

# Chapter 3

## The conduct of the 2010 tender process

3.1 In this chapter, the committee provides a factual narrative of events relating to the 2010 tender process covering the period from the decision to re-test the market to the announcement of the successful tenderer.<sup>1</sup> It examines:

- the lead-up to the tender;
- the approach to the market; and
- the tender evaluation.

3.2 This chapter also includes a description of the key tender documents—the Standing Deed of Offer, the procurement strategy, the Request for Tender, and the Tender Evaluation Plan. The committee then identifies particular aspects of the three stages of the tender process that caused the process to be suspended pending investigation and review.

### The lead-up to the tender

3.3 Strategic was contracted between 2005 and 2010 to provide air sustainment charter services to support ADF operations in the MEAO. In October 2008, Strategic entered into a 12-month contract with Defence, which was extended for a further 12 months in March 2009.<sup>2</sup> Between 24 October 2008 and 2009, Defence and Strategic agreed to seven amendments to the 2008 contract.<sup>3</sup> These amendments were a combination of Defence and contractor-initiated proposals, arising from changing force dispositions and other operational factors.<sup>4</sup> The 2008 contract expired on 23 October 2010.<sup>5</sup>

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

3.4 In October 2009, Defence elected to re-test the market and issue a new procurement process for air sustainment charter services. Defence identified several factors which prompted this decision. First, in 2008, the global financial crisis created excess capacity in the commercial air charter industry. Defence identified a decline in demand for international passenger air travel, shrinking aviation industry profitability,

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1 A chronology of events is also provided at Appendix 5 to this report.

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

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

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

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

idle aircraft and falling charter rates. It considered that these circumstances presented an opportunity to achieve significant cost savings.<sup>6</sup>

3.5 Second, Defence considered that re-tendering was appropriate in light of the numerous amendments to the 2008 contract. It noted that some amendments 'had significantly altered the contract', in areas including fuel allocation, routing, block hours flown, pricing structure, the aircraft utilised and consequent load-splitting arrangements in relation to cargo.<sup>7</sup>

3.6 In particular, the seventh contract amendment enabled Strategic to substitute the Airbus A330-300 aircraft with an Airbus A330-200 from 29 September 2009.<sup>8</sup> While reducing price and increasing the range of the aircraft, this solution created a freight shortfall. Under the contract amendments, Strategic separately moved an additional three pallets per week at its own expense.<sup>9</sup> Defence submitted that this solution introduced additional complexities and delays.<sup>10</sup> Accordingly, Defence determined in 2009 that re-testing the market was necessary to ensure that it obtained maximum value for money.<sup>11</sup>

### ***Preparation for re-tender***

3.7 Defence commenced preparation for the re-tendering process in late 2009. Two key stages—which are discussed below—were the establishment of the Air Transport Standing Offer Panel in November 2009, and the preparation and approval of the procurement strategy. Headquarters, 1<sup>st</sup> Joint Movement Group (HQ1JMOVGP), within the Joint Operations Command, was the area within Defence responsible for conducting the procurement. The Commanding Officer of 1JMOVGP was Group Captain Robert Barnes. His superior officer was the Deputy Chief of the Joint Operations Command, Rear Admiral Ray Griggs.

### ***Establishment of the Air Transport Standing Offer Panel***

3.8 In November 2009, Defence established—via an open tender process—the Air Transport Standing Offer Panel, consisting of 13 providers.<sup>12</sup> The panel

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6 Department of Defence, *Submission 5*, Attachment A, p. 3; Deloitte Review, p. 12.

7 Department of Defence, *Submission 5*, Attachment A, p. 3. See further, AFCD Review, pp. 16–17; AGS Review, p. 3; Deloitte Review, p. 12; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 46.

8 Department of Defence, *Submission 5*, Attachment A, p. 3; AFCD Review, p. 16.

9 Department of Defence, *Submission 5*, Attachment A, p. 3; AFCD Review, p. 16.

10 Department of Defence, *Submission 5*, Attachment A, p. 3; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 49. See further: Group Captain Robert Barnes, Statutory Declaration, signed 20 April 2011; Jo-Anne Pope, Statutory Declaration, signed 14 April 2011; Joshua Prucha, Statutory Declaration, signed 14 April 2011.

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

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

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arrangement covers the domestic and international air transportation, on an individual job basis, of ADF personnel, equipment and cargo. The panel was established to 'provide a contractual framework for ad hoc air charter services'.<sup>13</sup>

3.9 As mentioned in chapter 2, panel membership includes both commercial charter brokers and operators, most of which are small-to-medium enterprises.<sup>14</sup> The panel is operative for a term of three years, from 2 November 2009 to 1 November 2012.<sup>15</sup> Deloitte described the use of a panel as having 'effectively pre-selected the air charter market for Commonwealth requirements' for the period of its operation.<sup>16</sup>

#### *The use of standing offer panels in Commonwealth procurement*

3.10 By way of explanation, standing offer panels are arrangements whereby a number of suppliers—usually selected through a single procurement process—may each supply property or services to the Commonwealth as specified in the instrument establishing the panel.<sup>17</sup> The establishing instrument is often a deed of standing offer, executed between the Commonwealth (as represented by the relevant agency) and each supplier. The deed sets out the terms and conditions that will apply when the property or services are purchased by the Commonwealth. A contract is formed, pursuant to the deed, each time a participating agency purchases property or services under the panel arrangement.<sup>18</sup> The establishment and use of panels by Australian Government agencies is governed by the Commonwealth Procurement Guidelines (CPGs),<sup>19</sup> supported by relevant Commonwealth and agency-level policies.<sup>20</sup>

3.11 The Australian Government Good Procurement Practice Guide, *Establishing and Using Panels*, states that panel arrangements are intended to provide 'a convenient, flexible, streamlined and efficient process for acquiring the property or services covered by the panel arrangement', while 'providing competitive pressures to

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13 AFCD Review, p. 4.

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

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

16 Deloitte Review, p. 8. See further, AGS Review p. 6.

17 *Commonwealth Procurement Guidelines* (CPGs), December 2008, [8.35].

18 CPGs, [8.35]; Department of Finance and Deregulation, *Establishing and Using Panels*, Good Procurement Practice Guide 4, December 2007, [3.2]; Defence Procurement Policy Manual (DPPM), April 2011, Chapter 4.8.

19 See especially Division 2 (Mandatory Procurement Procedures), [8.35]–[8.37], which govern the establishment of panels. Note that the Mandatory Procurement Procedures apply to 'covered procurements' (defined as those which exceed the prescribed monetary thresholds in the CPGs and are not otherwise exempt).

20 See, for example, Department of Finance and Deregulation, *Guidance on the Mandatory Procurement Procedures*, Financial Management Guidance 13, Appendix B—Panels; Department of Finance and Deregulation, *Establishing and Using Panels*, Good Procurement Practice Guide 4; DPPM chapter 4.8.

assist in achieving value for money'.<sup>21</sup> The Guide states that panels are of most benefit where they are used for the procurement of property or services that are purchased regularly.<sup>22</sup> The CPGs require panel arrangements to include certain minimum requirements, normally including a clear specification of the types of property or services covered by the panel arrangement, an indicative or set price rate, the term of the panel arrangement and details as to how the agency will purchase from the panel.<sup>23</sup>

3.12 Once a panel is established, the purchasing of property or services from panel providers is not subject to the Mandatory Procurement Procedures in the CPGs. However, as procurement-related tasks, these purchases are governed by the other elements of the procurement policy framework—in particular, the requirement to achieve value for money.<sup>24</sup>

### ***The Air Transport Deed of Standing Offer***

#### *Design of the deed*

3.13 In its legal process review of the 2010 tender, the Australian Government Solicitor (AGS) explained the design of the deed of standing offer for the Air Transport Standing Offer Panel:

The Panel operates on the basis that the members are pre-qualified on the basis that they either operate aircraft ['operators'] or they have an ability to source aircraft ['brokers']. Where the Commonwealth identifies a particular requirement for air transport, the Commonwealth may then issue a 'Request' under the Panel, and the contractors may submit a response, which would include a contract price.<sup>25</sup>

#### *Key clauses in the deed*

3.14 Key clauses in the deed include the following:

- Clause 5.1 provides an indication of the matters that may be included in requests issued to contractors (for example, equipment, personnel, uplift and delivery dates and locations, and other special conditions);<sup>26</sup>

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21 Department of Finance and Deregulation, *Establishing and Using Panels*, Good Procurement Practice Guide 4, December 2007, [3.3], [3.5].

22 Department of Finance and Deregulation, *Establishing and Using Panels*, Good Procurement Practice Guide 4, December 2007, [3.4].

23 CPGs [8.35].

24 Department of Finance and Deregulation, *Guidance on the Mandatory Procurement Procedures*, Financial Management Guidance 13, Appendix B—Panels.

25 AGS Review, p. 6.

26 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clause 5.1(c).

- Clause 5.2 sets out the requirements that contractors must address in their responses to requests (for example, contract price, loading date, aircraft specifications, and subcontracting arrangements);<sup>27</sup>
- Clauses 5.3–5.6 govern the assessment, acceptance and rejection of completed requests by the Commonwealth, and the amendment of agreed requests;
- Various clauses setting out contractors' compliance obligations in performing services under the deed, for example clauses requiring compliance with:
  - various legal, regulatory and policy requirements of the Commonwealth and State and Territory governments and local authorities, and the laws of foreign jurisdictions;<sup>28</sup> and
  - identified Defence and Commonwealth policies,<sup>29</sup> including post-Defence separation employment policies where a contractor proposes to engage former Defence employees.<sup>30</sup>

3.15 The clause on post-Defence separation employment is particularly relevant to the committee's inquiry. It provides that contractors must ensure that any of their employees who are former Defence employees comply with the requirements of the relevant Defence Instructions and Workplace Relations Manual on post-separation employment.<sup>31</sup>

3.16 This clause further provides that contractors must not, without the written approval of the Commonwealth, permit a person to perform or contribute to the performance of services provided under the deed, where that person was:

- in three separate periods of the previous 24 months, 12 months and 6 months—an employee of or service provider to Defence, who was engaged in the preparation or management of the deed, the selection of the contractor, or the provision of services under the deed; or
- a Defence employee in the previous 12 months.<sup>32</sup>

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27 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clause 5.2(b).

28 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clauses 6.6, 13.3.

29 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clause 13.4.

30 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clause 22.

31 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clause 22 (a).

32 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clauses 22 (b), (d).

3.17 The clause further prescribes matters to which the Commonwealth must have regard in considering a contractor's written application for approval to engage a former Defence employee. These include:

- the character and duration of the employee's engagement with both Defence and the contractor;
- the potential for real or perceived conflicts of interest; any effects that the withholding of approval will have on the person's employment opportunities or the performance of the deed; and
- the policy contained in the relevant Defence Instruction and Workplace Relations Manual.<sup>33</sup>

### ***Development of the procurement strategy***

3.18 The 2010 tender process for the provision of air services to the MEAO followed a number of distinct stages, commencing with the development of a procurement strategy in October 2009. In broad terms, a procurement strategy identifies and provides a systematic approach to the management of each stage of the procurement process.<sup>34</sup>

3.19 The procurement strategy for the 2010 tender process, entitled *Procurement Strategy for the Contracting of Air Sustainment Services in Support of OP Slipper AM183951*, was approved by Group Captain Barnes on 24 March 2010. Two prior approvals were granted on 18 and 23 March covering, respectively, the decision to re-tender and the request for tender (RFT) document.<sup>35</sup>

3.20 The procurement strategy identified the following project deliverables:

- obtain a statement of funds availability;
- obtain proposal approval;
- obtain delegate approval for the tender evaluation plan;
- conduct financial analysis planning;
- release RFT documentation;
- evaluate tender responses;
- obtain contract approval; and

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33 Department of Defence, *Submission 5*, Attachment D ('Air Transport Deed of Standing Offer'), Clause 22(c).

34 See the Defence Procurement Policy Manual (DPPM), Chapter 5.1, 'Planning complex and strategic procurements'.

35 Department of Defence, *Submission 5*, Attachment A, Annexure A; Deloitte Review, Appendix C.

- obtain contract signatory approval from delegate.<sup>36</sup>

3.21 The procurement strategy stated that Defence would use the Air Transport Standing Offer Panel. It noted that the composition of the panel—being a mixture of charter operators and suppliers—meant that Defence had 'access to all air transport sourcing arrangements', because panel members could source charter aircraft globally.<sup>37</sup> It was contemplated that a request would be issued under the deed of standing offer, and responses sought from all panel members.<sup>38</sup> The terms of the request are examined separately below.

3.22 The procurement strategy included, as an annexure, a risk management plan, which covered nine key procurement risks. The plan identified, at a high level, the consequences if each risk were realised and detailed risk management strategies. The identified risks pertained to: the terms and conditions of the tender; the number of responses and nature of respondents; the breadth and precision of tender specifications; the selection of appropriate products and services from tender responses; the timing of tender evaluations; and exceeding budgetary limits.<sup>39</sup>

3.23 The tender evaluation plan (TEP) referred to in the procurement strategy was approved by Lieutenant Colonel Andrew Hall on 25 March 2010.<sup>40</sup> The TEP documented the governance arrangements for the tender evaluation process. It set out:

- the tender evaluation criteria;
- the delegates nominated to approve actions;
- the proposed timeframes for the critical steps in the procurement;
- the personnel structure for the evaluation of tender responses, comprising a tender evaluation board (TEB), overseen by a Chair and supported by two tender evaluation working groups (TEWGs);
- the roles and responsibilities of the Chair of the TEB;
- how the comparative assessment of tender responses would be undertaken;
- the administrative requirements for the handling of tender documents;

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36 Review, p. 14, citing 'Procurement Strategy for the Contracting of Air Sustainment Services in Support of Operation Slipper', [14]. See further, Department of Defence, *Submission 5*, Attachment A, p. 21.

37 Deloitte Review, p. 7, citing 'Procurement Strategy for the Contracting of Air Sustainment Services in Support of Operation Slipper'.

38 Deloitte Review, p. 7.

39 Department of Defence, *Submission 5*, Attachment A, Annexure C (Procurement Risk Management Plan, 23 March 2010).

40 Department of Defence, *Submission 5*, Attachment A, Annexure A; Deloitte Review, Appendix C.

- the requirements in respect of ethics, probity, fair dealing, conflicts of interest and security requirements and arrangements;
- the requirements applying to the detailed evaluation of tenders, the associated methodology and the production of the SER; and
- the steps for notification and debriefing of tenders.<sup>41</sup>

### *Consideration of probity issues in the tender planning stage*

3.24 While a dedicated probity plan was not documented in the procurement strategy, the evidence before the committee indicates that probity issues were given consideration during the tender planning stage in the following ways:

- the TEP identified matters of probity relevant to the tender evaluation process, including conflicts of interest of TEB members, fair dealing and security;
- HQ1JMOVGP considered, during its pre-tender deliberations, the potential for conflicts of interest among tender team members. Defence stated that it did not identify any actual conflicts of interest with any of these personnel. It determined that there was 'potential for a perceived conflict of interest to exist through the posting of [Major] Charlton (in his reserve capacity)', but considered that he had been adequately separated from 'any access to, or involvement in, the tender process';<sup>42</sup> and
- Defence sought advice from the legal firm Clayton Utz on the development of the tender requirements and conduct of the tender process.<sup>43</sup> Clayton Utz was selected from the Defence Legal Services Panel and, according to the AFCD review, the firm was familiar with the structure of the deed of standing offer and the MEAO air sustainment services requirements because it supported the initial establishment of the standing offer panel.<sup>44</sup>

3.25 Mr Steven Power, partner, Clayton Utz, informed the committee that Squadron Leader Cole had contacted him as early as 13 January 2010 to draft the request document and have it ready to issue to the panel.<sup>45</sup> He explained that he reviewed the draft request and through an iterative process over a couple of months developed that document into a form suitable for release. He explained:

Over that two-month period, amendments were made to the capacity requirements of the aircraft. Some of those amendments from memory, would have related to legal drafting to put it in a form that was legally

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41 Deloitte Review pp. 15–16; Department of Defence, *Submission 5*, Attachment A, p. 22.

42 Department of Defence, *Submission 5*, Attachment A, p. 23.

43 AFCD Review, p. 11; Mr Geoffrey Brown, Dr David Lloyd and Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, pp. 53–56.

44 AFCD Review, p. 11.

45 *Proof Committee Hansard*, 28 June 2011, p. 10.



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enforceable. There may have been amendments to the actual numbers over time.<sup>46</sup>

3.26 Mr Power had also been involved in establishing the standing panel.<sup>47</sup>

***Contemporaneous events during the lead-up to the tender***

3.27 As noted in chapter 2, a number of external developments occurred contemporaneously with the tender planning stage. In summary these developments were:

- the re-engagement of Major Charlton in 1JMOVGP on 24 June 2009, as a Training Officer in JMCO Brisbane;
- Major Charlton's civilian employment as an aviation industry consultant during this time, following the appointment of administrators to his own company, Sky Air World, in February 2009;
- Strategic's 'continuing conversations' with Defence from June 2009, expressing its concerns about Major Charlton's engagement in 1JMOVGP, after the company learned of his return to the ADF;<sup>48</sup>
- Adagold and Hi Fly's continuing commercial relationship, including undertaking a joint MEAO support assessment exercise;
- Adagold's meeting with 1JMOVGP personnel on 4 September 2009, which prompted Adagold to submit an unsolicited proposal to provide MEAO air sustainment services in February 2010;
- contact between MEAO contract administrators in 1JMOVGP and Strategic (as the incumbent contractor), in which Defence:
  - indicated that it regularly received approaches from other panel members about alternative solutions; and
  - sought Strategic's technical advice about some of these proposed solutions, including an Airbus A340-300 aircraft option, with a payload of 42,000 kg—the specification was ultimately included in the 2010 request;
- some members of the standing offer panel monitoring Strategic's separate MEAO freight forwarding arrangements at Brisbane airport; and
- Strategic's allegations that Adagold or Major Charlton made approaches to Strategic staff, with a view to recruiting them during the lead-up to the tender process—an allegation which was denied by both Adagold and Major Charlton.

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46 *Proof Committee Hansard*, 28 June 2011, p. 11.

47 *Proof Committee Hansard*, in camera, 28 June 2011, p. 3.

48 *Proof Committee Hansard*, 29 March 2011, p. 11.

## The approach to market

### *The RFT—AO/014/09–10*

3.28 The request for tender was released on 29 March 2010 to all members of the standing offer panel.<sup>49</sup> Its closing date was 1 June 2010 and the service commencement date was specified as 24 October 2010.<sup>50</sup> Defence noted that, while tight, the eight-week request period was necessary to meet operational requirements including the rotation of troops.<sup>51</sup> The issue of operational need is discussed below in the context of subsequent reviews of the tender process.

3.29 Broadly, the RFT sought an 'all-inclusive price for the MEAO air sustainment services, based on a guaranteed 65 flights per annum over the initial two-year contract period', in accordance with the aircraft, logistical and other specifications detailed in the request and the terms of the deed.<sup>52</sup> Item 7.13 of the RFT requested the following aircraft specifications:

(a) the aircraft must:

- (i) have an optimal seating capacity for at least 200 Relevant personnel; and
- (ii) have an available cargo carrying capacity of at least 25,000 kg (comprising a minimum of 150m<sup>3</sup> of volumetric capacity), comprising
  - A. capacity to hold accompanying baggage of at least 12,000 kg; and
  - B. a minimum useable cargo capacity of 13,000 kg.

(b) The aircraft must:

- (i) be configured for aero medical evacuation; and
- (iii) carry a minimum of four onboard stretchers that are available for use at all times.<sup>53</sup>

3.30 The volumetric capacity of 150m<sup>3</sup> represented a 3m<sup>3</sup> increase on the total capacity of the 2008 contract, as amended in March 2010.<sup>54</sup> Defence stated that the increased volumetric capacity specified in the request was due to changing operational requirements—including troop dispositions, routes and cargo increases—and value for money considerations.<sup>55</sup> It stated that the requirement of 150m<sup>3</sup> was based on

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49 Department of Defence, *Submission 5*, Attachment A, pp. 3–4; RFT AO/014/09-10, p. 1.

50 RFT AO/014/09–10, pp. 2 (definitions section), 20 (item 8).

51 Department of Defence, *Submission 5*, Attachment A, p. 20.

52 Department of Defence, *Submission 5*, Attachment A, p. 18. See further RFT AO/014/09–10, item 10(a). Note however, that the costs of fuel were met by the Commonwealth: item 7.9.

53 RFT AO/014/09-10, pp. 13-14 (Clause 7.13).

54 Department of Defence, *Submission 3*, Attachment A, p. 19.

55 Department of Defence, *Submission 3*, Attachment A, p. 19.

'historical data of ADF changes and projected force structure changes'.<sup>56</sup> The latter included the introduction of the unmanned aerial surveillance aircraft, Heron, and the C-RAM counter rocket artillery and mortar early warning system.<sup>57</sup>

3.31 Defence stated that while a single aircraft solution was preferred, the RFT did not exclude alternative solutions, such as a combination of passenger-cargo aircraft with a freight-forwarding solution.<sup>58</sup> For example, item 9.20 in the request provided that 'the Commonwealth may, in its absolute discretion, consider a Completed Request that is non-compliant with one or more of the requirements in this Request'.<sup>59</sup>

3.32 The release of the request documentation on 29 March set in train the tender process as follows:<sup>60</sup>

Conduct	→	Receive	→	Conduct	→	Identify	→	Communicate	→	Finalise
industry		tender		tender		preferred		tender results		contract
briefing		responses		evaluation		tenderer				

### ***Preliminary probity concerns***

3.33 On 30 March 2010, shortly after the release of the request, Strategic put in writing its concerns about the tender process with HQ1JMOVGP. Mr Aisen emailed Lieutenant Colonel Hall and Group Captain Barnes seeking to discuss matters and to 'nip a couple of issues in the bud'.<sup>61</sup> He expressed concerns about potential conflicts of interest arising from the posting of Major Charlton in 1JMOVGP. Mr Aisen wrote:

[I]t became very apparent that it appears that one Brisbane based broker [Adagold] has possibly had a 'heads up' regarding the possibility of re-tender, and has been actively in the market seeking Airbus A340-300 types. I am hoping it is not paranoia, but it does seem coincidental that this broker dealt with a current member in the ADF in Brisbane and a former member of JMOVGP/SLCC [Major Charlton], who endeavoured to operate a 'now defunct' airline, and actually tendered with this broker to introduce the aircraft type in competition with us at the last tendering process.

56 Department of Defence, *Submission 3*, Attachment A, p. 19.

57 Department of Defence, *Submission 5*, Attachment A, p. 19.

58 Department of Defence, *Submission 5*, Attachment A, 15. See further Deloitte Review, p. 11.

59 RFT AO/014/09–10, p. 23 (item 9.20). See also item 9.25(a)(xiii) which enabled the Commonwealth to waive any requirement or obligation under the Request or the Deed of Standing Offer.

60 Deloitte Review, pp. 14–15. See further, Department of Defence, *Submission 5*, Attachment A, p. 20.

61 Mr Shaun Aisen, email correspondence to Lieutenant Colonel Andrew Hall and Group Captain Robert Barnes, 30 March 2010.

More of concern is the likelihood that this gentleman will continue to liaise and possibly work with other tender parties, whilst working under the auspices of the Commonwealth.<sup>62</sup>

3.34 Mr Aisen also expressed concerns about the preference for a single aircraft solution. He considered that this solution would significantly:

- limit the capability of any Australian operator to provide services from existing fleets; and
- increase cost and reduce delivery flexibility, compared to the load-splitting arrangements developed by Strategic in performing the 2008 contract, and would thereby 'undo' the progress it had made in this regard.<sup>63</sup>

3.35 In response on 8 April 2010, Lieutenant Colonel Hall informed Mr Aisen that the individual ADF member in question (Major Charlton) had 'no direct line of communication' with HQ1JMOVGP and was not involved in the tender process. He stated that JMCO Brisbane was aware of the requirement to 'keep him distanced from the A330 and any contractual issues arising from it'. Lieutenant Colonel Hall confirmed that the requirement was implemented 'to the point that this contract is not discussed when he is present'. He stated:

[In order to] ensure that there can be no further perception that this individual may bias the process, he will cease parading with JMCO Brisbane from next week until the tender process has been concluded. Although this is unnecessary, as the JMCO is not involved in the tender process, at all, it will be done to ensure that a level playing field is being maintained.<sup>64</sup>

3.36 He commented further on brokers and operators and their significant market awareness, noting that, in most cases, companies making unsolicited proposals to Defence 'had already done their research as to what is required'. He confirmed that no decision had been made in relation to the release of the RFT until it was formally approved on 24 March 2010.<sup>65</sup>

3.37 In response to Strategic's concerns about the tender specifications, Lieutenant Colonel Hall advised that the paramount objective was value for money rather than Australian industry involvement. He noted further that Strategic's load-splitting arrangements would continue to be used in the remaining term of the 2008 contract,

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62 Mr Shaun Aisen, email correspondence to Lieutenant Colonel Andrew Hall and Group Captain Robert Barnes, 30 March 2010.

63 Mr Shaun Aisen, email correspondence to Lieutenant Colonel Andrew Hall and Group Captain Robert Barnes, 30 March 2010.

64 Lieutenant Colonel Andrew Hall, email correspondence to Mr Shaun Aisen, 8 April 2010. See further Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, p. 69.

65 Lieutenant Colonel Andrew Hall, email correspondence to Mr Shaun Aisen, 8 April 2010.

and a decision on the continuation of intra-theatre movements would be made before the contract expired on 23 October 2010.<sup>66</sup>

3.38 Mr Aisen replied on 9 April 2011, seeking a meeting with members of HQ1JMOVGP to discuss his concerns. According to Group Captain Barnes, Mr Aisen also telephoned him on 16 April with the same request. Group Captain Barnes further advised that, while he could not recall details of the conversation with Mr Aisen, he 'would have refused to discuss the Request with [Mr Aisen] one-on-one, as it could have provided [Strategic] with an unfair advantage'.<sup>67</sup>

### ***Industry briefing***

3.39 In accordance with the procurement strategy, Defence conducted an industry briefing on 23 April 2010. At the briefing, Defence indicated its preference for a single aircraft solution, but advised that it would consider alternative cargo solutions.<sup>68</sup> Clayton Utz also attended the briefing and assisted with responding to questions from panel members.<sup>69</sup> No specific probity protocols were developed for the industry briefing.<sup>70</sup>

### ***Contemporaneous events during the tender response period***

3.40 As noted in chapter 2, several events occurred contemporaneously with the tender response period relating to:

- the engagement of Major Charlton (via AIS) by Adagold to provide technical assistance on its tender response, on or about 31 March 2010;<sup>71</sup>
- Major Charlton's declaration, on 31 March 2010, of a potential conflict of interest to the Officer Commanding JMCO Brisbane;<sup>72</sup>
- the direction that Major Charlton cease parading at JMCO Brisbane, effective from 1 April 2010;<sup>73</sup> and
- on 30 March and 8 April, Mr Aisen wrote to Defence about the possibility of a broker in Brisbane receiving advance notice of the tender.

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66 Lieutenant Colonel Andrew Hall, email correspondence to Mr Shaun Aisen, 8 April 2010.

67 See AFCD Review, p. 27.

68 Department of Defence, *Submission 5*, Attachment A, p. 19.

69 AFCD Review, p. 12.

70 AGS Review, p. 9.

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

72 Major David Charlton, Statutory Declaration, signed 7 September 2010, [10].

73 Department of Defence, *Submission 5*, Attachment A, Annexure A; Deloitte Review, pp. 19–20; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 47.

3.41 Also, in addition to his previous attempts to alert 1JMOVGP to his concerns, Mr Aisen sought further to discuss matters about Major Charlton at a regular management meeting for the then contract on 27 May 2010. The Defence member attending the meeting, Squadron Leader Ben Cole, 'refused to engage in discussing this topic, or any aspect of the request' for reasons of probity.<sup>74</sup>

### **Tenders close and evaluation**

3.42 Tenders closed on 1 June 2010, with seven of the 13 panel members submitting a total of 11 solutions.<sup>75</sup> This included one response from Adagold utilising an Airbus A340-300, and two responses from Strategic—one utilising an Airbus A340-300 and the other an Airbus A330-200.<sup>76</sup>

3.43 Defence commenced the tender evaluation process on 2 June 2010. The process operated between that date and 9 July 2010 and was conducted primarily at the HQJOC premises near Bungendore, NSW. Evaluation of certain financial aspects of tender responses was undertaken at the Financial Investigation Services (FIS) office in Sydney.<sup>77</sup>

3.44 Overall responsibility for conducting the evaluation rested with the Tender Evaluation Board (TEB), consisting of three officers—two from 1JMOVGP and the third being the Air Transport Standing Offer Administrator. The TEB was supported by two tender evaluation working groups (TEWGs), which provided assistance in evaluating, respectively, technical and operational<sup>78</sup> and financial<sup>79</sup> aspects of tender responses.<sup>80</sup>

### ***Evaluation criteria and process***

3.45 The TEP and the RFT identified the following nine tender evaluation criteria, which were equally weighted and not listed in order of importance:

- (a) past performance of contractual obligations of the contractor, the operator or any subcontractor;
- (b) the contractor's overall degree of compliance with the requirements of the request;
- (c) the contractor's understanding of the requirements of the request;

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74 AFCD Review, p. 27.

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

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

77 Department of Defence, *Submission 5*, Attachment A, p. 18; AFCD Review, p. 8.

78 Referred to as the Technical/Operational TEWG.

79 Referred to as the Financial TEWG.

80 Department of Defence, *Submission 5*, Attachment A, p. 18.

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- (d) the extent to which the contractor demonstrates how compliance with the requirements of the request and the deed will be achieved;
  - (e) the extent to which the contractor meets the technical, functional, operational and performance requirements stated in the request and the deed;
  - (f) the extent to which the contractor is compliant with the request and the assessed level of risk relating to the negotiation of the request;
  - (g) the proposed corporate structure and the financial and corporate viability of the contractor and any proposed operator to fulfil their obligations under the deed;
  - (h) the contractor's demonstrated technical and managerial capability to meet the requirements in the request and the deed; and
  - (i) the fuel efficiency of the aircraft.<sup>81</sup>

3.46 The RFT provided that the criteria were non-exhaustive and did not limit the general provision in clause 5.5 of the deed that value for money was the overriding consideration.<sup>82</sup> The deed provided further that the Commonwealth may, in its absolute discretion, take into account other matters including past performance.<sup>83</sup>

3.47 All tender responses were initially assessed for their completeness and compliance and none were set aside during this process.<sup>84</sup> Commercial and financial information was then extracted from tender responses to undertake detailed compliance assessments. The Operational/Technical TEWG assessed criteria (e) and (h) above, while the Financial TEWG assessed criteria (g) and (i). The TEB conducted the compliance and risk assessments of tenders against the remaining criteria.<sup>85</sup>

3.48 On completion of the compliance and risk assessments, the TEB was provided with the financial and commercial information to consolidate and determine overall compliance and value for money and assign rankings to responses.<sup>86</sup> Advisors from Clayton Utz attended one TEB meeting to assist with insurance and liability questions and provided a summary document.<sup>87</sup>

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81 RFT AO/014/09-10, item 9.22; Department of Defence, *Submission 5*, Attachment A, pp. 17–18; AFCD Report, p. 9.

82 RFT AO/014/09-10, item 9.22.

83 RFT AO/014/09-10, item 9.22.

84 AFCD Review, p. 9.

85 Department of Defence, *Submission 5*, Attachment A, p. 18; AFCD Review p. 10.

86 AFCD Review, p. 10.

87 AFCD Review, p. 12.

3.49 Defence stated that during the evaluation process it became evident that six responses did not meet all of the criteria and were rated as 'non-preferred'.<sup>88</sup> Defence emphasised that 'this rating did not exclude them from the assessment process. It was merely a means of differentiating between those submissions that met all of the evaluation criteria and those that did not'.<sup>89</sup>

### ***Conflict of interest management***

3.50 The TEP contained three key clauses in relation to conflicts of interest, which required that:

- the Chair of the TEB brief members of the tender evaluation team (that is, the TEB and the two TEWGs) on the requirements of the TEP, including conflicts of interest;
- the Chair of the TEB brief members of the tender evaluation team on the risk associated with real or perceived conflicts of interest prior to the evaluation. Any non-Defence personnel participating in the tender would be required to submit a statement to the effect that they had no conflicts of interest; and
- participants in the tender evaluation process were to be advised that, should a real or perceived conflict of interest arise at any time during the evaluation, they would be required to declare this and may be required to exclude themselves from further participation in the process.<sup>90</sup>

3.51 All members of the tender evaluation team signed conflict of interest declarations to the effect that they:

- acknowledged their obligations, as relevant, under the *Australian Public Service Act 1999* (Cth) or the *Defence Force Discipline Act 1982* (Cth) in relation to their membership of tender evaluation team;
- were aware that they were subject to the relevant legislation while carrying out their duties;
- did not have any conflicts of interest—real or apparent—with their duties; and
- would immediately advise the TEB Chair if they had or became aware of any conflicts of interest—real or apparent—with their duties.<sup>91</sup>

3.52 Defence stated that members of the Financial TEWG signed their declarations during the evaluation process but before they had finalised their deliberations and made recommendations.<sup>92</sup> As discussed in Chapter 6, in the course of its external

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88 Department of Defence, *Submission 5*, Attachment A, p. 18.

89 Department of Defence, *Submission 5*, Attachment A, pp. 18–19.

90 Clauses 18, 21 and 22 of the TEP, cited in Department of Defence, *Submission 5*, Attachment A, p. 23.

91 Deloitte Review, p. 18.

92 Department of Defence, *Submission 5*, Attachment A, p. 22.



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review in September 2010, Deloitte identified certain deficiencies in these declarations. Subsequent to the evaluation process, tender evaluation team members signed revised declarations to address these issues.<sup>93</sup>

3.53 Defence stated that the tender evaluation team was not provided with a specific briefing on conflicts of interest and other probity matters. It submitted that:

The conduct of a separate probity briefing is considered best practice only and is not a mandatory requirement of the Commonwealth Procurement Guidelines or the Defence Procurement Policy Manual. Specific requirements of the Defence Procurement Policy Manual on conflicts of interest, the Tender Evaluation Plan and the Conflict of Interest declaration forms, combined with coverage of this issue in complex procurement training, provided adequate information on the obligations of the Tender Team in respect of probity matters.<sup>94</sup>

3.54 At this stage, the committee notes that in responding to possible criticism of the tender process, Defence relied on the bare minimum of satisfying mandatory requirements and not necessarily best practice.

### *Confidentiality*

3.55 The TEP contained clauses on confidentiality. These included requirements for the application of access restrictions to files and information, and for the handling of tender material with appropriate security and confidentiality.

### *Implementation of the TEP*

3.56 Defence stated that the following measures were undertaken in compliance with these clauses:

- the tender evaluation was undertaken primarily at the geographically remote and secure facility near Bungendore, NSW;
- the financial evaluation aspects were undertaken in a secure area of Defence offices in Sydney;
- key procurement documents were stored in an electronic folder accessible only to personnel employed in HQ1JMOVGP—it should be noted that, from July 2010, access controls were further tightened to restrict access to personnel directly involved in the tender process only; and
- the TEB advised that, at no stage was commercially sensitive information on any tender response communicated to other tenderers or personnel outside the TEB during the evaluation process.<sup>95</sup>

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93 Deloitte Review, p. 18.

94 Department of Defence, *Submission 5*, Attachment A, p. 24. See further, Deloitte Review, pp. 18–19.

95 Department of Defence, *Submission 5*, Attachment A, pp. 15–16.

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*Additional measures in respect of Major Charlton*

3.57 In response to confidentiality concerns arising from Major Charlton's posting to 1JMOVGP, Group Captain Barnes, Lieutenant Colonel Hall and Squadron Leader Cole declared that they did not have a personal or social relationship with Major Charlton and, to their knowledge, nor did any of the staff under their supervision.<sup>96</sup> Group Captain Barnes stated further that, as part of the tender review process, he directed his Chief of Staff to survey members of 1JMOVGP about their prior contact with Major Charlton.<sup>97</sup> Members were asked to respond to the following question:

What involvement have you had with Major Charlton in your time in 1JMOVGP?<sup>98</sup>

3.58 Group Captain Barnes stated that two members disclosed prior involvement with Major Charlton, but neither was involved in the tender evaluation. These members were his Chief of Staff and previous contracting officer, who had worked with Major Charlton in HQ1JMOVGP in 2003.<sup>99</sup> The Defence Chief Audit Executive, Mr Geoffrey Brown, stated that he assessed this remote contact as 'not pertinent to the overall process'.<sup>100</sup> As discussed subsequently, the AFCD examinations of Mr Charlton's Defence email and telephone access records supported these declarations.<sup>101</sup>

*Probity risk management during the tender evaluation stage*

3.59 Defence considered the appointment of a probity auditor after the evaluation had commenced. On 7 June 2010, Squadron Leader Ben Cole sent an email to Clayton Utz lawyer Mr Steven Power seeking advice about a probity audit. He wrote:

I have been thinking about the possibility of ministerials etc relating to this tender. To ensure any disputes do not overly delay the scheduled commencement of the new contract, I think it would be best to have some form of probity audit at the conclusion of the tender evaluation. What are your thoughts?<sup>102</sup>

3.60 Mr Power provided advice over the telephone to Squadron Leader Cole on 9 June 2010 about the appointment of a probity auditor to conduct an audit at the end of

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96 Deloitte Review, p. 8.

97 Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, pp. 69–71.

98 Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, p. 70.

99 Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, pp. 70–71.

100 Mr Geoffrey Brown, *Proof Committee Hansard*, 29 March 2011, p. 72.

101 AFCD Review, pp. 22–23.

102 Department of Defence, *Summary of advice provided by Clayton Utz to Defence in relation to the appointment of a probity auditor* (14 April 2011), response to Question on Notice 3(j).

the evaluation.<sup>103</sup> During this conversation, the limited role of a probity auditor, that is to identify probity issues after the event, was discussed. Mr Power suggested that it was open to Defence to appoint a probity auditor. He noted that whether a probity auditor should be appointed would depend on whether Defence had any probity concerns in relation to the process that would justify such an appointment. He advised that, if there were no current issues, then it was questionable that the appointment of a probity auditor would be warranted. Even though he had entertained the 'possibility of ministerials', Squadron Leader Cole stated that as far as he was aware there were no probity issues or concerns in relation to the process.<sup>104</sup>

3.61 At the same time, Mr Power and Squadron Leader Cole had a general discussion about the role of a probity adviser, as distinct from a probity auditor, and whether a probity adviser should have been appointed at the commencement of the procurement process. In a written summary of his advice, Mr Power gave an account of the points that he had made, which were:

- it was not common for agencies to appoint probity advisers when conducting procurements from established standing offer panels; and
- it was necessary to consider whether the value of the proposed contract warranted the appointment of a probity adviser.<sup>105</sup>

3.62 Defence's evidence to the committee indicates that it understood Mr Power to mean that the appointment of a probity adviser would be unusual because:

- the procurement was conducted using a panel arrangement, which provided a level of 'assurance' in regards to probity;<sup>106</sup> and
- the tender process had reached an advanced stage, such that the benefit of appointing a probity adviser had been lost.<sup>107</sup>

3.63 In his oral evidence to the committee, Group Captain Barnes stated that on the basis of Mr Power's advice, conveyed to him by Squadron Leader Cole, he made the decision not to appoint a probity adviser.<sup>108</sup>

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103 Defence made available to the committee a summary prepared by Mr Power of his telephone conversation with Squadron Leader Cole on 9 June 2010: Department of Defence, *Summary of advice provided by Clayton Utz to Defence in relation to the appointment of a probity auditor* (14 April 2011), response to Question on Notice 3(j).

104 Department of Defence, *Summary of advice provided by Clayton Utz to Defence in relation to the appointment of a probity auditor* (14 April 2011), response to Question on Notice 3(j).

105 Department of Defence, *Summary of advice provided by Clayton Utz to Defence in relation to the appointment of a probity auditor* (14 April 2011), response to Question on Notice 3(j).

106 See further: Mr Geoffrey Brown, Dr David Lloyd and Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, pp. 53–56. See also, AFCD Review, pp. 11–12; AGS Review, p. 9; Deloitte Review, p. 15.

107 Dr David Lloyd, *Proof Committee Hansard*, 29 March 2011, p. 55.

***Identification of preferred tenderer and the source evaluation report (SER)***

3.64 On completion of the overall compliance assessment undertaken by the TEB, Adagold was rated as the highest ranked tenderer.<sup>109</sup> The TEB prepared the Source Evaluation Report (SER), documenting the evaluation and outcome of the tender. Defence stated that the function of the SER was to provide:

...an explanation of how the evaluation has been conducted, summarising the responses received; the outcomes of screening and short-listing processes; the strengths and weaknesses of the tenders; key risks and other problems identified; and issues in the value for money comparison (including those that will need to be negotiated).<sup>110</sup>

3.65 Early in July, during the final stage of the evaluation process, Squadron Leader Cole approached Clayton Utz to provide two forms of written legal advice—one in relation to a review of the SER and the second to insurances. In respect of the SER, he explained:

We were instructed to carry out a high level review of the SER, and we did that. We were not...second guessing the evaluation. For example, we were not going back to source documents to check whether they had got the evaluation right. We were just doing a review. As a legal adviser, when you are reviewing a document like that, you are making sure that there is sufficient detail in there. You are making sure that you can follow the reasoning leading up to the ultimate conclusion.<sup>111</sup>

3.66 Mr Power identified a number of areas where the SER could be improved or where inconsistencies appeared in the document. Most of the concerns related to a lack or absence of detail, especially on the extent to which each tender had met the evaluation criteria, and the importance of ensuring that statements or assertions could be substantiated. For example, he suggested that Defence consider recording in the SER some of the key matters that led the TEB to conclude that the preferred tender represented value for money. Mr Power also commented on the use of imprecise language such as the term 'compliant' when 'having no deficiencies' would be more accurate. He gave the example of a contractor's 'past performance which 'cannot be assessed as 'compliant' or 'non compliant'—instead a qualitative comment should be made.<sup>112</sup>

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108 Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, p. 59. See further, Department of Defence, *Submission 5*, Attachment A, p. 16.

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

110 Department of Defence, *Submission 5*, Attachment A, pp. 3–4 (footnote 13). See further DPPM, 5.6—Evaluation of tenders, p. 5.6–14.

111 *Proof Committee Hansard*, 28 June 2011, p. 16.

112 Clayton Utz, Advice to Tender Evaluation Board re Source Evaluation Report, 9 July in camera evidence.

3.67 The committee took in camera evidence on a comment by Mr Power that the SER did 'not appear to have treated tenderers equally on the leasing arrangements with the respective aircraft owners'.<sup>113</sup> Basically, most of the tenderers had not yet entered into formal leasing arrangements with a respective aircraft owner. One tenderer had, however, obtained a signed letter indicating that a named aircraft provider had agreed to deal exclusively with the tenderer in providing suitable aircraft for chartering should that tenderer succeed. In the view of Clayton Utz, this arrangement did 'not constitute a formal lease agreement' and should have been understood in this light.<sup>114</sup>

3.68 While in private session, the committee also sought to clarify observations made about the scoring method employed by the tender evaluation teams. Mr Power explained:

It was not evident from the document I had been given that there was sufficient information in relation to the overall value for money assessment. I raised the issue of whether that had been documented separately, and if it had been it should have been attached to the report or, alternatively, there should have been a summary detailing the overall outcomes and the reasons for that decision being reached.<sup>115</sup>

3.69 A subsequent review also took note of the unequal treatment and the scoring methodology, which are discussed later.

3.70 In respect of the insurance matter, Mr Power indicated that his work was 'more a review to identify which of the bidders had provided the relevant insurances, where there were gaps and what would have to be done in the future to follow up those gaps'. He said that Clayton Utz assisted the evaluation team to identify 'the extent to which tenderers had actually provided the required insurances and we identified gaps'.<sup>116</sup> He said:

We were not providing specific insurance advice as such; it was more about identifying gaps where they may need to be addressed in the future.

3.71 He noted that more detailed analysis was required and understood that some clarification was then 'sought from tenderers seeking further details about proposed insurances'. Group Captain Barnes explained that it was 'normal business practice' to obtain those types of insurances when the contract was in place. According to him, the contract itself needs to specify that the company needs to provide evidence of these insurances within a certain period of time of signing the contract'.<sup>117</sup>

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113 *Proof Committee Hansard*, 28 June 2011, p. 16 and in camera Hansard, 28 June 2011.

114 *Clayton Utz, Request ALSO/014/09-10 for the Provision of Air Sustainment Services to the MEAO (Request) – Advice to Tender Evaluation Board re Source Evaluation Report, Committee Hansard*, in camera, 28 June 2011.

115 *Committee Hansard*, in camera, 28 June 2011, p. 5.

116 *Committee Hansard*, in camera, 28 June 2011, p. 5.

117 *Committee Hansard*, in camera, 28 June 2011, p. 7.

3.72 On receipt and consideration of Mr Power's advice, Defence finalised the SER on 9 July 2010.<sup>118</sup> That same day, it notified Adagold of its preferred tenderer status, and Strategic—as the current contract holder—of its unsuccessful bid.<sup>119</sup> Defence formally communicated the tender results to all participants on 12 July 2010.<sup>120</sup>

3.73 On 9, 10, 12 and 13 July 2010, Mr Aisen rang 1JMOVGP voicing concerns about the integrity of the tender process. On 14 July, he wrote to the Inspector General, Department of Defence, detailing his concerns. The letter was copied to a number of other people including the Secretary of Defence and the Chair of the Senate Foreign Affairs, Defence and Trade Legislation Committee.

3.74 Defence conducted initial contract negotiations with Adagold on 27 July 2010, but the procurement was suspended to enable an examination of the complaints made about the tender process.<sup>121</sup> These complaints and their subsequent investigations are considered in chapters 4–7.

## Conclusion

3.75 The tender process had a number of key features:

- it used a standing offer panel which, according to the Australian Government Good Procurement Practice Guide on Establishing and Using Panels, is 'of most benefit' where used for 'the procurement of property or services that are purchased regularly';
- the deed used by Defence for this tender had a post-Defence separation employment clause;
- the aircraft specifications in the RFT were materially different from those in the 2008 contract;
- the RFT was released on 29 March 2010 with a closing date of 1 June 2010 meaning potential tenderers had just over two months to prepare and lodge their tender responses;
- within days of the release of the RFT, on 30 March 2010, Mr Aisen representing a member of the Standing Offer Panel, Strategic Aviation, raised concerns about the tender process;
- Major Charlton, who was identified by Mr Aisen as having a conflict of interest, declared a potential conflict of interest on 31 March 2010 and ceased parading at JMCO Brisbane effective from 1 April 2010;

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118 Department of Defence, *Submission 5*, Attachment A, Annexure A.

119 Department of Defence, *Submission 5*, Attachment A, Annexure A. See further, DPPM 5.6—Evaluation of tenders, p. 5.6–15.

120 Department of Defence, *Submission 5*, Attachment A, Annexure A.

121 Department of Defence, *Submission 5*, Attachment A, Annexure A.

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- no probity plan was documented in the procurement strategy, and nor did the risk management plan refer to probity risks;
  - no probity protocols were developed for the industry briefing on 23 April 2010;
  - the TEP contained conflicts of interest clauses and members of the tender evaluation team signed conflict of interest declarations;
  - in June 2010, Defence considered but rejected the idea of appointing a probity adviser;
  - on completion of the tender evaluation, Clayton Utz reviewed the SER and made a number of observations especially about inadequate documentation including insufficient detail on the extent to which each tenderer had met evaluation criteria and on the overall value for money assessment;
  - Defence considered the above comments before finalising the SER on 9 July 2010;<sup>122</sup> and
  - on 9 July 2010, Defence advised Adagold of its preferred tenderer status and Strategic of its unsuccessful tenderer status.

3.76 In the following chapters, the committee considers the course of events subsequent to the tender evaluation stage. These developments included further allegations of impropriety in the 2010 tender process, which prompted Defence to commission four reviews of the procurement.

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122 Report provided to the committee as a confidential document.

