

CHAPTER 2

METHODOLOGY EMPLOYED

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CHAPTER 2

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2.1 THE PUBLIC PHASE OF THE INVESTIGATION CONDUCTED BY THE PUBLIC PROTECTOR

2.1.1 Reasons for the public phase

2.1.1.1 Due to the huge public interest in the joint investigation, it was decided that it would be in the public interest and in the interests of the investigation that a part of it be conducted in public. The principles of transparency and openness that underpin our constitutional democracy require that matters of national interest be dealt with in a manner that is accessible and comprehensible to the citizens of our country and every other interested person or institution. However, for obvious reasons, the DSO could not conduct the criminal part of the investigation in public. The format of a forensic investigation also does not allow for public insight and participation. As indicated above, the Public Protector Act, 1994, however, makes provision for investigations to be conducted in public, the format and contents of which are to be determined and regulated by the Public Protector.

2.1.1.2 As the different parts of the joint investigation involved many of the same role players and key issues, considerable care was taken to ensure that one part of the investigation did not have a negative impact on any of the other parts. The selection of the issues to be addressed and the witnesses to be called during the public phase of the investigation, was carefully managed.

2.1.1.3 The view was held that it was in the interest of the public to be informed of what the acquisition under investigation was. Why was it necessary; what was required; how was it acquired; at what cost and what its effect on the country

was going to be? These were all the issues that could be addressed in the public phase by inviting some of the key role players to give testimony. There were also some specific allegations, however limited, that could be addressed in public.

- 2.1.1.4 In order to limit overlapping and possible interference in the other parts of the investigation, it was decided to divide the public phase of the investigation into two stages. The first stage was referred to as the “scene setting stage” and comprised testimony in respect of the requirements of the SANDF and the process and procedure of acquisition. The second stage was referred to as the “specific complaints stage”. It included the evidence of a tenderer who alleged certain improprieties in the acquisition process that caused his company to be deselected from obtaining a specific contract.
- 2.1.1.5 As the public phase of the investigation was conducted on a voluntary basis, witnesses were invited to participate and notified accordingly. All witnesses were represented by legal counsel. Persons and institutions implicated by the evidence provided during the public phase were informed of their right to attend and to respond and a number of them did so. The media covered the proceedings extensively. Documents, media and other reports and the inputs of several interested parties were also considered and evaluated during this phase.
- 2.1.1.6 The public phase of the investigation commenced on 28 May 2001 and was finalised on 31 August 2001. The Public Protector was assisted by Dr S Ramaite, Director of Public Prosecutions and Mr H van Zyl, Executive Manager of the Office of the Auditor-General during the hearings.

2.1.2 The scene setting stage of the public phase of the investigation

2.1.2.1 *The purpose of this stage of the investigation*

During the first stage of the public phase of the investigation evidence was heard in connection with the process and procedure that was followed for the acquisition concerned, the requirements that had to be met by the procurement, the financial implications thereof for the State and the Industrial Participation Programmes relevant to the acquisition.

2.1.2.2 *The witnesses*

The following witnesses testified during the first stage of the public phase of the investigation:

- Rear Admiral S J Verster, Director: Weapons Systems of the Department of Defence.
- Mr D Griesel: Senior Manager: Telecommunications and Acquisition Systems at Armscor.
- Mr J Naidoo, the former Chief Negotiator of the International Offers Negotiating Team.
- Lieutenant General (ret) W H Hechter, the former Chief of the South African Air Force.
- Vice Admiral (ret) R C Simpson-Anderson, the former Chief of the South African Navy.
- Minister A Erwin, the Minister of Trade and Industry; and
- Minister M Lekota, the Minister of Defence.

The three investigation agencies had a consultation with Mr R White, a former senior manager of the former Department of Finance (now National Treasury) by way of video recording. During the public hearing the video was screened

and entered into the record of the evidence. This had to be done as Mr White is currently based in Washington where he is an employee of the World Bank.

2.1.3 The Second Stage of the public phase of the investigation: specific complaints

2.1.3.1 This stage of the public phase of the investigation presented a particular challenge as most, if not all of the specific complaints in connection with the SDP were being investigated by the other two agencies involved. In order not to interfere with those investigations or to duplicate efforts, care had to be taken to select specific complaints that could be investigated in public. Eventually it was decided that, a public investigation into the complaint of C²I² Systems (Pty) Ltd (C²I²) would not be detrimental to the other investigations and that it would be in the public interest, in the interest of the complainant and in the interest of openness and transparency, that this complaint and any rebuttals thereof be ventilated properly.

2.2 THE FORENSIC INVESTIGATION BY THE AUDITOR-GENERAL

2.2.1 Operational Teams of the Auditor-General

The operational team of the Auditor-General was divided into five subteams. Each subteam was allocated certain responsibilities to ensure that the investigation would be completed within a reasonable time. Due to the shortage of personnel in the Office of the A-G, personnel from private audit firms were contracted in and formed part of the teams. Precaution was taken to ensure that no conflict of interest would arise. Security clearances were obtained for all personnel involved in the investigation. A project office was established, which was headed by a project manager. The project manager was responsible for managing all the subteams and liaising with the investigators attached to the other investigation agencies.

2.2.2 Scope of the Investigation

2.2.2.1 The subteams were instructed to adopt a focused approach in order to address the allegations and concerns and to ensure that the investigation is completed within reasonable time.

2.2.2.2 As a result the teams investigated the following areas:

- (a) The arms procurement process;
- (b) Selection of prime contractors – LIFT, ALFA, LUH, Submarines, Corvettes;
- (c) Final contracts vis-à-vis IONT;
- (d) Cost to State: Validity of contract amount;
- (e) Cost to State: Full financial and fiscal implications;
- (f) Selection of subcontractors: Conflict of interest;
- (g) Selection of subcontractors: Process followed by prime contractors in the selection of subcontractors;
- (h) The complaints of a subcontractor: C²I²;
- (i) The validity of a statement by ministers with regard to deterrent losses on NIP for prime contractors;
- (j) International norms for NIP guarantees; and
- (k) Progressive realisation of NIP and DIP.

2.2.3 Standards Applied

The forensic investigation conformed to internationally acceptable forensic investigation standards. It, however, does not constitute an audit and the principles applied during the investigation, did not incorporate any standards as prescribed by the General Accepted Government Auditing Standards (GAGAS) or the South African Auditing Standards (SAAS).

2.2.4 Study of Documents

2.2.4.1 A proper forensic investigation is usually underscored by an in-depth studying of documents. In order to give effect to this, the investigation team adopted a multi-phased approach, which involved the following:

- (a) Identifying and photocopying the relevant documents from the approximately 700 000 pages furnished. Approximately 134 768 pages have been copied to date. Apart from these documents, documentation from subcontractors was also obtained and studied.
- (b) Perusing the relevant documents, which were identified to address the areas of the investigation. From these documents a number of witnesses were identified for interviews in order to complete the investigation.
- (c) Identifying, obtaining, and studying any other documents relevant to the investigation.
- (d) Presenting the documents to the relevant witnesses during the interviewing process in order to obtain their views.

2.2.5 Interviewing of Witnesses

2.2.5.1 During the course of the forensic investigation, interviews were held with various persons involved in the procurement process. This was necessary in order to obtain their interpretation of the process, their involvement with the process, to clarify certain issues and to provide some of them with an opportunity to explain certain decisions and/or actions. It was also essential to conduct the interviews in order to test the versions of the different individuals in relation to one another, and in relation to the facts appearing from the documentation.

2.2.5.2 Different approaches were adopted during this process. For example, in some instances, witnesses were consulted and consultation notes prepared, whilst in other instances the interviews were recorded under oath in terms of section 28(1) of the NPA Act.

2.2.5.3 All the evidence obtained in terms of this provision has been dealt with in terms of the prohibition of disclosure provided for in section 41(6) of the NPA Act.

2.3 THE CRIMINAL INVESTIGATION BY THE DIRECTORATE OF SPECIAL OPERATIONS

2.3.1 Operational Teams

The DSO investigation team was divided into four subteams, and each team was allocated responsibilities to investigate specific areas of the SDP. Two of the subteams concentrated on the process of the arms procurement and they worked very closely with the teams of the A-G. The other two mainly focused on the issues pertaining to the conflict of interest and other allegations of criminality.

2.3.2 Scope of Investigation

2.3.2.1 On 6 November 2000, the Investigating Director instituted a preparatory investigation to determine whether there are reasonable grounds to conduct an investigation pertaining to corruption and/or fraud in connection with the acquisition of armaments at DoD in respect of negotiations and/or contracts concluded regarding the purchase of corvettes, submarines, light utility helicopters, maritime helicopters, lead in fighter trainers and advanced light fighter aircraft.

2.3.2.2 The DSO investigation progressed to a stage where, on 24 August 2001, the Investigating Director was satisfied that reasonable grounds existed to conduct an investigation in terms of section 28(1)(a), into the suspected commission of offences of fraud and/or corruption in contravention of the Corruption Act, 1992 (No 94 of 1992), relating to certain contracts and/or subcontracts. Those allegations where reasonable grounds have not yet been found are still the subject of a preparatory investigation.

2.3.2.3 It should be mentioned that the scope of the DSO investigation was not aimed at determining the status of and/or legality and/or enforceability of the contracts between the South African Government and the various contracting parties in terms of the SDP. The quality of the contracts was reviewed by the Public Protector and is dealt with in chapter 13 of this report.

2.4 REPORT AND DUE PROCESS

2.4.1 A draft Joint Report was compiled by a task team of the three investigation agencies and submitted to the President, in his capacity as the Chairperson of the Ministers' Committee involved in the procurement under investigation, and to the Ministers of Finance, Defence, Public Enterprises and Trade and Industry for comment in adherence to the provisions of section 4(6) of the Auditor-General Act, 1995 and due process. Government submitted a response on the draft Joint Report that was appropriately considered, in terms of due process, when finalising this report.

2.4.2 This report includes the evidence obtained during the public and forensic phases of the investigation.

2.4.3 Chapters 1 – 2 provide a background and introduction to the investigations reported on and methodology adopted.

Strategic Defence Packages

Joint Report



- 2.4.4 Chapters 3 – 13 focus on the specific areas of the investigation with key findings at the end of each chapter.

- 2.4.5 The report concludes in chapter 14 with the overall findings and recommendations of the investigation.