

CHAPTER 14

KEY FINDINGS AND RECOMMENDATIONS

From the joint investigation discussed in the preceding chapters of this report, the following key findings and recommendations are made:

14.1 KEY FINDINGS

- 14.1.1 No evidence was found of any improper or unlawful conduct by the Government. The irregularities and improprieties referred to in the findings as contained in this report, point to the conduct of certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers involved in their capacity as members of the Ministers' Committee or Cabinet. There are therefore no grounds to suggest that the Government's contracting position is flawed.
- 14.1.2 The Strategic Defence Packages were unique to South Africa. Firstly, it was the first time that a "package approach" to the acquisition of armaments was adopted. Secondly, the acquisition consisted mainly of weapon systems designed and developed overseas.
- 14.1.3 Due to the sanctions imposed on the acquisition of arms prior to 1994, an adequate acquisition policy to accommodate the procurement of armaments for SANDF in the international markets did not exist.
- 14.1.4 The policy on the acquisition of armaments that evolved during SDP procurement process and that was approved in July 1999 (ACQ/1/98), consists of the necessary procedures and provides for the necessary authorising bodies to enable DoD and Armscor effectively to deal with international defence

equipment procurement. This policy compares favourably with defence procurement policies in the United Kingdom and Australia.

- 14.1.5 In view of the magnitude and extent of the SDP procurement, the time allocated for each evaluation and execution was insufficient to ensure that it was done properly and efficiently.
- 14.1.6 The decision that the evaluation criteria in respect of the LIFT had to be expanded to include a non-costed option and which eventually resulted in a different bidder being selected, was taken by the Ministers' Committee, a subcommittee of Cabinet. Although unusual in terms of normal procurement practice, this decision was neither unlawful, nor irregular in terms of the procurement process as it evolved during the SDP acquisition. As the ultimate decision-maker, Cabinet was entitled to select the preferred bidder, taking into account the recommendations of the evaluating bodies as well as other factors, such as strategic considerations.
- 14.1.7 The decision to recommend the Hawk/Gripen combination to Cabinet as the preferred selection for the LIFT/ALFA was taken by the Ministers' Committee for strategic reasons, including the total benefit to the country in terms of countertrade investment and the operational capabilities of the SANDF.
- 14.1.8 The acquisition policies and procedures of the DoD and Armscor required the compilation and approval of certain key programme documents. These documents provide the basis for informed decision-making during the acquisition process. Various key documents had not been finalised and/or duly approved before the final contracts were concluded.
- 14.1.9 From the investigation it is evident that IONT made a positive contribution to improving the overall procurement process and its outcome. However, it is not possible to make a conclusive finding on the total impact of IONT, because:

- Some functionalities of the packages were removed.
- The quantity of equipment for the LUH programme was reduced.
- Certain costs, for example management and statutory costs, had not been included in the presentation to Cabinet during November 1988.

14.1.10 With the exception of Bazan, all the bidders involved in the Corvette procurement programme failed to comply with the minimum evaluation criteria in respect of financing, technical requirements and Defence Industrial Participation. Bazan failed only in terms of the financing evaluation criteria.

14.1.11 The decision to allow bidders for the Corvette programme to supply information after the offers were submitted constituted a deviation from proper procurement practice.

14.1.12 Certain aspects of the financial and economic model used by the Affordability Team in their presentation to the Ministers' Committee in August 1999 on the cost of the procurement, can be criticised to an extent. However, even though there might be different views and models explaining future projected costs and effects, it appears from the investigation that the Affordability Team and IONT took adequate measures under the circumstances to present to the Government a scientifically based and realistic view on these matters. The Ministers' Committee was put in a position by the Affordability Team to apply their minds properly to the financial impact of the procurement. Ultimately, the decision about what the country can and cannot afford is one of political choice.

14.1.13 The acquisition policies and guidelines of DoD and Armscor, as well as the Defence Review, stipulate that the prime responsibility for the selection of subcontractors rests with the main supplier. However, Armscor was not precluded from contracting subcontractors directly if this proved to be more cost effective. Armscor did, in fact, nominate and select subcontractors for the supply of the engines for the LUH and the gearboxes for the Corvettes.

- 14.1.14 Fair and competitive procurement procedures for the selection of subcontractors were not followed in all cases where strategic considerations played a significant role.
- 14.1.15 No instance was found of particularly clumsy language in the contracts. The contracts were found to be understandable, well defined and the drafting was of a high standard.
- 14.1.16 Proper evaluation procedures were not consistently and diligently applied and a proper audit trail was not established throughout the procurement process.
- 14.1.17 There was a conflict of interest with regard to the position held and role played by the Chief of Acquisitions of DoD, Mr S Shaik, by virtue of his brother's interests in the Thomson Group and ADS, which he held through Nkobi Holdings. Mr Shaik, in his capacity as Chief of Acquisitions, declared this conflict of interest in December 1998 to the PCB, but continued to participate in the process that led ultimately to the awarding of contracts to the said companies. He did not recuse himself properly.
- 14.1.18 During the course of the investigation it was established that the Chief of Acquisitions, Mr S Shaik, had not applied for and did not receive the military security clearances required by law.
- 14.1.19 The imposition of a risk premium on the IMS of C²I² was not unreasonable. By all accounts the IMS was a critical sub-system and it appears reasonable that the GFC would not have been prepared to accept the IMS as a category B system.

- 14.1.20 ADS was given the opportunity to lower its inflated tender of R64,73 million for the SMS to just below that of C²I² over a period of more than a month. C²I² was given a maximum of four days to submit its tender.
- 14.1.21 Industrial Participation obligations committed to by suppliers and contracted for, were in excess of the minimum requirements of both the National Industrial Participation programme approved by Cabinet and the 100% of contract price as stipulated in the RFP.
- 14.1.22 The performance guarantees, although based on contract price as opposed to the value of Industrial Participation obligations, were found to be reasonable in view of the higher value of the obligations and because the obligations were in excess of the IP policy requirements approved by Cabinet.
- 14.1.23 The Industrial Participation obligations contracted for by the prime contractors in terms of the SDP as well as the performance guarantees in relation thereto, compare favourably with the position in other countries that exercise countertrade practices.
- 14.1.24 The intended controls contained within contracts may, in certain instances, not be sufficient to deter prime contractors from fully meeting their industrial participation obligations.
- 14.1.25 It has come to the attention of the investigation teams that the former Minister of Defence was allegedly involved in a company that was to benefit from the SDP procurement. The Minister concerned was actively involved in the procurement process before his retirement. Although no evidence of impropriety was found in this regard during the public and forensic phases of the investigation, such a situation seems extremely undesirable as it creates negative public perception about a process that might otherwise be in order.

14.2 RECOMMENDATIONS

- 14.2.1 It is recommended that the policy document, referred in paragraph 3.2.5 above, be further refined with specific reference to the lessons learnt from the acquisition process under investigation as reflected in this report. The staff of DoD and Armscor involved in procurement should be properly trained to ensure that they assimilate and fully understand the policy with a view to its effective implementation.
- 14.2.2 Properly approved needs determination should be compiled during the acquisition process. During needs determination it should be ensured that the planned acquisition addresses the operational capability required as well as the future sustainability thereof. During cardinal acquisitions, sufficient time should be made available to determine needs properly, compile acquisition plans, evaluate offers and finalise contracting.
- 14.2.3 The evaluation process should contain effective controls to ensure a fair and regular process in order to exclude the possibility of manipulation. Internal audit should be involved far more extensively to ensure effective controls are in place and that they are complied with during the various stages of the procurement process.
- 14.2.4 Detailed and accurate information, including all possible costs, should be submitted to Cabinet. All currency risk implications regarding international armament acquisitions should be disclosed to Cabinet. Such information is necessary to ensure that essential functionalities are not removed from equipment during negotiations due to budget constraints.
- 14.2.5 The NIP offers during RFO stage should be properly evaluated. This will ensure that only feasible projects are accepted and negotiations with bidders to replace projects at a later stage will not be necessary.

- 14.2.6 Adequate audit trails, with particular emphasis on the visibility of supervision, decision-making and assumption of responsibility should be in place at appropriate levels in the procurement process.
- 14.2.7 Moderation of results should take place to ensure that computation errors and significant variances in scores awarded are addressed.
- 14.2.8 DoD should take steps to ensure that good procurement practices are adhered to and that compliance with the prescribed tender procedures is strictly enforced.
- 14.2.9 An approved negotiation strategy and terms of reference should be in place prior to the commencement of negotiations.
- 14.2.10 Proper consultation and an impact study should be done before equipment types or functionalities are reduced.
- 14.2.11 The guidelines contained in the Defence Review that relate to the selection and appointment of subcontractors must be followed and steps taken to ensure that an open and fair process is adhered to for the selection of subcontractors.
- 14.2.12 DoD and Armscor should develop specific rules and guidelines to address conflict of interest issues and to ensure that personnel are properly informed in this regard. These rules and guidelines should be developed, taking into account the principles contained in the Code of Conduct of the State Tender Board and the King Report on Corporate Governance, 1994, regarding improved ethics and probity as well as international norms in this regard. Steps should also be taken to ensure that a particular individual, irrespective of his/her position is not tasked with incompatible functions in multifaceted procurements. This will prevent a conflict or perceived conflict of interest, which could have a detrimental effect on the overall acquisition process.

Strategic Defence Packages

Joint Report



- 14.2.13 DoD should undertake an urgent personnel audit to ensure that all its' staff comply with the prescribed security clearance requirements.
- 14.2.14 The Department of Trade and Industry should consider obtaining legal opinion pertaining to the controls in respect of the effective implementation of the NIP and DIP programmes, to ensure that prime contractors fully meet their obligations, as contained in the relevant agreements.
- 14.2.15 Parliament should take urgent steps to ensure that high ranking officials and office bearers, such as Ministers and Deputy Ministers, are not allowed to be involved, whether personally or as part of private enterprise, for a reasonable period of time after they leave public office, in contracts that are concluded with the State.

A handwritten signature in black ink, appearing to read 'S A M Baqwa'.

*Adv S A M Baqwa, SC
Public Protector*

A handwritten signature in black ink, appearing to read 'S A Fakie'.

*Mr S A Fakie
Auditor-General*

A handwritten signature in black ink, appearing to read 'B T Ngcuka'.

*Mr B T Ngcuka
National Director of
Public Prosecutions*

14 November 2001