

Chapter 4

Complaints about the 2010 tender process

4.1 In this chapter, the committee continues the factual narrative of events that took place during the 2010 tender process. It starts with events occurring after Strategic was notified on 9 July that it was not the preferred tenderer. The committee's main focus is on the complaints concerning probity and due diligence matters that triggered a series of internal and external reviews.

Complaints about the tender process

4.2 On 14 July 2010 Mr Aisen, in his capacity as Executive Director of Strategic, wrote formally to the Defence Inspector-General, Dr Raymond Bromwich, raising concerns about the probity of the tender process.¹ Mr Aisen elaborated on these concerns in nine additional items of correspondence to the Inspector-General and the Chief Audit Executive between 16 July and 18 August 2010.² The complaints concerned three broad issues:

- conflicts of interest and confidentiality;
- the tender specifications; and
- Adagold's fitness and propriety to contract with the Commonwealth.³

Conflicts of interest and confidentiality

4.3 At the core of Mr Aisen's complaints was an allegation that Adagold received privileged information about the tender specifications prior to the release of the RFT, which, he submitted, should have disqualified its tender response. Specifically, he alleged that:

- (a) through his employment in 1JMOVGP, Major Charlton 'directly or indirectly provided, or assisted in the provision of, information which justified the stringent increased criteria in the particular tender process in question';⁴

1 Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, 14 July 2010.

2 Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, Inspector-General, Department of Defence, 16, 19, 21 July 2010. See also Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, Chief Audit Executive, Department of Defence, 22, 28, 31 July 2010; 4, 18, 28 August 2010.

3 See further, Department of Defence, *Submission 5*, Attachment A, pp. 5–6; AFCD Review, 4.2.

4 Strategic Aviation, *Submission 6*, p. 2. See also, Mr Shaun Aisen, letter to Dr Raymond Bromwich, 14 July 2010; Mr Shaun Aisen, email to Mr Geoffrey Brown, 4 August 2010 (forwarding email correspondence with HQ1JMOVGP from 30 March to 9 April 2010).

- (b) on his re-employment in 1JMOVGP in mid-2009, it seemed 'likely' that Major Charlton 'may have or could have had access to relevant, discussions, conversations [and] email traffic about a potential upcoming tender or tender in process';⁵
- (c) Major Charlton had an ongoing relationship with Adagold prior to and during his employment in 1JMOVGP from March 2009 to April 2010;⁶
- (d) in the course of that relationship, Major Charlton provided Adagold with inside information on the tender specifications prior to its release;⁷ and
- (e) this information included forewarning of the increased cargo capacity requirements, requiring at least 25,000 kg, comprising a minimum of 150m³ of volumetric capacity.⁸

4.4 Strategic referred to the following circumstantial evidence in support of its allegations:

- (a) Adagold's unsolicited presentations to 1JMOVGP in early 2010, including an Airbus A340 solution. Strategic submitted that this circumstance—together with contact around this time from HQ1JMOVGP seeking Strategic's advice on an Airbus A340 solution—suggested that Adagold 'had been working on the tender for several months prior to its release'.⁹
- (b) 'The fact that Hi Fly managed to flag [its] intention of upgrading [its] FAAOC well before the tender closure date, and succeeded in doing so in May, just prior to the tender closure date, would appear to be highly coincidental'. Strategic stated, 'Why would Hi Fly specifically put the A340-300 onto its FAAOC unless it was aware of the upcoming tender compliance requirements?'¹⁰
- (c) Strategic's receipt of advice from Hi Fly on the evening of 29 March 2011, approximately eight hours after the release of the RFT,

5 Mr Shaun Aisen, email to Mr Geoffrey Brown, 18 August 2010.

6 Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 4. See also Strategic Aviation, *Submission 6*, p. 2; Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 4, 18 August 2010.

7 Strategic Aviation, *Submission 6*, p. 2; Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 4 August 2010 (forwarding email correspondence with HQ1JMOVGP between 30 March and 9 April 2010).

8 Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 4 August 2010 (forwarding email correspondence with HQ1JMOVGP between 30 March and 9 April 2010).

9 Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, 21 July 2010.

10 Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, 21 July 2010.

that Hi Fly had a commercial arrangement in place with another member of the standing offer panel in respect of its Airbus A340-300 aircraft. According to Strategic, this suggested Adagold may have 'briefed Hi Fly during the periods prior to the tender release'.¹¹

- (d) Alleged approaches by Major Charlton to 'a number of pilots employed by Strategic...seeking their interest in transferring to Adagold's proposed operation'. Strategic submitted that such behaviour was 'contrary to normal contractual negotiation protocols'.¹²
- (e) Major Charlton's employment 'within JMOVGP during the whole development and construction phase of the tender' and his departure 'shortly after the tender was released'.¹³ Strategic stated that this suggested that 'Adagold was aware of this potential tender, its increased specifications and had several months head start to prepare itself for the tender'.¹⁴

The tender specifications

4.5 Strategic asserted that certain tender specifications, in particular, the aircraft volumetric capacity, the preference for a single aircraft solution and the response timeframe:

- (a) did not reflect operational need;¹⁵
- (b) were not commercially justifiable in terms of value for money;¹⁶ and
- (c) were specifically designed to 'exclude the existing operator' and 'all Australian operators', and were 'tailored to suit a foreign entity via a brokered solution'.¹⁷

11 Strategic Aviation, *Submission 6*, p. 4; Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, 21 July 2010.

12 Mr Shaun Aisen, letter to Dr Raymond Bromwich, 14 July 2010. See also, Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, 16 July 2010; Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 18 August 2010.

13 Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 18 August 2010.

14 Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 18 August 2010.

15 Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 28 July 2010. See also, Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, pp. 2–5; Strategic Aviation, *Submission 6*, pp. 3–4.

16 Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 28 July 2010; Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 4 August 2010 (forwarding email correspondence with HQ1JMOVGP between 30 March and 9 April 2010). See also, Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 4; Strategic Aviation, *Submission 6*, pp. 3–4.

Adagold's fitness and propriety to contract with the Commonwealth

4.6 Strategic alleged that Adagold was not a fit and proper entity for the purposes of contracting with the Commonwealth due to the company's:

- (a) connection to tender irregularities in relation to contracts with the South African and Danish defence departments;¹⁸
- (b) association with Hi Fly, because the latter company:
 - (i) did not meet minimum essential requirements of the Airworthiness Protectorate for the carriage of Australian military personnel;¹⁹ and
 - (ii) had an unsatisfactory safety record in the provision of services to the ADF under previous MEAO air sustainment contracts;²⁰ and
- (c) association with Major Charlton, via AIS and previously Sky Air World. Strategic submitted that it is 'highly questionable that any company with which [Major Charlton] is involved should have any contractual relationship with the ADF'²¹ because he:
 - (i) was the subject of probity related concerns in the 2005 and 2010 tender processes, through his employment in 1JMOVGP;²² and
 - (ii) has a 'chequered record as an aviation consultant', in particular presiding over the collapse of Sky Air World, of which the Commonwealth is a creditor.²³

Investigation of complaints

4.7 In concluding his letter of 14 July, Mr Aisen recommended that Defence's Inspector-General:

...intervene to independently review the tender and its evaluation so as to avoid having the Commonwealth enter a contract which is clearly contrary to the interests of the Australian taxpayer.²⁴

17 Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, 21 July 2010. See also, Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 2; Strategic Aviation, *Submission 6*, p. 3.

18 Mr Shaun Aisen, email correspondence to Dr Raymond Bromwich, 19 July 2010; Mr Shaun Aisen, email correspondence to Mr Geoffrey Brown, 18 August 2010; Strategic Aviation, *Submission 6*, p. 4.

19 Mr Shaun Aisen, letter to Dr Raymond Bromwich, 14 July 2010.

20 Mr Shaun Aisen, letter to Dr Raymond Bromwich, 14 July 2010.

21 Mr Shaun Aisen, letter to Dr Raymond Bromwich, 14 July 2010.

22 Mr Shaun Aisen, *Proof Committee Hansard*, 29 March 2011, p. 4.

23 Mr Shaun Aisen, letter to Dr Raymond Bromwich, 14 July 2010.

24 Shaun Aisen to Dr Ian Williams, Inspector General, 14 July 2010 (confidential document).

4.8 In response to Strategic's allegations—and those subsequently published in media reports—Defence initiated a series of internal and external reviews of the tender process. As mentioned in chapter 1, these reviews were:

- the AFCD Review—an internal assessment of the MEAO air sustainment requirements, the contract process, the outcome, the probity of the process and value for money;
- the PwC Review—an external peer review of the AFCD review process;
- the Deloitte Review—an external probity review of certain aspects of the tender process; and
- the AGS Review—an external legal and legal process review of the tender, conducted concurrently with the Deloitte Review.

Conclusion

4.9 Strategic made several allegations of serious impropriety in respect of the 2010 tender process that go to critical probity issues including:

- conflicts of interest—especially Major Charlton's engagement in 1JMOVGP and his current and previous involvement in the commercial air charter industry;
- unnecessary or unjustifiable changes to the tender specifications designed to disadvantage the existing and all Australian operators; and
- Adagold's fitness and propriety to contract with the Commonwealth.

4.10 These allegations, among other probity and due diligence issues, then set in train the reviews listed above. The committee considers the conduct and findings of these reviews in the following chapters.

