of the details in Schedule 3 of the Draft Contract for each Vessel. Provide details of the condition of the Vessel(s) and how they will be maintained while providing the services.</p> <p>The tenderers should advise which Vessels will be Key Vessels, consistent with the Draft Contract.</p>	
a. operating in the Search Area with the variety of weather and sea conditions that are usually present in that part of the Indian Ocean over a 12 month period;	Highly Desirable	Tenderer should provide the details of the Vessel(s) capabilities in a variety of weather conditions and sea states. Provide details of plans for Vessels in cases of adverse weather and arrangements to assess and plan for forecast bad weather.	
b. carrying and operating the equipment necessary to carry out the search in accordance with this Statement of Requirements;	Most Important	Tenderer to provide details of the equipment each Vessel will have on board as part of the Contractor's search method. Provide details of how the equipment, including spares, will be stored (including details of	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
c. accommodating the personnel necessary to carry out the search in accordance with this Statement of Requirements;	Most Important	space), and how the equipment will be maintained and deployed.	
d. accommodating up to three Commonwealth Representatives on each Vessel conducting search operations.	Most Important	Tenderer to provide details of Vessel accommodation and rest and recreation areas to enable completion of Schedule 5 of the Draft Contract.	
		The Commonwealth Government may place Commonwealth Government Personnel on board the vessel to monitor the results of the Search Data. Tenderer should provide current details of vessel accommodation, rest and recreation areas, and catering arrangements for completing Schedule 5 of the Draft Contract.	

6. CONVENTIONS APPLYING TO VESSELS AND CREW

Note: the information provided may be relevant to Sch 4 and 6 of the Draft Contract. The information may also be relevant as Acceptance Criteria for the purposes of the Draft Contract).

6.1 The Contractor's Vessels will meet all International Maritime Organization (IMO) safety and marine environmental	Most Important	Tenderer should provide current vessel safety and pollution prevention certification . Tenderer should
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REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
requirements for a vessel of its size on an international voyage, including the International Safety Management (ISM) Code, the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) and the Convention on Safety of Life At Sea (SOLAS) (1974, as amended).		describe any way in which it exceeds the requirements of the Conventions.	
6.2 Vessels carrying more than twelve passengers (not including crew) must be compliant with the Special Purposes Ship Code or the Passenger Ship Requirements.	Highly Desirable	Tenderer should provide appropriate certifications indicating the vessel/s is compliant with the Special Purposes Ship Code or Passenger Ship requirements. Tenderer should outline if less than twelve (12) passengers are to be carried and compliance not required.	
6.3 The Contractor's vessels and crews will meet the conditions set out in the Maritime Labour Convention, 2006 at a minimum.	Most Important	Tenderer should provide copies of Maritime labour certification issued to the vessels, including the Declaration of Maritime Labour Compliance Parts 1 and 2. Tenderer should describe ways in which it exceeds the minimum	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
		conditions set out in the Convention.	
6.4 The qualifications of Master and crew should be in compliance with the International Convention on Standards of Training, Certificate and Watchkeeping for Seafarers (1978, as amended in 1995)	Most Important	Tenderer should provide certification of standards of training and certificate of watchkeeping. Tenderer should describe any way in which it exceeds the requirements of the Conventions.	
7. SEARCH, MAPPING AND IMAGING EQUIPMENT			
<i>Note: The information provided may be relevant as Acceptance Criteria for the purposes of the Draft Contract.</i>			
7.1 The Contractor will use search, mapping and optical imaging equipment capable of:		Tenderer should provide details of the search, mapping and optical imaging equipment that will be deployed from the Vessel(s). The tenderers should advise which equipment will be Key Equipment, consistent with the Draft Contract.	
a. operating across the variety of sea floor terrains expected in the Search Area;	Most Important	Tenderer should describe the capabilities of the equipment and how varying seafloor terrain in the Search Area will be thoroughly searched. Include reference to holes, trenches, ridges, steep gradients, isolated features and sea floor that	

REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
			could be comprised of silt, sand, rock, and possibly manganese nodules. Describe the means by which the equipment is positioned/navigated.	
	b. operating at depths of up to 6,000 metres; and	Critical	Tenderer should describe the operating depth limitations of the equipment.	
	c. operating in a variety of sea states and ocean currents that may be present in the Search Area over a 12-month period.	Highly Desirable	Tenderer should describe the sea states and ocean currents the equipment is capable of operating in and the plans and methods for managing its use in these conditions.	
7.2	The Contractor will use search and mapping equipment capable of providing a feature detection capability (resolution) sufficient to identify an aircraft (in whole or in part) and any associated debris to a minimum cubic size of 2.0 metres in the search conditions set out at SOR 7.1.	Critical	<p>Tenderer should describe how the 2.0 metre resolution will be achieved in the search conditions set out at SOR 7.1. Capabilities that exceed the SOR should be fully substantiated.</p> <p>Tenderers should advise of proposed equipment, including search speeds, tow fish/AUV altitudes above sea</p>	

REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
			<p>floor, swath widths and overlaps, any blind spots in the swath and how these will be covered.</p> <p>Describe the parameters/ specifications for the data that will be acquired/ produced and how the data will be analysed (see Part 7 of these SORs).</p> <p>It is expected that the equipment the Contractor uses will include towed sonar and/or autonomous underwater vehicle mounted sonar and/or optical imaging equipment.</p>	
7.3	The Contractor will use high resolution optical imaging equipment to enable identification of small parts of MH370.	Critical	Tenderer should describe the parameters/specifications for the optical imaging equipment that it will use, taking into account the conditions in SOR 7.1.	
8. DATA PROCESSING				
<i>Note: The information provided will be relevant as Acceptance Criteria for the purposes of the Draft Contract.</i>				
8.1	The Contractor will have an on-board capability to process Search Data acquired	Critical	Tenderer should provide details of the on-board data processing	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
<p>from the search, mapping and imaging equipment into a form that can be analysed and understood by an informed person to determine with certainty whether or not MH370 is within the area searched.</p>		<p>capabilities.</p>	
<p>8.2 The Contractor is to supply all processed Search Data in a format that readable with commercially available software, from all vessels, to ensure it can be completed within a complete data set of the Search Area.</p> <p>Raw data should be supplied by the Contractor in native formats and also converted, if necessary, so they can be processed using commercially available software.</p>	<p>Critical</p>	<p>The Tenderer should supply a flow diagram, or data management plan, outlining methodology for processing data on-board and off Vessel for each form of Search Data for each Vessel. Tenderer should confirm file format of the Search Data at each stage.</p> <p>The Tenderer should specify the Search Data deliverables against quality controls to meet the requirements of these SORs.</p>	
<p>8.3 The Contractor will have systems to protect the integrity of the data and store the data.</p>	<p>Most Important</p>	<p>Tenderer should explain systems for protecting the integrity of the data during the processing. Tenderer should explain systems for storing the data over the life of the contract including the Information and</p>	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
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Communication Technology (ICT)
Security arrangements.

9. COMMUNICATIONS FACILITIES

Note: The information provided will be relevant as Acceptance Criteria for the purposes of the Draft Contract.

9.1	The Contractor will use communication equipment during the search, mapping and identification activities that allows for transfer of reports of the activities, including analysis of the data to specified locations on the Australian mainland.	Most Important	<p>The Tenderer should detail, in addition to the SOLAS communications equipment, the ICT and data management systems that will enable the Vessel(s) and the ATSB to transfer processed data and reports (including images and video) to specified locations on the Australian mainland.</p> <p>The Tenderer should explain the information security arrangements that will apply to the transfer of the information to prevent misuse, interference and unauthorised access, including by hacking.</p> <p>See Part 14 of this SOR for deliverables with respect to reports.</p>
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REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
10. PERSONNEL				
10.1	The Contractor Personnel running the operation, including project manager, subsurface search equipment operators, data analysts, masters and officers of vessels) will speak and comprehend fluent English to allow for communication with ATSB staff and the Commonwealth Representatives.	Most important	List the English language capabilities of the personnel.	
10.2	Personnel, other than Contractor's Personnel in 10.2, who will have responsibilities to interact with the ATSB staff and the Commonwealth Representatives should speak and comprehend fluent or adequate English.	Desirable	List the language capabilities of the personnel, other than those described for item 10.2, who will have responsibilities to interact with the ATSB.	
11. ORGANISATIONAL SYSTEMS				
<i>Note 1: The Tenderers response should not be limited to providing information about the organisational systems below. Additional organisational systems which support the tenderers response to the Statement of Requirements should be detailed.</i>				
11.1	The Contractor will be required to have a detailed mobilisation plan.	Most important	Tenderer should provide a mobilisation plan for its Vessels, Equipment and Personnel. Tenderer should provide information and plans for mobilisation ports, times for mobilisation and transit times to Search Area.	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
		<p>Mobilisation plans should include milestones for the delivery of key activities and a program of planned mobilisation meetings between the Contractor and the ATSB.</p> <p>The mobilisation plan should address the test to be conducted prior to completion of mobilisation in the Search Area (see SOR Item 3.8).</p>	
11.2 The Contractor will be required to maintain an ISO 31000:2009 Risk Management Framework or similar.	Highly Desirable	Tenderers are to specify their current accreditation, provide details of their current risk management frameworks and risk management accreditations, including whether they maintain an ISO 31000:2009 Risk Management Framework. Tenderers should include copies of any documents demonstrating their relevant risk management accreditations.	
11.3 The Contractor will be required to identify, manage and mitigate risks associated with the delivery of the Services. The Contractor	Most Important	Tenderers should provide an outline of a risk management plan which will be finalised if the Tenderer enters	

REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
	will be required to provide a detailed Risk Management Plan. The Contractor will be required to review and, if necessary, revise the Risk Management Plan during the Contract term.		into the Contract with the ATSB, prior to mobilisation.	
11.4	The Contractor will operate a Quality Assurance Control Procedure which conforms with the requirements of ISO-9000	Highly Desirable	Tenderers should provide an outline of the Quality Assurance Control Procedure that they intend to use. Regard should be had to Schedule 7 of the Draft Contract in developing this Procedure.	
11.5	The Contractor will have a communications plan to cover communications and reporting applicable to the delivery of Services in accordance with this SOR and the Draft Contract	Highly Desirable	Tenderers should provide an outline of communications plan.	
11.6	The Contractor will have a contract management system in order detail the contractual and administrative processes and procedures for management of the Contract with the Commonwealth and contracts with any subcontractors.	Most Important	Tenderer to provide details of contract management system or plan.	
11.7	The Contractor will be required to	Most Important	The Tenderer should provide details	

REQUIREMENT		Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
	implement a Work, Health and Safety management system from the Commencement Date and maintain the system for the Contract Term.		of their current or proposed future work health and safety systems. Tenderers should clearly identify which components of the systems are current and which are yet to be implemented. Tenders should detail how their system addresses the remote area of the search and the particular risks associated with the nature of the work.	
11.8	The Contractor will have staff management systems to ensure they are able to perform in accordance with their highest capabilities.	Most Important	Tenderer should describe rostering and provide a fatigue management plan. Tenderer to describe arrangements for rest and recreation over the contract period.	
12. COMMERCIAL ACTIVITIES				
12.1	The Contractor will be required to advise the ATSB if any commercial contracts it has may adversely affect the performance of services.	Critical	Tenderer should disclose any commercial agreement that they currently have, or plan to have, with third parties that may, or may appear to, adversely affect their ability to provide the Services diligently and independently and in accordance with the Draft Contract.	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
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13. KEY PERFORMANCE INDICATORS

13.1 The Contractor will be required to meet the KPIs as set out in Attachment 3 (KPIs) of the RFT.	Critical	Tenderer to advise how it will meet or exceed the KPIs. Tenderer may propose alternative KPIs to meet the Commonwealth's objectives.
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14. PROGRESS AND OTHER REPORTING

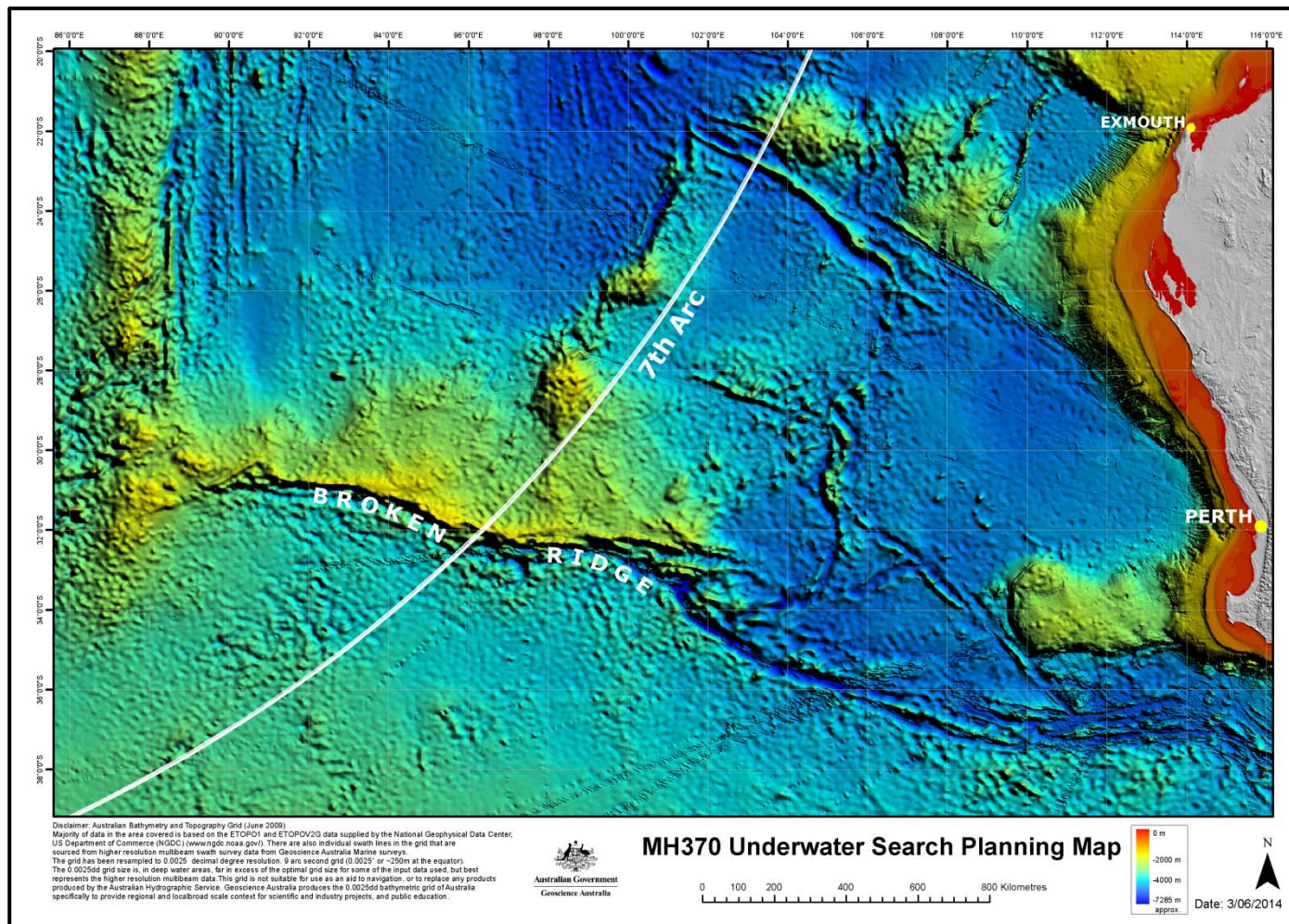
<p>14.1 As part of the Deliverables, the Contractor will provide reports to the ATSB on its search activity every twenty four hours (Daily Reports).</p> <p>The Contractor will provide the Daily Reports to the Commonwealth Contract Representative(s) on board the Vessel(s) and to the Commonwealth Contract Authority based in Canberra.</p> <p>The Daily Reports must, to the reasonable satisfaction of the Commonwealth Contract Authority, detail the activities carried out in the performance of the Services during the previous 24 hour period, including:</p> <ul style="list-style-type: none"> - details of the part of the Search Area for which searches were completed 	Critical	Tenderers are to detail how they will aggregate these Daily Reports from each Vessel to provide a daily report of the Search activity to the Commonwealth Representative(s) and the Commonwealth Contract Authority.
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REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
<ul style="list-style-type: none"> - in last 24 hours; - details of the part of the Search Area planned to be searched over the next 24 hours; - simple graphic that shows the Search Areas completed and planned for next 24 hours; - Any areas of interest identified and/or investigated at mapping and identification rate and the time for these activities; - any issues or incidents that occurred during the last 24 hours, including Prescribed Events; - Remaining endurance (time in days to next port of call for resupply); - an estimate of the time of the next port call; and - any additional comments provided by the Vessel Master. 			
14.2 As part of the Deliverables, the Contractor will provide the Commonwealth Representative(s) on board the Vessel(s) and the Commonwealth Contract Authority based in Canberra with Weekly Reports	Critical	Tenderers are to detail how they will aggregate and provide these Daily Reports from each Vessel to provide a Weekly and Monthly Report of the Search activity to the Commonwealth	

REQUIREMENT	Requirement Descriptor	Tenderer should provide information that demonstrates its technical capability to provide the Services, having particular regard to the points in this column for the corresponding Statement of Requirement	Advise where in the proposed Statement of Work this information can be found.
<p>before 5pm on Friday each week and Monthly Reports before 5pm on the last Friday of each Month.</p> <p>The Weekly Reports must provide aggregated summaries of the Daily Reports, including graphics of areas covered. The Monthly Reports must provide aggregated summaries of the Weekly Reports, including graphics of areas covered.</p>		Contract Authority.	
<p>14.3 As part of the Deliverables, the Contractor will produce a Final Search Report to the Commonwealth Contract Authority in Canberra on completion of the Search.</p> <p>The Final Search Report must, to the reasonable satisfaction of the Commonwealth Contract Authority:</p> <ul style="list-style-type: none"> - summarise all of the Daily, Weekly and Monthly Reports, including analysis of methods used; - a discussion of the findings; and - recommendations for recovery of MH370. 	Critical	Tenderers are to briefly describe the structure of the Final Search Report, including what details will be included. The Tenderer should refer to Schedule 7 of the Draft Contract.	

MAP OF ARC FOR DETERMINING FUTURE SEARCH AREA

The following is a map showing an arc along which the Search Area will be located.



SEARCH AREA

The latest information and analysis confirms that MH370 will be found in close proximity to the arc set out in the map and labelled as the 7th arc. At the time MH370 reached this arc, the aircraft is considered to have exhausted its fuel and to have been descending. As a result, the aircraft is unlikely to be more than 20 NM (38 km) to the west or 30 NM (55 km) to the east of the arc.

Based on all the independent analysis of satellite communications and aircraft performance, the total extent of the 7th arc reaches from latitude 20 degrees S to 39 degrees S.

Refinement of the analysis in the coming weeks will reduce the underwater Search Area along this arc to a prioritised 17,500 sq. NM (60,000 sq. km). The prioritised length of the Search Area along the arc is expected to be 350 NM (650 km).

More information about the Search Area will be made available as soon as it is verified.

Further explanation of the arc is available at: <http://www.atsb.gov.au/mh370.aspx>.

Attachment 3 - KPIs

[Note to tenderers: Further KPIs may be considered during the negotiation process. Dependant on the quality assurances provided, this includes consideration of KPIs relating to Search Data quality.]

1. KPI #1 – Wide Area Search

- 1.1 The Contractor must complete a Wide Area Search (see Definition in Attachment 4 – Pricing Response Template) of no less than 5,000km² every 25 days to ensure they achieve the Contract requirement of up to 60,000km² within the prescribed 300 days (see SOR 3.1).
- 1.2 A percentage from relevant invoices will be withheld if the 5,000km² is not achieved within the 25 day period. Table 1 sets out how the amounts will be withheld if Pricing Model A is used. Table 2 sets out how the amounts will be withheld if Pricing Model B is used.

Note: Refer to Attachment 4 - Pricing Response Template

TABLE 1: SEARCH AREA KPI FOR PRICING MODEL A	
KPI	Implication of KPI
>5,000km ²	Full Payment on completion of each 5 000km ² before Positively Identifying MH370 (subject to other KPIs being achieved)
4,500 – 4,999km ²	4% to be withheld from the invoice for the 5,000km ²
4,000 – 4,499km ²	7% to be withheld from the invoice for the 5,000km ²
3,500 – 3,999km ²	10% to be withheld from the invoice for the 5,000km ²
<3,499km ²	15% to be withheld from the invoice for the 5,000km ²

TABLE 2: SEARCH AREA KPI FOR PRICING MODEL B	
KPI	Implication of KPI
>5,000km ²	Full Payment on completion of each 5 000km ² for the Wide Area Search (subject to other KPIs being achieved)
4,500 – 4,999km ²	4% to be withheld from the invoice for all fees for the 5,000km ²
4,000 – 4,499km ²	7% to be withheld from the invoice for all fees for the 5,000km ²
3,500 – 3,999km ²	10% to be withheld from the invoice for all fees for the 5,000km ²
<3,499km ²	15% to be withheld from the invoice for all fees for the 5,000km ²

- 1.3 Any and all amounts withheld by the Commonwealth under this item 1 during the Term of the Contract will be payable to the Contractor upon either of the following two occurrences being achieved to the satisfaction of the Commonwealth:
- (a) MH370 is located and positively identified; or

(b) the complete 60,000km² is completed within the nominated 300 days.

1.4 If neither 1.3(a) or (b) is achieved to the satisfaction of the Commonwealth, then any and all amounts withheld in accordance with this Item 1 will not be payable by the Commonwealth.

2. KPI #2 – Reporting and Invoicing

2.1 Critical to the successful contract management of this engagement is the timely and accurate provision of Reporting, Data Transfer and Invoicing as required in the SOW.

2.2 Therefore each payable invoice, 2% of the invoice total will be tied to the Contractor meeting the specified Reporting, Data Transfer and Invoicing Deliverables in the SOW.

2.3 Failure to meet all the Reporting, Data Transfer and Invoicing requirements in a calendar month will result in 2% of the Fees otherwise payable in respect to that calendar month not being payable by the Commonwealth.



Australian Government

Australian Transport Safety Bureau

Tender Evaluation Report

RFT 570-04 – Request for Tender for provision of services relating to the search for Malaysia Airlines Flight 370

1. Summary

1.1. Aim

The aim of this Tender Evaluation Report (TER) is to outline and document the process undertaken to assess the responses to the Request for Tender No. 570-04 (the RFT) in accordance with the Tender Evaluation Plan (TEP) and to provide a recommendation to the relevant delegate of a preferred supplier. The criteria used for evaluation are outlined in the TEP.

1.2. RFT Details

Contract Title	Intensified Sub Surface Search for Flight 370 (MH370) (RFT 570-04)
The RFT	RFT 570-04 was intended to identify the services of suitably qualified providers capable of delivering services to search for and locate Flight 370 within a defined search area and map and photograph the debris field.
Contract Term	<ul style="list-style-type: none"> Initial: August 2014 until the Commonwealth advises the contractor(s) that the services have been completed to its satisfaction or the contract is terminated. Extension options may be based on: extension of area to be covered within funding available or an expansion of square kilometres.
Preferred Supplier	Fugro Survey Pty Ltd
Total Contract Value Pre-Tender Estimate	<p>[REDACTED]</p> <p>No pre-tender estimate [REDACTED]</p> <p>Although extensive research was conducted prior to the release of the RFT, due to the nature of the required services and the numerous possible options that were expected to be presented by tenderers, it was extremely difficult to accurately estimate the potential value of the tender responses.</p>
Price Basis	<p>Fixed for up to 300 days (Covering a search area of up to 60,000km²)</p> <p>Variable for a period of up to 12 months</p> <p>Variation Index: any variation to prices quoted and agreed between both parties</p>
Anticipated contract commencement date	8 August 2014
Program Director	Peter Foley
Project Manager	Jason McGuire

STAGE 1 - PRELIMINARY

2. Australian Transport Safety Bureau Requirements

2.1. Background

The Australian Transport Safety Bureau (ATSB) is seeking to procure the services of a Prime Contractor to undertake the following:

- Provision and management of vessels, personnel, services, logistics, consumables, primary data analysis, data transfer and the reporting and coordination of the deployment of all contracted search assets on water for the period stipulated in the contract for the purpose of a continuous search of an area of up to 60,000km² using towed and/or autonomous underwater vehicle mounted sonar and/or optical imaging equipment with sufficient resolution to identify an aircraft debris field; and
- Map and photograph the aircraft debris field if possible/applicable.

(taken together "the services")

2.2. Timetable

The tender process complied with the TEP, with the following key milestones:

Event	Date Achieved
Tender Brief/Scope signed off	2 June 2014
Initial Tender Evaluation Team (TET) was selected	4 June 2014
RFT issued or advertised	4 June 2014
Industry briefings (if applicable)	N/A
Revised Tender Evaluation Team (through addendum to TEP)	27 June 2014
Closing date of RFT	30 June 2014
Evaluation of tenders commenced	1 July 2014
The Tender Evaluation Team submitted individual assessments	11 July 2014
Preferred Tender selected	18 July 2014

Event	Proposed Date
Proposed date for contract commencement	8 August 2014

3. Tender Evaluation Team (TET) and Advisers

3.1. TET

The composition of the TET was as follows:

Name & Role	Position
<i>Chair</i>	Peter Foley, Program Director, Operational Search for MH370, ATSB
<i>Member</i>	Julian Walsh, General Manager, Strategic Capability, ATSB
<i>Member</i>	Jocelyn Parsons, Manager, Marine Environment Salvage and Intervention, Australian Maritime Safety Authority (AMSA)
<i>Member</i>	John Pugh, Contract Manager, Geoscience Australia
<i>Member</i>	Stephen Curry, Acting General Manager, Surface Safety Investigations, ATSB

3.2. Advisers

Assistance was provided by the following advisers:

Name & Role	Position
<i>Adviser</i>	Matthew O'Donnell, Ernst and Young, Probity Adviser
<i>Adviser</i>	Minter Ellison Lawyers – Legal Advice (External)
<i>Adviser</i>	Patrick Hornby, Manager Legal Services, ATSB – Legal Advice (Internal)
<i>Adviser</i>	John Taylor, Principal Lawyer, Legal Services ATSB – Legal and Procurement Policy Advice (Internal)
<i>Adviser</i>	Andrew Sherrell, Sherrell Offshore Services LLC – Technical Advice - Ocean Engineering services
<i>Adviser</i>	Jason McGuire, Project Manager, Operational Search for MH370 – Financial Adviser
<i>Adviser</i>	Analytics Group – Financial Viability Advice
<i>Adviser</i>	Drew Coulter, Senior Operations Officer, Marine Environment Salvage and Intervention, , Australian Maritime Safety Authority (AMSA) – Risk and Insurance Advice

4. Integrity of the Process

4.1. Conflict of Interest & Confidentiality

The TET members have indicated in the Evaluation Plan that they have identified no conflict of interest with regard to any part of this tender.

Note that those involved in this tender have identified a potential perceived conflict of interest as the ATSB currently has a bathymetric survey contract with one of the Tenderers (Fugro Survey Pty Ltd). The two procurement processes are separate, with the bathymetric survey contract managed according to its contract provisions. The tender process is managed separately, balanced by a range of members on the TET.

Ensuring that probity standards were met in this tendering process was the responsibility of all TET members, ATSB staff and external advisers. The broad objectives of the probity process were to:

- Ensure conformity to processes that are designed to achieve best value for money
- Improve accountability
- Encourage commercial competition on the basis that all Tenders will be assessed against the same criteria
- Preserve public and Tenderer confidence in government processes
- Improve defensibility of decisions to potential administrative and legal challenge.

All documents were strictly handled in a manner consistent with the TEP to ensure security and confidentiality.

All external advisers involved in the evaluation process complied with the TEP and completed Deeds of Confidentiality and Conflict of Interest declarations.

An addendum to the TEP included the following amendments:

- Section 4.2: The TET Chair determined that due to availability, Mr Andrew Sherrell would provide technical advice instead of participating as a TET member, replaced by Mr Stephen Curry, A/General Manager Surface Safety Investigations
- Section 4.3.2: The TET determined that assessment did not need to be undertaken 'blind' and advisers could be aware of the identity of each Tenderer
- Annex A Point 1: The TET clarified that all reference to price should be removed from tender documentation before assessment of technical capability is undertaken. Price was considered by the TET after assessment of technical capability
- Section 4.3.3: The addition of Analytics Group and Mr Drew Coulter as Advisers to the TET.

5. Request for Tender process

5.1. Invitation to Tenderers

Open tenders were invited through AusTender only, which is the online tendering system for Australian Government Agencies. The tender was advertised on the AusTender website on 4 June 2014 with a closing date and time of 30 June 2014 at 1730 Australian Eastern Standard Time (AEST).

5.2. Issue of RFT document and Addendum

A total of 59 queries were received during the RFT open period from 4 to 30 June 2014.

Of these;

- 13 were unrelated to the tender (inbox tests, SPAM, theories and opinions)
- Nine were Media related
- Six provided unsolicited offers for tender related services (one of which submitted an AusTender response, and another was treated as a late tender)
- Seven were direct communications from AusTender
- 24 were tender queries.

The issues raised in the tender queries included:

- requests for extension for submission, that were refused by the ATSB,
- identification of an error in the RFT Attachment 3 KPI pricing model, that was subsequently rectified by the ATSB in an Addendum,
- requests for the facilitation of consortia via the provision of lists of potential prime contractors, that were refused by the ATSB due to privacy issues, commercial confidentiality, and maintaining probity in the tender process,
- requests for confirmation of tender validity following the media release of the award of the bathymetric survey contract,
- technical AusTender queries that were subsequently referred on to the AusTender Help Desk,
- requests for clarification of the RFT Statement of Work, Pricing and contract clauses, responded to as appropriate,
- identification of an error in the RFT Attachment 4 Price Model B section 10.1, that was subsequently rectified by the ATSB in an Addendum,
- a request regarding the availability of weather data for the search area, that was referred to the Bureau of Meteorology website, and
- a request to use internal document links to navigate within the tender submission that was agreed to by the ATSB as per the RFT guidelines.

Three Addenda to the Request for Tender were issued as follows:

- Addendum 1: Rectification of an error identified with the RFT Attachment 3 KPI pricing model,

-
- Addendum 2: Rectification of an error identified with the RFT Attachment 4 Price Model B section 10.1, and
 - Addendum 3: Release of the defined Search Area Map.

5.3. Tender Registration

The Tender Closing Time was 1730 AEST, on 30 June 2014. The Electronic Tender box was opened after this time by the Project Manager, Mr Jason McGuire, in the presence of registered witnesses within the AusTender system. The witnesses being Ms Jane Childs – ATSB Chief Financial Officer and Mr Angelo Santosuosso - ATSB Business Support Services.

Ten submissions were downloaded and logged in a submission summary (Attachment A). Original submissions were saved to a folder restricted to Authorised Points of Contact on the ATSB Y: Drive. Each submission was separated into a technical capability response saved to a restricted folder on the ATSB Y: Drive, and a price response saved to a further restricted folder on the ATSB Y: Drive. Copies of all submissions (excluding price) were provided to TET members on password protected USB Flash Drives, except for TET member, Ms Jocelyn Parsons who was travelling. Technical capability responses were encrypted and provided to Ms Parsons using the Trueshare system, a protected internet access point accessed through a password protected portal. Once Ms Parsons had successfully downloaded the technical capability responses, the information was removed from the Trueshare site by ATSB Information Technology staff. Price responses were provided to TET members after technical assessments were complete. Submissions were provided to advisers as necessary to provide requested advice according to the TEP section 4.3.2.

5.4. Responses Received

Valid Tenders were received from the following Tenderers:

- Bibby Offshore Australia Pty Ltd
- Calecore Ltd
- Deep Ocean (Australia) Pty Ltd
- Fugro Survey Pty Ltd
- Morgan Marine Pty Ltd
- Optek Australasia
- Phoenix International Holdings, Inc
- SC Projects Pty Ltd
- Svitzer Salvage Australasia Pty Ltd
- Theo Shipping Limited

A further Tender was received late via email from the following Tenderer:

- Westsea Marine Pty Ltd

The Tenders and associated correspondence are available for your reference if required.

STAGE 2 – SCREENING AND COMPLIANCE

6. Compliance and exclusion

6.1. Compliance with RFT requirements

An initial screening of Tenders against the Minimum Content and Format Requirements was completed by the Program Director and the Project Manager on 1 July 2014 and only the Tenders that met those requirements were admitted to undergo detailed evaluation against the evaluation criteria (Attachment C). Tenders that failed to meet any of these requirements were excluded in accordance with section 5.2.3 of the RFT.

The following tenders were excluded under 5.2.3:

- Westsea Marine Pty Ltd submitted a Tender after the closing time at 1810 AEST by email to opsearch@atsb.gov.au instead of the required submission via AusTender.

Section 5.2.4 of the RFT allowed the ATSB to exclude from further consideration tenders which did not meet other requirements. The following tenders were excluded under section 5.2.4:

- Optek Australasia submitted an incomplete Tender, with no statement of work against the RFT Statement of Requirements, and
- Theo Shipping Limited submitted an incomplete Tender, with no statement of work against the RFT Statement of Requirements.

The decision to exclude these Tenders was referred to and assessed by the Probity Adviser who provided advice that this decision was consistent with the requirements of the RFT.

The following Tenders were shortlisted for assessment:

- Bibby Offshore Australia Pty Ltd
- Deep Ocean (Australia) Pty Ltd
- Fugro Survey Pty Ltd
- Morgan Marine Pty Ltd
- Phoenix International Holdings, Inc
- SC Projects Pty Ltd
- Svitzer Salvage Australasia Pty Ltd

A further Tender submitted by Calecore Ltd was initially set aside by the Program Director and agreed by the TET at its initial Tender Evaluation meeting on 2 July 2014, as the proposed solution did not meet the Key Performance Indicators. The decision to set this Tender aside was also referred to and assessed by the Probity Adviser. As other proposed solutions were also found to not meet the Key Performance Indicators, this Tender was then assessed for technical merit as per the other Tenders listed above.

6.2. Unintentional Errors

One Tender was identified as containing an unintentional error in form. This Tender was dealt with in accordance with section 5.2.2 of the RFT and 2.10 of the TEP. An email was sent to Morgan Marine Pty Ltd to clarify which of the two similar documents submitted:

Morgan Marine Statement of Work, and Morgan Marine Statement of Work – Issued for Release; was the correct document to evaluate.

STAGE 3 – DETAILED TECHNICAL ASSESSMENT

7. Technical Requirements

7.1. Technical Requirements

Each member of the TET assessed each tender shortlisted for assessment and conducted an objective analysis as indicated in the table below. The scoring scale at Attachment C was used to score each tender in relation to how well it satisfied each of the Technical Requirements and total scores for each tender were recorded in a Tender Evaluation Tool.

Technical Capability
Technical capability was assessed against the Statement of Requirements. For each of the requirements the TET, in accordance with the TEP, assessed each tender using the Evaluation Criteria Scoring in Attachment C. Each member of the TET considered all relevant information for each Requirement and conducted an objective analysis against each criteria score. In assessing the relevant score, TET members assessed the extent to which the services offered met the requirements as set out in the Statement of Requirements. Individual assessments by each TET member were discussed and moderated by the TET as a whole to determine an aggregated technical score for each tender submission. This process ensured that each requirement of the RFT Statement of Requirements for each tender submission was assessed to moderate scoring by each TET member. The aggregated scoring for each assessed tenderer is included at Attachment D.

Detailed assessments of Technical Capability for each Tenderer are included at Attachment E.

A summary of the technical assessments for each tenderer compared by the Statement of Requirement Descriptors stated in the RFT is as follows:

Requirement	Critical	Most Important	Highly Desirable	Desirable	Undefined	Technical Score
Tenderer						
[REDACTED]	80	71	24	1	13	189
[REDACTED]	78	76	29	7	19	209
[REDACTED]	76	72	27	5	16	196
Fugro Survey Pty Ltd	145	126	38	6	21	336
[REDACTED]	100	105	31	9	15	260
Phoenix International Holdings, Inc	142	121	40	6	21	330
[REDACTED]	57	62	24	1	14	158
Svitzer Salvage Australasia Pty Ltd	126	119	41	6	20	312

The RFT Statement of Requirements also contained requirements which were assessed as either compliant or non-compliant. These requirements were not rated numerically as part of the technical score, but were assessed for technical risk as part of the risk assessment. Non-compliances are noted as follows:

- [REDACTED] were non-compliant on one Critical requirement and non-compliant on three Most Important requirements
- [REDACTED] were non-compliant on two Critical requirements and non-compliant on one Highly Desirable requirement
- [REDACTED] were non-compliant on two Most Important requirements and non-compliant on two Highly Desirable requirements
- Phoenix International Holdings, Inc were non-compliant on one Most Important requirement
- [REDACTED] and Svitzer Salvage Australasia Pty Ltd were non-compliant on one Highly Desirable requirement.

Fugro Survey Pty Ltd were compliant on all requirements.

The results of the assessments are ranked at part 7.4 to this TER.

7.2. Clarification Questions

Clarification questions related to technical capability and potential conflicts of interest were raised by the TET during assessments and directed by email to Tenderers as per the TEP section 4.10.3.

The TET determined that there was no requirement to conduct interviews for shortlisted Tenderers.

7.3. Referee Checks

The TET consulted with referees to confirm experience, competence and capability of each shortlisted tenderer - where the results of this consultation affected the scores determined during the previous step, the scores were reconsidered and adjusted accordingly.

An agreed list of referee questions and the outcomes are attached at Attachment F.

7.4. Ranking

The results of this evaluation, with assessed Tenderers ranked in order of their technical capability score, are as follows:

Rank	Tenderer	Technical Score	Technical Merit
1	Fugro Survey Pty Ltd	336	Shortlisted
2	Phoenix International Holdings, Inc	330	Shortlisted
3	Svitzer Salvage Australasia Pty Ltd	312	Shortlisted
4	[REDACTED]	260	Non-Preferred
5	[REDACTED]	209	Non-Preferred
6	[REDACTED]	196	Non-Preferred
7	[REDACTED]	190	Non-Preferred
8	[REDACTED]	158	Non-Preferred

Each member of the TET was afforded the opportunity to review each tender response received and independently documented the evaluation which has been placed on file for future reference.

STAGE 4 – EVALUATION OF TENDERED PRICE AND RISK

8. Pricing

The TET undertook an assessment of the pricing schedules for services submitted and considered tendered rates and other pricing, including total cost to the ATSB. Tenderers were expected to complete the pricing schedule for the RFT to inform the TET evaluation of this criteria.

The TET factored risk into the value for money assessment of tenders and the TET made an assessment of the level of risk associated with a Tenderer's offer.

In assessing risk the TET had regard to the Risk Assessment and Management Plan (Annex C TEP) and the ATSB's Risk Management Guidelines for the purpose of any additional risk assessments that were undertaken.

The TET took into account reports from advisers to the TET in assessing risks from each tender.

The TET determined a ranking of service providers based on pricing, having regard to the services offered.

8.1. Ranking after Pricing Consideration

Prices were examined with the aim of identifying the total actual or estimated tender price over the term of the contract on a whole-of-life basis and to ensure that all tenders are assessed on a common financial basis. The GST exclusive prices offered were used in the value for money assessment. However, the GST inclusive prices are also included in the tables below.

The results of this evaluation, with shortlisted Tenderers ranked in order of the maximum tendered price exclusive of GST, are as follows:

Rank	Tenderer	Total Price (\$AUD) Model A (Ex. GST)	Total Price (\$AUD) Model B (Ex. GST)
1	Fugro Survey Pty Ltd	[REDACTED]	[REDACTED]
2	Svitzer Salvage Australasia Pty Ltd	[REDACTED]	[REDACTED]
3	Phoenix International Holdings, Inc	[REDACTED]	[REDACTED]

[REDACTED]

The results of this evaluation, with non-preferred Tenderers ranked in order of maximum tendered price exclusive of GST, are as follows:

Rank	Tenderer	Total Price (\$AUD) Model A (Ex. GST)	Total Price (\$AUD) Model B (Ex. GST)
4	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]

The results of this evaluation, with shortlisted Tenderers ranked in order of the maximum tendered price inclusive of GST, are as follows:

Rank	Tenderer	Total Price (\$AUD) Model A (Inc. GST)	Total Price (\$AUD) Model B (Inc. GST)
1	Fugro Survey Pty Ltd	[REDACTED]	[REDACTED]
2	Svitzer Salvage Australasia Pty Ltd	[REDACTED]	[REDACTED]
3	Phoenix International Holdings, Inc	[REDACTED]	[REDACTED]

The results of this evaluation, with non-preferred Tenderers ranked in order of the maximum tendered price inclusive of GST, are as follows:

Rank	Tenderer	Total Price (\$AUD) Model A (Inc. GST)	Total Price (\$AUD) Model B (Inc. GST)
4	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

A summary of price for each Tenderer is included at Attachment G.

9. Risk

9.1. Risk Assessment

The TET assessed any risks to each Tender. Matters that were assessed were:

- the Tenderer's financial viability,
- any actual or perceived conflict of interest,
- level of compliance with the RFT (including the Draft Contract),
- adequacy of insurance proposed by the Tenderer,
- compliance with the proposed KPIs provided within the RFT (to be further developed as part of the negotiation phase), and
- matters related to the above, for nominated Personnel/Subcontractors.


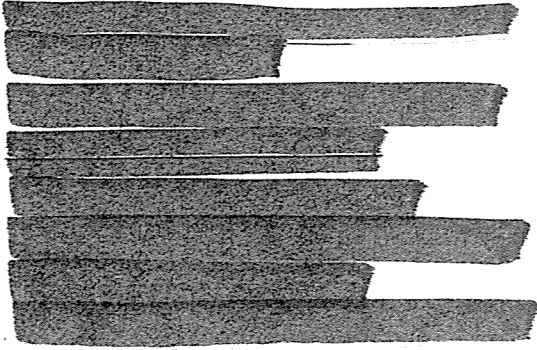
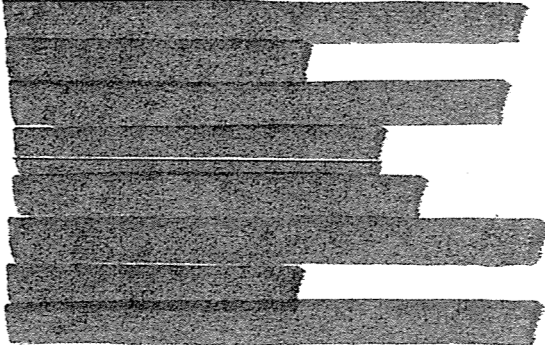
A risk assessment and treatment plan was completed for each of the shortlisted Tenderers in accordance with Annex A of the TEP and a risk profile created for each Tenderer. Any potential risks were identified and options for managing those risks where necessary were clearly outlined.

Assessments of risk for each shortlisted Tenderer are attached at Annex H.

The level of compliance with the Draft Contract and any requests for changes to the terms and conditions were considered as part of the risk assessment.

Minter Ellison Lawyers assessed the legal compliance risks of each Tenderer identified below:

Tenderers who responded as being fully compliant with the Draft Contract	[REDACTED]
Number of legal issues with a preliminary risk rating of Medium-High and High ⁴	[REDACTED]
Number of KPI non-compliances	[REDACTED]
Licensing requirements provided as per RFT?	[REDACTED]

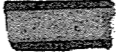


	
Certification documents provided as per RFT?	
Insurance details provided as per RFT?	



9.2. Financial Viability Checks

The ATSB engaged Analytics Group to conduct Financial Viability Checks of the shortlisted Tenderers.

The results of these checks with shortlisted Tenderers are as follows:

Tenderer	Viability Rating
Fugro Survey Pty Ltd	
Svitzer Salvage Australasia Pty Ltd	
Phoenix International Holdings, Inc	

A draft assessment of financial viability is at Attachment I.

10. Evaluation Results

10.1. Individual TET's Evaluation Results

The individual results of each TET member were reviewed to identify and resolve any apparent inconsistencies or uncertainties that may have arisen during the evaluation.

10.2. Final Rank

Following a consultation process by the TET (above), relevant technical and pricing scores were combined to formulate the best Value for Money (VFM) tender responses, taking into account relevant qualitative and quantitative requirements, and any identified risk factors identified at 9.1 above.

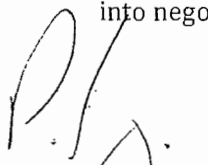
The table below details the final ranking of assessed Tenderers on the basis of best VFM:

Rank	Tenderer	Value for Money Rating
1	Fugro Survey Pty Ltd	Preferred
2	Svitzer Salvage Australasia Pty Ltd	Technically suitable but not preferred
3	Phoenix International Holdings, Inc	Technically suitable but not preferred

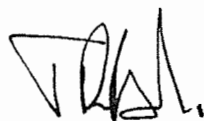
11. Recommendation

The TET recommends that:

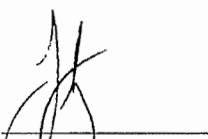
- Fugro Survey Pty Ltd be selected as the successful Tenderer for the provision of services relating to the search for Malaysia Airlines Flight 370;
- The TET enter into contract negotiation with Fugro Survey Pty Ltd; and
- If contract negotiations are not successful with Fugro Survey Pty Ltd, the TET consider entering into negotiations with one (or more) of the other shortlisted Tenderers.



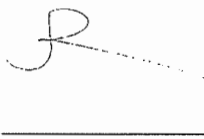
Peter Foley
Program Director, - **Chair**
Operational Search for MH370, ATSB
25 July 2014



Julian Walsh
General Manager,
Strategic Capability, ATSB
25 July 2014



Stephen Curry
A/General Manager,
Surface Safety Investigations, ATSB
25 July 2014



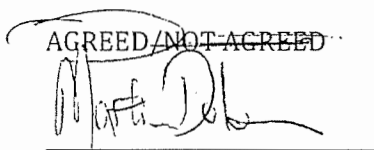
Jocelyn Parsons
Manager,
Marine Environment Salvage and Intervention, AMSA
25 July 2014



John Pugh
Contracts Manager, Geoscience Australia
25 July 2014

Delegates Decision

AGREED/NOT AGREED



Martin Dolan
ATSB Chief Commissioner
25 July 2014

Attachment C – Tender Evaluation Scoresheet

Scored Criteria		
Score	Descriptor	Description
10	Superior	Tender is highly convincing and credible. Tender demonstrates superior capability, capacity, relevant experience or understanding of the requirements of the evaluation criteria. Comprehensively documented with all claims fully substantiated. Full achievement of the requirements specified in the RFT for that criterion to a superior level. Demonstrated strengths, no errors, weaknesses or omissions.
9	Outstanding	Tender is highly convincing and credible. Tender demonstrates outstanding capability, capacity, relevant experience or understanding of the requirements of the evaluation criteria. Documentation provides complete details. All claims adequately substantiated and demonstrated. Sound achievement of the requirements specified in the RFT for that evaluation criteria. Demonstrated strengths, no errors, weaknesses or omissions.
8	Excellent	Tender complies, is convincing and credible. Tender demonstrates excellent capability, capacity, relevant experience or understanding of the requirements of the evaluation criterion. Sound achievement of the requirements specified in the RFT for that evaluation criteria. Some minor lack of substantiation, but the tenderer's overall claims are supported. Sound achievement of the requirements specified in the RFT for that evaluation criterion. Some minor errors, risks, weaknesses or omissions, which are acceptable as offered.
7	Very Good	Tender complies, is convincing and credible. Tender demonstrates very good capability, capacity, relevant experience or understanding of the requirements of the evaluation criterion. Sound achievement of the requirements specified in the RFT for that evaluation criterion. Some errors, risks, weaknesses or omissions, which are acceptable as offered.
6	Adequate	Tender complies and is credible but not completely convincing. Tender demonstrates adequate capability, capacity, relevant experience or understanding of the requirements of the evaluation criterion. Reasonable achievement of the requirements specified in the RFT for that evaluation criterion. Some errors, risks, weaknesses or omissions, which can be corrected/overcome with minimum effort.

Scored Criteria		
Score	Descriptor	Description
5	Marginal	Tender has minor omissions. Credible, but barely convincing. Tender demonstrates only marginal capability, capacity, relevant experience or understanding of the requirements of the evaluation criteria. Minimal achievement of the requirements specified in the RFT for that evaluation criterion. Some errors, risks, weaknesses or omissions, which are possible to correct/overcome and make acceptable.
4	Limited	Tender is barely convincing. Tender has shortcomings and deficiencies in demonstrating the tenderer's capability, capacity, relevant experience or understanding of the requirements of the evaluation criterion. Tender weaknesses or omissions are difficult to correct/overcome and make acceptable.
3	Poor	Tender is unconvincing. Tender has significant flaws in demonstrating the tenderer's capability, capacity, relevant experience or understanding of the requirements of the evaluation criterion. Tenderer's weaknesses or omissions are likely to be difficult to correct/overcome and make acceptable.
2	Very Poor	Tender is unconvincing. Tender is significantly flawed and fundamental details are lacking. Minimal information has been provided to demonstrate the tenderer's capability, capacity, relevant experience or understanding of the requirements of the evaluation criterion. Tender weaknesses or omissions are difficult to correct/overcome and make acceptable
1	Inadequate	Tender is totally unconvincing and the requirements have not been met. Tender has inadequate information to demonstrate the tenderers capability, capacity, relevant experience or understanding of the requirements of the evaluation criterion. Tender weaknesses or omissions cannot be corrected or overcome to be made acceptable
0	Unacceptable	Tender is totally deficient for that evaluation criterion.

Attachment E – Technical Capability Assessment for assessed Tenderers

Non-Compliant Tenders

[REDACTED]

[REDACTED]

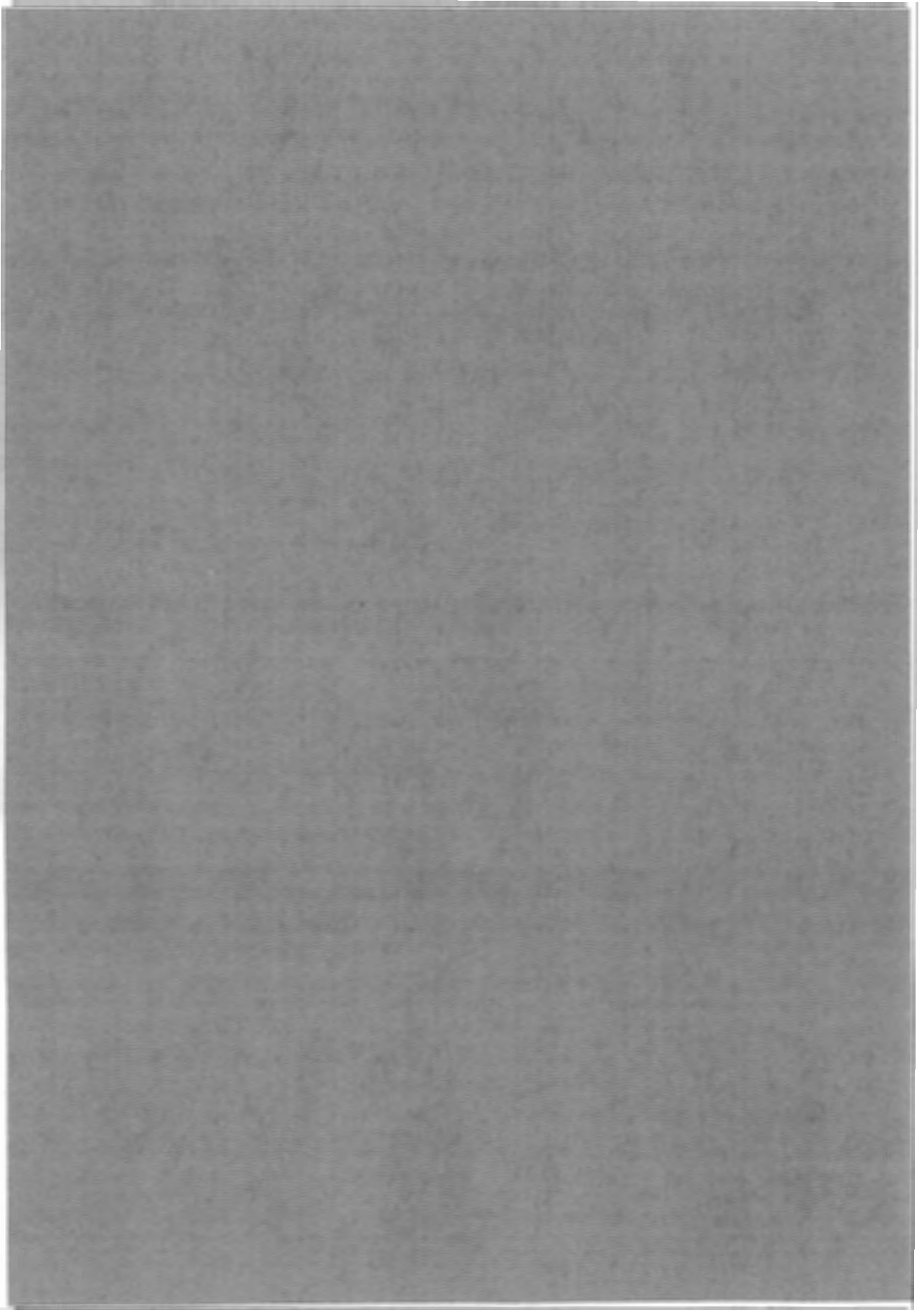
[REDACTED]

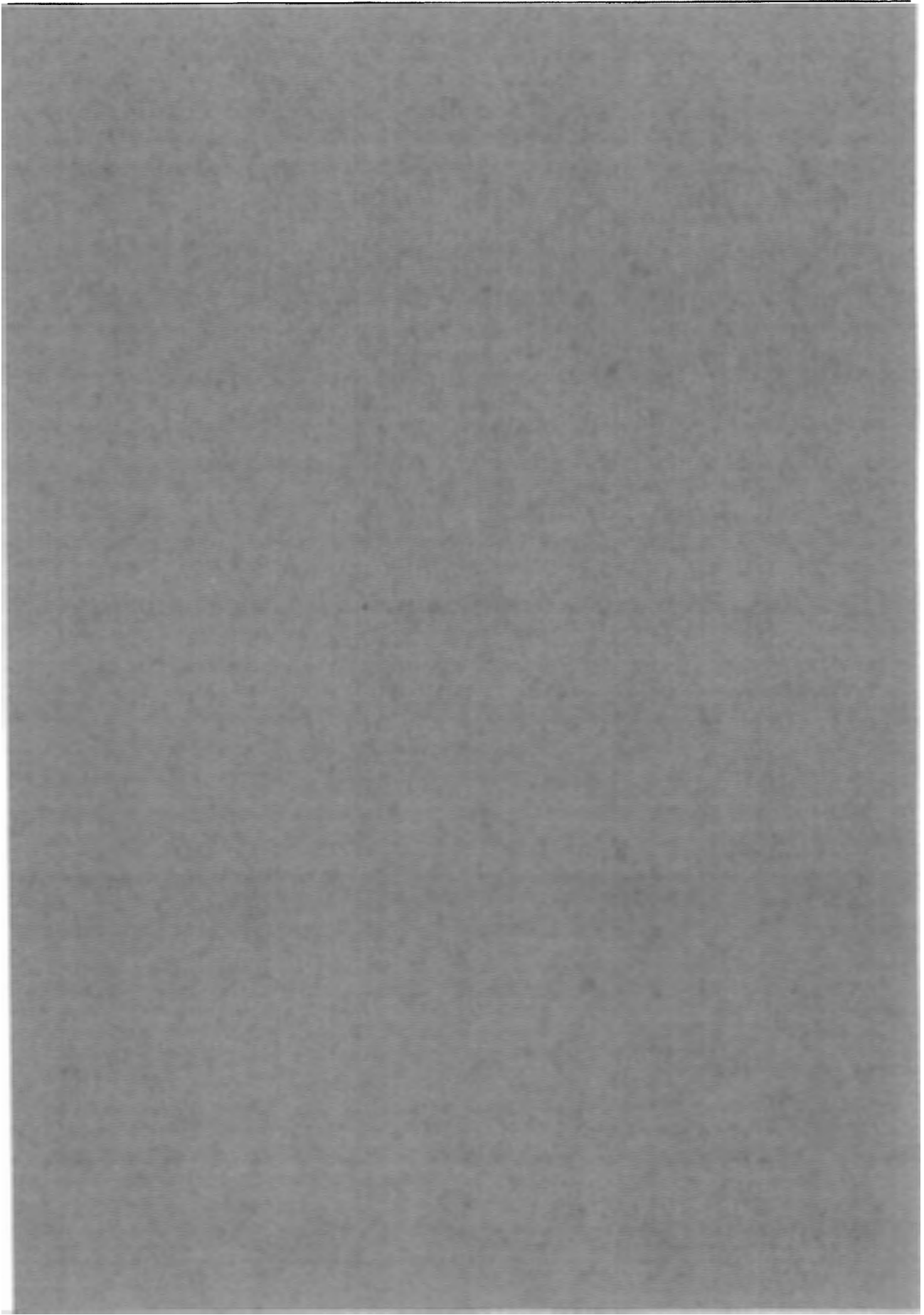
[REDACTED]

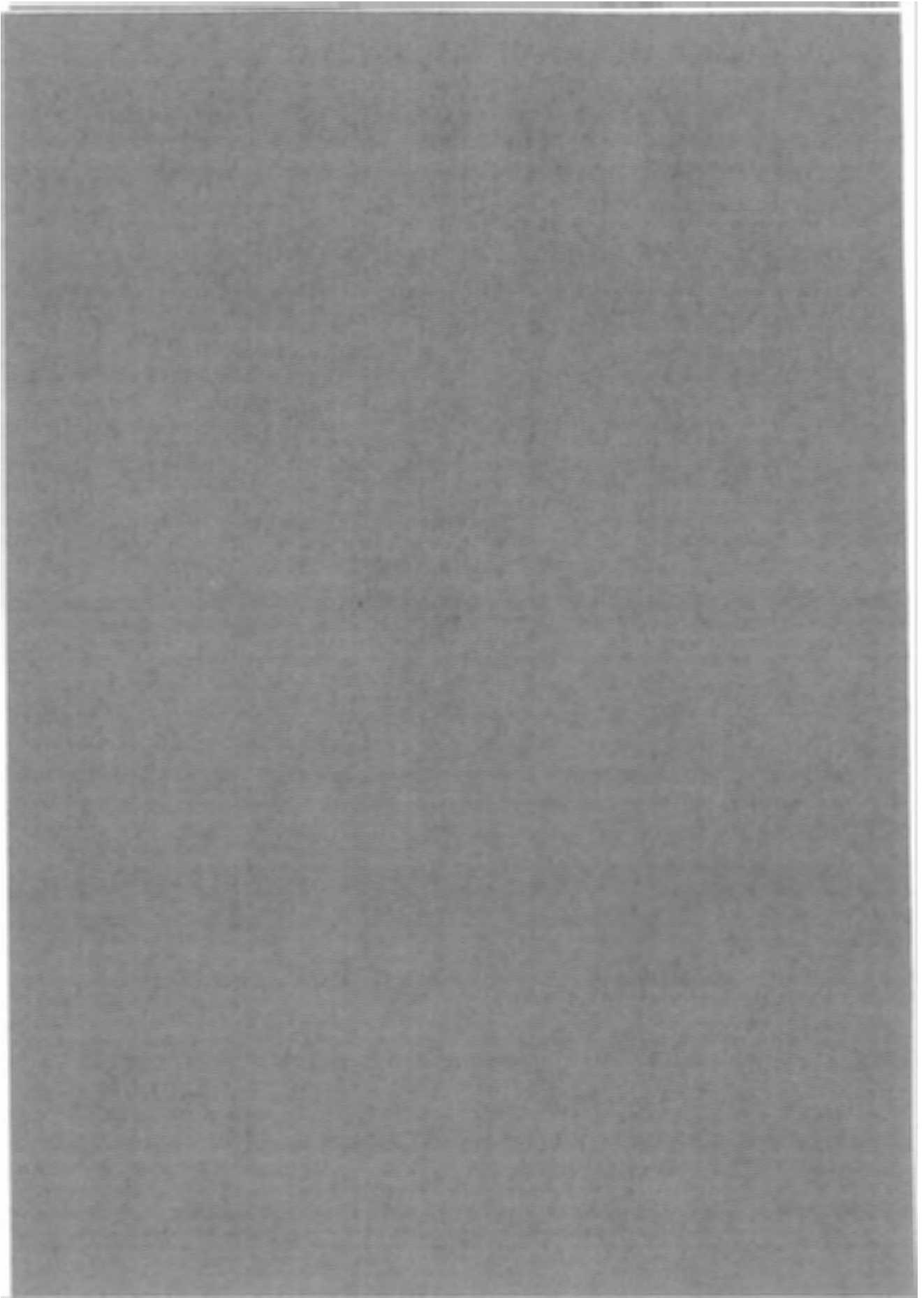
Non-Preferred Tenders

[REDACTED]

[REDACTED]







Shortlisted Tenders

Fugro Survey Pty Ltd (Fugro)

Tender documentation provided was comprehensive and well structured. All information relevant to particular requirements was easily found with relevant links to appendices. Overall, the TET assessed Fugro's tender as at least adequate on every single requirement.

The tender documentation contained a very good understanding of the purpose of the project. Experience and referees were adequate with a very good management structure proposed for the project.

The explanation of the method for covering the search area and the assets proposed were adequate as were the assets for identifying debris field. The asset coordination plan and debris field mapping solution proposed was very good and the data transfer solution was excellent. The test proposed for the search system was very good. Subcontractors proposed for mapping only were adequate (WHOI for REMUS).

The proposed search vessels were excellent with a very good description of their capabilities in weather based on extensive analysis with very good mobilisation of equipment and accommodation. All relevant certification was provided.

The tender contained a very good description of SSS capabilities, resolution, identification, imaging and mapping all 6000 m rated. The description of data processing, analysis and security was also very good. There was an excellent description of search data deliverables, transfer of data and security. Adequate ability to communicate in the English language.

The mobilisation plan, risk plan, quality plan, communications plan and fatigue plan were all rated adequate with very good contract management and WHS plans. The only business conflict is with the ATSB's current bathymetry contract. Very good address to the area coverage KPI and the proposed reports were rated excellent.

TET Technical Adviser:

Vessel(s) offered: M/V FUGRO Searcher (estimated operating onsite Sep 11th), M/V FUGRO Equator (estimated operating onsite Oct 7th). Optional third vessel.

Equipment offered: Edgetech 75/410kHz SSS, 1.5 km swath, EM2040MB Nadir coverage, HD camera (on one), 10 km F/O Cable, similar system option for the third vessel.

Shore based spares: One spare vehicle, one spare winch/cable, one new vehicle to be built upon award.

1.6km Swath, 2.5kts, 3hr turns per day, 20% overlap = 123.5 km²/day 40 day rotation, 10% downtime/weather, 5000 km² per 22.6 days (271 days for 60,000 km² – 2 vessels). If 3 vessels are employed ~345km² could be achieved.

IXSEA USBL limited to 8k tracking, recommend and upgrading to HiPAP101 for 10 km tracking. Both vessels have hull mounted MBES/SBP collected and provided at no extra cost. Spooling cable on winch in Singapore (new – 2 new cables already ordered). HD Still camera and LED lighting mounted on one of the Tow fish. WHOI-MISO Tow cam will be available on one vessel. 14 day call out for REMUS 6000 AUV (pre-shipment and purchase of battery modules).

Comments: Fugro feels that a deep towed system is the best equipment option based on requirements. Data processing and command center at Perth office. Last noted deep tow operations was 2008 for DT1 and 2007 for DT2. Winch selected from Scripps has 100m/min cable rate (many are only 30-40m/min) – this is good for obstacle avoidance (not clear if this is on both ships or just one).

Some of the wording regarding effective range scales gives a perception of low practical equipment experience. (“recommended by manufacturer” versus based on “past experience”) Survey work is a large part of Fugro’s business however based on their list of operations most if not all has moved from towed systems to AUV systems and surface ship mapping since 2008.

Towed camera sleds are inherently difficult to use to locate and identify small areas of interest because of the passive positioning done in deep water on a long cable. Larger debris fields like we anticipate finding will be easier to identify as the camera has a better chance to cross a larger field. However these systems prove to be difficult to consistently run a line pattern needed for a photomosaic – where line spacing would be on the order of 2-3 m. Hence they are offering mobilizing an AUV for the final photomosaic and mapping phase. (seems like costly and an lengthy process for a photomosaic once the debris have been located – however this is only an option they offer and it not part of the wide area search)

Conclusion: Fugro has long standing track record in surveying and using the different tools available, SAS, AUV, towed, and ROV. The systems they offer and operational plan are sound and meet the requirements set forth in the tender. Their plan for covering the Nadir gap and tracking the tow fish show their experience and willingness to provide as complete a coverage as possible with a balanced tracking system. The tow camera is not ideal for target investigation or positive identification but will accomplish the task. Towed systems will cover the area but will undoubtedly leave some larger gaps or holidays in the overall coverage, this will be a trade-off for the coverage rate needed. Fugro also has AUV resources should this prove to be a needed tool for some areas of the search. Recommend this be discussed as an option if contract with Fugro is awarded.

On technical merit, with a score of 336, the TET assessed this tender as *preferred*.

Phoenix International Holdings, Inc (Phoenix)

Tender documentation provided was comprehensive and well structured. All information relevant to particular requirements was easily found with relevant links to appendices. Overall, the TET assessed that Phoenix’s tender rated adequate or better on every requirement except the provision of MLC certification for some proposed vessels.

The tender included an excellent understanding of the purpose of the project, very good references and excellent experience in this type of work, the best of all the tenders.

Mobilisation was rated adequate, excellent Statement of Work (SOW) and assets for searching, identifying, imaging and mapping. Very good description of the project organisation, and adequate method proposed for data transfer. Very good test proposed for the methodology. Overall the most comprehensive tender for search/mapping assets.

There was a very good organisation proposed for service delivery and subcontractors. The vessel description and mobilisation of assets were very good with an adequate description of vessel capability and accommodation. Vessels compliant with all certification except MLC not provided.

Search mapping and imaging equipment proposed was excellent all 6000 m rated (except Bluefin 21). SAS systems proposed for wide area search, AUVs and ROVs for identification, imaging and mapping. Bluefin coverage may be overstated and SAS systems have limited time on any task so only risk is the reliability of these systems for this project.

Data processing on board and security was rated very good, with an adequate specification of search data deliverable against SOR. Communications were rated adequate with no real time transfer just raw data transfer in port. Project staff with adequate English.

The mobilisation plan, risk plan, quality plan and communications plans were all very good. The project management plan, WHS plan and fatigue plan were rated adequate

Phoenix declared a business conflict as they are offering two vessels to Malaysia as GFE. Very good address of coverage of KPI and daily, weekly and monthly reports proposed were very good with an adequate final report.

TET Technical Adviser:

Vessel(s) offered: M/V John Lethbridge – DT-6000 SAS, MAK#1, MAK#2, 6000m ROV (Comanche) – On site September 24. M/V Deep Sea 1 – Bluefin 21, REMUS – On site Aug 25th, and then Oct 21st respectively. M/V GO Phoenix – ProSAS, 6000m ROV (Remora 3) On site Sep 1st.

Equipment offered: 2 SAS systems, 2000 m swath and 1500 m swath (141 km², 116 km² per day). 2 Spare SSS systems, 30kHz, 1500m swath (only on one of the vessels). All 3 assets - estimated 325 km²/day (20% overlap, 8-10hr turns, +25km²/day for weather allowance). 24 operational days, 6 days transit, 2 day turn around. Only using one AUV, second is a backup system (REMUS – 117 km²/day, Bluefin 21 – 115 km²/day).

Comments: Comprehensive collection of assets for search and identification. PM and APM at ATSB office full time for coordination and coverage analysis. APM in Perth fulltime for vessel management. 184 survey days needed for 60,000 km²

*“Artemis spent 370 hours underwater while scanning over 850 km² of seafloor” MH370 Phase 1. Based on last operation 850 km² in 370 hrs = 2.3 km²/hr * 20hrs = 46 km² per day*

MAK-iX SSS since 2010 ~1200 days, ~43,000 km² surveyed.

Conclusion: Phoenix's primary business is search and salvage of items at sea. They have long list of operational work history and past performance regarding this type of operation. Their proposal of three ships with deep tow systems, AUVs, and ROVs gives them the flexibility to cover different seafloor terrain using different technologies is well rounded and provides a comprehensive approach. Some risk is associated with the proven performance of the SAS systems but Phoenix has mitigated this with one (kind of two) spare traditional sonar systems. (Phoenix does not know if the spare sonar can be used on ProSAS vessel) AUVs provide another resource for acquiring data in more difficult terrain as well as the capability to optically image a larger area efficiently. However Phoenix only lists one AUV as being used while the second AUV is a backup. This is an inherently expensive as the ship is not being productive for a large amount of time while to AUV is working. Having 2-3 AUVs operating simultaneously is the most productive and efficient use of ship time and personnel. Having ROVs on board are great tools for contact investigation and creating photo mosaics, however it is greatly dependent on positioning and is not as efficient as an AUV for either task. ROVs do provide the ability for deep tow or AUV vehicle recovery in the case that one is lost.

Based on SAS systems being a relatively new technology, having a proven back up system lowers risk considerably. However at this time Phoenix only confirms one SAS system has a backup. In addition only utilizing one AUV on-board a vessel is not an efficient use of resources or ship time. While the overall solutions seems all encompassing it does hold some risk and expected high cost for minimal coverage rates on the AUV vessel.

On technical merit, with a score of 330, the TET assessed this tender as *preferred*.

Svitzer Salvage Australasia Pty Ltd (Svitzer)

Tender documentation provided was comprehensive but not as well structured as either the Fugro or Phoenix tenders. All information relevant to particular requirements was found with a little effort. Overall there were 2 critical requirements where the TET scored Svitzer's tender less than 5 these were for the data management plan and search data deliverables. The tender was rated adequate or better on everything else except non-compliant on SPS certification for the vessels proposed.

The tender included a very good understanding of the purpose of the project. The tenderers previous experience was very good with adequate referees provided.

Mobilisation was adequate as was the mapping proposal and data transfer. A very good method was proposed for searching, coverage and identification and imaging the debris field. The test proposed to demonstrate the methodology was very good.

The proposed organisation and subcontractors were very good. Very good vessels, a detailed weather analysis and equipment mobilisation with deck plans and the provision of adequate accommodation. Vessel certification was compliant but no SPS certs.

The proposed wide area search assets and coverage method description was very good. Very good 2 m resolution description and imaging weather capability. All search assets 6000 m rated. There was a marginal description of data processing on board, limited description of data plan and deliverables against SOR. Adequate security for data with very good communications facilities and data transfer proposed. Project staff with adequate English.

The mobilisation plan, risk plan, quality plan and communications plans were all very good. The contract management plan, WHS plan and fatigue plans were all adequate. Svitzer declared no business conflicts. The proposal can meet the area coverage KPI. All reports proposed were rated very good.

TET Technical Adviser:

Vessel(s) offered: 2 S-Type 82 m Anchor Handling Vessels (Maersk)

*Equipment offered: OE6000 33/36/120 Deep tow – max 5 k swath, WA27/30/120 Deep tow – max 6k swath. Use 4km swath for calculations, but recommend larger swaths to detect debris field allowing for larger coverage rates. OE – 1.8 kts - 3800m (200 m overlap) L/S – 120 khz SSS Nadir fill. WA – 2kts - 1700m (300 m overlap) run 2/3 of lines – 167% overlap to cover Nadir. Coverage/day = OE + WA = $163 \text{ km}^2 + 158 \text{ km}^2 = 321 \text{ km}^2$. Accounts for 8 hr turns, 4hr/day (15%) maintenance, minimal 10%-15%-167% overlap. For $60,000 \text{ km}^2 = 187 \text{ days} * 25\% \text{ weather days} = 234 \text{ days}$. Max swath setting for each system = $429 \text{ km}^2/\text{day}$ (140 days). Tracking - USBL system to check tow fish position (OE not stated type, WA-Ranger2). WA Spares: WA-60 Sonar (2.5 km swath), Spare winch with new 10 km cable, order 1 more upon award. OE order new 10 km cable upon award. Magellan 725 ROV and spare Discover ROV (using same crane/hpu as SSS, up to 12 hrs switch over each time)*

Comments: Over the two search methods WA (167% overlap) approach is more desirable in this terrain, OE nadir fill not 100% proven. Willing to take on additional vendors/contractor. Equipment not used a lot, last op 2011(WA) and 2007(OE).

Conclusion: Oceaneering and Williamson have been involved with deep water search and salvage projects since the mid 80s. Both deep tow systems are older but have a proven track record for deep water operations. Equipment maintenance, specifically deck machinery, is a risk but is true for all deep tow systems being offered. This was the only proposal with 4 hrs of maintenance time, 8 hrs for turns, and a 25% weather window included in the coverage calculations. Which makes their coverage calculations more conservative and likely more accurate. Williamson has a spare tow fish, winch, and both are planning on getting spare cable. OE has an ROV with a full spare ROV on the vessel. Some uncertainty with how well their tracking will work but this can be upgraded or overcome by operational practices and mosaicking adjacent lines.

On technical merit, with a score of 312, the TET assessed this tender as *preferred*.

ATTACHMENT D

Mr Jason McGuire
Project Manager – Operational Search for MH370
Australian Transport Safety Bureau
62 Northbourne Avenue
CANBERRA ACT 2601

14 August 2014

Report on probity services – Procurement of a Primary Contractor for an intensified sub-surface search

Dear Jason,

In accordance with Contract 570-01 between the Australian Transport Safety Bureau ('ATSB') and EY dated 7 July 2014, EY was engaged to provide probity advice services in relation to procurement processes and contract letting for a prime contractor for an intensified sub-surface search relating to the Operational Search for Malaysian Airlines Flight 370 ('the Project').

This letter has been compiled to provide you with our observations in respect of the services we have performed on your behalf, in terms of our instructions.

Executive Summary

In providing probity services for the procurement process we advised on and integrated where appropriate the Australian National Audit Office principles for probity considerations which include:

- Compliance with the legal and policy framework applying to procurement decisions.
- Use of an appropriately competitive process.
- Fairness and impartiality.
- Consistency and transparency of process.
- Identification and management of conflicts of interest.
- Appropriate security and confidentiality arrangements.

These principles and other practical protocols were documented in the Probity Plan which formed the basis for the approach to probity and the standards of ethical behaviour for all ATSB employees, contractors, consultants and advisors throughout the procurement.

During all stages of the procurement we observed a considered, transparent and accountable approach that provided fair and equitable treatment for respondents to the Request for Tender ('Respondents').

Based on our understanding of the process, the approach to this procurement demonstrated integrity, uprightness and honesty.

Background

The ATSB is mandated to carry out sea search operations to localise, positively identify and map the wreckage of the Boeing 777 aircraft operated as Malaysia Airlines flight 370 which is believed to have crashed into the Indian Ocean on or around 8 March 2014 ('Flight MH370').

The ATSB is seeking to procure the services of a Prime Contractor to provide and manage vessels, personnel, services, logistics, consumables, primary data analysis, data transfer and the reporting and coordination of the deployment of all contracted search assets on water for the purpose of a continuous search of an area of up to 60,000km² using towed and/or autonomous underwater vehicle mounted sonar and/or optical imaging equipment with sufficient resolution to identify an aircraft debris field. This includes a requirement to map and photograph the aircraft debris field if possible/applicable.

The ATSB engaged EY to provide probity advisory services in order to assist in achieving an evaluation process for the tender that was fair and equitable and had due regard to probity. This includes the creation of a procurement process where the rules are clear, open, well understood and applied equally to all parties. The ATSB also required the management and mitigation of conflicts of interest that are inevitable in specialised procurement of this nature.

Procedures Performed

We have performed the following procedures:

- Attended an initial engagement commencement meeting to understand the nature of the procurement and the applicable ATSB policies and procedures relevant to the project.
- Management of the Conflict of Interest process implemented for this procurement.
- Prepared a Probity Plan defining the approach towards probity risks throughout the procurement.
- Delivered a probity briefing to staff involved in the procurement and to other staff and contractors with some involvement in the process.
- Reviewed and provided probity advice on the Request for Tender and addendums.
- Reviewed and provided probity advice on the Tender Evaluation Plan.
- Reviewed and provided probity advice on the 'Question and Answer' process following the release of the Request for Tender.
- Reviewed and provided probity advice on the process to exclude incomplete tender responses.
- Reviewed and provided probity advice on the Tender Evaluation Report.
- Provided ad hoc probity advice throughout the procurement process.

Limitations

The following limitations apply:

- We were not required to and did not undertake an audit in accordance with Australian Auditing Standards. Consequently, no assurance is expressed.

- We have relied on information provided to us verbally and the documentation that has been made available to us. We cannot verify that this information is credible, complete or truthful.
- If additional or new documentation or information is brought to our attention subsequent to the date of this report, which would affect the findings detailed below, we reserve the right to amend and qualify our findings accordingly.

Observations

Our observations in relation to the probity of the tender process are set out below.

Probity principles

In guidance on buying for the Australian Government, the Department of Finance states that, 'Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.'

The Australian National Audit Office has identified the following principles as providing the foundation for integrating probity considerations into government procurement:

- Compliance with the legal and policy framework applying to procurement decisions.
- Use of an appropriately competitive process.
- Fairness and impartiality.
- Consistency and transparency of process.
- Identification and management of conflicts of interest.
- Appropriate security and confidentiality arrangements.

The probity framework

A Probity Plan was prepared to provide an overview of the probity issues that may arise during the procurement process and set out the protocols, principles and practical procedures to be followed by ATSB employees, contractors, consultants and advisors who were involved in the tender process. The purpose of the Probity Plan was to ensure that probity was observed at all times.

The probity principles detailed in the Probity Plan are consistent with Australian Government guidance and provide the standards of ethical behaviour to which all personnel must adhere. The Probity Plan was designed to protect the ATSB in particular, and the Commonwealth in general, by eliminating or minimising risk arising from the failure to comply with probity principles, and the failure to achieve the fair treatment of Respondents.

We provided probity briefings to all ATSB employees, contractors, consultants and advisors who were involved in the procurement. The probity briefings covered the requirements of the Probity Plan and their individual requirements and responsibilities during the procurement process. All ATSB employees, contractors, consultants and advisors signed a 'Declaration of Acknowledgement and Agreement to the Probity Plan'.

All ATSB employees, contractors, consultants and advisors who were involved in the process were also required to declare any actual or perceived conflicts of interest at the commencement of the procurement process and at any other time throughout the process. This included the completion of a

documented declaration of their freedom from conflicts and communications with EY which outlined a potential, actual or perceived conflict of interest. Upon receipt of a declaration of a potential, actual or perceived conflict, proportionate arrangements were made to manage the conflict. This formed the basis of the formal conflicts of interest program that was applied throughout all stages of the procurement.

ATSB employees, contractors, consultants and advisors were not permitted to communicate with Respondents and potential Respondents in relation to the procurement process with the exception of the 'Authorised Point of Contact'. This requirement of the Probity Plan was to mitigate the risk that one Respondent received additional information that provides them with an advantage over another.

Release of the Request for Tender

The Request for Tender was released on 4 June 2014 via AusTender with a closing date of 30 June 2014. The information within and accompanying the Request for Tender was prepared with the intention of providing fair treatment to all potential Respondents.

The Tender Evaluation Plan

On 3 June 2014 the Tender Evaluation Plan was finalised and demonstrated an evaluation that was consistent with the criteria detailed in the Request for Tender.

The approach to evaluating value for money was detailed in the Tender Evaluation Plan and included the evaluation of (as a minimum) the technical worth, risk, price and the overall comparative analysis of tenders.

Tenders Received

At the Request for Tender closing time a total of 10 organisations submitted tenders via the AusTender website. An additional tender was received via email from Westsea Marine Pty Ltd after the closing time however this tender response was excluded from evaluation in accordance with sections 3.1.1 and 3.1.2 of the Request for Tender which states:

3.1.1. Tenders must be lodged electronically via AusTender, at <https://www.tenders.gov.au>.

3.1.2. Tenders lodged by any other means, including by hand, mail, facsimile or email, will not be considered

Also due to the lateness of the Westsea Marine Pty Ltd tender there are further grounds for its exclusion under section 5.2.3 of the Request for Tender which states:

5.2.3 The ATSB will exclude a tender from consideration if.....the tender is lodged after the Closing Time

A completeness and minimum content compliance check was conducted and it was found that Optek Australasia and Theo Shipping Limited failed to provide a statement of work against the RFT Statement of Requirements. These tenders were excluded under section 5.2.4 of the RFT which states:

5.2.4 The ATSB may at any time exclude a tender from consideration if the tender is incomplete

All remaining tenders were compliant.

The Evaluation

Section 3.1 (f) of the Probity Plan states, *'the evaluation of Responses should only take into account the criteria described in the procurement documents and be undertaken in accordance with the Evaluation Plan.'* The respective Tender Evaluation Plan detailed the evaluation approach from the time of receiving the tenders to the time of shortlisting of a preferred tender.

The Tender Evaluation Team identified a value for money outcome ranking which placed Fugro Survey Pty Ltd as the preferred Respondent. The ranking also included Svitzer Salvage Australasia Pty Ltd and Phoenix International Holdings Inc who were placed second and third respectively. These organisations were rated as technically suitable although not preferred.

Tender Evaluation Report

The Tender Evaluation Report accurately portrays our understanding and observations of the procurement process. The Tender Evaluation Report recommends among other things that Fugro Survey Pty Ltd be selected as the successful Respondent for the provision of services relating to the search for Flight MH370.

In addition to the observations set out above, we make the following comments:

- The Tender Evaluation Plan was finalised before the closing date for tenders on 30 June 2014.
- All ATSB employees, contractors, consultants and advisors, with a nexus to the procurement, signed conflict of interest declarations. There were no actual conflicts of interest disclosed throughout the procurement process. However, there were multiple potential and perceived conflict of interest disclosures made such as contract management with an incumbent organisation for different services and prior employment with potential Respondents. Proportionate mitigation strategies were implemented at the time each potential and/or perceived conflict of interest was disclosed.
- As required by the Tender Evaluation Plan, there was a separate evaluation of technical and price responses to mitigate any risk of favouring one Respondent over another based on other aspects of their tender.
- Our advice was sought when clarification questions and other communications were drafted and sent to Respondents.
- All ATSB employees, contractors, consultants and advisors communicated with Respondents and potential Respondents through the 'Authorised Point of Contact'.
- Our advice was continually sought and followed throughout the procurement process and during all other project stages.

Conclusion

Based on our understanding, observations and comments above, there are no probity issues concerning the tender that we wish to draw to your attention at this time. The procurement process integrated the probity considerations which are provided as the foundation to government procurement by the Australian National Audit Office.

Based on our understanding of the process, the approach to this procurement by ATSB employees, contractors, consultants and advisors demonstrated integrity, uprightness and honesty.

If you have any questions about this letter or our work more generally, please contact Matt O'Donnell on 0434 963 172.

Yours sincerely



Roger Darvall-Stevens
Partner

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2015 - 2016
Infrastructure and Regional Development

Question no.: 115

Program: N/A

Division/Agency: Australian Transport Safety Bureau

Topic: Pel-Air Act of Grace Payment Advice – Alternate question

Proof Hansard Page: 103 - 104 (19 October 2015)

Senator Fawcett, David asked:

Senator FAWCETT: There are a couple of points that come out of this. There is one about the trust of industry in the organisations that are supposed to be having an oversight around safety and regulation, but the other is a very real impact on people. At the time, the committee were concerned about what we saw as a breakdown in the relationship between you and CASA and the inadequacies of the report. Subsequent to the Canadian peer review, which was quite scathing about the fact that there were very clear systemic issues which were not addressed, people who have been affected by this accident—being the pilot involved and potentially the nurse—have sought some remedy for the situation they find themselves in as a result of this report. In the pilot's case, correspondence I have seen from him has indicated that that report has essentially finished his aviation career. My understanding is that even after the Canadian report, when he has sought an act of grace payment from the Department of Finance, ATSB's recommendation is: 'Don't pay it. It was his fault.' Can you confirm that was the case?

Mr Dolan: I recall that there was some information sought from the Department of Finance in relation to an act-of-grace payment. We provided the facts as we understood them. It is not a purpose of our organisation to assign blame, and we would not have said that to the Department of Finance.

Senator XENOPHON: Can you provide the advice that Senator Fawcett has asked you for?

Mr Dolan: I beg your pardon?

Senator XENOPHON: Can you table that advice?

Mr Dolan: I cannot see any reason why we should not, so I will obtain it and table it for the committee.

....

Answer:

The answer to Question on Notice 116 refers for the purpose of this answer.

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2015 - 2016
Infrastructure and Regional Development

Question no.: 116

Program: N/A

Division/Agency: Australian Transport Safety Bureau

Topic: Pel-Air Act of Grace Payment Advice

Proof Hansard Page: 104 (19 October 2015)

Senator Fawcett, David and Senator Xenophon, Nick asked:

Senator FAWCETT: That would be very useful. I look forward to the report.

....

Senator XENOPHON: So we will get a copy of that advice. Mr Dolan has been good enough to indicate that we would get a copy of that advice in this committee as to what was said and all the correspondence in relation to that. I have a couple of questions.

Answer:

The advice and correspondence in relation to the advice are set out in Attachments A-C of this answer.

Attachment A – Letter dated 18 August 2015 from Hon Michael McCormack MP, Parliamentary Secretary to the Minister for Finance to Turner Freeman Lawyers

Attachment B – Email Correspondence between the Department of Finance and the Australian Transport Safety Bureau dated from 13 June 2014 and 13 April 2015.

Attachment C – Advice dated 12 June 2014 from the Australian Transport Safety Bureau to the Department of Finance



THE HON MICHAEL McCORMACK MP
Parliamentary Secretary to the Minister for Finance

REF: MS15-000772

The Hon Robert McClelland
Partner
Turner Freeman Lawyers
Level 13, 39 Martin Place
SYDNEY NSW 2000

18 August 2015

Robert

Dear Mr McClelland

I refer to your correspondence forwarding a request for an act of grace payment of \$1,529,447 on behalf of Mr Dominic James, related to loss of earnings following the decision of the Civil Aviation Safety Authority (CASA) to cancel his pilot's licences after the ditching of a Pel-Air flight near Norfolk Island in 2009. As I have policy responsibility for the act of grace mechanism under subsection 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), I have considered Mr James's request.

In making my decision, I have considered the information provided by you and Senator David Fawcett, Senator for South Australia, on Mr James's behalf, and the advice from the Australian Transport Safety Bureau (ATSB) and CASA.

I understand that the incident and Pel-Air itself have been the subject of investigations by both the ATSB and CASA. The matter has also been investigated by the Senate Standing Committee on Rural and Regional Affairs and Transport. The Committee handed down its report on 23 May 2013 and no recommendations were made in relation to compensation being payable to any of those involved in the crash. As you are likely aware, the ATSB re-opened its investigation into the crash in December 2014, after the release of the Canadian Transport Safety Bureau's review of the ATSB report. I have also noted that Pel-Air has recently made compensation payments to passengers on the flight, as Pel-Air has accepted that Mr James and the co-pilot were negligent and it is vicariously liable.

I have noted the Committee's criticism of the ATSB's published report on the matter, including that the report did not meet the standards the aviation community and industry would have expected.

I understand from the information provided that Mr James has not brought any legal action against the Commonwealth. I further understand that Mr James had appealed against two decisions of CASA's delegates to the Administrative Appeals Tribunal. He has stated that he withdrew one of these AAT appeals because of legal advice he received, which was provided prior to certain information coming to light as part of the Senate Committee's investigation of this matter. I have also taken into account CASA's advice about the reasons for the decisions to cancel Mr James's licences.

I do consider the criticisms made of the ATSB report, by the Committee and the Canadian Transport Safety Bureau, to be relevant. However, I do not consider that there is a sufficient basis to conclude that an act of grace payment is warranted. CASA has provided detailed information on why it took the actions it did. Mr James has provided little to substantiate his claims and has not given evidence to support the significant amount he is seeking.

Given the information available to me, I am not of the view that it is appropriate to make an act of grace payment to him or that there are special circumstances in the matter. I have therefore declined, under subsection 65(1) of the PGPA Act, a payment of \$1,529,447.

I would be grateful if you could convey to Mr James my decision on his request. The enclosed information sheet outlines the options available to Mr James.

Yours sincerely,



MICHAEL McCORMACK



Australian Government

Department of Finance

INFORMATION SHEET

ABOUT THE DECISION

The act of grace and waiver of debt mechanisms are discretionary. This means that there is no automatic entitlement to an act of grace payment and/or waiver of debt.

Generally, a request will not be reconsidered unless you can show that the decision maker made a serious factual mistake or if you provide relevant new evidence.

A COMPLAINT TO THE COMMONWEALTH OMBUDSMAN

If you are dissatisfied with the way the Department of Finance (Finance) handled your request for an act of grace payment or waiver of debt, you can ask the Commonwealth Ombudsman to investigate. Investigations are independent, informal, private and free. The Ombudsman cannot investigate actions or decisions by a Minister.

If the Ombudsman decides to investigate your case, you and Finance will receive a report of findings from the investigation. The Ombudsman may make a recommendation to Finance for the matter to be considered again, but cannot change the decision.

You can contact the Commonwealth Ombudsman on the following details:

address: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601
telephone: 1300 362 072
website: www.ombudsman.gov.au

REVIEW UNDER THE *ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977*

Decisions about act of grace payments and waiver of debts can be reviewed by the Federal Circuit Court and the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act). The grounds for review include a breach of the rules of natural justice or an error of law. You are also able to request a statement of reasons for the decision, within 28 days, under the ADJR Act. The statement will restate the reasons that you have already been given, formally setting out the facts, evidence used, and reasons for the decision.

The Court can set aside the decision and refer the case back to Finance for further consideration, but cannot review the merits of the decision, or substitute a decision to approve an act of grace payment or waive a debt. Regardless of any view expressed by the Court, a decision maker may again decide not to approve an act of grace payment or waiver of debt.

The ADJR Act prescribes various time limits and fees, and you may also face an award of costs if an application for judicial review is unsuccessful. You can find out more about your options under the ADJR Act and judicial review at www.fedcourt.gov.au.

It is recommended that you seek independent legal advice if considering judicial review.

Taylor John

From: Taylor John
Sent: Monday, 13 April 2015 11:53 AM
To: Tweedie, Marianne
Subject: RE: Dominic James -AoG [DLM=For-Official-Use-Only]

Marianne

We advise that the decision in relation to the Act of Grace application is a matter for the Department of Finance.

The ATSB has re-opened the investigation in response to a review by the Canadian Transport Safety Board. This is reflected in the statement on the [ATSB Website](#), however the reopening of the investigation does not mean that the previous findings were incorrect.

There is nothing, including in respect of the progress of the re-opened investigation which would cause the ATSB to alter its position; that it does not support the making of an Act of Grace payment.

Kind regards

John Taylor

Principal Lawyer
 Australian Transport Safety Bureau

62 Northbourne Avenue
 Canberra ACT 2601

P 02 6274 6416 | E john.taylor@atsb.gov.au | M 0419 787 451

Australia's national transport safety investigator

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From: Tweedie, Marianne [<mailto:Marianne.Tweedie@finance.gov.au>]
Sent: Friday, 10 April 2015 11:53 AM
To: Taylor John
Subject: RE: Dominic James -AoG [DLM=For-Official-Use-Only]

For-Official-Use-Only

That's great, thank you!

Marianne

For-Official-Use-Only

From: Taylor, John
Sent: Friday, 10 April 2015 11:53 AM

To: Tweedie, Marianne
Subject: RE: Dominic James -AoG [DLM=For-Official-Use-Only]

Thanks Marianne

I have some instructions on a response which you should receive today or Monday

John Taylor

Principal Lawyer
Australian Transport Safety Bureau

62 Northbourne Avenue
Canberra ACT 2601

P 02 6274 6416 | E john.taylor@atsb.gov.au | M 0419 787 451

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From: Tweedie, Marianne [<mailto:Marianne.Tweedie@finance.gov.au>]
Sent: Friday, 10 April 2015 11:52 AM
To: Taylor John
Subject: RE: Dominic James -AoG [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi John

I am just following up to see if you have further advice after our phone conversation the other week?

Thank you
Marianne

For-Official-Use-Only

From: Tweedie, Marianne
Sent: Tuesday, 24 March 2015 9:19 AM
To: Taylor, John
Cc: 'patrick.hornby@atsb.gov.au'; Silk, Kathryn
Subject: RE: Dominic James -AoG [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi John

We have received advice from the Civil Aviation Safety Authority and provided Mr James with time to make comments on that advice.

I've noted that the ATSB has reopened its investigation into the Pel-air ditching. I have looked at the advice on the ATSB's website (http://www.atsb.gov.au/publications/investigation_reports/2009/aair/ao-2009-072.aspx) and the specific areas that are being examined.

Taking into account that the investigation has been re-opened, can you advise whether would be appropriate for a decision to be made on Mr James' act of grace request at this time?

Happy to discuss.

Regards
Marianne

Marianne Tweedie | A/g Assistant Director
Discretionary Payments
Risk, Insurance and Special Claims Branch
Business, Procurement and Asset Management
Department of Finance
T: 02 6215 2377 | F: 02 6215 3774 | E: marianne.tweedie@finance.gov.au
A: John Gorton Building, King Edward Terrace, PARKES ACT 2600

For-Official-Use-Only

From: Taylor, John
Sent: Tuesday, 24 June 2014 8:27 AM
To: Tweedie, Marianne
Subject: RE: -AoG - further process question [DLM=For-Official-Use-Only]

Good Morning Marianne

Thank you for your email. The ATSB has considered the content of the updated material and I advise that the ATSB has nothing to add to its previous response.

If you have any further queries please do not hesitate to contact me.

Kind regards

John Taylor

Principal Lawyer
Australian Transport Safety Bureau

62 Northbourne Avenue
Canberra ACT 2601

P 02 6274 6416 | E john.taylor@atsb.gov.au | M 0419 787 451

Australia's national transport safety investigator

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From: Tweedie, Marianne [<mailto:Marianne.Tweedie@finance.gov.au>]
Sent: Monday, 23 June 2014 2:22 PM
To: Taylor John
Subject: RE: -AoG - further process question [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi John

Due to other demands last week I did not send your advice to Mr James's lawyers. In the meantime they have provided further correspondence and attachments.

Can you please advise if the attached comments require you to revise the advice you provided to Finance on this matter? If not, I will send a copy of your letter of 12 June 2014 to Mr James' representatives.

Thank you for your help

Marianne

For-Official-Use-Only

From: Taylor, John
Sent: Friday, 13 June 2014 4:21 PM
To: Tweedie, Marianne
Subject: -AoG - further process question [DLM=For-Official-Use-Only]

Marianne

Has the situation with CASA been explained to Mr James? The only reason I ask is that the ATSB reply, from its perspective, ought not be seen in isolation. If this has not yet been explained would Finance do this prior to sending our response, or with it or would it be done at the decision stage?

Thanks

John Taylor

Principal Lawyer
Australian Transport Safety Bureau

62 Northbourne Avenue
Canberra ACT 2601

P 02 6274 6416 | E john.taylor@atsb.gov.au | M 0419 787 451

Australia's national transport safety investigator

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Australian Government
Australian Transport Safety Bureau

Chief Commissioner

*Our reference: AO-2009-072
Contact: John Taylor*

12 June 2014

Ms Marianne Tweedie
A/g Assistant Director
Discretionary Payments
Risk Insurance and Special Claims Branch
Business, Procurement and Asset Management
Department of Finance
John Gorton Building
King Edward Terrace
PARKES ACT 2600

Dear Ms Tweedie

Application for an Act of Grace Payment – Mr Dominic James

I refer to your email dated 31 March to Mr Patrick Hornby, Manager of Legal Services regarding an application for an act of grace payment by Mr Dominic James, the pilot of VH-NGA. In your email you asked for the Australian Transport Safety Bureau's (ATSB's) views in relation to the application, specifically whether the ATSB supports the making of an act of grace payment, and its reasons.

In a subsequent telephone conversation with Mr John Taylor, Principal Lawyer, you advised that you are seeking any background information that may be relevant but not reflected in Mr James' application. You also asked that if the applicant has provided sufficient information, that the ATSB advise from its perspective whether there are any special circumstances that would justify an act of grace payment.

ATSB Advice

The ATSB does not support the making of an act of grace payment to the applicant in relation to anything the ATSB is alleged to have done. The reasons for the ATSB's position are set out below.

Reasons

Section 33 of the *Financial Management and Accountability Act 1997* (FMA Act) provides that payments may be made to a person if there are 'special circumstances'. What may constitute 'special circumstances' is not defined although guidance is provided by Finance that special circumstances may apply where:

- the action or inaction of the Australian Government has directly resulted in a loss;
- the application of Commonwealth legislation or policy has caused an unintentional or inequitable outcome; or
- there is some other relevant anomaly or moral imperative.

The ATSB does not consider that those circumstances apply. As you state in your email dated 31 March 2014 while the majority of the applicant's claims relate to alleged actions of the Civil Aviation Safety Authority, mention is made of the ATSB. The application itself canvasses excerpts from the Inquiry into Aviation Safety Investigations by the Senate Standing Committee on Rural and Regional Affairs and Transport with respect to the ATSB's investigation of the ditching of VH-NGA, 5 km SW of Norfolk Island Airport, 18 November 2009.

The application does not reflect the substance of the evidence given by officers of the ATSB to the Senate Inquiry or the written submissions made by the ATSB to the inquiry. The Government response (released March 2014) to the Senate Inquiry's report clarifies the substance of the ATSB's position with respect to any need for the ATSB to review the findings of its investigation. Specifically, please refer to the Government's response to recommendation 10 of the Senate Inquiry's report (attached).

The ATSB does not consider it necessary to add anything further. If you have any further queries please do not hesitate to contact John Taylor, Principal Lawyer, on 6274 6416.

Yours sincerely



Martin Dolan

Recommendation 10

That the investigation [of the Pel-Air Incident] be re-opened by the ATSB with a focus on organisation, oversight and broader systemic issues.

Response

The Government notes this recommendation.

Consistent with undertakings given to the Committee, the ATSB will be amending the Pel-Air investigation report to correct administrative errors which have been brought to its attention, including at the inquiry hearings.

However the re-opening of investigations is ultimately a matter for our independent aviation safety investigatory body, the ATSB.

In this regard, in accordance with ICAO Annex 13, the reopening of an investigation should be considered by the investigating agency where significant new evidence comes to light.

The ATSB's Commission has closely monitored the proceedings of, and submissions to, the inquiry and has advised the Government that it does not consider that any significant new evidence has arisen on issues that have already been considered which are likely to have contributed to the accident.

The ATSB investigation report included the identification of two safety issues which are focussed on organisation, oversight and broad systemic considerations:

- the available guidance on fuel planning and on seeking and applying en route weather updates was too general and increased the risk of inconsistent in-flight fuel management decisions to divert; and
- the operator's procedures and flight planning guidance managed risk consistent with regulatory provisions but did not effectively minimise the risks associated with aeromedical operations to remote islands.

Further organisation, oversight and systemic issues have been assessed and addressed by the operator, CASA, and other parties, which is acknowledged in the ATSB report.

Therefore the ATSB does not consider that re-opening its investigation will add further safety benefits, but would unnecessarily divert investigative resources currently involved in other ongoing investigations.

The Government also notes the Committee's concerns regarding aspects of the investigation and these will be examined as part of the Canadian Transportation Safety Board peer review of the ATSB investigation methodologies and processes having regard to Australia's obligations under ICAO Annex 13.

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2015 - 2016
Infrastructure and Regional Development

Question no.: 117

Program: N/A

Division/Agency: Australian Transport Safety Bureau

Topic: Number of aircraft accidents

Proof Hansard Page: 104 (19 October 2015)

Senator Bullock, Joe asked:

Senator BULLOCK: I have a couple of questions. How many accidents have there been in Australia in 2014-15?

Mr Dolan: I am afraid we will have to take that one on notice.

Senator BULLOCK: When you let us know, could you please let CASA know as well, because they have a question on notice that depends on your answer to that question and they say that they cannot get it out of you.

Answer:

There were 257 aviation accidents in the 2014-2015 financial year. Of these, 154 involved VH-registered aircraft. This information is shared routinely with CASA in a de-identified form.

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2015 - 2016
Infrastructure and Regional Development

Question no.: 118

Program: N/A

Division/Agency: Australian Transport Safety Bureau

Topic: Double go-around at Melbourne Airport, Victoria on 5 July 2015

Proof Hansard Page: 104 (19 October 2015)

Senator Xenophon, Nick asked:

Senator XENOPHON: That is on notice. The other one on notice relates to the double go-around on 5 July. Can you tell us where the ATSB is at on that in relation to that double go-around?

Mr Dolan: We are currently undertaking an investigation of that double go-around.

Senator XENOPHON: So, it might take several weeks or months before there is a report?

Mr Dolan: Months more than weeks.

Senator XENOPHON: Thank you.

Answer:

The ATSB is investigating simultaneous missed approaches by two aircraft from crossing runways that occurred at Melbourne Airport, Victoria on 5 July 2015. The double go-around involved two Boeing 737-800s, registered VH-VXS and VH-VYE. An initial summary of the occurrence is available on the ATSB website at <www.atsb.gov.au> (see investigation AO-2015-084).

At this stage the ATSB has:

- interviewed a number of air traffic controllers that were on duty at the time
- obtained a number of flight crew and operator reports of the occurrence
- obtained copies of relevant recorded air traffic control phone, audio and radio calls
- examined controller rosters and licences, Local Instructions and Letters of Agreement
- obtained a number of LAHSO-related Airservices Australia documents including operational and safety risk assessments, post implementation reports and temporary local instructions.

The expected completion time for investigation AO-2015-084 is July 2016.

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Budget Estimates 2015 - 2016
Infrastructure and Regional Development

Question no.: 119

Program: N/A

Division/Agency: Australian Transport Safety Bureau

Topic: Breakdown in air traffic control coordination

Proof Hansard Page: 104 (19 October 2015)

Senator Xenophon, Nick asked:

Senator XENOPHON: Just very quickly—and I am happy for you to take this on notice—I have asked about the issue of the REPCON on communications. This is about concerns about a loss of separation assurance between Essendon and Melbourne; it is a real criticism from people within the aviation community about the ATSB relying upon WebTrack, something that is publicly available that a lot of kids use to track where aircraft are. On notice, can you provide details of what has happened with respect to investigation in relation to the loss of separation assurance, whether there will be any further reports in respect of that and whether you have reconsidered your views on that. There was a concern that for several hours there was a lack of adequate communication between Melbourne and Essendon towers in respect of aircraft movements where they could have potentially intersected.

CHAIR: That is on notice.

Answer:

As advised in the answer to Question on Notice 102 of 28 May 2015, the ATSB does not intend taking any further action on this matter. The ATSB is satisfied with the response provided by both Airservices Australia and CASA to the REPCON report see <<http://www.atsb.gov.au/repcn/2013/ar201300090.aspx>>.

Rural & Regional Affairs and Transport Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2015 - 2016
Infrastructure and Regional Development

Question no.: 120

Program: N/A

Division/Agency: Australian Transport Safety Bureau

Topic: Jandakot airport investigation

Proof Hansard Page: Written

Senator Back, Chris asked:

1. Can ATSB inform the Senator when investigations have been done whether language barriers between trainee pilots and air traffic controllers could be contributing to a higher than usual rate of near misses at Perth's Jandakot Airport?
2. If so, can the ATSB update the Senator about the progress of these investigations?
3. If not, when will investigations begin?
4. If language barriers are not a safety issue, why are pilots still concerned about safety matters?

Answer:

1. A review of aviation safety occurrences by the Australian Transport Safety Bureau (ATSB) identified that Jandakot Airport had a disproportionate rate of aircraft near-collisions. Specifically, between 2013 and 2015 Jandakot Airport had a near-collision rate that was at least three times higher than other similar metropolitan Class D airports across Australia.
In response to this identified transport safety matter, the ATSB has commenced an investigation to identify the factors that increase the collision risk to aircraft operating at Jandakot Airport. The investigation has collected data on a number of the most recent near-collision occurrences. This has included interviewing pilots, air traffic controllers, and personnel from Airservices Australia and the Civil Aviation Safety Authority.
While the presence of language barrier issues is being investigated, to date no evidence has been found to indicate that this is the case.
2. The investigation continues to review the data collected to identify common factors across individual occurrences.
3. The investigation commenced on 16 June 2015.
4. The investigation is ongoing. The ATSB will advise the Committee when the investigation is complete and provide information on its findings.