

Joint Standing Committee on Defence

22 November 2001

Joint Investigation Report into Arms Procurement Package: Chapter 7

Relevant documents:

[Joint Investigation Report into the Strategic Defence Procurement Packages](#)

Chairpersons: Mr J Mashimbye, Ms T Modise

1. Summary

- 1.1 The Committee concluded their deliberations on Chapter 7 of the Joint Investigation Report into the Strategic Defence Procurement Packages. Subject to confirmation by the investigating agencies the Committee will meet with them on Tuesday 27 November 2001.

2. Minutes

2.1 Planning for Hearings

- 2.2 Mr Ndlovu (IFP) proposed that the three investigating agencies as well as Armscor and the Department of Defence (DoD) be invited next week.
- 2.3 Adv Schmidt (DP) agreed, saying that the Committee needs to hear from the three agencies, DoD and Armscor before submitting a report.
- 2.4 Mr Mashimbye (ANC) advised that he had taken the initiative and asked the three agencies to come before the Committee on Tuesday 27 November 2001. There had been no reply as yet. He had also asked them to be available Wednesday if it was required.
- 2.5 Mr Ngculu (ANC) suggested that the Committee first meets with the DoD and Armscor so that it would be better informed on the substance of the Report.
- 2.6 Mr Smit (NNP) wanted clarity who would appear first, the DoD and Armscor or the agencies.
- 2.7 Ms Modise (ANC) confirmed that her co chair had invited the agencies for the Tuesday and they would go first.

2.8 Chapter 7: Consideration

- 2.9 Adv Schmidt referred to 7.3.3.5 [Non-conformance with critical minimum criteria]. Despite non-conformance in round one, certain offers were nevertheless evaluated in the second round.

This was contrary to the norm. He commented that if this was not a dereliction of duty he did not know what is.

- 2.10 Mr Ndlovu referred to 7.2.1.5 and said that Mr Schmidt was talking about the change of formula. In 7.3.5.1 (b) it seems as if people were not knowing what they were doing. In the first chapter Mr Hirsch (DTI) is present then he disappears from other chapters and reappears again.
- 2.11 Mr Bloem referred to 7.2.1.1 and wanted to know what the definition of security agreement was. In the paragraph it states that there is no evidence of a security agreement as required by the Ministry of Defence (MoD).
- 2.12 Mr Smit referred to 7.3.5.4 (c)(iv) that relates to non-conformance to critical criteria and asked why the legal opinion given to Mr Van Dyk was not considered.
- 2.13 Mr Oosthuizen referred to 7.1.7. The value systems for the technical evaluation, NIP (National Industrial participation), DIP and the financial evaluation were each scored out of 100. It states that the Navy was only involved in the technical evaluation. Was the Navy involved throughout the process? It his view, and he hoped it is wrong, that the Navy was only involved until 1998 and thereafter did not play a role.
- 2.14 Mr Mabeta (UDM) said that it was not clear how the different roles played by Mr Shaik related to one another. He referred specifically to 7.1.8 and 7.3.5.1 (a) and (b).
- 2.15 Mr Theron referred to the various roles played by Mr van Dyk as head of Armscor Countertrade, overall supervisor of the three DIP evaluation teams and chairman of another team. The Report states that these roles are incompatible. This concerned Mr Theron and he wanted to flag this.
- 2.16 Ms Kota (ANC) referred to 7.6.2.4 and said that there is a deviation from the norm in that performance guarantees were allowed that were 5% of 25% of the contract price. She wanted to know why there was this deviation.
- 2.17 Mr Ngculu (ANC) requested that 7.3.6.1 be flagged because it states that no approved NIP value system could be found in the investigation. All that was found was an individual schedule.
- 2.18 Mr Ntuli (ANC) wanted to know the exact powers delegated to Mr Shaik and details surrounding the delegation.
- 2.19 Adv Schmidt commented that non-conformance and various deviations have been pointed out. Under 7.3.3.5 Bazan is the only bidder that meets the minimum technical requirements yet GFC (German Frigate Consortium) was selected as the preferred bidder. The Meko A200, the corvette built by GFC, failed the specified engine compartment vulnerability separation requirement. Under 7.3.7.3 (g) the value system works to the detriment to bidders who openly supply information and conform to the standard. This is as a result of no provision being made for the rating of the bidder where information has not been provided. If no information is provided the bidder gets the lowest score. But in terms of the finance value system, the lowest score gets the highest ranking.
- 2.20 Mr Bloem (ANC) commented that Cabinet can select the preferred bidder. It might be that Cabinet took everything into account and made a strategic decision. The decision is Cabinet's and nobody else's.

- 2.21 Ms Kota wanted to flag 7.2.1.4 in relation to the combat suites. 60% of the money will go to subcontractors. She believed that the procedures in place needed to be examined.
- 2.22 Mr Oosthuizen referred to 7.2.1.6 and specifically to the R6 billion estimated cost for the GFC corvettes that was presented to Cabinet. The final price in 7.5.3.2 was R6.9 billion and this suggests that not all the information was revealed to Cabinet. The member wanted to flag the fact that the difference in costs was due to the fact that not all the cost elements - per the affordability report - were taken into account initially.
- 2.23 Mr Jankielsohn (DP) wanted to know why there was no approved value system. He said that at some stage the Committee must request a list of the individuals being investigated and the charges that are being considered because the substance of the Report does not correlate with the findings and the recommendations.
- 2.24 Adv Schmidt wanted to know what was SOFCOM's (Strategic Officers Committee) brief because it seems as if they were performing a variety of functions from co-ordination to making decisions.
- 2.25 Mr Smit wanted to know the current position held by Mr V Pillay within the Department of Trade and Industry (DTI).
- 2.26 Mr Bloem was of the opinion that asking for a list of people being investigated is not wise, it is not the duty of the Committee and it would be overstepping the bounds.
- 2.27 Mr Ndlovu noted that if he were investigating charges he would not hand over such a list for confidentiality reasons. The request is impossible and the Scorpions would never give the list.
- 2.28 The Chair suggested that the Committee could direct that certain people and issues be followed up on.
- 2.29 Mr Jankielsohn clarified that he merely wanted to know who are the persons responsible and accountable in respect of all the issues raised by the Committee.
- 2.30 Ms Kota referred to 7.3.5.1(c) and also identified the multiple roles of Mr Van Dyk as being problematic. Further she wanted to know who negotiated the price reduction referred to in 7.5.3.4.
- 2.31 Mr Oosthuizen looked at 7.3.3.5 (a)(iv) that states that Mr Shaik referred the investigators to the technical evaluation team. He asked if the team mentioned is the Navy, the team that Mr Van Dyk co-ordinated or the team Mr Shaik co-ordinated.
- 2.32 Mr Mabeta asked how were the different roles defined by the DoD and how was the excessive power granted to individuals condoned. It is legitimate and proper to know the names of who is accountable and responsible because the authorities might be leaving people out of their investigation and the Committee would not even know.
- 2.33 Ms Modise said that that requesting that information was different from requesting the names of those being investigated and such a request was in order.
- 2.34 Mr Bloem again objected to the request for names.

- 2.35 Ms Modise explained that it is the Committee's right to ask who is responsible and accountable. It would be strange if the DoD and Armscor could not provide this list. The Committee is not accusing these people of anything but it is important because of the multiple roles they play and the authority and powers given to them.
- 2.36 Mr Oosthuizen, following up on Ms Kota's question, asked who had reduced the performance guarantees from 5% of the contract price to 5% of 25% of the contract price.
- 2.37 Mr Ngculu asked who had set up the team of evaluators and if a list of names could be provided.
- 2.38 Mr Oosthuizen pointed out that in 7.3.5.4, GEC offered an amount of \$670 million for technology transfers and know-how. The DIP (Defence Industrial Participation) evaluation team reduced this amount to 25% of the contract price to \$210 million. Mr Van Dyk had written a memo stating that this reduction is normal practice for these types of projects. The reduction was approved by SOFCOM chairpersons and not the whole Committee. The member wanted to flag this because it had deprived SA of \$460 million of investment. It would also be a concern if the purpose of the reduction was to make the deal affordable for local bidders.
- 2.39 Mr Ngculu wanted to flag the instances where the investigators say that documents were missing or that they had never had sight of it.
- 2.40 Findings and Recommendations of Chapter 7
- Mr Theron said the procurement policies need to be looked at and why it was so easy for Mr Shaik and Mr van Dyk to contravene policies. He commented that these individuals surely have bosses who are accountable.
- 2.41 Mr Mabeta said that where important decisions were made, discrepancies did exist and did influence the process and the decisions that were made.
- 2.42 Adv Schmidt commented on Mr Bloem's assertion that Cabinet has the final say. He said that tender rules and procedures must be followed and it makes no sense if Cabinet can just make a contrary decision because of strategic reasons. Mr Bloem's comment is not in line with recommendation 7.8.1. In the recommendation it says that once the evaluation criteria and instructions have been compiled, compliance therewith should be enforced. The principle contained in the recommendation should also apply to Cabinet and this is contrary to what Mr Bloem is saying.
- 2.43 Ms Modise asked the Committee to defer the debate on the performance of the Cabinet and the way decisions were reached by it. To assume something and make conclusions about the Cabinet at this stage is premature especially since the substance of the Report shows glaring discrepancies that DoD and Armscor need to come and account for. The Chair wanted the Committee to rather focus for the moment on what the Chapters are saying and make deductions later.
- 2.44 Mr Oosthuizen wanted 7.7.6 to be flagged. This dealt with the lack of evidence that the financing value system was approved as required.
- 2.45 Ms Kota wanted to know who is the compiler referred to 7.7.6.

- 2.46 Mr Ngculu said that the Committee needs to demand the names of who is accountable. He said that the buck stops with the DoD and Armscor. He mentioned the incompatible functions of Mr Van Dyk and said that they need to ensure that this does not happen in the future.
- 2.47 Ms Kota said that SOFCOM and the evaluation teams need to be reconstituted with different people and the structures within the DoD and Armscor need to be revisited.
- 2.48 Ms Modise wanted to know if this was a recommendation that the Committee should make. And Ms Kota replied that it was.
- 2.49 Mr Mabeta asked if the recommendations and findings should be noted.
- 2.50 Adv Schmidt said that it can be noted for now but it should be revisited at a later date and discussed.
- 2.51 Ms Modise said that when the Committee writes a report, recommendations will be made.
- 2.52 The members discussed when the next meeting should take place to conclude deliberations on the remaining chapters. The members agreed on Monday 26 November 2001 at 14h00 [Ed note: this meeting will not be taking place].
- 2.53 The meeting was adjourned.