

Appendix 5

Chronology of significant events 2005-2011¹

2005

April Following a competitive tender process, Strategic Aviation Pty Ltd ('Strategic') is awarded the first single air sustainment services contract to the MEAO, utilising an Airbus A330-300 aircraft operated by the Portuguese company Hi Fly.

Captain (now Major) David Charlton, an Australian Army Reservist then on continuous full-time service, is the non-voting chairman of the 2005 tender evaluation board which selected Strategic as the preferred tenderer.

In response to allegations of impropriety associated with the 2005 tender, Defence engages legal firm Phillips Fox (now DLA Piper) to conduct an independent external probity review of the procurement. The review concludes that the 2005 tender was conducted in a fair, open and transparent manner, and that no tenderer was disadvantaged in the tender process.

22 June Major Charlton deploys to the Middle East on Operation Catalyst, as Officer Commanding Joint Movements Coordination Centre, MEAO. He returns to Australia on 2 November 2005.

Mid-2005 Defence exercises an option to extend the 2005 MEAO contract with Strategic for a further six months.

2006

5 Jan Major Charlton ceases active Reserve service in the ADF and is appointed General Manager of Strategic.

Defence re-tenders the 2005 MEAO contract. The re-tendered contract is awarded to Strategic for a term of six months, with options for up to four, six-month extensions.

April The Chief Executive Officer and Executive Director of charter broker company Adagold Aviation Pty Ltd ('Adagold'), Mr Mark Clark, returns to Australia from South Africa. Mr Clark had been in South Africa since

1 This chronology was compiled from information taken from many different sources. Please consult the relevant sections in the report for more detail.

February 2004, where he jointly established and held a directorship in the company Adagold Aviation (South Africa).

- May The Australian Federation of Air Pilots writes to the Defence Minister about the alleged non-engagement of Australian pilots under the MEAO contract with Strategic.
- July Allegations are published in the South African media in respect of tender irregularities concerning contracts awarded to Adagold (South Africa) by the South African Government from 2004 to 2006.
- Aug Major Charlton resigns from Strategic and establishes his own airline, Sky Air World Pty Ltd.
- October Defence exercises an option to extend the 2006 MEAO contract for a further six months.

2007

- 28 Feb Mr Mark Clark resigns from his role as Director of Adagold Aviation (South Africa) by letter dated 28 February 2007. According to Mr Clark, the resignation does not appear to have been registered with the South African Registrar of Companies until 5 September 2007.
- July The 7:30 Report airs allegations made by former Strategic employees that the company is breaching aviation safety standards. Strategic responds that it is a victim of 'a commercially motivated campaign' to discredit it.

2008

- Ongoing Major Charlton, through Sky Air World, supports the bid of Adagold Aviation Pty Ltd ('Adagold') for a tender for an air services contract to the Danish Department of Defence. Adagold is awarded this contract in December 2008. The unsuccessful tenderer, Cimber Air, lodges a complaint with the Danish Complaints Board for Public Procurement in relation to the decision to award the contract to Adagold.
- June Defence re-tenders the 2006 MEAO contract. The re-tendered contract is awarded to Strategic for a term of 12 months, with options for two extensions of 12 months each.
- 24 Oct Commencement date for 2008 MEAO contract with Strategic.
- 24 Oct
08 to 09 Defence and Strategic agree to seven contract change proposals that provide amendments to the 2008 contract.
- Dec South African media reports indicate that the South African Defence Department has announced that there were no grounds for concluding

that tenders were improperly awarded to Adagold Aviation (South Africa).

2009

- Ongoing Adagold Aviation Pty Ltd (Adagold) undertakes market assessment and monitoring activities, including performing its own MEAO site assessment in conjunction with Hi Fly, and observing Strategic's freight forwarding arrangements at Brisbane Airport.
- Feb Sky Air World is placed into voluntary administration.
- Major Charlton is engaged as a consultant to the firm Aviation Integration Services Pty Ltd ('AIS'). Through AIS, Major Charlton provides consultancy services to certain members of the air transport standing offer panel in 2009.
- 20 March Major Charlton approaches Army Personnel Agencies seeking to recommence active Reserve service.
- 23 March Defence advises Major Charlton of a Reserve position within the Joint Movement Control Office (JMCO), Brisbane.
- 22 April Defence exercises an option to extend the 2008 contract with Strategic for a further 12 months.
- 24 June Major Charlton is posted to the role of Training Officer in JMCO, Brisbane. Major Charlton continues working for AIS in a civilian capacity and discusses his employment with the Officer Commanding (OC) JMCO, Brisbane, Major Tamara Rouwhorst.
- 6 July Major Charlton commences parading at JMCO, Brisbane.
- According to Defence, the OC ensures that Major Charlton is 'purposely kept away from all operational matters at JMCO Brisbane' including 'anything to do with' the 2008 MEAO contract.
- 4 Sept Adagold representatives meet with Defence personnel to discuss a range of issues. One issue relates to Adagold's plan to present an unsolicited proposal to provide air sustainment services to the MEAO.
- Oct Defence establishes a need to retender the MEAO contract and commences the procurement process (for example, preparation of tender related documents and discussions with Clayton Utz, the law firm engaged to provide legal support on the tender). Defence drafts the procurement strategy. Procurement documentation is stored in a DRMS folder, which is accessible to all personnel employed in HQ1JMOVGP near Bungendore.

The Danish Complaints Board for Public Procurement hands down its decision on complaints made by the unsuccessful tenderer, Cimber Air, in relation to the awarding of the 2008 Danish Defence Department contract to Adagold. Of the 16 heads of complaint, 15 are dismissed entirely and one is partly dismissed. No action is taken to change the award of the contract.

2 Nov The Air Transport Standing Offer Panel is established, comprising thirteen providers which are a combination of air charter brokers and operators.

2010

Early 2010 Defence and Strategic participate in mediation in respect of a refuelling cost dispute under the 2008 MEAO contract.

Jan Upon the changeover of the OC of JMCO Brisbane, the new OC is briefed on Major Charlton's history and the measures in place to keep him distanced from operations and any issues relating to the operation of the MEAO air sustainment contract.

10 Feb Adagold submits a written, unsolicited proposal to Defence entitled 'Middle East Sustainment Aircraft'.

18 March Defence approves the procurement decision to retender the MEAO contract.

23 March Clayton Utz provides oral advice to Defence in respect of the appointment of a probity advisor to the procurement. On consideration of this advice, Defence determines not to appoint a probity advisor.

23 March Defence approves the request for tender (RFT) for the 2010 MEAO contract.

24 March Defence approves procurement strategy for the retender of air sustainment charter services to the MEAO.

25 March Defence approves the tender evaluation plan (TEP).

29 March The RFT is issued to standing offer panel members.

30 March Major Charlton verbally declares a potential conflict of interest in his role as a member of the JMCO Brisbane, having been approached, through AIS, to assist with the tender responses of three standing offer panel members one of whom is Adagold.

30 March Mr Shaun Aisen, the Executive Director of Strategic corresponds with

- to 9 April members of 1JMOVGP, Group Captain Robert Barnes and Lieutenant Colonel Andrew Hall, to express Strategic's concerns about the upcoming tender process.
- 31 March AIS elects, in consultation with Major Charlton, to assist Adagold with its tender response.
- 1 April Major Charlton ceases parading at JMCO Brisbane on the instruction of the OC, Major Lara Bulpitt-Troy.
- 13 April Major Charlton commences parading as a visitor at the Directorate of Army Safety Assurance, followed by Headquarters 11 Brigade while awaiting further posting instructions.
- 23 April Defence conducts an industry briefing of standing offer panel members.
- April-June Defence provides additional tender clarifications at the request of standing offer panel members through Request for Information (RFI) notices.
- 1 June RFT closing date.
- 2 June to 8 July Defence undertakes the tender evaluation process.
- 16-24 June Members of the relevant Tender Evaluation Organisation (comprising the Tender Evaluation Board and working groups assisting the board) within Defence sign conflict of interest declarations to the effect that they:
- acknowledge their obligations as members of the APS or ADF;
 - are aware that they are subject to the relevant legislation governing their employment as members of the APS or ADF while carrying out their duties in the tender evaluation process;
 - do not have conflicts of interest (real or apparent) with their duties; and
 - will immediately advise the Chair of the Tender Evaluation Board or their supervisor if they have or become aware of a conflict of interest.

Members of the Tender Evaluation Organisation were not provided a specific briefing on conflicts of interest and other probity matters.

Subsequent to the tender evaluation process, members of the Tender Evaluation Board sign further conflict of interest and probity declarations covering possible conflicts of interest arising from employment, prior employment or financial interests in the organisations who may be potential suppliers, and relationships with persons who have interests in these organisations.

- July Defence applies access controls to the DRMS file containing tender documentation for the 2010 MEAO procurement. The folder is now accessible only to personnel directly involved in the 2010 tender process.
- 1 July Major Charlton is posted to Army Active Stand-by Staff Group on promotion to Major, undertaking project work for Headquarters 11 Brigade and the Directorate of Army Safety Assurance.
- 9 July Clayton Utz provides a letter to Defence outlining the findings of its review of the draft Source Evaluation Report (SER).
Defence finalises the SER and identifies Adagold as the preferred tenderer.
Defence provides verbal advice to Adagold that it is the preferred tender and to Strategic Aviation that it is not the preferred tenderer.
- 12 July Defence formally communicates the tender results to all participating tenderers.
- 14 July Mr Aisen writes to the Defence Inspector-General, Dr Raymond Bromwich, raising concerns about the tender process. Mr Aisen raises further allegations in nine additional items of correspondence to the Inspector-General and Chief Audit Executive, Mr Geoffrey Brown, between 16 July and 18 August 2010.

Mr Aisen forwards this correspondence to the Chair of the Senate FADT Legislation Committee, raising several concerns about the 2010 tender process and recommends that the committee 'intervene to independently review the tender and its evaluation'.
- 15 July The Secretary, Department of Defence, Dr Ian Watt, instructs the Defence Chief Audit Executive to conduct a probity review of the 2010 tender process. The Defence Audit and Fraud Control Division (AFCD) commences scoping the review.
- 19 July AFCD commences its probity review.
- 20 July Defence issues a media release announcing the AFCD probity audit.
- 27 July Defence conducts initial contract negotiations with Adagold.
- From July 2010 Defence begins implementing initiatives to improve non-equipment procurement (NEP) arising from the Defence White Paper 2009.
- 16 Aug PricewaterhouseCoopers (PwC) is engaged by Defence to conduct an independent peer review of the AFCD probity audit of the tender process

- 18 Aug Defence provides a formal letter of engagement to PwC in relation to the independent peer review of the AFCD probity audit.
- 24 Aug Defence approves the contract for the provision of air sustainment charter services with Adagold. The contract is not signed.
- 26 Aug On completion of the AFCD review, Defence briefs the (then) Minister for Defence, Senator the Hon John Faulkner, on the outcome of the review in a written submission. The Minister notes Defence's intention to proceed to contract with Adagold, subject to the agreement of the Department of Prime Minister and Cabinet.
- 27 Aug On the request of Minister Faulkner, Defence provides a copy of the ministerial submission to the Shadow Minister for Defence, Senator the Hon David Johnston, under caretaker provisions.
- 26 Aug Defence Chief Audit Executive, Mr Geoffrey Brown, writes to Mr Aisen advising him of the outcome of the AFCD review.
- 28 Aug Mr Aisen responds to Mr Brown's letter of 26 August, re-iterating his concerns about suspected conflicts of interest arising from the employment of Major Charlton in 1JMOVGP. Mr Aisen calls for a 'full, independent inquiry' into the procurement.
- 31 Aug Senator Johnston raises additional concerns about the 2010 tender process during a meeting with Defence, and subsequently records these concerns in a letter to Dr Watt dated 31 August.
- Defence convenes an internal meeting to discuss and develop the terms of reference for subsequent independent probity reviews of the 2010 tender process before taking any decision to proceed to contract.
- 2 Sep An article published in the *Age* reports allegations of impropriety in respect of the 2005 tender process. These allegations concern the provision of privileged information on tender specifications to Strategic before the release of the RFT. The article also reports on an alleged connection between Adagold and tender irregularities in procurements conducted by the South African and Danish defence departments.
- Defence engages the Australian Government Solicitor (AGS) from its legal services panel to conduct a legal and legal process review of the procurement process.
- Defence engages Deloitte Touche Tohmatsu (Deloitte) from its management consultancy panel to undertake a probity review of the procurement process.
- 6-15 Sept The tender evaluation board (TEB) undertakes a re-validation of the original SER and subordinate documents raised during the original

	tender evaluation process. The re-validated SER confirms Adagold as the preferred tenderer.
10 Sept	Defence refers matters concerning the 2005 MEAO contract to the Australian Federal Police for investigation.
13 Sept	Defence issues a media release announcing the referral of matters concerning the 2005 contract to the AFP.
15 Sept	<p>Deloitte provides its probity review report to Defence. The review concludes that nothing had come to Deloitte's attention to indicate that Defence should not proceed to contract with Adagold, but identifies several areas for improvement.</p> <p>AGS provides its legal and legal process review to Defence. The review concludes that the procurement process complies with the deed of standing offer under which the process was let, that it complies with Commonwealth and Defence procurement policy, and that there is no evidence of impropriety in the conduct of the process. AGS identifies areas for improvement in respect of SER and Tender Evaluation Working Group reports, to ensure greater accuracy and transparency in the documentation of evaluations.</p> <p>Defence approves the re-validated SER.</p>
Sept-Oct	<p>Defence implements findings and recommendations of the procurement reviews. These include:</p> <ul style="list-style-type: none"> • including in the deed of standing offer a performance guarantee to the value of \$2m (underwritten by the Commonwealth Bank of Australia); and • executing a novation agreement between Adagold, Hi Fly and Defence, enabling Defence to novate the contract to Hi Fly should Adagold become insolvent.
21 Sept	Defence issues an RFT for an interim MEAO contract, for four flights between 26 October and 4 November 2010.
6 Oct	The Defence Minister provides approval to proceed with the interim contract, which is awarded to Strategic.
7 Oct	An interim contract change proposal is signed by Defence and Strategic for four flights between 9 and 18 November 2010.
8 Oct	PwC provides its report on its independent peer review of the AFCD probity audit to Defence.
15 Oct	Defence briefs Senator Johnston on the 2010 contract approval.

- 19 Oct The Senate FADT Legislation Committee questions Defence about the 2010 tender process at supplementary budget estimates hearings.
- 20-21 Oct The Defence Minister approves the 2010 contract for signature.
- 22 Oct The 2010 contract is signed by Adagold and Defence.
- 23 Oct The 2008 contract concludes.
- 26 Oct to 18 Nov Strategic performs the interim MEAO air sustainment contract.
- 26 Oct CASA issues a FAAOC to Hi Fly for the period 1 November 2010 to 31 October 2011. The certification includes two Airbus A340-300 aircraft.
- 23 Nov 2010 MEAO contract commences. Adagold performs its first flight to the MEAO.
- 24 Nov The Senate refers an inquiry into the Department of Defence's request for tender for aviation contracts and associated matters to the FADT References Committee, for report by 1 May 2011.

2011

- Feb The Senate FADT Legislation Committee questions Defence about the 2010 tender process at additional estimates hearings.

Mr Shaun Aisen resigns as Executive Director of Strategic.
- 28-29 Mar The Senate FADT References Committee holds public hearings in Sydney and Canberra.
- Mar Defence implements non-equipment procurement reforms arising from the Defence White Paper 2009.
- 27 April The Senate FADT References Committee provides an interim report to the Senate, stating its intention to provide a final report on 23 June 2011.
- Mid 2011 Defence begins implementing reforms to its post-separation employment policy framework, which are due to be rolled out by late 2011.