

6. Selection of Main Suppliers for the ALFA, LIFT, LUH, Corvettes and Submarines

We will leave no stone unturned in the effort to ensure that you, the people, know everything that needs to be known about this matter (the Arms Deal). All investigations will continue. All wrongdoers, whoever they may be, will meet their just deserts (State President TM Mbeki, 19 January 2001)

Government contention (during the investigation into the strategic defence packages procurement) that the nature of the structure of the acquisition process was such that any corruption in the awarding of the tenders would have had to infiltrate effectively up to ministerial level was (only) theoretically impossible (The JIT Report 2001, 4.6.7)

The South African Air Force (SAAF) of the early nineties had a three-tier fighter trainer philosophy comprising the Astra trainer, Impala fighter trainer, and the Cheetah fighters and Mirage. The SAAF strategy for the long-term replacement of its air combat capacity proposed in the 1990s provided for an advanced fighter trainer (AFT) and a medium fighter to be acquired in the future. The SAAF fighter programme that was started included programmes such as the Projects Ukhozi and Kambro. Project Ukhozi was established to satisfy trainer requirements *via* the replacement of the Impala with the AFT aircraft by 1997, and Project Kambro to satisfy the medium fighter requirement through the replacement of the Mirage F1 as well as the Cheetah C and D aircraft with a future multi-role supersonic fighter – described as a Future Medium Fighter (FMF) - by the year 2012 (JIT 2001 4.1.3, 4.1.4). According to the JIT Report, “the training philosophy for the AFT aircraft assumed that the Astra trainer would be fully operational by 1997 and the Cheetah would remain in place until the fleet is replaced in approximately 2012. *This implied a future SAAF fighter force design of front line squadron, completed by the light fighter squadron and combat flying school*” (JIT 2001 4.1.5, emphasis added).

The evaluation results for first level contender short list selection against operational, logistic, and supplier value system as well as cost analysis, risk analysis, and trade-off analysis conducted on the responses to Request For Information (RFI) from suppliers of

Advanced Light Fighter Aircraft (ALFA) for the SAAF in order to recommend a short list of aircraft types that can satisfy the requirement for an AFT, and obtain approval to issue Requests For Proposals (RFP) to the suppliers of these aircraft, placed bidders' aircraft, viz AMX-T of Aermacchi/Alenia/Embraer Italy/Brazil 1st, AT 2000 of Daimler-Benz Aerospace Germany 2nd, L 159 of Aero Vodochody Czech Republic 3rd, Yak/AEM-130 of Yakovlev/Aermacchi Russia 4th. Both the British Aerospace Hawk 100 and the Saab Jas 39 Gripen were, after this exercise, according to JIT, eliminated. The former was disqualified on "high cost. Does not satisfy SAAF operational requirement," and the latter, on "unaffordability" (see JIT 2001 4.1.11, 4.1.12, 4.1.14).¹ Italian Aermacchi MB 339 FD was eliminated on "low performance, cannot satisfy user requirement."

In response to the removal of the British Package Proposal from the short list of suppliers to be issued with Requests For Proposals (RFP), the chairman of the Ukhozi Control Council (UCC) stated in July 1997 that the "advanced training system could be acquired far more cost-effectively outside the British Package Proposal of the Hawk 100. *However, the SAAF would include this requirement in the RSA/UK SDP only in the event of it being politically obliged to accept the training system on offer*" (JIT 2001 4.1.14, emphasis added). Neither the Hawk nor Gripen systems, as offered by the BAe during its response to the Project Ukhozi acquisition, satisfied the requirement specification. In respect of quoted acquisition and life cycle support costs, both aircraft systems were by far the most expensive options in their respective classes. In order to satisfy the requirement for these two systems, investigation reveals, the SAAF would have preferred not to participate in the stated fighter component of the SDP, as there were aircraft systems that were operationally far more acceptable and available at substantially lower acquisition and operating costs, and formed part of the package proposals received from other countries. "In this instance, the acceptance of the Hawk would have been based on the interim lease of a limited number of Hawk 100 only until an agreed number of Gripens had been delivered and the Astra training system had been adapted to address *the new training gap*. Before the inclusion of SAAF requirements within the proposed SDP could be finished, substantial staff work within the SANDF would have to be conducted

¹ The British Government had during January 1997, according to JIT, tabled a package proposal for the supply of armaments to SA including, *inter alia* the replacement of the Impala fighter trainer with the Hawk jet trainer or a combination of the Hawk and the Gripen fighter *via* British Aerospace (BAe) (JIT 2001 4.1.13).

to safeguard the interest of DoD” (JIT 2001 4.1.14), the chairman of the Ukhozi Control Council warned.

Besides (the reasons of the Ukhozi Project Team, as recorded by the Joint Investigating Team, for the disqualification of these aircraft), experts and analysts emphasise both the grave incapacity of the SAAF to fly the 28 Gripen fighter aircraft if purchased, and the unsuitability of the BAe/Saab manufactured Gripen Jas 39 for SA and Africa (see *Heat rises over arms deal*, in *Mail & Guardian* 2 June 2000; “*Sexed-down*” report leaves out advice to stall Gripens, in *Business Day* 7 January 2005). According to Wally van Heerden of the Office of the Auditor-General, the SAAF is not in a position to fully utilise the 28 Gripen fighter aircraft, on which billions of Rand has already been spent, and which could become an even greater embarrassment to Government. Van Heerden told *Mail & Guardian* (2 June 2000) the SAAF currently has fewer than ten pilots qualified to fly the many perfectly serviceable Cheetah C aircraft it currently owns, and none as yet capable of flying the Gripens. The Cheetah Cs were bought from Israel as recently as 1996. But faced with a shortage of qualified pilots in the SAAF, more than half of the aircraft are virtually unused. The class C Cheetahs were bought to replace, at the cutting edge of technology, an earlier generation aircraft, the Cheetah D, which the SAAF still flies (though on the point of obsolescence as opposed to the still-functional Cheetah C).

Freelance defence analyst Dave Verster (*Mail & Guardian* 2 June 2000) questions the decision to buy the Gripens on grounds that ‘the Cheetahs in the possession of the SAAF constituted a force more powerful than any air attack that neighbouring countries in Africa could assemble. “The Cheetah has been specially modified in line with African conditions, and is generally considered a far more suitable aircraft for South African purposes than the single-seater Gripen. The Cheetah is still the most capable combat aircraft in sub Saharan Africa, even though it is considered slow as a result of its heavy electronic load.” ’ According to Verster, South Africa is the only country yet to buy the BAe/Saab manufactured Gripen JAS 39, which will cost about R35 million each to modify in order to make it serviceable in African conditions. “The Gripen is specifically designed for North Atlantic Treaty Organization conditions in Europe, where only a relatively short strike range is required and the capacity exists for frequent refuelling at airfields within strike distance,” defence experts and analysts point out. Under African conditions, however, where, for instance, the aircraft could be needed in the Democratic Republic of Congo, such facilities would not be available and the fighter would become

practically useless. “It wouldn’t even make it out of the borders of South Africa from Pretoria, let alone to Luanda or Kinshasha,” analysts conclude (*Mail & Guardian* 2 June 2000). Has the Republic of South Africa bought aircraft types it did not need, and could not use? Adv HC Schmidt’s MP (DA) succinct summary of the purchases of the LIFT/Gripen aircraft is telling: “totally unsuitable aircraft were purchased in terms of the Department of Defence’s own standards.” The lack of logic of the Cabinet sub-Committee’s decision in this regard “would probably have brought the Government to its knees in most other countries” (see *Debate on committee reports on Joint Investigating Report into the SDP* 13 August 2002).

Economists Allied for Arms Reduction of South Africa (ECAAR-SA) Chair, Terry Crowford-Browne, summarized the purchase of the Gripens as “incomprehensible. Conservatively estimated, the money spent on arms procurement could have built a million homes,” he told *Mail & Guardian* (2 June 2000).

The President was in July 1997 advised by the DoD and the SANDF of the reasons why the British proposal was rejected (JIT 2001 4.1.15). The Chief of the SAAF was, at the stage of the rejection of the British proposal, according to the JIT Report, concerned that the acquisition process for Ukhozi “had not taken into account the MoD package offer made by the British Government, (as) the wrong impression might be created if the Request For Proposals were issued without the inclusion of the Gripen aircraft” (JIT 2001 4.1.16-7). The Ukhozi Control Council, after a consideration of matters including insufficient funds, and the fact of “the British SDP offer affecting the course of the project,” subsequently got approval of its recommendation to the Armaments Acquisitions Steering Board (AASB) for the delay of the project by 12 months (JIT 2001 4.1.17).

The acquisition process of Project Ukhozi could not continue within the proposed timescales. Project Ukhozi had to redefine its Staff Requirement to that of an advanced light fighter aircraft concept that would meet the requirements of both Project Ukhozi and Project Kambro on the consideration that a mid-range light fighter could satisfy both of the projects’ requirements at a lower cost. This meant an effective change from the 3-tier to 2-tier fighter strategy consisting of the Astra (for basic fighter orientation training) and the ALFA (which would take over the operational roles of the Impala, Mirage and the Cheetah, as the only front line fighter with precision air defence and ground capabilities). The SAAF was therefore forced to redesign, *not* according to its requirements but, in

order to “take into account the MoD package offer made by the British Government.” At the insistence of Council of Defence (CoD) the SDP process continued inclusive of the ALFA (JIT 2001 4.2.1-3).

The revised User Requirement Statement (URS), the Staff Target (ST), and the Staff Requirement (SR) for the ALFA (revised to reflect the new requirement within the 2-tier system) were indicative of the fact that CoD accepted the ALFA as part of the 2-tier fighter strategy in the SDP and that, as presented at the UCC meeting of 7 October 1997 revision, “(it) is in its final stages of completion” (JIT 2001 4.2.3). These documents however, formed part of the Request For Information (RFI) technical value system presented to, and approved by, the Ukhozi Control Council on 7 October 1997, which was used as a weeding-out process against suppliers’ responses to Request For Information on the acquisition of the ALFA aircraft. AT 2000/Germany, Dassault Mirage 2000/France and Saab Gripen/United Kingdom were scaled through the ALFA project team RFI technical value system and were presented on 17 November 1997 to the SAAF Command Council. It was expressed at this meeting that another type of aircraft would be required as an interim trainer between the Astra and the ALFA, and that the 2-tier system was not acceptable to the Minister of Defence (JIT 2001 4.3.1.4). Consequently, the SAAF Command Council opted for a 3-tier system, incorporating both the ALFA and lead-in-fighter trainer (LIFT) as essential to satisfy the requirements of the SAAF in relation to fighter training and fighter consolidation in a cost-effective manner.²

² SAAF had a 3-tier fighter philosophy. SAAF strategy for the long-term replacement of its air combat capacity, which embraced Project Ukhozi and Project Kambro programmes, was based on that 3-tier fighter philosophy. The failure of the British Government proposal - for the supply of the Hawk jet trainer or a combination of the Hawk and the Gripen fighter *via* British Aerospace (BAe) for the replacement of the Impala - to satisfy the requirements of the RFI technical value system for an advanced fighter trainer (AFT) and proceed to the request for proposal (RFP) stage raised “concern” from DoD that, “although the acquisition process for Ukhozi had followed the normal path and had not taken into account the MoD package offer made by the British Government, the wrong impression might be created if the RFP were issued without the inclusion of the Gripen aircraft” (JIT 2001 4.1.16). It was this “concern” of the DoD that set the process in motion for the reversion from the 3-tier fighter training philosophy of the SAAF to a 2-tier philosophy. The unacceptability to the Minister of Defence of the 2-tier fighter philosophy led to a reversion back to the 3-tier fighter training philosophy of the SAAF and hence the incorporation of both the ALFA and LIFT (which constituted an additional requirement to the SDP) into the defence procurement programme. “The turning point in the SAAF strategy,” as investigators said (JIT 2001 4.3.1.4), but what they omitted was the coincidence of this turning point in the arms procurement process with the *visionary approach* of Defence Minister Joe Modise, this being the genesis of the initiative of considering a *non-costed option* in the LIFT programme, contrary to the testimony of Minister Alec Erwin that this initiative originated from the Ministers’

The minutes of meetings of a Steering Committee held on 19 and 20 November 1997 indicated that all the suppliers, except those for the Mirage 2000, confirmed that pilots could convert to the proposed aircraft directly from the Astra (JIT 2001 4.3.1.5).

At the presentations by the UCC to the Armaments Acquisition Council (AAC), on 24 and 28 November 1997, a short list for Request For Offers (RFOs), viz the German AT 2000, French Dassault Mirage 2000, and the BAe/SAAB Gripen, considered acceptable to satisfy the SAAF’s requirement for an advanced light fighter aircraft (ALFA) was approved, subject to risk being covered contractually, and by government-to-government agreement (JIT 2001 4.3.6):

Aircraft type	Supplier	Normalized Military Value (RFI results)	Motivation
AT 2000	DASA	1,0	Best cost effective. Also best operational capability. Development programme with very high risk – unless DASA and German Government commit to programme. Also option that can satisfy the SAAF requirement. Financial commitment during development (next three years) low.
Mirage 2000	Dassault	0,83	Lowest technical and programme risk with high operational capability. Cost provisional estimate that has to be verified.
Gripen	BAe/SAAB	0,81	Capable modern fighter with low development risk but high cost

Project Ukhozi was redefined to satisfy the requirements for the ALFA as a 3-tier system on 2 December 1997. According to the JIT Report, the completely revised User Requirement Statement (USR) of Project Ukhozi for the ALFA was ratified at a meeting of the UCC. The revised Staff Target (ST) and Staff Requirement (SR) were reviewed by the SAAF Command Council and subsequently approved by the AAC on 16 March 1998, evidently after the RFOs was approved *supra* and issued out to the three contenders on 14 February 1998 (JIT 2001 4.3.1.6-7, 4.3.2.2).

Committee; neither the minutes of the said Cabinet sub-Committee meetings nor the entire 400-page JIT Report create any visible audit trail for this claim.

All three received final offers for the ALFA were measured against a set of discriminatory criteria, which formed part of the final value system, to ensure that the proposals still complied with minimum requirements.³ All three contenders each went through ALFA value systems evaluation, viz a) technical value system and evaluation⁴ b) DIP value system and evaluation c) NIP value system and evaluation and d) financial value system and evaluation. There was no competitive financial evaluation and its lack impacted significantly on the overall evaluation process, as the financial evaluation score comprised 33,3% of the total evaluation (JIT 2001 4.3.6.3). The cost effectiveness values were ranked from highest to lowest and the most cost-effective contender recommended to SOFCOM. The evaluation team leader(s) of each of the evaluation programmes compiled the evaluation report and JIT records that the results of the evaluation of the ALFA final offers were presented to SOFCOM on 1 July 1998 (JIT 2001 4.3.3.2).

The normalized evaluation scores for technical, IP (i.e., the DIP plus the NIP) and finance (all normalized to 100) was consolidated by SOFCOM whose responsibility it was to present the combined results (out of 300) to the Armaments Acquisition Steering Board (AASB) and the AA Council for ratification (JIT 2001 4.3.7.1).

The minutes of a special meeting on 10 June 1998 show that all team leaders responsible for the value determination of the strategic programmes indicated the formulas to be used, viz

$$\text{Best Value} = \frac{\text{Military Value} + \text{Industrial Value}}{\text{Financial Index}}$$

³ For each acquisition programme for an arm of service of the SANDF, a set of mandatory requirements, which was to be prepared and approved by designated officials, or forums of officials, of the Department of Defence, form the value system of the (acquisition) programme. Each proposal for the supply of arms equipment was to be measured, at the different stages of the acquisition programme, against this set of mandatory discriminatory requirements to ensure that a proposal still complied with the minimum requirements. Evaluation consists in subjecting the selected offers to an extensive process of examination, analysis, discussions and provisional conclusion by successive committees in the Ministry of Defence, each one in turn examining and assessing the other's conclusions, to ensure compliance with the pre-determined value system.

⁴ Each proposal was assigned a determined score called the military value. The life-cycle cost was calculated for each proposal and a life-cycle cost index determined. The military value then had to be divided by the life-cycle cost to provide the cost-effectiveness for each contender. Although this requirement of the technical value system and evaluation was changed and the programme cost was used instead, JIT says this had no effect on the final ranking of the bidders (JIT 2001 4.3.3.2).

According to the JIT Report (4.3.7.3), the Chairperson of SOFCOM advised that the formula to be used was

$$\text{Best Value} = \text{Military Value} + \text{Industrial Value} + \text{Financial Index}$$

This change in the formula was tested, the JIT Report (4.3.7.4) says, and the different results based on these two formulas showed no effect on the ranking in the case of the ALFA, viz

$$(a) \text{ Best Value} = \frac{\text{Military Value} + \text{Industrial Value}}{\text{Industrial Value}}$$

Aircraft	Military Value	Industrial Value	Financing Index	Best Value	Ranking
AT 2000	79	59	0	-	-
Mirage 2000	76	25	0	-	-
Gripen	100	100	100	2	1

$$(b) \text{ Best Value} = \text{Military Value} + \text{Industrial Value} + \text{Financing Index}$$

Aircraft	Military Value	Industrial Value	Financing Index	Best Value	Ranking
AT 2000	79	59	0	138	2
Mirage 2000	76	25	0	101	3
Gripen	100	100	100	300	1

Having concluded that a 3-tier system, incorporating both the ALFA and LIFT, was essential to satisfy the requirements of the SAAF, Project Winchester, involving the acquisition of a fleet of lead-in-fighter trainer (LIFT) aircraft, was registered and ran parallel with Project Ukhozi as a single SDP programme and all the technical aspects of both projects were managed by the Ukhozi/Winchester Control Council (UCC).

Responses to Request For Information (RFI) for the LIFT programme approved by the UCC on 3 February 1998 and issued on 9 March 1998 to twenty suppliers were received

on 6 April 1998. Hence, to bring “Project Winchester in line, together with Project Ukhozi, with the SDP times scales,” as instructed by the Chairperson of AAC, the Staff Target (ST) and Staff Requirement (SR) were approved by the AAC on 16 March 1998 long after the RFI had been issued (JIT 2001 4.5.1.1). In as much as tenders were requested before adequate planning and determination of needs and technical requirements was undertaken, it is suggested that the tail may have wagged the dog in this regard. The value system for the evaluation of the replies to the LIFT RFI was approved, it should be pointed out, only *after* the replies were received on 6 April, giving rise to the risk that manipulation of either the value system or the RFI could have taken place; but JIT, in a manner that can only be read as defensive, “found no evidence of such manipulation of the value system on the RFI” (JIT 2001 4.5.1.2).

Regarding suppliers’ proposals evaluation, the JIT Report (4.5.1.3, 4.5.1.6) wrote: “from Project Winchester: Interim Study Report dated November 1998, it was noted that the proposals were evaluated against mandatory requirements and a discriminatory value system... The cost-effectiveness of the aircraft on offer was also calculated by dividing the military value by the life-cycle cost.” Thereafter, the project team, *strangely* and against standard procurement procedure, *decided* not to use acquisition cost as a limiting factor, but rather based the short list of aircraft recommended to the UCC on a military value of 60 and higher, and life-cycle cost-effectiveness of above 8.0, *viz* L 159/L 59 (Aero Vodochody would present one option), MB 339 FD, S 211 A and Hawk 100. As recommended to the Council on 30 April 1998, UCC “decided” that the short list should be determined on military value only and that “the cost impact be deferred for discussion at the AAC” (JIT 2001 4.5.1.8, 4.5.1.11). The UCC approved a recommendation to be tabled to the AAC that 1) L 159 2) MB 339 FD 3) Yak 130 4) Hawk 100 and 5) MiG-AT manufacturers/aircraft systems receive a request for best and final offer (BAFO), based on a military value result of more than 68. On that same day, the project team presented a combined forum of AASB and AAC with a recommendation of six aircraft types, including the AMX-TT, for consideration and further recommendation; however, the Hawk 100, Yak 130, L 159 and MB 339 FD (all of which complied with the minimum functional capabilities for a LIFT) were, as approved by the forum, short listed in the RFO list, and received RFOs.

The minutes of the Joint AASB/AAC forum of 30 April 1998 indicate that the project team presented the Joint AASB and AAC forum with an affordability analysis of the LIFT contenders. Without cost considerations the selection process was biased towards

the higher performance category aircraft. These aircraft are, however, also significantly more expensive to acquire, operate and maintain. The SAAF would have to take cognisance of budgetary constraints in the selection process unless additional funding could be found to support the acquisition of a superior aircraft. The Minister of Defence cautioned the meeting that a *visionary approach* should not be excluded as the decision on the acquisition of a new fighter trainer aircraft would impact on the South African defence industry's chances to be part of the global defence market through partnership with major international defence companies, in this case, European companies. "In terms of this *vision*, the most inexpensive option might not necessarily be the best option." It was the Minister's request that the DoD acquisition staff bear this vision in mind during the selection process (JIT 2001 4.5.1.10).⁵

With the Minister's *vision* and his instruction to the project team borne in mind during the LIFT selection process, the recommendation for the best and final offer for the LIFT to be presented to the Strategic Offers Committee (SOFCOM) ended up including an option which does not take cost into account. In respect of preparing two recommendations on the LIFT, (to be presented to SOFCOM), the minutes of a special SAAF Command Council meeting on 29 June 1998 - where the LIFT recommendation to be presented to SOFCOM was formulated and approved – read

⁵ The project team, during a work session, on 24 April 1998, *decided* a short list of aircraft for the RFO of the LIFT programme not based on acquisition cost but the military value only and recommended it to the UCC (see JIT 2001 4.5.1.7-8). As the project team *decided*, the Council, at a special UCC meeting *concurred* that the short list be determined on the military value only and that "the cost impact of the LIFT on the SDP be deferred for discussion at the AAC." Indeed the UCC was told, on 5 May 1998, that the "recommendation" of the project team to the combined AASB/AAC, on 30 April 1998, was not based on cost-effectiveness because "it was thought that the cost constraint for the inclusion of the LIFT into the SDP should be determined by the AAC" (JIT 2001 4.5.11). In fact, this is the background of the Minister of Defence's invocation of the meeting of his *visionary approach* in terms of which vision the most expensive option might be the best option and which the DoD acquisition staff must bear in mind during the selection process (JIT 2001 4.5.1.10). Regardless of both the aforementioned cost constraints in the selection process, and the recommended preference of the SA Air Force at the CoD brief by AASB, on 21 August 1998, for the cheaper MB 339 FD option, "which meets the SAAF LIFT requirements adequately," Minister Joe Modise ruled that "the choice between the Hawk 100 and MB 339 will be made later by the Cabinet" (JIT 2001 4.6.5-6, 4.6.12) – could this have been the incubation and maturity stages of the *non-costed option* of the LIFT procurement process? In the event, the project team's (strange) *decision* not to use acquisition cost as a limiting factor in the consideration of evaluation results of bidders' replies to the LIFT RFI (without quoting any authority as its source), contrary to laid down and time tested procurement procedures, eventually coincided with Cabinet's decision on the LIFT to give expression to the Minister of Defence's *visionary approach* to the SDP process against the advice of defence experts.

The final recommendation gives two alternatives; the first alternative (a) is the most cost-effective solution based on achieved military value for the aircraft taking into account the associated risk and the cost of the aircraft. The second alternative (b) does not take the cost of the aircraft system into account and is therefore the recommended aircraft based on the military value with its associated risk (JIT 2001 4.5.1.12).

As the Director: Air Force Acquisitions testified, the then Chief of the SAAF, when presented with a single costed option, called the attention of the Council to a request by the AAC (the Minister of Defence) to consider a non-costed option and this reminder led to paragraph 3.3 of the minutes of the meeting thus

A separate recommendation is required where cost is not taken into account as per the request from the Minister of Defence (JIT 2001 4.5.1.12).

Final offers for the LIFT having been received from BAe (Hawk 100), Aero Volodochy (L 159) and Aermacchi (Yak 130, MB 339 FD), each proposal was measured against a set of mandatory requirements in order to ensure that the proposals still complied with the minimum requirements.⁶ Like the ALFA bidders, all four contenders were each to go through LIFT value systems evaluation consisting of a) technical value system and evaluation⁷ b) DIP value system and evaluation c) NIP value system and evaluation and d) financial value system and evaluation.

When contenders were ranked on risk moderated military value and programme cost, the results, as in the JIT Report (4.5.3.6), were

⁶ The observation is made that in some cases the content of the value system, and specifically, the value of the relative weights, used during the evaluation of the best and final offers, were known to the evaluators. Although, according to an internal audit report, “[t]his is undesirable as evaluators may be influenced by knowledge of the relative importance of parameters, or could manipulate the results through knowledge of relative weights,” JIT says no evidence was found that manipulation had taken place (JIT 2001 4.5.2.2).

⁷ At a special meeting of SAAF Command Council meeting on 29 June 1998 the Yak 130 was excluded from any further consideration for failure to meet a mandatory requirement. At any rate, all three remaining aircraft, Hawk 100, MB 339 FD and the L 159 had a number of *mandatory* requirements that had not been met which would have ideally led to starting the process *de novo*.

Aircraft	Moderated Value	Programme cost	Cost effectiveness	Normalised	Rating
MB 339 FD	73,93	US\$0,3777b	195,7	100	1
L 159	65,3	US\$0,6414b	101,8	52	2
Hawk 100	66,7	US\$0,7715b	86,5	44,2	3
Y 130	46,2	US\$0,5506b	83,9	42,9	4

When contenders were ranked only on risk moderated military value (minus programme cost) the results, as in the JIT Report (4.5.3.7) were

Aircraft	Moderated value	Normalised
MB 339 FD	73,93	100
Hawk 100	66,7	90,2
L 159	65,3	88,3
Yak 130	46,2	62,5

The “adapted” military/technical value prepared in costed and non-costed evaluation terms did not affect the positions of contenders (the Italian MB 339 FB ranked first).

The defence industrial participation (DIP) project proposals⁸ of each contender in the RFO phase were evaluated against the approved DIP evaluation team value system and bidders’ normalized final scores were recommended to SOFCOM as follows:

Bidder	Normalised rating
Italy/Russia – Yak 130	100
Italy – MB 339 FD	95
UK – Hawk	94
Czech – L 159	84

⁸ The Chairperson of SOFCOM at some point may have intended that the evaluation of contenders’ offers for the LIFT go on without the DIP project requirement of the DoD and government, as captured in the meeting of SOFCOM held on 6 May 1998, which read: “The Chairman briefed the SOFCOM on the lead-in-fighter trainer (LIFT) contender evaluation, and resulting short list that will be solicited for proposals on 11 May 98. The new timescales for the LIFT evaluation have been compressed to permit consideration of the LIFT recommendation in parallel with the overall SDP recommendation. The leasing option requested by the Minister must be developed as well. *Clearly the direct industrial participation falls away in this case;* but the remaining IP needs to be addressed as well” (JIT 2001 4.5.1.13, emphasis added).

The national industrial participation (NIP) project proposals submitted by each bidder in the RFO phase were evaluated against the NIP evaluation team value system and the recommendation of the normalized final scores of contenders presented to SOFCOM thus

Bidder	Normalised rating
UK – Hawk	100
Italy – MB 339 FD	25
Italy – Yak 130	25
Czech – L 159	97

In the records of Department of Trade and Industry (DTI), as investigators put it, “a view was expressed in June 1999 that a report that was submitted to the Ministers’ Committee on the proposed package for the LIFT programme had a radically inflated Hawk NIP offer. Ministers have been provided with an incorrect impression of the quality of the Hawk NIP offer” (JIT 2001 4.5.5.2-3), *viz*

Data to Cabinet Subcommittee (Rm)				
Package	Price	Investment	Export	Sales
Hawks	4900	3536	5975	81

In the words of the JIT Report (JIT 2001 4.5.5.2-5), “Data derived from an assessment provided by the DTI shows that the power procurement project as provided by BAe was the old (rejected) National Power project in another form,” *viz*

Project	Investment	Exports	Local Sales
Power procurement	400	370	0
BAe Industrial Park	25	78	0
Infrastructure JV	0	134	0
Ind-agri Bus Park	0.8	15	13
Titanium Plant	140	359	0
Total	565.8	956	13

The only other alternative NIP of significance was subsequently withdrawn as not feasible. “Without these two projects, BAe had virtually no NIP package, (which) situation led to negotiations with the supplier in order to replace certain projects, indicative of the fact that the NIP offer of BAe was not properly evaluated during the RFO phase” (JIT 2001 4.5.5.3-5).

As the JIT Report indicates, “the critical criteria used to evaluate the LIFT RFOs were similar to those used in respect of the ALFA” and, in this regard, attention is drawn to the finance value system and evaluation (see JIT 2001 4.5.6.1-3). The absence of a competitive financial evaluation, as well as its impact on the overall evaluation process though, the financial evaluation results ranked UK/BAe Hawk 1st, Italy/Aermacchi MD 339 FD 2nd, Italy/Aermacchi Yak 130 3rd, Czech/Aero L 159 4th (JIT 2001 4.5.6.1-3).

The results of the technical, Industrial Participations (IP) - i.e., DIP plus NIP - and financial evaluations of the LIFT final offers were presented to the Strategic Offers Committee which consolidated the normalized scores for technical, IP and financial evaluations (all normalized to 100) and was responsible for presenting the combined results (out of 300) to AASB and AAC for approval.

Like in the ALFA (JIT Report 2001 4.3.7.2-3, 4.5.7.3), two formulas were used for combining results and the different results based on the two formulas, viz

Costed option

$$(a) \text{ Best Value} = \frac{\text{Military Value} + \text{Industrial Value}}{\text{Financial Index}}$$

Aircraft	Military Value	Industrial Value	Financial Value	Best Value	Ranking
MB 339 FD	100	62	85.58	1.9	1
Hawk 100	45.1	100	80.35	1.8	2
L 159	52	93	100	1.5	3
Yak 130	42.9	64	86.46	1.2	4

$$(b) \text{ Best Value} = \text{Military Value} + \text{Industrial Value} + \text{Financial Index}$$

Aircraft	Military Value	Industrial Value	Financial Index	Best Value	Ranking
MB 339 FD	100	62	92	254	1
Hawk 100	45.1	100	100	245	2
L 159	52	93	69	214	3
Yak 130	42.9	64	90	196	4

Non-Costed option

$$(a) \text{ Best Value} = \frac{\text{Military Value} + \text{Industrial Value}}{\text{Financial Index}}$$

Aircraft	Military Value	Industrial Value	Financial Index	Best Value	Ranking
MB 339 FD	100	62	85.58	1.9	2
Hawk 100	90.2	100	80.35	2.4	1
L 159	88.3	93	100	1.8	3
Yak 130	62.5	64	86.46	1.5	4

$$(b) \text{ Best Value} = \text{Military Value} + \text{Industrial Value} + \text{Financial Value}$$

Aircraft	Military Value	Industrial Value	Financial Index	Best Value	Ranking
MB 339 FD	100	62	92	254.0	2
Hawk 100	90.2	100	100	290.2	1
L 159	88.3	93	69	250.3	3
Yak 130	62.5	64	90	216.5	4

Recalculations show that the change in formula did not affect the ranking of contenders as noted in the JIT Report.

SOFCOM presented the combined evaluation results for the ALFA and LIFT to the AASB on 8 July 1998 thus

ALFA

Military Value									
Offeror/Product	Program Cost US\$m	Finance Cost US\$m	Total Cost (NPV @13.5%)	Mil Perf Index	Mil Value Index	IP Value Index	Mil+IP Index	Finance Index	Best Value
United Kingdom JAS 39 Gripen	2 217.0	1 252.1	3 469.1 (1 067.6)	100.0	100.0	100.0	100.0	100.0	100.0
Germany DASA AT2000	2 139.0	No offer	****	76.0	79.0	59.0	69.0	0**	46.0
France Dassault Mirage 2000	2 257.0	No offer	****	79.0	76.0	25.0	50.5	0**	33.7

Industrial Participation							
Country	Tender Price	DIP		NIP		TOTAL IP	
		Value	%	Value	%	Value	%
United Kingdom	1 877.1	574.2	30.6	8 168.8	435.2	8 742.9	65.8
Germany	1 461.5	781.2	53.5	1 030.2	70.5	1 811.5	123.9
France	1 874.7	937.4	50	915.8	48.8	1 853.1	98.8

LIFT

Military Value including cost									
Offeror/Product	Program. Cost US\$m	Financial cost US\$m	Total Cost (NPV @13.5%)	Mil Perf Index	Mil Value Index	IP Value Index	Mil+IP Index	Financial Index	Best Value
UK BAe Hawk	756.5	402.5	1159.0	90.2	45.1	100.0	89.6	100.0	96.5
Czech AVodochody L 159	641.4	179.8	821.2	88.3	52.0	93.0	89.5	69.0	84.3
Italy Aermacchi MB 339 FD	377.7	139.9	517.6	100.0	100.0	62.0	100.0	92.0	100.0
Italy Aermacchi Yak 130	550.6	203.9	754.5	62.5	42.9	64.0	66.0	90.0	77.5

Military Value excluding cost									
Offeror/Product	Program. Cost US\$m	Financial cost US\$m	Total Cost (NPV @13.5%)	Mil Perf Index	Mil Value Index	IP Value Index	Mil+IP Index	Financial Index	Best Value

UK BAe Hawk	756.5	402.5	1159.0	90.2	90.2	100.0	100.0	100.0	100.0
Czech AVodochody L 159	641.4	179.8	821.2	88.3	88.3	93.0	95.3	69.0	86.3
Italy Aermacchi MB 339 FD	377.7	139.9	517.6	100.0	100.0	62.0	85.2	92.0	87.5
Italy Aermacchi Yak 130	550.6	203.9	754.5	62.5	62.5	64.0	66.5	90.0	74.6

Industrial Participation							
Country	Tender Price	DIP		NIP		Total IP	
		Value US\$	%	Value US\$	%	Value US\$	%
United Kingdom	599.0	429.4	71.7	848.5	141.7	1 277.9	213.3
Czech Republic	513.7	254.5	49.5	981.4	191.0	1 235.9	240.6
Italy-MB 339 FD	278.1	184.6	66.4	246.3	88.6	430.9	154.9
Italy-Yak 130	420.6	237.4	56.4	246.3	58.5	483.6	115.0

As the “note” in item 4.6.2 of the JIT Report reads,

Although the MB 339 FD was still the preferred option under the costed and non-costed options in respect of the military performance index, the Hawk was placed in an advantageous (first) position under the non-costed option for the total evaluation (*confer* JIT 2001 4.6.2).

Thus, the Hawk was made to supplant the MB 339 FD as the preferred option. As investigators say, the Chairperson of the Strategic Offers Committee, somewhat *strangely* advised that the Armaments Acquisition Council, the highest approval authority in the arms acquisition process, be so briefed (JIT 2001 4.6.2). The presentation by SOFCOM to Armaments Acquisition Steering Board on 8 July was also presented to the AAC on 13 July 1998, with the latter presentation detailing the costs pertaining to the successful bidders. In the words of the JIT Report, “these costs were based on the selection of the Aermacchi MB 339 FB for the LIFT programme.” If BAe Hawk were to be selected, the

JIT Report stated, the total cost, comprising the programme cost and financing cost would have been higher (see JIT 2001 9.2.3.1-2).⁹

The same presentation made to the AASB on 8 July 1998 on the combined evaluation results for the ALFA and LIFT was also presented to the AAC by SOFCOM on 13 July 1998. Herein, in respect of the ALFA, all that the JIT Report stated as recorded in the minutes of the meeting of the AAC on 13 July 1998 is the following

Prices in the offer are “quoted” prices; and DASA and Dassault failed to offer financing, notwithstanding repeated requests. The condition of a business case involving 330 AT2000 aircraft was advised (JIT 2001 4.6.3.1).

Now, it needs to be emphasised that paragraph 4.6.3.1 of the joint task team’s final Report on the opaque weapons procurement process was embedded in an arcane context and that it makes no sense even to “a person reading the full Report,” as the Auditor-General would recommend that the 400-page Report be read rather than the specific chapter(s) of a particular reader’s interest (*Business Day* 5 June 2003). Within the context of item 4.6.3.1 absolutely nothing was discussed about the German DASA AT2000 or French Dassault Mirage 2000. Aside from paragraph 4.6.3.1 no other reference throughout the JIT Report was ever made of “330 AT2000,” whatever the meaning of the acronym. The final JIT Report on the Government arms acquisition process was, then, wracked with irregularity and impropriety. Nonetheless, it was presented to Parliament and the SA public in November 2001. Moreover, when the draft versions were made

⁹ While minutes of SOFCOM presentations at these two meetings state that “the costs presented included all costs applicable,” in fact, “the total amount presented was made up of programme costs and finance costs.” For “all applicable costs” to the SDP procurement, *Affordability of the Defence Strategic Armaments Packages* by the Affordability Team of the IONT (31 August 1999) is an interesting report (JIT Report 2001 9.2.3.6). Given the more expensive BAe Hawk 100 option in comparison with Aermacchi MB 339 FB, SOFCOM’s inclusion of the amounts for the main battle tank (MBT) programme and financing costs of the SDP in the presentation to the AAC on 13 July 1998; the exclusion of financing charges and the non-declaration of the amounts for the elimination of the MBT as well as the reduction of the quantities on other programmes in the presentation to the Council of Defence on 21 August 1998; the exclusion of the amounts for the MBT programme and financing costs of the SDP in the presentation to a special ministerial briefing on 31 August 1998; and the exclusion of the financing costs and some other cost elements of the SDP in the subsequent presentation to Cabinet on 18 November 1998; in which approval was obtained of the recommended preferred bidders with whom the Departments of Defence, Finance, Public Enterprises and Trade & Industry would then enter into contract negotiations, is both intriguing and disturbing (see JIT 2001 9.2.3.1-5, 9.2.3.11).

available to the public, between October 2001 and December 2004, through repeated decisions of the courts courtesy of Act No 2 of 2000: Promotion of Access to information Act, 2000, they were lucid and telling regarding the selection process of the ALFA procurement.

Relating to the selection of the United Kingdom Gripen (see JIT 2001 4.6.2) for the ALFA programme, the changes and omissions in this regard from the original draft documentation of the final Report to the final JIT Report itself make the failure of the German DASA AT2000 and French Dassault Mirage 2000 contenders to supply details of their financing bids during the SDP process of particular importance. The failure of the Germans and the French contenders for the preferred supplier of the ALFA to supply details of their financing bids during the SDP process meant that they were awarded zero for the financing evaluation category counting 33 per cent. The final Report makes reference to a claim by officials of Government, with established conflicts of interest, that the two bidders were “repeatedly requested” to supply such information, but, significantly it omitted any mention of evidence to the contrary from officials of the Department of Finance and a written denial from French Dassault stating that no follow-up information was requested (*confer* JIT 2001 4.6.3.1; *Arms report sanitised*, in *Mail & Guardian* 7 January 2005, 2).

Prior to the final Report, the Auditor-General, coordinator of the JIT Report, *Arms report sanitised* says, submitted the draft report to certain Cabinet Ministers and the State President who responded with a point-by-point rebuttal of its original content and documentation. The Auditor-General has repeatedly denied any material changes or omissions in the final Report, particularly as a result of pressure from the Executive, save for “verified facts” being taken into consideration (see Committee Minutes, SCOPA, 20 August 2003; *Mail & Guardian* 22 August 2003). But, substantively, the drafts differ from the final Report strongly, in tone, content and conclusion, even on a cursory comparison. “Hugely significant and material changes were made to the final Report,” according to *The Sunday Independent* (23 January 2005, 6). These significant changes, the draft documents show, ‘were initiated (in the form of) handwritten notes in the margins of certain pages alluding to the (improper) meeting of the investigators and the Ministers’ Committee, and appear to note “instructions” for changes to be made to the original draft report.’ Of special interest, *The Sunday Independent* continues (23 January 2005), are those changes in the original draft which found their way into the final Report ‘that pertain to the removal, or watering down, of findings or recommendations, which

would have otherwise brought the competency of the Ministers' Committee into question, removing findings which suggest there were highly improper or corrupt interventions into the selection processes of the armaments and to particular "additions" which sought to absolve the Cabinet of any wrongdoing or blame.'

In respect of the costed and non-costed options of the LIFT programme, the minutes of the AAC meeting of 16 July 1998 were explicit on the SAAF's preference for the Italian MB 339 FD over the "limited operational capabilities" of the more expensive British Hawk 100 cluster. In fact, the AASB meeting of 16 July 1998 ruled that "the MD 339 FD should be procured in line with the preference of SAAF within its envisaged fighter trainer system." In the brief of the CoD by the AASB, on 21 August 1998, the AASB recommended that the cheaper option be selected based on the Military's "remark that the Hawk was double the price of its MB 339 FB rival for a 15% more utility." In the event, Defence Minister Joe Modise's view that the operational qualities of the aircraft were only a part of the overall consideration and that the Government had to decide whether or not to enter the European market, and if so, through which partner carried the day (see JIT 2001 4.1.14, 4.6.3.2, 4.6.5).

In the words of the JIT Report (4.6.6), "after the CoD meeting of 21 August 1998, a special ministerial briefing was held on 31 August 1998 regarding the progress relating to the SDP process." The minutes of this meeting record the information given to Ministers in order for them to make a decision on the preferred bidder, *viz*

Two options were proposed in the SOFCOM presentations for the LIFT programme. Option A (MB 339 FB) considered a military value system including programme cost and option B (Hawk) considered a military value system excluding programme cost. Option A considered and selected an aircraft from the lower acquisition cost cluster while option B considered and selected an aircraft from the higher acquisition cost. *Option B (Hawk) offered a dual role aircraft both pilot training and a limited operational use capability at a higher acquisition cost. The dual role advantage of the Hawk is not apparent in the value system applied in making the military performance recommendations. The IP proposals of option B were higher in total dollar value and higher in total percentage against the tender price offered* (emphasis added). The final decision for selecting the preferred bidders of the SDP rests with the executive level of government.

The minutes of the meeting further stated that a decision was taken, *viz*

11. After a discussion it was decided by the Ministers present, that the Hawk (Option B) should be recommended as the preferred option. This decision to recommend the Hawk was based on the national strategic considerations for the future survival of the defence aviation sector and the best teaming-up arrangements offered by the respective bidders. Strategically important industrial participation programmes offered with the best advantage to the state and local industries were also a determining factor in the final recommendation for the preferred bidders per programme (JIT 2001 4.6.6).

According to the JIT Report (4.6.7), Government's contention that 'the nature of the structure of the acquisition process was such that any corruption in the awarding of the tenders would have had to infiltrate effectively up to ministerial level, "was (only) theoretically impossible." ' The Joint Investigating Team held the view that "the Ministers' Committee decided on and prepared final recommendations, in respect of the procurement, to Cabinet. The Committee dealt with the selection of preferred bidders on the basis of the evaluation that was done in the other forums." The Minister of Trade and Industry explained to JIT that "the initiative to consider a non-costed option in the case of the LIFT came from the Ministers' Committee and not from the AAC" (JIT 2001 4.6.8). The JIT Report however bears no evidence for the Minister's explanation. On the contrary, the (unauthorized) *decision* of the LIFT and ALFA project team, during a work session, on 24 April 1998, *supra*, for a short list of aircraft for the RFO of the LIFT programme was not based on acquisition cost but the military value only (JIT 2001 4.5.1.7); similarly the *ratification* by Ukhozi/Winchester Control Council on 30 April 1998 that the short list, as "recommended," be determined on the military value only and that "the cost impact of the LIFT on the SDP be deferred for discussion at the AAC" (JIT 2001 4.5.1.8); the intention to reverse the SAAF 3-tier fighter training philosophy to a 2-tier philosophy (JIT 2001 4.2.1-2) and the unacceptability to the Minister of Defence of the 2-tier fighter trainer philosophy that led to incorporating both the ALFA and LIFT (which constituted an additional requirement to the SDP) into the defence procurement programme – the turning point in the SAAF strategy (JIT 2001 4.3.1.4), were all noted in the JIT Report as was "the decision not to use acquisition cost as a limiting factor in the consideration of evaluation results of bidders' replies to the LIFT Request For Information" (without quoting any authority as its source). This initiative, later captured in Defence Minister Joe Modise's *visionary approach* to the SDP process, was against defence experts' advice and the recommendation of military personnel on the LIFT programme. The only visible audit trail the JIT Report created with reference to the

initiative to consider a non-costed option of the LIFT is traceable to the failure of the British Government proposal (for the supply of the Hawk jet trainer or a combination of the Hawk and the Gripen fighter *via* British Aerospace - BAe) to satisfy the requirements of the RFI technical value system for an Advanced Fighter Trainer in order to proceed to the Request For Proposal stage of the SDP process and, as has already been noted, the “concern” of the DoD this raised (see footnote 5 *supra*; JIT 2001 4.1.16).

Over and above any other meaningful reason put forward by the Minister of Trade and Industry and contained in the JIT Report on the SDP for the Ministers’ Committee’s decision to accept the Hawk/Gripen combination offered by the suppliers was that “the combination of the Hawk/Gripen procurement option offered a more effective overall possibility of achieving technologically advanced NIP projects that was more favourable than the original offers” (JIT 2001 4.6.10(a)).¹⁰ Trade and Industry Minister Alec Erwin

¹⁰ Elsewhere the Minister of Trade and Industry argues: “there is no possibility that offsets justify the purchases... The rationale must be the Defence Review and constitutional obligations” (Committee Minutes, SCOPA, 26 February 2001). This view, which has been variously expressed by Government, was captured in the contention of the Ministers’ Committee before JIT (2001 4.6.7), *viz* “industrial participation can never be used to justify a decision to purchase any equipment. Any procurement must be justified in its own right.” On this premise of the arms deal being a rational expression of the Defence Review and defence purposes, amongst which, according to Defence Minister MGP Lekota, is the country’s survival (including its safety and security and correctional services), Ministers further assert, “there are no counter-trade in housing one’s prisoners, feeding them and so on” (*Debate on Committee Reports on Joint Investigating Report into the Strategic Defence Packages* 13 August 2002). In his *letter to Chairperson Gavin Woods* on 19 January 2001, (Ch 5 *supra*) Deputy President Jacob Zuma questioned the requirement of the expenditure on the SDP programme to be balanced by “a social payback.” In any event, it has been the National Industrial Participation (NIP) policy of Government since 1997 that all public sector procurements where the imported content will exceed \$10 million entail a systemic process of NIP programme – a policy which was, in fact, initiated by DoD in August 1994 and subsequently adopted on 8 August 1996 sequel to *Reports on the MODAC Investigation of Technology and Armament: Acquisition in the DoD* (see GCIS *Defence Summary September 1999: National Industrial Participation (NIP) – Project Description* September 1999; and *Economic and Fiscal Impacts of the Procurement* September 2000; JIT 2001 3.2.4.1, 12.1.1.3). The argument by the Government Negotiating Team that “the arms acquisitions programme was not meant to generate economic development but would be economically neutral,” and that of B Nair MP (ANC) that “the NIPs were not decisive to the procurement process” build on this same view of the arms deal being a constitutional imperative (Committee Minutes, SCOPA, 11 October 2000; and 26 February 2001): however the parliamentary statements of Minister Alec Erwin and some ANC MPs that while the NIPs and DIPs made Government’s expenditure on arms “acceptable” at some point they were “decisive” in the choice of certain suppliers at other points (Committee Minutes, SCOPA, 26 February 2001; and 14 March 2001). At any rate, there ought to be a consistent logical justification by the Government for its shopping for weapons – cheaper price or *realistic* higher IP offers? – congruent with the State/DoD/ARMSCOR tender prescripts. Justification for the LIFT purchase from the BAe over

restated the strategic importance of the industrial participation programmes offered by BAe in the choice the Ministers' Committee made of the BAe Hawk 100 before SCOPA on 26 February 2001: 'Four teams went through the proposals, specifications, rules, evaluating process, and ranked the equipment on the basis of points. Decision-makers must take this process into account, "but have the right to make a decision on additional criteria, i.e., the LIFT technical aspects and the NIPS/DIPS were *decisive* rather than the cost" ' (Committees Minutes, SCOPA, 26 February 2001, 2). As above, the analysis of bidders' IP project proposals evaluated against approved value systems and evaluations, and the ranking of preferred offers thereafter in the JIT Report is reflected neither in the Minister's evidence nor the information given to Ministers, as minuted in the aforementioned special ministerial briefing of 31 August 1998, on which their decision on the preferred bidder for the LIFT procurement was based. Turning specifically to "the combination of the Hawk/Gripen procurement option," which, for Minister Alec Erwin, "offered a more effective overall possibility of achieving technologically advanced NIP projects that was more favourable than the original offers," all that the JIT Report is able to say on the basis of evidence and the audit trail in substantiation, is that "the NIP offer of BAe was not properly evaluated during the RFO phase... a Report that was submitted to the Ministers' Committee on the proposed package for the LIFT programme had a radically inflated Hawk NIP offer ...Without these two projects, BAe had virtually no NIP package" (see JIT 2001 4.5.5.2-5).

The JIT Report made reference to a memorandum dated 7 September 1998, to the Chief of Acquisitions, in which the former Secretary of Defence made remarks regarding the minutes distributed to him, signed by the Chief of Acquisitions, *viz*

I question the completeness and accuracy of paragraph 11. I cannot recall that a decision was made. The merits of either the Hawk and (sic) the MB 339 were discussed. The fact that the MB 339 meets the SAAF LIFT requirement adequately (with reference to the pre-determined criteria) is not reflected. The Hawk is not the "best" option from a military point of view – the fact that its acquisition cost would solicit substantially more

its Italian Aermacchi rival ought be consistent with the rationale put forward for the preference of the GSC over its Italian Fincantieri rival for the supply of the SA Navy's submarines, the choice of the GFC over the Spanish Bazan for the supply of the SA Navy's Corvettes and the preference of Thompson-CSF/Detexis Diacerto data bus for the Navy's Corvettes' Combat Suite over its SA C2I2's IMS rival. However pleasing the view that the arms deal is "the imperative of the Defence Review and the Constitution, justified in its own right," the arms packages purchase was not presented to Parliament and the public in its own right but "sold" to them with a highly *optimistic* and *unrealistic* economic gain of R104 billion and 65 000 jobs.

IP apparently carries the day. The SAAF, however, will have to absorb considerably higher operating costs during its life cycle. As far as I can recall, the choice between the Hawk and MB 339 will be made later by the Cabinet. Hence the Italians should be afforded the opportunity to respond with other successful bidders. If we fail to do this, I submit that the ensuing fracas could derail the initiative completely. In any event, by keeping the Italians in play, it would sustain the element of competition (JIT 2001 4.6.12).

The JIT Report made reference neither to the date of the meeting, its agenda nor the particular organ or body under whose auspices the meeting was held. The minutes were, though, signed by Shamin Chippy Shaik and distributed to the former Secretary of Defence, who strongly contests the content. Draft documentation to the JIT Report made public through a marathon legal battle with C2I2 contesting the exclusion of its bid for one of the subcontracts against the Auditor-General, have, however, brought to light startling revelations around claims of serious irregularities in the country's controversial multibillion Rand arms package purchases. The draft versions to the final version of the Report on the strategic defence procurement process brought a certain clarity to a Report that was itself unnecessarily made even more complex, convoluted and arcane than the arms deal it purportedly probed. Regarding the aforesaid meeting whose minutes the accuracy of which the former Secretary of Defence disputes, the draft documentation of the final Report coordinated by the Auditor-General provided the missing linkage or reference.

It linked the minutes, which former Defence Secretary Pierre Steyn contested, to a crucial ministerial meeting held on 31 August 1998 at which the issue of the choice between the BAe Hawk 100 and the Italian MB 339 FD was discussed. Draft copies of the final Report stated the discovery of two conflicting sets of minutes, purporting to record the same Cabinet sub-Committee meeting. The one, signed by the Head of Procurement of DoD, Shamin Chippy Shaik, at which some Ministers' Committee supposedly took a decision to recommend to Cabinet that the BAe Hawk, "twice the price of the Aermacchi MB 339 FD for an increased performance of approximately 15 per cent, be selected," and the other, drawn up by a senior official of ARMSCOR and SOFCOM co-chair, Erich Esterhuyse, in which the Cabinet sub-Committee recommended that the Cabinet be presented with both BAe Hawk 100 and the Italian Aermacchi MB 339 FD options for a decision. As it emerges, Pierre Steyn's view of the minutes (JIT 2001 4.6.12 *supra*), which contradicted the Ministers' purported decision and version of events, was

supported by the latter set of minutes, not drawn up by the Chief of Acquisitions, but found in a file marked “secret,” which said, “both countries will be requested to submit further information in this regard,” regarding the British Aerospace’s and Italian Aermacchi’s NIP offers for the LIFT programme (see *Mail & Guardian* 9 November 2001 and 7 January 2005; and *Business Day* 7 January 2005). In the event, Cabinet heard only the BAe Hawk proposal.

The existence of a second set of parallel minutes of the same special ministerial meeting not disclosed in the final Report, says *Mail & Guardian* (7 January 2005, 2) “reflects that the meeting did not recommend the Hawk, but instead decided that both options should go to Cabinet, pending a proper investigation of benefits to the local aerospace industry of pairing either with BAe or the Italian (Aermacchi) company.” In presenting Cabinet only with the BAe Hawk 100 proposal rather than in conjunction with the Aermacchi MB 339 FD option, “Cabinet was misled,” *Business Day* (7 January 2005) suggests. Ignoring these anomalies, the final Report found without contradiction that the Ministers’ Committee had indeed reached a decision to recommend the BAe Hawk 100 by *post facto* adopting an evaluation model that disregarded cost. It found, without citing any authority, that “although unusual in terms of normal procurement practice, this decision was neither unlawful nor irregular” (*Mail & Guardian* 7 January 2005). Further, according to the Report (4.12.1, 14.1.6), “as the ultimate decision-maker, Cabinet was entitled to select the preferred bidder.” This, remarkably, undermines the whole idea of the acquisition process and proper tender procedures as well as any oversight role for parliamentary committees.

In any case, with reference to the choice of BAe/Saab for the supply of the LIFT/ALFA for South African Air Force, earlier findings in the draft documents, later edited out in the final Report, *inter alia* include (a) ‘ “[t]here were fundamental flaws in the selection of BAe/Saab as the preferred bidder for the LIFT & ALFA programme (b) ...options as was decided by the AAC...meant that the acquisition process for LIFT was a fruitless exercise (c) it became clear that during the NIP, DIP and financial evaluations as well as during the negotiation phase, preference was given to BAe/Saab (d) decisions of the Minister of Defence (that) could have influenced the process.” Defence Minister Joe Modise personally influenced the decision to opt for the more costly Hawk trainer as opposed to the Italian jet favoured by the SAAF and “caused the Hawk to be selected” ’ (see *Arms-deal report cover-up*, as well as *How Modise’s “visionary approach” cost SA*

R15bn, in *Business Day* 7 January 2005; *Arms report sanitised*, in *Mail & Guardian* 7 January 2005).

In the version of the Chief of Acquisitions' minutes of the ministerial meeting of 31 August 1998, in respect of the Hawk 100 and MB 339 FD options, "it was decided by the Ministers present that the Hawk option should be the preferred option," for strategic reasons related to a proposed alliance between BAe and South Africa's arms manufacturer Denel, as well as the anticipated NIP benefits. The LIFT contract was finally awarded to BAe whose deal to purchase an interest in Denel later fell through. Analysis of the JIT Report's summary of BAe NIP offer for the LIFT programme as "virtually no NIP package," is important as has been pointed out in this thesis. Besides, and equally important, the draft reports contain new facts that question the Ministers' Committee's "strategically important industrial participation programmes offered with the best advantage to the State and local industries," which were the stated "determining factor" in the preference of the British Aerospace for the LIFT over the Italian company (JIT 2001 4.6.6).

Draft documentation to the final JIT Report noted that in December 1997 Denel directed a letter to the SAAF saying: "Industry was united behind the fact that the BAe/Saab industrial participation offer was very poor and was aimed at the absolute minimum they could get away with..." (*Mail & Guardian* 7 January 2005). It also highlighted serious doubts about the quality of the industrial participation benefits attached to the BAe Hawk offer, including a complaint by a senior official of the Department of Trade & Industry (DTI), Paul Jordan, viz "We do not normally help a seller to this extent, but we are given to believe that a Hawk purchase will be made come what may, in which case we'd like as high a NIP commitment as possible" (emphasis added). This remark, edited from the final Report, was made in relation to what the final Report noted was termed by DTI to be a "radically inflated Hawk NIP offer" presented to Cabinet, which then had to be salvaged as DTI scratched around for viable projects for British Aerospace' (*Mail & Guardian* 7 January 2005).

More disconcerting, however, Denel recently complained to Parliament about difficulties in realizing any benefit from the defence contracts flowing from the arms deal (*Business Report* 18 November 2004; *The Star* 16 August, and 11 November, 2004). In response to the Department of Trade and Industry (DTI) team's brief of the Portfolio Committee on Trade and Industry on the Industrial Participations 2003/2004 Report, MPs questioned

how the projects fitted in with the country's strategic industrial policy, and aired concern about the real technology transfer involved backed by research and development and help for the poor. During the brief of the Committee on 17 November 2004, DTI team leader Deputy Director-General Lionel October admitted, "most of the projects involved low technology suppliers" (*Business Report* 18 November 2004). It is possible the Government went "overboard" in its desire to introduce international competition to the arms manufacturing sector, he also conceded. Ferrostal, partner in the German Submarine Consortium (GSC) responsible for industrial participation commitments for the SA Navy's acquisition of three type U-209 submarines "had fallen behind schedule in meeting its NIP obligations" (*Business Report* 18 November 2004; *Mail & Guardian* 5 November 2004). More than that, the German Submarine Consortium now admits to *The Star* (17 August 2004) that "it had agreed with government from the start that the widely-publicized Coega stainless steel project in Eastern Cape was not feasible, never meant to take off." In the event, the opposite story was told to the South African public. Was Government determined to use the false promises of offsets as a public relations excuse to go shopping for military goods? *Where are offsets* (in *The Star*, 17 August 2004) likened the Cabinet sub-Committee's argument for buying arms for war during a period of supposedly fiscal austerity and peace to the justification put forward by the US and UK to go to war in Iraq: "One reason is provided, another prevails."

Offsets (industrial participation programmes (IP)) commitments of the arms procurement deal which "were supposed to ensure that the deal generated benefits for the local economy to match the massive outflow," Denel Chief Financial Officer Portgieter told *Mail & Guardian* (5 November 2004, 25), 'did no such thing for Denel. "We weren't involved in the initial contracting, BAe Systems and others had already won their bids so we were negotiating from a position of weakness. We make little or no profit on these contracts. We were bullied into contracts with ARMSCOR, so we are reviewing them." ' For its part, in November 2004, the Defence Committee of Parliament heard that the Defence Industrial Participation (DIP) programmes, at the heart of the basis on which the South African public believed that the arms deal was desirable, were running at a loss. According to Denel Chief Executive Officer Victor Moche, "80% of the promised offsets incur losses, and the rest have insignificant operating margins" (see *Offsets cause upsets*, in *Mail & Guardian* 5 November 2004, 25). Concerned about the value being gained from the DIP projects related to the defence equipment purchases, Victor Moche called them "practically 100% loss-making contracts." This, together, with the many unanswered questions about the realizeability of the promised IP projects "strategically

important” to the Ministers’ Committee, “provide food for thought,” according to *More risks to arms deal than gains* (in *The Star*, 11 November 2004, 14).

These are the practical realities facing “the strategic considerations” argument of the Cabinet sub-Committee for entering into contract with BAe/Saab for the supply of the LIFT/ALFA. Now, a recent article titled, *Don’t read silence as proof of evil* in *The Star* (14 January 2005), claims, *inter alia* “[t]he decision to select the Hawk went beyond matters of costs and offsets: Indeed it did, as the final Report asserts – and this may reflect an instance where “strategic considerations about long-term mutual dependencies had to carry the day.” Clearly this allegation of the “strategic considerations about long-term mutual dependencies carrying the day” could have nothing to do with the fact of the Hawk allowing for “direct transition by trainee pilots to the Gripen, and that the Hawk can be adapted to operate as a fighter aircraft,” ’ as all the aircraft systems on the Final Request For Offers of the LIFT complied with the functional capabilities for a LIFT. The SAAF, in deed, confirmed that the first contenders in respect of the LIFT, i.e., the MB 339 FD, the L 159 and the Hawk, could all satisfy the pilot training requirements for a conversion from the Astra to the ALFA.” The AASB recommended that the MB 339 FD be procured in accordance with the preference of SAAF within its envisaged fighter training system and the MB 339 FD’s cost-effectiveness (*confer* JIT Report 2001 4.5.1.9, 4.6.4, 4.3.1.5). Unfortunately, nowhere, throughout the JIT Report, was reference made to so-called “strategic considerations,” as implying or meaning “long-term mutual dependencies,” let alone “the long-team mutual dependencies” springing up from Government’s phantom “strategic considerations.”

Don’t read silence as a proof of evil continues, “Differences on what decision a particular meeting took on the Hawk and Aermacchi MB 339 FB: Ministers who took part in this meeting with officials were also present when the recommendation was made to the Cabinet Committee, and if they were of a different view, they would have stated this.” This is outrageous and unbelievable. Has the Head of Government Communications, author of *Don’t read silence as a proof of evil*, found time to read the JIT Report on Government’s multibillion expenditure on arms purchases and familiarise himself with its litany of misconduct and wrongdoings? The Head of Government Communications must be directed to that portion of the JIT Report (4.6.7), which repeats the Government’s contention that “the nature of the structure of the acquisition process was such that any corruption in the awarding of the tenders would have had to infiltrate effectively up to ministerial level.” In particular, the JIT Report, in this regard, states: “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 retirement...such a situation seems extremely undesirable as it creates negative public perception about a process that might otherwise be in order” (JIT Report 2001 14.1.25; Committee Minutes, SCOPA, 11 October 2000). In fact, “FBS (Futuristic Business Solutions) is a supplier for R35 million in contracts for the helicopter package,” a company in which the Minister held interests. Thus, the established conflicts of interests of officials actively involved in the arms acquisition process must be noted with emphasis. Secondly, the pages of this work are an analysis of a memorandum (dated 7 September 1998) to the Chief of Acquisitions, and to which the JIT Report (4.6.12) made reference, in which the former Secretary of Defence disputed the minutes distributed to him, signed by the Chief of Acquisitions. *Two sets of contradictory minutes exist for the same crucial decision-making Ministers’ Committee meeting* of 31 August 1998 in respect of the selection of the Hawk 100 or Aermacchi MB 399 FD jet trainer and, importantly, this portion of the final draft documentation was obliterated from the JIT Report. The Head, Government Communications, Joel Netshitenzhe said, “the Government is confident that when the Auditor-General Office is afforded an appropriate platform, it will clarify these issues.” Need we add anything?

Information regarding the total cost of the ALFA and LIFT was not submitted to Cabinet. In terms of the *Air Combat Programmes Status Report*, the programme management cost, which was not included in the Cabinet figures for the LIFT and ALFA, summed up to R250 00 million as at February/April 1999. According to the JIT Report, the total “other costs,” including the programme management cost, was not yet determined by 18 November 1998; however, no indication of such additional cost was brought to the attention of Cabinet at the presentation in November 1998 (JIT 2001 4.6.15, 4.7.2-3, 4.8.1). During the negotiation by International Offers Negotiating Team (IONT), some of the essential functionalities of the aircraft in the LIFT and ALFA packages were excluded in the contracts to reduce the programme cost and keep the ALFA and the LIFT within the amounts approved by Cabinet. Both the programme management cost and the funding for the essential components of the LIFT and ALFA aircraft were excluded from the total cost of the arms procurement programme submitted to Cabinet and will now be sourced outside the approved SDP budget (JIT 2001 4.7.9, 4.12.7, 8.11.2.4).¹¹ In August 1999

¹¹ During November 1998, subsequent to Cabinet’s acceptance of the recommendations to it on the preferred bidders for the various arms equipment, the IONT was constituted by Cabinet “to negotiate an achievable funding arrangement and affordable package with the identified preferred

however, Cabinet was put in a proper position by the Affordability Team of IONT to apply their minds as to the full financial impacts of the procurement packages. IONT directed the Ministers' Committee to the increase in the overall procurement costs presented to Cabinet on 18 November 1998, directly related to the technical performance of the equipment and the programme management costs associated with the equipment acceptance. The *Affordability Report* on the SDP "dealt comprehensively with all relevant issues on the matter of affordability and sufficiently equipped the Ministers' Committee to enable the ultimate decision-makers to make properly informed choices about what the country can and cannot afford" (JIT 2001 9.1.1.5, 9.3.5).

After extensive consultations with the Chiefs of the Air Force, Navy, the Defence Force, and the Defence Minister on the need for the defence equipment under consideration, the timing of these needs, alternative approaches to meeting these needs and the requirements of an affordable package, the IONT recommended to the Ministers' Committee on 26 May 1999, that the procurement of the ALFA aircraft be deferred (*confer* JIT 2001 4.7.4, 4.7.4.1-5, 4.7.6, 4.9.2, 8.8.2.4, 8.10.3.1). This recommendation was made on the basis of a) the SAAF at the time of the negotiations still had 50 supersonic Cheetah fighter aircraft able to operate effectively until 2012 which will now be prematurely replaced between July 2007 and August 2009; b) the fighter pilot capacity of the SAAF;¹² c) the

suppliers, which would result in final contracting for the offered strategic equipment to the SANDF" (see JIT 2001 4.7.1, 8.1, 8.4.2, 8.6.1, 8.5.1, 8.5.1.1-3, 8.7.3). The Jayendra Naidoo led negotiating team, which excluded very essential functionalities of the aircraft in the LIFT and ALFA package contracts in order to stay the packages with the Government's approved amount but which functionalities, vital in the life and operations of the package, will have to be funded outside Cabinet's approved package for these functionalities, was an expensive joke, as its value is hardly readily evident - the whole idea, a flashy promotional gimmick, a bit of a subterfuge, (if not a premeditated hoax). The essence and impact of the IONT in respect of the improvement of the overall procurement process and its outcomes is imperceptible as all that was obvious during their negotiations with the preferred suppliers, according to the JIT Report, were the a) removal of some vital functionalities of the packages b) reduction in the quality of equipment for the LUH programme c) exclusion of certain costs including management and statutory costs, in their presentation to Cabinet, which costs will later be sought for by other means to effect the use of the weapons procured (see JIT 2001 8.11.2.4, 8.12.4). The IONT did not even always ensure the minuting, recording, and documentation, of its negotiations so that its contribution could be established.

¹² What the JIT Report (JIT 2001 4.7.4.3) meant by "the fighter pilot capacity of the SAAF," was made clear in its drafts versions. Among the strong motivations put to Cabinet by the IONT for the deferment or scrapping of the Gripen aircraft were the startling fact that "the Air Force has 50 supersonic Cheetah fighter aircraft with current midlife upgrade and are serviceable until 2012, but in any case currently has only 9 pilots on operational duty able to fly these jets. There is therefore a capacity constraint to absorb the Gripen should these be supplied earlier than the time required" (*Business Day* 7 January; *Mail & Guardian* 7 January 2006 and 2 June 2000). Whether

currency risk implications of procuring equipment in advance and the possibility that better priced suitable alternative may be available should the procurement be deferred to a more appropriate time; d) the fact that the financing cost of the procurement would be higher than it would otherwise have been should the procurement be deferred to a later stage. "IONT's recommendation amounted to engaging the suppliers in a negotiation of a deferment of the procurement on the terms and conditions which are practical and favourable, failing which the tender should be scrapped for the moment" (JIT 2001 4.7.6).

The Affordability Team took into account a certain percentage of risk that the industrial participation benefits would not materialize (JIT 2001 9.1.1.7, 9.2.3.15(g)). The Ministers' Committee was put in the know that Government's intent to acquire military equipment above the R16.5 billion-expenditure level, and the timing for such an announcement, strictly depends on "Government's appetite for risk."¹³ In terms of the mandate of the Ministers' Committee to explore the possibility of concluding a single contract with BAe for both the Hawk and Gripen, and in obvious disregard for the recommendations of both IONT and the *Affordability Report*, IONT approached BAe/Saab who proposed, as an alternative to the two separate contracts originally

SA will be able to provide enough pilots to fly the expensive Gripens purchases remains a moot point. "*Sexed-down*" report leaves out advice to stall Gripens (in *Business Day* 7 January 2005) could not elicit a response of the Department of Defence in January 2005 as to whether SA had expanded its list of jet-ready pilots considerably beyond the initial nine, nor would the Department discuss any progress in preparing its pilots for the arrival of the Gripens. But Roemer Heitman (*Business Day* 7 January 2005), analyst for *Jane's Defence Weekly* pointed out that the SAAF was struggling to find enough pilots to meet quota requirements. "They are training people on the fighter lines, but how many of these people will be ready to fly the Gripens when they arrive remains to be seen," according to him. The merits of a delay of the Gripens purchases and the likelihood of SA being able to provide enough pilots for the Gripens, which worried the high-level IONT back in 1999, were excised from the final Report without the SA public's knowledge.

¹³ Though the Ministers' Committee was "fully satisfied" with the affordability assessment presented to them in August 1999 and regarded it "as a professional and very precise document that could be relied on" (JIT 2001 9.1.1.9, 9.1.2.5), the statement contained in the forensic investigation portion of the JIT Report on the SDP process by the Auditor-General that "the affordability assessment formed the basis for the decision taken by Cabinet" (JIT 2001 9.2.1.2) is not true, and contradicts the "Key Findings and Recommendations" of the JIT Report paragraphs 14.1.1 and 4.12.1. "Political choice" and/or "Cabinet's ultimate entitlement to select the preferred bidder" rather than the *Affordability Report* or, for that matter, any other assessment of the agreed standard tender evaluation procedures, regrettably justified Cabinet's choices of the BAe/Saab Hawk and Gripen aircraft systems which SA neither need nor could use now and/or in the near future, as defence experts, and analysts have demonstrated (in *How Modise's "visionary approach" cost SA R15bn*, in *Business Day* 7 January 2005; and *Heat rises over arms deal*, in *Mail & Guardian* 2 June 2000).

planned for the LIFT and ALFA, a combined transaction for the supply of 24 Hawk and 28 Gripen aircraft in three tranches. This offer involved the supply of a number of Hawk and Gripen upfront in tranche one with an option to the Government to cancel the procurement of tranches 2 and three between year 2002 and 2005. At any rate, the cost of the Hawk and Gripen in tranche one are 35% and 34% higher than the average cost for the Hawk and Gripen respectively, as BAe/Saab have front-loaded their non-recurrent expenditures for the full contract in tranche one. The implication of this is that exercising the cancellation option would effectively mean that the Government would pay a premium of 35% and 34% which equates to a total of R1 736 million. Exercising the option to cancel the procurement of the tranche 3 single-seater Gripens would imply a major waste of resources, as the only purpose for acquiring the tranche one dual-seater Gripens was to train pilots to fly the single-seater Gripens to be procured in tranche 3. Thus, Government entered into contract with BAe/Saab for the LIFT and ALFA aircraft for amounts roughly half of the total cost (R30.3 billion at the signing of contracts in December 1999 and R48.7 billion in 2004 by Government estimated currency fluctuations) of the *entire* SDP procurement, which the country does not really need, and could not even operate (see JIT 2001 4.7.8.2-5, 8.8.3.4-5, 9.2.3.7(a)(b), 9.2.3.8).

6.2 Selection of Primary Suppliers for the Light Utility Helicopters (LUH)

The SAAF policy decision in 1996 to replace the fleet of Alouette III helicopters in use since 1962 with a new fleet of Light Utility Helicopters (LUH) was codenamed “Project Flange.” ARMSCOR concluded a contract worth US\$199 778 887 (R1 249 000 000 at R6.25 per US\$) with the Italian Agusta Un’Azienda Finmeccanica SpA, for the development, manufacturing, assembly, qualification, testing and delivery of 30 A 109 Light Utility Helicopters which was signed by Defence Minister MGP Lekota, on behalf of Government, on 3 December 1999 (JIT 2001 5.5.7.1-2, 5.6.4.3).

Like in the LIFT/Gripen case, the Staff Requirement (SR) document for the LUH contract was finalized between 3 and thirteen months *after* the contract had been entered into with the preferred supplier. In confirmation of this impropriety the Auditor-General, ARMSCOR and DoD admit:

A formal staff requirement was not authorized for this project and is a definite oversight of this division...(JIT 2001 5.3.1.4).

Request For Information (RFI) was issued to sixteen companies for the supply of the Light Utility Helicopters in mid 1996 (JIT 2001 5.1.2, 5.3.3.3). Request For Offers (RFOs) was issued to three of these companies: i) Agusta Un'Azienda Finmeccanica SpA of Italy, for their A 109 helicopter ii) Bell Helicopter Textron, a Division of Textron Canada Ltd, for the BELL 427 and iii) Eurocopter of France, for the EC 635 on 13 February 1998. According to the JIT Report, due to the decision to include the LUH in the SDP, it was decided not to continue with the RFO, but to re-issue a second RFI covering aspects relating to the SDP. A second RFI document dated 29 September 1997 was issued to the three shortlisted suppliers *supra* as part of an information request package, authorized by the Minister of Defence. The purpose of the second RFI was to obtain information to address the specific requirements of the SDP. Hence, the three potential suppliers were instructed to take note of the requirements and minimum levels of industrial participation as described in the document "*Industrial Participation Requirements, Conditions and Reference Documents*" and attached to the RFI. Although Defence Minister MGP Lekota signed the contract ultimately concluded between ARMSCOR and Agusta Un'Azienda Finmeccanica SpA for the delivery of 30 A 109 Light Utility Helicopters on 3 December 1999, the Staff Requirement (SR) document for this contract was only signed between February 2000 and March 2001 (JIT 2001 5.1.6, 5.3.1.3, 5.3.7.1).

The SR document detailed the performance and equipment requirements, which form the basis against which the Alouette III replacement by the LUH was to be measured. The SR provides that it is of "utmost," "cardinal," importance that specific contents as prescribed for staff requirements, *viz* functional user requirement specification, logistic user requirement specification, project management plan, value system and costs plus timescales, be available at specific points later in the acquisition process. Whereas the final version of the SR records that ' "*A comprehensive Helicopter Logistics User Requirement Statement had been compiled,*" this document could not be traced during the course of investigation' (JIT 2001 5.3.1.6). It was noted that the User Requirement Statement (URS), dubbed a "live" document, as it details the initial system requirements of the arms of service and amended as the needs of the user changed was finalized and

approved on 20 March 2000, *after* contract has been entered into with the preferred supplier (JIT 2001 5.3.2.1-3). This was a definite deviation in terms of tender procurement prescripts. A deviation report, which records the differences between the initial URS and the final contract, was consequently written. The deviation report indicates those requirements of the user that were not met and would only be addressed at a later stage (JIT 2001 5.3.2.3). This demonstrates the degree to which Agusta's A 109 LUH were unsuitable and failed to satisfy the requirements of the SAAF for a new fleet of light utility helicopters, and this was a consequence of tenders being requested and the contract entered into with Agusta for the SAAF LUH even *before* adequate planning and determination of needs and technical requirements were undertaken. Again, as in the LIFT programme, the tail wagged the dog during the procurement of the LUH for the SA Air Force.

Defence sources say "the acquisition of the Italian-made Agusta utility helicopters as part of the weapons procurement programme was made against the wishes of SAAF experts...and raised eyebrows in the industry, since the basic design of the Agusta helicopter is more than thirty years old, and is widely considered obsolete" Analysts question the usefulness of the Agusta A 109 LUH in the conditions for which it was bought. "The first purchase of Agustas was made for maritime conditions," *Heat rises over arms deal* remarked (*Mail & Guardian* 2 June 2000). "The problem is it cannot take high altitudes, and this reduces its effectiveness." Before the deal was done, the SAAF had already selected the American Bell Helicopter Textron 427 (the world market leader in the class) going so far as to signal the forthcoming deal by draping the Bell helicopter in SA colours at the exhibition of defence technologies (*Mail & Guardian* 2 June 2000). However, the helicopter giant argued as long ago as September 2000 that it was dropped from preferred bidder status after failing to enter into partnership with Futuristic Business Solutions. Bell Helicopters baulked at the assurance communicated to it in mid 1998 by an important role player in the acquisition process and ADS as a company interfacing between SA and foreign interests, that: "it would get the deal if a satisfactory arrangement was made with FBS...when it became clear that FBS lacked the infrastructure to actually deliver on services it would have been contracted to supply. Several bidders for the defence contracts confirmed that Chippy Shaik had personally communicated that they would have to come to an agreement with ADS and/or FBS if their bids were to be successful," *Nepotism in R32bn arms deal* (in *Mail & Guardian* 26 May 2000) heard. This is an allegation that has been under the investigation of the Directorate of Special Operations of the National Prosecuting Authority for the past five

years, viz “[a]n important role player in the acquisition process had personally communicated to several bidders that they would have to come to a specific arrangement with two South African subcontractors if their bids were to be successful” (JIT Report 2001 1.3.1.2).

According to *Nepotism in R32bn arms deal*, buying into the deal proposed by FBS, which included the payment of a management and administration fee of about \$125 000 a month, as well as a success fee on delivery of the contract, would have made the company vulnerable to prosecution under United States’ anticorruption laws, viz the Foreign Corrupt Practices Act. Attempts by Bell Helicopters to create alternative empowerment infrastructures, with companies that they believed were in a position to add value to the project, and thus benefit South African companies, were rejected out of hand, *Nepotism in R32bn arms deal (Mail & Guardian 26 May 2000)* says. In the event, though earlier assured that it was the frontrunner in the bidding for the helicopter contract, the American manufacturer was overlooked in favour of Italian Agusta A 109, “at a unit price more than R3 million above the cost of the American product, which is generally considered to be a far superior flying machine. FBS, which had not previously been part of the Agusta package, was included as partner in the contract secured by Agusta” (*Mail & Guardian 26 May 2000*). According to the Chief of Acquisitions of DoD, “FBS is a supplier for R35 million in contracts for the helicopter package” (Committee Minutes, SCOPA, 11 October 2000). Another allegation before the DSO since November 2001 is that “[a] certain bidder was overlooked in favour of a prime contractor at a unit price of more than R3 million above the cost of the bidder’s product (JIT Report 2001 1.3.1.2).

Like the SR, the Acquisition Plan (AP), a mandatory document summarizing the results of the acquisition study of Project Flange was only submitted for approval on 17 February 2000 and was finally approved on 23 March 2000, subsequent to the signing of the contract with Agusta for the supply of 30 Light Utility Helicopters on 3 December 1999 (JIT 2001 5.3.6.2-4, 5.4.1.2).¹⁴

¹⁴ As the JIT Report shows, all but the ST milestone document (i.e., the ST, SR, AP and the Project Study Report) in the LUH programme seem not to have been approved by the appropriate highest approval levels and whereas paragraph 5.3.6.3 records that the Acquisition Plan was approved on 23 March 2000, item 5.4.1.2 clearly indicates the uncertainty of the approval of this mandatory document by the Armaments Acquisition (AAC)/DoD. Some of the in-house documents – Operational Requirement, Programme Plan, User Requirement Statement, referred to as “live” documents, i.e., are always changing and are used internally by the arms of service to

Further, as in the ALFA and LIFT, the best financial value system and evaluation was not used. According to Chapter four of the JIT Report, the best value formula was changed, and there was no competitive financial evaluation, which impacted on the overall evaluation process, as the financial evaluation score comprised 33,3 per cent of the total evaluation (JIT 2001 4.3.6.1-3, 5.3.9.9-10)). Besides, the three bidders for the LUH were requested to submit an abridged version of specific financial information in their proposals on standardized spreadsheets provided by ARMSCOR. The evaluation team found as tabled to SOFCOM, a number of non-conformities in the financial information submitted by bidders, shortfalls in cash flow and general issues that impacted on the financing evaluation, as confirmed by the finance report dated 29 June 1998. Evaluation however continued, as “it did not seem practical to disqualify most of the proposals.” SOFCOM in fact instructed the evaluation team to “continue and evaluate as much of the proposals as possible with indications of their non-conformances” (JIT 2001 5.3.9.8-9).

Agusta, the preferred bidder in the LUH contract had, at a later stage, altered their DIP proposals consequent upon which the Office of the Auditor-General compared Agusta’s DIP terms in the RFO and those in the final contract to test whether the final contract contained fewer DIP credits than those committed to in the original proposal of Agusta. It found various evaluation errors but, as the Office of the Auditor-General was wont in its “forensic” work on the arms deal, it dismissed such “errors (as) immaterial, (with) no effect on the overall ratings, (and no) impact on the final result” (JIT 2001 5.3.10.3, 5.7.4).

Similar to the ALFA and LIFT contracts, information regarding the programme total cost of the LUH was not submitted to Cabinet in September 1999. The LUH programme budget analysis, including the implementation cost and Client Furnished Equipment (CFE) of R176 320 000, was detailed in the Staff Requirement document of SAAF. At the instruction of the Strategic Offers Committee (SOFCOM), for no apparent reason, the implementation costs of the LUH were *excluded* from the total programme cost submitted to Cabinet. No funds were approved by Cabinet for the implementation of the LUH into

document requirements and methodology – were either not approved or approved by unauthorized persons. Milestone documents and in-house documents build on one another; for example the ST is the predecessor of the SR and the Acquisition Plan confirms the solutions of the Project Study Report, and should be approved in chronological order, however approval of these documents (some by unauthorized persons though) was not chronological but haphazard (*confer* JIT 2001 5.4.1.2-3).

service, hence the sourcing of the amount of R176 320 000 outside the SDP (LUH) budget and for which approval was sought only *after* signature of the contract (see JIT 2001 5.3.1.2, 5.5.6.3, 5.7.2).

6.3 Selection of Main Suppliers for the Submarines

According to the JIT Report, it was the recommendation of Government's Chief Negotiator, Jayendra Naidoo, during the weapons procurement process which was approved by the Ministers' Committee, that the Minister of Defence, as the initiator of the defence package, initial the purchase of submarines from the German Submarine Consortium (GSC) at a press conference to mark his departure from public office. The International Offers Negotiating Team (IONT) actually initialled the contract to purchase three submarines from the GSC worth R4 226 million on 12 June 1999, *prior* to the outcome of an affordability study undertaken by Department of Finance (DoF) on the SDP. The supply of equipment would, however, depend on the yet to be concluded affordability study, ratification of the Ministers' Committee and approval by Cabinet. The affordability study was concluded on 31 August 1999 and subsequently approved by Cabinet only on 1 December 1999. All that the Report says in this regard is that "the initialling of the contract without the actual signing thereof by all the parties did not constitute a binding agreement" (JIT 2001 6.1.9-11, 6.6.5-7) but it did not explicitly remark on the impropriety of the act.

Request For Information (RFI) was issued to 11 companies for the supply of submarines in September 1997, and responses received from nine countries in October 1997. Responses were evaluated against predetermined value systems and a shortlist of suppliers from seven countries was recommended to, and approved by, the Armaments Acquisition Council (AAC) during January 1998, according the JIT Report. Request For Offers (RFOs) was issued to these short-listed countries for proposals for the supply of submarines in February 1998, and four offers were received from suppliers: i) DCN, France for their Scorpene submarine ii) GSC, Germany for the 209 1400 Model iii) Fincantieri, Italy for the S 1600 submarine iv) Kockums, Sweden for the 192 Type. Offers, as received, were adjudicated against predetermined value systems in the domains of a) military value and performance of the products b) financing of the product and c)

industrial participation offered (NIP and DIP in equal proportions), and the results and final ranking after the formal evaluation process, are (as in the JIT Report):

Bidder	NIP	DIP	Normalised Total IP Value	Mil Value Index	Financial Index	Best Value	Final Ranking
GSC	100	54	100	100	100	100	1
Kockums	14	93	69	91	78	79.3	2
Fincantieri	10	93	67	83	87	79	3
DCN	11	100	72	66	93	77	4

A significant degree of irregularity and error is however shown by a review of i) the NIP evaluation results *vis-à-vis* the NIP working papers and the NIP contract values against the NIP offered values; ii) the DIP value system *vis-à-vis* the final evaluation summary as determined by the DIP evaluation team; iii) the financial evaluation system instructions against the financial evaluation as submitted to SOFCOM and contained in the finance evaluation report; and iv) the submarine technical value system *vis-à-vis* the military performance of the individual components of the technical evaluation domain (as determined by the evaluation team, prior to, and after, the consideration of programme costs), to determine the regularity or otherwise of the procedures through which the final results and bidders' rankings *supra* were arrived at and determined.

As could be seen in matrix above, the non-defence industrial participation (NIP) evaluation results ranked the four approved offers for the submarines, *viz* GSC, Germany 1st, Fincantieri, Italy 4th, Kockums, Sweden 2nd, DCN International, France 3rd (*confer* JIT 2001 6.1.6, 6.4.1, 6.4.2.1). The investigators review of the NIP projects considered from the four approved offers for the submarines and the scores and rankings of the four offers after evaluation by DTI (i.e., the NIP evaluation results *vis-à-vis* the NIP evaluation working papers) show significant “error.” This “resulted in an overstatement of the total score allotted to GSC by an amount of US\$1 584 000 000.” As the JIT Report noted, “the large value of the score attributable to GSC amounted to a significant percentage of the total score of GSC.” Yet it qualified this irregularity in the evaluation procedure thus - “in isolation (this error) did not have an impact on the final ranking” (JIT 2001 6.4.2.1).

The other “error” found when the overall NIP evaluation results of bidders for the submarines were compared with NIP working papers, was an understatement of the total value attributed to Fincantieri by US\$1 276 623 000. This, in the words of DTI representative V Pillay, “might have been a computation error or a conscious decision by the economic evaluation team not to award a score for this project” (JIT 2001 6.4.2.2(b)). JIT made no finding to ascertain whether the understatement of Fincantieri’s NIP value was an error or “a conscious decision,” as suggested by the official, nor any comment regarding the proposal that the latter could have been a possibility. ‘Taken in isolation this “error” did not have an effect on the final outcome,’ says the JIT Report (6.4.2.2(b)) with respect to the understatement of the total NIP value of the Italians, but add the rider that ‘adjustment of the “errors” would have resulted in French DCN International achieving a greater score as opposed to the lesser score calculated by the evaluation team.’

The value of the NIP originally offered by the GSC was significantly higher than the value of the NIP finally contracted for on 3 December 1999. The NIP offered by GSC was utilized in the determination of the preferred bidder and included in the presentation by DoD to Cabinet on 18 November 1998. The reduced value of the NIP contracted for, as compared to the high value of the NIP offered by GSC, according to the JIT Report, related to the price difference of stainless steel in the contract of Austenitics (grade 304) and Ferritics (grade 409) compared to prices of Austenitics and Ferritics as contained in the GSC offer. A recomputation of the evaluation, utilizing the contracted values instead of the values of the original offer by GSC, had the effect of a reduction in total score awarded to GSC to US \$67 536 326 000 (see JIT 2001 6.4.3.1-5). As became usual for every irregularity and impropriety found during their investigation into the weapons procurement process, the joint task team portrays the adjusted computation of the higher value of NIP in the GSC original offer and the reduced value of NIP actually contracted for, as having no cumulative effect on the overall NIP rating of contenders for the supply of the SAAF submarines.

‘The technology proposed by GSC in the business plan for the stainless steel project, called “Compact Strip Production” (CSP) technology, was recognized by the evaluators during the evaluation process as “a new technology with no competition” ’ (JIT 2001 6.4.4.2-4, 6.4.5.6(e)). Yet, the credits awarded to the GSC for an investment of US \$990 million proposed in respect of the Coega stainless steel plant were overstated by US \$22 77 000 000, and the JIT (6.4.4.4) Report says “adjustments to an appropriate investment

credit computation” showed no “cumulative effect” on the ranking of GSC in the overall evaluation results.

A review of the approval of NIP value system showed “no evidence indicating that the value system registered at ARMSCOR procurement division is a document that was approved either by the DTI or any relevant authority at ARMSCOR/DoD. The document is not signed by anyone to signify approval thereof. Furthermore, the team members assigned to evaluate the NIP offers were recorded in the value system in manuscript. Review of SOFCOM minutes did not indicate that the value system had been considered and approved by the members. In terms of its constitution, SOFCOM did not appear to be a decision making body. This was confirmed by Shamin Chippy Shaik during a formal consultation” (JIT 2001 6.4.5.1).

Further to the endless succession of irregularities and improprieties (or rather “errors,” and “miscomputations”) which occurred right from the improper initialling of the contract with the GSC by Government for the supply of submarines, through to the final approval of the contract with GSC in December 1999, a repetition of offers contained in the French DCN International proposal, in respect of the corvette and submarine programmes, was divided between the two programmes (JIT 2001 6.4.5.2) contrary to the provisions of DIP and NIP value systems in the event of repetition.

Investigation shows in terms of paragraph 39(a) of the Strategic Offers Committee minutes of 20 May 1998 that the Chairperson provided guidelines for the evaluation team, which enabled communication with bidders to obtain *traceable* clarification of information, thus

Communication/interaction must be restricted to clarification of information in the offers. No new information that contributes to altering an assessment against the value system must be entertained, only information clearly traceable to the official offers. Written (letter/fax/email) clarification requests must be registered at the ARMSCOR Procurement Secretariat before transmission. All members of evaluation teams must avoid consorting with offerors (potential beneficiaries of the results/decisions emanating from the information being evaluated) until after official promulgation of the final decision by the Cabinet. This precautionary practice applies to SOFCOM members after 1 July (JIT 2001 6.4.6.18).

Yet, in the words of the JIT Report, “*there is no evidence that DCN was requested to provide an indication of the allocation of offered activities*.” Lack of consistency in this regard was evident as Eurocopter, a bidder in the LUH programme, who offered a basket of certain indirect activities, were requested to rectify the matter by committing to specific activities under the respective projects” (emphasis added). The Joint Investigating Team were firm and categorical in their “findings,” in respect of investigation into the impropriety in the procedures through which the GSC was retained as the preferred supplier of the SA Navy’s submarines that “there is no evidence to indicate that any individuals influenced the selection process” (JIT 2001 6.8.8) though, *inter alia* the written response from Shamin Chippy Shaik to an inquiry in respect of the inconsistency of requests to bidders for traceable clarification regarding the allocation of offered activities indicates otherwise:

The tender for corvettes and submarines were indicated as independent tenders, with separate Technical, DIP, NIP and Financial requirements. *The French company DCN refused to comply with these instructions as per the RFO documents*. They requested meetings with myself, ARMSCOR, Secretary for Defence, Minister of Defence who all informed them that this was a tender requirement to which they should comply. *The French DGA/DCN refused to comply with this tender requirement and offered a “basket” across for both their corvette and submarine tenders*. Hence, a decision was required from DoD/ARMSCOR/DTI on this issue. From my recollection, both acting Chief Executive Officer and Chief of Acquisitions were requested to provide advise to the ARMSCOR DIP division. *The acknowledgement of 50% was also based on the assumption that DCN would/might be in a position to secure both contracts on corvette and submarines*. *If this would have been the case, there would have been a major problem in securing a firm commitment under either programme*. Again DCN was explicitly instructed by both the DoD/ARMSCOR not to offer a basket IP. Strictly speaking the DCN should have been disqualified, or the SOFCOM co-chair and SOFCOM had to make a decision on how to proceed. From my recollection both co-chairs agreed to split the IP offer in 50% to the corvette and 50% to the submarine offer. This decision was subsequently approved by SOFCOM, AASB and the AAC (JIT 2001 6.4.5.2(d), emphasis added).

Could not the *strange* lack of “evidence that DCN was requested to provide an indication of the allocation of offered activities (and) lack of consistency in this regard” (JIT Report 2001 6.4.5.2), taken together with the established conflicts of interests of Shamin Chippy Shaik and the yet to be investigated allegation of bribery and conflict of (private and official) interests against Defence Minister Joe Modise in respect of the contract with the

German Consortium supplier of the Navy's submarines, as well as the improper initialling of this contract by the Minister of Defence in his *Press Statement* of 13 June 1999 (JIT 2001 1.3.1(d), 6.1.10, *Financial Mail* 30 March 2001) prior to proper planning and approvals, all indicate the influence of certain individuals in the selection process which retained the submarine contract with the GSC as initialled?

Contending bidders deviated from the IP requirements of DTI at the business concept phase. As V Pillay stated: "not all bidders had submitted business concepts for approval and, consequently, activities included in the offers constituted a combination of approved concepts for certain activities as well as business proposals which had not previously been considered and approved by the DTI" (JIT 2001 6.4.5.3). Inherent in not all business concepts having been considered by DTI prior to the submission of the offers, is the possibility that some bidders might have been prejudiced by not knowing if submitted projects would have been approved or rejected prior to the submission of offers, whilst other bidders might have known that their business concepts were acceptable for inclusion in the final offers. "The aforementioned is not in accordance with good procurement practices," the JIT Report (6.4.5.3(c) concludes.

Various activities offered by bidders were excluded from evaluation, at times without any reasons and at other times with insufficient reasons (JIT 2001 6.4.5.4). The lack of supporting documentation and any evidence that exclusions were considered and approved at an appropriate level, according to JIT, opened the possibility that bidders might have been prejudiced through *arbitrary* exclusion of activities offered. Interviews with personnel from DTI indicated that acceptable projects were evaluated on the basis of a list of twenty-two special projects devised by DTI. Proposals not representative of these 22 projects were excluded. It was also noted that certain projects, which did not qualify in terms of the list of special projects, were included in the evaluation process. In a number of instances, evaluators made assumptions pertaining to export sales, domestic sales and local content in the business plans, where such business plans themselves made no distinction between export and domestic sales (JIT 2001 6.4.5.5).

According to V Pillay, industry experts within DTI advised the evaluators on the percentages of local and export sales as well as local content, where this information had not been furnished. No working papers have been furnished by DTI to substantiate this. It is important to record in this regard that evaluators overstated both the actual total value of sales offered and the percentage of export sales in the GSC business plan, while

projects offered by Kockums and DCN were analysed correctly with regard to export and local sales as well as local content, as the latter furnished the required information. In the words of the JIT Report, “the assumptions used by evaluators in respect of GSC project proposals were incorrect” (JIT 2001 6.4.5.4-5). It suffices to note that almost all the “errors” discovered to have been made during the review of the IP offered by GSC, Kockums, DCN International and Fincantieri against benchmarks for evaluation, were made in respect of an overstatement of the actual NIP, and, in fact, more than doubling the DIP value of the GSC (see JIT 2001 6.4.2.1, 6.4.3.1-5, 6.4.4.1-4, 6.4.5.5(c), 6.4.6.12-15), while the two other “errors” made in respect of the Italian Fincantieri and French DCN International (see JIT 2001 6.4.2.2-3, 6.4.5.2) coincided with either an understatement of or an outright controversial exclusion of some percentage of the total NIP value attributable to the two bidders. The adjusted bidders’ NIP and DIP scores, factored into their original NIP and DIP scores, bring this to light (JIT 2001 6.4.6.15). The successful supplier’s ranking, as depicted below, was, again, arrived at through the normal “finding” throughout the 400-page Report that irregularities and improper manipulations of the weapons packages purchases processes do not change the ranking of suppliers:

Bidder	Original DIP Score	Original NIP score	Original total IP Normalised	Original Ranking	Revised DIP Score	Revised NIP Score	Revised total IP Normalised	Ranking
GSC	54,00	100	100	1	25,10	100	100	1
Fincantieri	93,30	10	67	4	89,6	16	84,41	4
DCN	100,00	11	72	2	100	19	95,12	2
Kockums	93,28	14	70	3	88,8	23	89,37	3

The true status of these “coincidences” between the “predetermined” and final ranking - whether, e.g., they were staged or fabricated - may be difficult to determine as JIT “found” no leads that any individuals influenced the selection process.

In terms of the NIP value system, economic evaluation consisted of rating the five strategic considerations: technology, empowerment, job creation, global integration and sectoral strategy, on the basis of information extracted from the business plans of each bidder, listed in the economic evaluation schedule *and given to the industry experts within the DTI for scoring* (emphasis added). The total score that could be attained by a bidder was derived by multiplying the credits evaluated in terms of the business plans by

the sum of the values of strategic considerations out of a maximum score of 25. In the event, rather than DTI experts, the multiplier for the determination of the final scores of each bidder was determined by the evaluation team at a workshop. “No minutes of the workshop were maintained. There was therefore no evidence that the final scores agreed upon had been consented to by all members present” (JIT 2001 6.4.5.6). The economic evaluation schedules furnished by DTI, which purport to support the final scoring utilized, bore no relation to the final scores, as determined and actually utilized by *the evaluation team*, rather than industry experts:

Bidders	Projects	Scoring per economic evaluation schedule furnished	Final score utilised
GSC	COEGA stainless steel plant	17	23
	Ferrostal & Murray & Robberts	9	13
DCN	Titanium technology	15	22
	Discard coal	12	16
Fincantieri	Marble and granite	4	17
	Reinforced glass polyester pipes	11	17
Kockums	Stirling solar	10	16
	Windmill power generation	10	16

As the JIT Report says, the “Compact Strip Production” (CSP) technology originally proposed by GSC in their business plan for the stainless steel project was “a new technology with no competition,” “risky and unrealistic,” and the bidder’s re-negotiated “NIP commitments, in having been awarded the score of 23 out of a maximum possible score of twenty five, was rated highly, in respect of the strategic considerations, in comparison with other projects” (*confer* JIT 2001 6.4.5.6-7, 6.4.5.8). The multiplier score of twenty three out of a maximum possible score of 25 in respect of strategic considerations awarded GSC stainless steel mill project at the time of evaluation (when the rating for the project was still realistic) was retained beyond the assessment of the steel industry projects at the instance of the IONT during the negotiation phase of the SDP acquisition. IONT reported that a component of the integrated stainless steel project in the GSC offer was both new with no competition, risky and unrealistic. Investigators did not probe the serious possibility that evaluators’ retention of an *arbitrarily* high score for an uncompetitive unrealistic and risky project gave rise to serious misjudgements and suspicion of improprieties.

Further, though the GSC “alternative projects serve as suitable substitute projects for the original NIP investment commitment of US\$960 million only, no mention was made of the contracted total IP of Euro 2 852 million.” It was the submission of the DTI that this be brought to the attention of the Cabinet sub-Committee on the defence equipment acquisition. However, the joint task team was satisfied in this regard by the following - “it is not clear whether the substitute projects were brought to the attention of the Ministers’ Committee as recommended” or not (JIT 2001 6.4.5.6-8).

The JIT Report records a significant variance in the value of IP presented to Cabinet and the value of IP eventually contracted for. It was observed that the presentation to Cabinet on the day the contract was entered into was in respect of the acquisition of three submarines, whilst the IP value presented to Cabinet was in respect of four submarines as offered by the GSC. In fact, doubts exist as to whether the enormous reduction in the value of IP of R22 187 392 000 finally contracted for, from the IP value of R30 274 000 000 presented to Cabinet, is compensation for a reduction of just one submarine, especially, since the GSC’s re-negotiated NIP commitments of US\$960 million, after its original project was withdrawn, relates to the investment element of the original IP only, where no mention was made of the contracted total IP of Euro 2 852 million which includes the gross export revenue and local sales components of the NIP projects. Investigators, nevertheless, conclude, in this regard that “the reduction in the final value of IP contracted for *appears* to be acceptable” (JIT 2001 6.4.5.9(b)). Indeed, the reduction in the final value of the IP contracted for could only *appear* to be acceptable, as JIT did not bother to ascertain whether or not it *was* acceptable. The SA media is replete with the charge that the JIT Report lacks rigor, thoroughness and clear thinking. The Report obscures the failure of investigators to following apparent leads, suggestive of improprieties and to determine the degree to which “errors,” were made consciously or mistakenly, and how this affected Government’s choices of the successful suppliers of armaments during the defence packages purchases process.

Although the Defence Industrial Participation value system issued by the Counter-trade Division of ARMSCOR and, which, governs the DIP evaluation process, was approved by the Chairpersons of SOFCOM, uncertainty exists, according to the JIT Report (6.4.6.2), regarding the authority of the above persons to approve the value system. In terms of DIP process flow diagram, audited evaluations results were to be approved by relevant Industrial Participation control committee of DTI and a DIP committee of DoD/ARMSCOR. The combined inputs were to be recommended to the steering

committee (SOFCOM) for the formulation of recommendations to the Minister of Defence and adjudication of tenders for the respective package elements.¹⁵ JIT found no evidence of approval of the results by either the IP control committee or DIP committee. In fact, no reference was made to the composition and establishment of these two committees (JIT 2001 6.4.6.4(f)(g)). No policy was in place with regard to the appointment of DIP evaluation teams, though the DIP division of ARMSCOR argue, “the selection of the evaluation team was made on the basis of the experience of the personnel in the DIP evaluations” (JIT 2001 6.4.6.5).

The final DIP evaluation summary as determined by the evaluation team ranked the four bidders for supply of the submarines, *viz* DCN International 1st, Fincantieri 2nd, Kockums 3rd and GSC 4th (JIT 2001 6.4.6.11). As said and shown *supra* DIP projects offered by bidders for the submarines reviewed against benchmarks for evaluation revealed various inaccuracies, which more than doubled the DIP value of the GSC (JIT 2001 6.4.6.12-15). The revised and adjusted bidders’ DIP scores, factored into their original DIP scores, demonstrated this (JIT 2001 6.4.6.15). Again, the “finding” was that these adjustments of scores “did not have an effect on bidders’ ranking.”

In two memoranda of 18 May 1998 from the Head: ARMSCOR Counter-trade Division and DIP team leader, Johan J van Dyk, to the Head: ARMSCOR Legal Division, the submarines DIP evaluation team made a joint statement: “the GSC and Kockums did *not* comply with the DIP requirements as contained in the submarine RFO. A legal opinion is requested as to whether the bidders complied with the tender prescriptions” (JIT 2001 6.4.6.16). The memoranda catalogued a long list of the non-compliances with the DIP requirements as contained in the submarine RFO and furnished by the DIP evaluation team regarding the GSC offer, including, *inter alia* i) no submission of bidders confirmation form (a critical document) ii) submission of the missing “Bidders Confirmation” *dated 12 May 1998* on 15 May 1998 (three days after closure of receipts of responses to the Request For Offers and commencement of evaluation of bidders’ offers for the submarines, on 12 May 1998), which constituted a late submission iv) the bidder’s commitment to a Direct DIP: 7% (\$59 million) and Indirect DIP: 12% (\$102 million) on a collective basis without relating to any specific project or activity as

¹⁵ The Chief of Acquisitions of the DoD, and co-Chair of the Strategic Offers Committee was the auditor and moderator for DIP process and consolidator of NIP responses, which were to be generated by DTI. Data from all evaluators was to be collated by the Counter-trade Division and a final report issued to the Chief of Acquisitions of Department of Defence (JIT 2001 6.4.6.3-4).

required by the RFO v) no business plan as required was submitted to detail how the DIP commitment will be executed (JIT 2001 6.4.6.16).

The legal advisor P Hlahane's response, on 22 May 1998, to the request for a legal opinion made by DTI evaluation team, on 14 May 1998, as to whether GSC and Kockums complied with the tender prescriptions, concurred with the DIP evaluation team's analysis of the GSC and Kockums offers. Regarding the GSC, advisor P Hlahane's legal response was as follows:

“RE: GERMAN SUBMARINE CONSORTIUM (GSC)

GSC had failed materially to meet the essential requirements of the DIP. Without confirmation by the bidder there is no basis on which it could be evaluated. GSC therefore did not comply with conditions and requirements of both the IPRCR clauses 3.1; 5.6; 6.2 and all conditions as contained in DIPCB, which have been outlined above. The DIP requirements are very specific and GSC's bid is tantamount to an undertaking of intent... I have found your analysis and your fellow evaluation team members not to have been divorced from opinion provided herein (JIT 2001 6.4.6.17).

Following this legal opinion from ARMSCOR Legal Division, the JIT Report (6.4.6.17), in this regard, concludes: “Despite the above (advised non-conformances), Shamin Chippy Shaik and L Esterhuyse gave approval that all the bidders who had failed the minimum criteria be allowed to take corrective action in order to proceed to the next round of the DIP evaluation.” There was no reason provided as to why SOFCOM refused to accept the DIP evaluation team's analysis of GSC's offer.

DIP team leader and JJ van Dyk, in a memorandum to the Chairpersons of SOFCOM, on 1 June 1998, reminded SOFCOM of the “numerous deviations (in various DIP offers) from the official tender prescriptions” as it relates to the DIP requirements of the RFOs which “was already reported at SOFCOM meeting of 20 May 1998” (see JIT 2001 6.4.6.19(a)). At the instruction of the SOFCOM Chair, in response to this reminder, the Counter-trade Division of ARMSCOR said they had embarked on an additional information-gathering exercise and, still convinced after the exercise, that “some of the contenders have disqualified themselves,” requested that SOFCOM “*formally*” condone and subsequently approve the utilization of all additional information “*lately*” requested

from bidders who otherwise would have been disqualified, ‘in order to create “visibility” of the action taken to “legalise” everybody’s participation’ (JIT 2001 6.4.6.19(f), 7.3.5.4(c)(iii-v)). To be sure, JIT (JIT 2001 6.9.1.2) recommends, in this regard, that adequate audit trails, with particular emphasis on the *visibility* of supervision, decision-making and assumption of responsibility at appropriate levels, must be put in place.

The reasons for the request for a legal opinion by the Counter-trade Division of ARMSCOR, on 14 May 1998, and the legal advisor’s response to it, on 22 May 1998, *vis-à-vis* the DIP evaluation team’s analysis of contenders’ DIP offers against DIP requirements as contained in the submarine RFO and stated in the ARMSCOR Counter-trade Division’s memoranda to SOFCOM, on 20 May 1998 (see JIT 2001 6.4.6.16-17, 6.4.6.19, 7.3.5.4(c)(iii)(iv)), highlight the *formal* joint expert advice by ARMSCOR Counter-trade Division and the DIP evaluation team to SOFCOM as to why “some of the contenders have disqualified themselves” (as per the material failure of GSC and Kockums to meet the essential requirements of DIP section of the RFOs) in the contest for the supply of the submarines. This was enough to enable SOFCOM to take the advice into consideration in the Committee’s decision, on the preferred bidder, regardless of any legal opinion. SOFCOM, indeed, any committee of Government Department for that matter, may not ordinarily use a legal adviser in order to contest the expert view of another committee. Contestation of an issue between teams and committees requiring a legal opinion can only be an exception to the rule in respect of the intra and inter team or committee relations within Government Departments.¹⁶ Contrary to the reading of

¹⁶ On every possible meaning that can be deduced from the JIT Report, in this regard, is that the Chairpersons of SOFCOM did not consider either the legal opinion of ARMSCOR Legal Division or the ARMSCOR Counter-trade Division memorandum to SOFCOM supported by the DIP evaluation team’s view that “GSC and Kockums did not comply with DIP requirements as contained in the submarine RFOs.” In fact, the legal opinion only confirmed reinforced DIP evaluation team’s analysis of bidders’ DIP offers against DIP requirements as contained in the submarine RFOs and as stated on ARMSCOR Counter-trade Division’s memorandum to SOFCOM, on 20 May 1998. The detail of the JIT Report, paragraphs 6.4.6.16-17, 6.4.6.19, 7.3.5.4(c)(iii)(iv), is meaningless if not that SOFCOM Chairpersons, SC Shaik and L Esterhyse, improperly, on 20 May 1998, at a meeting of SOFCOM, brought an otherwise disqualified GSC into contention for the supply of submarines while response to their *instruction* of the Counter-trade Division of ARMSCOR for the procurement of additional information from the non-complying bidders in order to correct contenders’ non-compliances, was still awaited. There was no evidence from the minutes of SOFCOM that Van Dyk’s memorandum of 1 June 1998 directed to SOFCOM Chairpersons, in order to “legalise” the (late) request for additional new information which amounted to a deviation from the DIP requirements, was ever submitted to the entire Committee; hence the Chairpersons took a unilateral decision to condone the numerous deviations and non-compliances without the approval of the Committee which decision

paragraph 6.4.6.17 or any other portion of their 400-page Report, the Joint Investigating Team “found” in paragraph 6.8.5 that “the outcome of the (aforementioned) legal opinion was not communicated to SOFCOM to enable its members to take it into consideration when making recommendations. Messrs Shaik and Esterhuysen gave approval that all the bidders who had failed to meet the minimum criteria be allowed to take corrective action in order to proceed to the next round of the DIP evaluation.” This is misleading and not true, i.e., cannot be substantiated on the face of the JIT Report on the arms deal. It is reiterated that this very “finding,” which is utterly out of step with the actual details of the JIT Report on the arms deal, is outrageous as it stretches credulity to the extreme.

It is strongly felt by the SA public that it was, above all else, the inability of the joint task team to cope with the manufacture of “justifications to wish away, to rationalize away,” the plethora of departures from laid down rules and criteria that characterised the SDP process, that led to recourse to claims such as, “as the ultimate decision-maker, Cabinet was entitled to select the preferred bidder (through) unusual procurement practice,” and “ultimately, the decision about what the country can and cannot afford is one of political choice.” This is, of course, apart from anything else, in complete disregard for *the Affordability Report* by the Affordability Team of the IONT, worth millions of public money, commissioned by Government solely to advise on the affordability of the weapons procurement packages (JIT 2001 4.12.1, 9.1.1.5, 14.1.12). What is really required is a proper look into whether Ministers, servants, rather than masters, of the public, acted properly, competently and responsibly, in the choices they made of preferred bidders for the supply of defence equipment, as presented by the Head of Procurement of the Department of Defence. Did the Cabinet sub-Committee, which oversaw the putting together of the defence packages procurement sufficiently and responsibly apply their minds during the SDP procedures? Did it do so “in the other forums” (see JIT Report 2001 4.6.7, 3.2.6) of the *staged*-approach upon which Ministers’ decisions (on the single biggest expenditure of Government in SA history of democracy) “were based?”

With respect to the submarine programme, only Fincantieri had fully complied with the critical criteria pertaining to DIP evaluation, and had the value system been adhered to, only Fincantieri and Fincantieri alone should have gone through to the second round of the DIP evaluation process (JIT 2001 6.4.6.19). Going beyond the final Report on the

eventually led to the selection of GFC as the preferred bidder for the Corvettes, according to the JIT Report (JIT 2001 7.3.5.4(b)(ii)).

arms procurement purchases and considering its draft documentation, *Arms report sanitised* (*Mail & Guardian* 7 January 2005, 2) state categorically, ‘the DIP process with regard to the submarines was “materially flawed” resulting in “potential prejudice to unsuccessful bidders.”’

There was no evidence that the financing evaluation instruction compiled, and issued by the Finance and Administration Division of ARMSCOR, as a requirement, was approved by a higher authority. Nor was there any formal policy for the appointment of the seemingly inexpert team members, whose selection was at the discretion of the team leader, given the limited availability of the necessary expertise required. No provision appeared to have been made for the moderation of actual results to ensure that (computation) errors and significant variances in scores awarded were addressed. The results of the financial evaluation as submitted to SOFCOM and contained in the financing report, placed GSC 1st, DCN 2nd, Fincantieri 3rd and Kockums 4th.¹⁷ When the flaw of the finance value system was rectified and bidders financing offers recalculated against benchmarks for evaluation, DCN International was placed first, Finactieri second, and GSC third in the financing domain and not first as originally determined (*confer* JIT 2001 6.4.7.5, 6.4.7.6).

There was no policy prescribing the process to be followed for approval of the technical value system or the level of authority at which it should be approved. According to the Chief of Acquisitions, DoD, “there is no clear position as to who must sign value systems” (JIT 2001 6.4.8.1). The technical value system required offers essentially to respond to the a) engineering management component b) integrated logistic support (ILS) and c) product performance aspects of the RFO. As shown in the JIT Report, the military performance results of the individual components of the technical evaluation, as

¹⁷ In terms of the financing value system the original formula to determine the preferred bidder, *viz* $(T+IP)/F = \text{Best Value}$, provided that the bidder with the best financing proposal would receive the lowest score in view of financing forming the denominator in the above formula. This correlated with the scoring to be awarded in respect of each criteria being evaluated, whereby a rating from “excellent” to “poor” represented by a score ranging from 1 to 5, respectively was applicable. As a result, an evaluator who failed to award a score for non-compliance would give a bidder a lower score and therefore a better rating, compared to an evaluator who rated a bidder as poor as (5) for non-compliance. Evaluators who did not allocate a score were excluded from the final computation, as provided for in the value system. Hence, the flaw in the finance value system: where an evaluator was excluded because he had failed to allocate a score in respect of any particular criteria, this would have an impact on the scoring because of the method of scoring specified. If the value system had compelled the allocation of a score (e.g., a rating requirement of 5 for poor or non-compliance), the risk would have been eliminated.

determined by the evaluation team, prior to the introduction of costs, ranked offers thus, Fincantieri 1st, DCN 2nd, Kockums 3rd and GSC 4th (JIT 2001 6.4.8.5).¹⁸ According to JIT, when the military performance index (MPI) - i.e., the consolidated technical results - was then calculated by taking the three component scores and dividing these scores by their associated costs, the final results as determined by the evaluation team placed the offers thus; GSC 1st, Kockums 2nd, Fincantieri 3rd and DCN 4th. JIT says GSC was rated as the best in all three components after using a) the separate costs of the four submarines offered by bidders as denominators for their product performance b) ILS costs as denominators for ILS and c) engineering management costs (referred to as other costs in the JIT Report) as denominators for engineering management, respectively, in the MPI formula (JIT 2001 6.4.8.6-9). “Although GSC came *fourth* from an overall performance perspective (JIT says) the *lower costs* offered by them in relation to the other bidders resulted in the GSC being the overall *preferred* supplier over all three components evaluated. Costs were therefore a significant factor in the identification of the overall preferred supplier,” they conclude (see JIT 2001 6.4.8.9). Significant to note is the weight factor of 67,51% of the ILS component, which represents its importance as major determinant of the preferred supplier of the submarines (at least, on the face of the JIT Report). The cost for ILS, as offered by the GSC, and shown in paragraph 6.4.8.6 of the JIT Report, was US\$36 million, which was significantly less than the costs offered by Fincantieri (US\$111,18 million) and DCN (US\$113,74 million). However, the submarine evaluation report, according to the JIT Report, in relations to the costs for ILS as offered by GSC, states

The logistic support package is comprehensive but a large amount of deliverables are offered as options and were not costed into the proposal. The logistic risk is determined as low, but because many options were not costed additional funds should be allocated. As directed by the moderator of the submarine offers, *an amount of 75% of the quoted logistic cost was added to the logistic cost for risk management* (JIT 2001 6.4.8.10, emphasis added).

¹⁸ In fact, all that happened was that GSC was catapulted from its fourth/last ranking position to the first and preferred position. JIT concur: “insufficient clarity was given in the value system about the manner in which costs were to be used in calculating or consolidating the scores for the three criteria” of a) the engineering management component which carried a weight of 6,54 per cent b) integrated logistic support (ILS) which carried a weight of 67,51 per cent and c) the product performance, which carried a weight of 25,95 per cent (JIT 2001 6.4.8.3-4).

Following from this, as JIT (JIT 2001 6.4.8.10) says, “the decision to allocate an additional 75% of the quoted logistic cost of the GSC, which was significantly less than the logistic costs offered by Fincantieri and DCN, was *arbitrary* (emphasis added). This additional 75%, amounting to US\$27 million, resulted in a total ILS cost of US\$63 million for the GSC, compared to US\$111.18 million for Fincantieri and US\$113.74 million for DCN.” And they conclude that “because the denominator for the ILS element in the formula for GSC was much less than the other bidders, and because of the impact of the weight factor of 67,51% allocated to the ILS component, the result was that the GSC was effectively the preferred bidder in the *overall* technical evaluation on the basis of the value of US\$63 million” (emphasis added, JIT 2001 6.4.8.11). In other words, the moderator of the submarine offers was guilty of an improper act in arbitrarily allocating an additional 75% of the quoted logistic cost of GSC to GSC. This was significantly less than the logistic cost offered by Finantieri and DCN, and secured the contract for GSC; this is obviously the case in light of the fact that GSC ranked *fourth and last* on the military performance results prior to the consideration of costs.¹⁹ What happened after the military performance results of the technical evaluation of bidders, and which brought GSC from its bottom ranked position to first (preferred) position, was not clear to JIT and will remain unclear until a true forensic investigation brings clarity to what otherwise seems mysterious. The breadth and volume of the improprieties, irregularities, and cut-and-paste procedures which marked Government’s multibillion Rand weapons purchases programme immediately become much more apparent when the purported justification for the award of the submarine contract to the Germans and the preference of the Germans also for the supply of the Corvettes, is read side by side with the reasons purportedly justifying the passing over of the C2I2’s Data bus for the Corvettes Combat Suite, as well as the refusal to award the LIFT contract to the Italians who, by virtue of

¹⁹ The thesis makes this logical conclusion bearing in mind the observations made with respect to the submarine programme that a) only Fincantieri had fully complied with the critical criteria pertaining to the DIP evaluation and had the value system been adhered to, only Fincantieri should have gone through to the second round of the DIP evaluation process (JIT 2001 6.4.6.19) b) NIP evaluation results ranked bidders thus GSC 1st, Fincantieri 4th, Kockums 2nd and DCN international 3rd (JIT 2001 6.4.1) c) final evaluation summary as determined by the DIP evaluation team’s placement of bidders, *viz* Fincantieri 2nd, GSC 4th, DCN 1st and Kockums 3rd (JIT Report 2001 6.4.6.11) and d) results of the financial evaluation that would have correctly ranked bidders as follows DCN 1st, Fincantieri 2nd as in paragraph 6.4.7.6(d) rather than the skewed results contained in the financial evaluation report summarized in paragraph 6.4.7.5 of the JIT Report. A conclusion made with strong reservations apropos of “errors” consciously or inadvertently committed all through the submarine evaluation process, which began with keeping GSC in the preferred position as signaled by the improper initialling of the contract on 12 June 1999.

having offered the *lowest cost* of the LIFT in relation to their competing rivals, were the *preferred* bidder under both the costed and non-costed options of the equipment.

6.4 Selection of Prime Suppliers for the Corvettes

Project Sitron (Corvettes) was launched in 1993 to procure patrol corvettes for the SA Navy, which arm of the service had by the 1990s lost both the capability to operate effectively in very rough sea conditions and also the capability to operate maritime helicopters at sea. According to the JIT Report, the former Minister of Defence Joe Modise's idea of counter-trade (offsets or industrial participation), *inter alia* led to the concept of a strategic defence package that would benefit the SANDF as a whole and hence the inclusion of four corvettes in the force design of the Defence Review (see JIT 2001 7.1.5-6).

The Acquisition Division of DoD was established in 1998 and the teams and project staff of Project Sitron were transferred to this division. The Project Control Board (PCB), with the Chief of Acquisitions as Chairperson and Chief of the Navy and CEO of ARMSCOR as senior members, was subsequently established. The PCB controlled all projects and high-level project decisions were forwarded to it for a final decision.

Unique to the Corvettes, Request For Offers (RFOs) for primary contractors specifically requested bidders to bid only for the ship platform. The Combat Suite, which is the weaponry system of the Corvettes, was to be subcontracted to South African entities to the extent of 60% of its cost, which had a ceiling amount of R1 471 billion (JIT 2001 7.2.1.4). The preferred bidder was to enter into a teaming agreement with a local arms manufacturer for the purposes of supplying the Munitions Suite.

Requests For Information (RFIs) for the procurement of the Corvettes were distributed to 11 countries' shipyards on 23 September 1997. The responses were evaluated subsequent to 31 October 1997 (due date for bidders' responses) and a shortlist of four bidders, consisting of the German Frigate Consortium (GFC) of Germany, Bazan of Spain, GEC of the UK and DCN International of France, was compiled. On 13 February 1998

Request For Offers (RFOs) were sent to the short-listed bidders whose offers were submitted by the due date of 12 May 1998 (see JIT 2001 7.1.7, 7.2.1.2-3). Offers by the four bidders were evaluated on the basis of a) Military/technical value system b) Financing of the products and c) Industrial participation offered. The three criteria were, as in the ALFA, LIFT and the Submarines, consolidated by SOFCOM in terms of a changed evaluation formula, viz

$$\text{Best Value} = \text{Military} + \text{Industrial Participation} + \text{Finance}^{20}$$

According to the Report, on the basis of consolidated evaluation results, Meko A200 of the Germans was selected as the preferred Corvette at the cost of R6 001 25 million and a contract was entered into with GFC on 3 December 1999.

The relevant value systems and evaluation criteria were reviewed against the actual process followed in the evaluation of bidders, as contained in the evaluation reports, and other relevant documentation was also considered, according to the joint task team. Offers were evaluated for military (technical) performance to obtain a weighted score out of a maximum of 1 080 points and the overall technical evaluation result ranking of bidders follows:

Country/Offeror	Score out of 1080	Ranking
United Kingdom GEC F3000	649.9	4
Germany GFC MEKO 200	790	2
Germany GFC MEKO A200	810.5	1
France DCN PATROL CORVETTE	618.3	5

²⁰ Against the unanimity, (in a special meeting of 10 June 1998), of all team leaders responsible for determining the value of strategic programmes, the Chairperson of SOFCOM, at a work session, of 1st and 2nd July 1998, adopted a different formula which was used by SOFCOM for the consolidation of normalized evaluation scores for technical, IP and finance results throughout the SDP evaluation process. The Chairperson of SOFCOM gave no reason, as far as the 400-page JIT Report on the SDP purchases process goes, for his unilateralism (*confer* JIT 2001 4.3.7.2-3, 4.5.7.3, 6.1.5). Only the *forensic* investigation of the Auditor-General on the Corvettes procurement process portion of the Report came to the rescue, viz ‘the reasons furnished by DoD for changing the formula “appear” to be sound.’ In any event, the JIT Report neither contains “the reasons” nor any explanation for “these reasons” (see JIT 2001 7.2.1.5).

Spain BAZAN 590B	766.6	3
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When bidders' received proposals were adjudicated against the predetermined value system in the technical domain this did not change the preferred status of GFC's Meko A200 Corvette, however, "only Bazan (of Spain)²¹ complied with all the minimum technical performance criteria" (JIT 2001 7.3.3.4-5). All offers but the Bazan 590 B ship platforms, as per the technical evaluation report, did not conform to the critical minimum performance criteria, as stipulated in the value system. The non-conformance with the minimum ballistic protection requirement by the DCN Patrol Corvette could be corrected with a slight cost implication. GEC F3000 ship platform's failure in the specified radar signature and minimum ballistic protection criteria, require correction with major cost and redesign implications and slight cost implications, respectively. The non-conformance of GFC Meko A200 in the specified engine compartment vulnerability separation requirement, due to the Codag-Warp design, says the JIT Report (7.3.3.5(a)(iii)), "apparently affords other compensating vulnerability advantages and did not need to be corrected."

"Only Bazan complied with all minimum technical performance criteria" (JIT 2011 7.3.3.5(a)(i), 7.3.5.4(h)(i)), but the bids for the supply of the Corvettes were not an exception in the disregard that was displayed for the standard procedures characterizing the entire arms procurement process. Offers were, thus, evaluated in the second stage of evaluation, regardless of the degree of their non-conformances. The Joint Investigating Team found no evidence of approval of such a decision, and, in accordance with their generally incomplete and superficial probe of the strategic defence packages process, said nothing about the official(s) whose responsibility it was to make such a decision at the different levels and stages of the acquisition process. Investigators were content that Shamin Shaik - moderator, auditor, coordinator, and consolidator of DIP and NIP evaluations, and Chairperson of the steering committee which actually consolidated the combined evaluation results of the military performance, industrial participation, and financing of the three evaluation teams, and made final recommendation of bidders'

²¹ No evidence of the existence of a security agreement between the South African Government with Spain could be found, according to the JIT Report, in spite of the requirement by the Ministry of Defence policy for such an agreement between the SA Government and the offering country.

ranking for the supply of the Corvettes through to the Ministers’ Committee in July 1998 - “was not aware of these failures to conform” (JIT 2001 7.3.3.5(a)(iv)).

The DIP evaluation results placement of bidders regarding contenders’ offered activities for the Corvettes, viz

	GEC Rm	DCN Rm	GFC Rm	BAZAN Rm
Total contract value	863 600 000	903 600 000	846 964 133	737 053 000
Total platform value	550 000 000	590 000 000	533 364 133	423 453 000
Total Combat Suite value	313 600 000	313 600 000	313 600 000	313 600 000
Total value of DIP @ 50%	967 000 000	377 450 000	255 962 000	676 000 000
Total value of direct DIP	440 000 000	247 950 000	249 464 000	269 400 000
Total value of platform element	42 000 000	59 950 000	61 464 000	81 400 000
Total value of Combat Suite	188 000 000	188 000 000	188 000 000	188 000 000
Total value of indirect activities	527 000 000	129 500 000	6 498 000	406 600 000
Local industry participation	230 000 000	311 950 000	249 464 000	365 000 000
Value of technology transfer	210 000 000	500 000	0	10 000 000
Value of globalisation	527 000 000	65 000 000	6 498 000	301 000 000
Job creation	10 093	5 026	3 413	8 880
Overall normalized ranking	92	96	81	100

However, the DIP evaluation results ranking of Bazan of Spain 1st, GFC of Germany 4th, DCN International of France 2nd, and GCE of the UK 3rd *supra* involved calculation errors in the scores allocated to certain bidders. Rectifying this decreased the normalized score for DCN, GEC, and GFC by 4, 1, and 10 points respectively but did not affect the final ranking, as below:

	GEC	DCN	GFC	BAZAN
Conformance and compliance <i>paragraph 12.25.1</i>	4.09	4.36	4.09	5.45
Sectoral development <i>paragraph 12.2.5.2</i>	8.0	7.82	5.31	7.83
Average score	6.05	6.09	4.70	6.64
Normalised score <i>per</i> JIT calculation	91	92	71	100
Ranking <i>per</i> JIT calculation	3	2	4	1

Normalised score <i>per evaluation table above</i>	92	96	81	100
Ranking <i>per evaluation</i>	3	2	4	1
Change in normalized score	-1	-4	-10	0

Note: Paragraph references in table refers to annexure A and C of DIP value system. In row 5 - normalized score per JIT calculation - bidders retained their positions as per DIP ranking of Bazan 1st, GFC 4th, DCN International 2nd, and GCE 3rd in respect of contenders' offered activities for the Corvettes after errors in the original scores allotted to bidders have been rectified, and which effect was the decrease in the normalized score for DCN, GEC, GFC and Bazan by 4, 1, 10 and 0 points respectively.

As has been demonstrated *supra* investigation shows that GFC failed, *inter alia* to comply with the minimum criterion specified in DIP value system of providing a bank or sovereign guarantee to the value of 5% of the DIP commitment, which would have disqualified GFC save for the late submission of the said guarantee on 6 June 1998, at the request of the co-chairpersons of SOFCOM. This clear deviation from the value system instructions, according to JIT (JIT 2001 7.3.5.4(c)(ii)(h)), led an otherwise disqualified GFC to the second round of evaluation, and eventually secured the bid for the Corvettes for it. However, the Joint Investigating Team was not worried; it simply accepted the incorrect statement told to it by the DoD that the (arbitrary) decision by SOFCOM Chairperson (to improperly authorize a late and unsolicited request from GFC and allow it to submit its bank/sovereign guarantee or *bidder confirmation form* after twenty five days of closure of acceptance of Request For Offers and commencement of evaluation of offers) was taken in terms of items 2.1.3 & 2.10.1 of the tender rules and RFO documents which paragraphs specifically state:

2.1.3: The buyer reserves the right to deviate from the prescribed rules applicable to prospective contractors (K-STD-0010) in any case where such deviation is deemed justified.

2.10.1: Offerors may submit an alternative offer not strictly in accordance with the requirements, or an alternative offer to satisfy a requirement, *provided that all information requested in the RFO is furnished by the closing date. The alternative offers and deviations from the requirements must be indicated in the offer (confer JIT 2001 7.3.5.4(c)(ii)).*

Suffice it to record that GFC submitted their bank guarantee as requested of them by the SOFCOM Chairperson, notwithstanding a) the fact that the legal opinion of ARMSCOR Legal Division had already confirmed deviations and non-conformances by GFC, among other contenders, and b) that the evaluation team held the opinion that the non-complying bidders should be disqualified (paragraph 4.7.1 of the DIP evaluation instruction, in the JIT Report 2001 7.3.5.4(iv)). According to SC Shaik, “this decision was taken by the CEO of ARMSCOR and himself, as Chief of Acquisition of DoD. His authority (was) vested in his management delegation from DoD.” The Chief of Acquisition’s claim of authority was apparently vested in “his management delegation from DoD” (JIT 2001 7.3.5.4(iv)) to unilaterally authorise that non-complying bidders be kept in reckoning in the bids for the supply of the corvettes. Investigators neither looked into the validity of this claim nor make any appropriate remark or recommendation regarding it. They simply fobbed off another instance of deliberate misinformation by a senior official of Government vested with state authority (and worthy of public trust).

As in the LIFT and Submarines contracts, it took a plethora of successive departures from laid down standard procurement rules to award the Corvettes contract to GFC of Germany. On top of these deviations and non-compliances with minimum evaluation and performance criteria, DIP values offered by GEC were reduced for evaluation purposes from those offered in the offers, and though the DIP value system provided for the evaluation of business plans *at face value*, in deviation from this requirement, SOFCOM Chairpersons approved the reduction.

In terms of the minutes of the Council of Defence meeting on 9 February 1998, DIP and NIP proposals were to be consolidated at 50% each. ARMSCOR Counter-trade Division, as well as the opinion given by the Legal Division of the Corporation, also held this view. However, this was not complied with upon the consolidation of the NIP and DIP to determine the total IP. Instead, the two criteria were simply added together and the average was used to determine the scores for the preferred bidder.²² The DIP evaluation

²² A special meeting of the AAC, on 13 July 1998, stated that the ranking of the Spanish bidder (Bazan) was due to most of their industrial participation not being of a strategic nature. At any rate, paragraph 1.4 of the evaluation instructions was clear about the business plans in the DIP part of bidders’ offers: *‘the assessment of all business plans was to be performed on the face value of the proposals contained therein.* The correctness of proposals contained in the DIP section of each bidder’s offer was the responsibility of the bidders. This was to be acknowledged in terms of “confirmation by bidder” forms duly completed and signed by each bidder’ (JIT 2001

instruction clearly state that a portion of the direct DIP to be offered by the bidders be based on the value of the Combat Suite, and in terms of which 60% of the value of the Munitions Suite was to be offered as a minimum; however, the evaluators used a standard contract value of US\$313 600 000 for all bidders, resulting in the direct DIP portion of US\$188 000 000 for all bidders, in flagrant disregard of the DIP evaluation instruction (see JIT 2001 7.1.2.4, 7.3.5.3).

The amount offered by GEC for technology transfer and know-how, was reduced by the DIP evaluation team, and, without confirmation with bidders, SOFCOM Chairpersons approved the use of the amount as adjusted by the evaluation team. Further, GEC did not provide a business plan on the Combat Suite as required in terms of the critical criteria of the value system, and for which they should have been disqualified, but were nevertheless permitted into the second round.

Neither GFC nor GEC provided the 60% direct DIP required on the Combat Suite, which should also have entailed their disqualification, but both bidders were allocated the same direct DIP value as the other bidders, based on the direct DIP value offered by Bazan. GFC's business plan on the 60% direct DIP was submitted *late* on 6 June 1998, after GFC was requested to do so by the evaluation team, following the arbitrary and improper decision of SOFCOM Chairpersons on 20 May 1998. SOFCOM minutes of the same date record no evidence that the Committee approved such a decision. Furthermore, GFC was given a score of 5 instead of one on the total DIP offered in terms of the conformance and compliance summary schedule, for no apparent reason.

DCN offered duplicated activities under both the Corvette and Submarine programmes, and contrary to the stipulation of DIP value system that "duplicated activities had to be ignored for the other programme" (JIT 2001 7.3.5.4(f)), SC Shaik directed, on 24 June 1998, that the specific activities be included at 50% in both programmes. An evaluator's view that Bazan did not provide a business plan for a particular activity could not be substantiated where the activity could not be identified and, Bazan, according to JIT, committed itself in this respect²³ (JIT 2001 7.3.5.4(h)).

6.4.6.3(c)(d)). But, contrary to this section of the evaluation system, evaluators picked and chose proposals that 'were fraught with "anomalies," "qualifying and contradictory statements," and "suspect commitments," ' in disregard of the value system.

²³ Placed third on the overall technical result, "only Bazan complied with all the minimum technical performance criteria," though (JIT 2001 7.3.3.5(a)(i). Had the evaluators, coordinators, the auditor and moderator of evaluation processes and, perhaps, SOFCOM Chairpersons,

There was neither any evidence of an approved NIP value system in place for the purposes of evaluating the Corvettes bids, nor any regarding the manner of awarding the NIP quality multipliers of 1 to 25, as these were not linked to any documented benchmarks. The NIP evaluation results however ranked bidders as follows:

Country/Offeror	Value	Score	Ranking
United Kingdom GEC MARINE	5 892 344	11	4
Germany GFC	52 423 525	100	1
France DCN International	27 519 751	52	2
Spain Bazan	25 030 877	48	3

The combined IP evaluation (DIP and NIP) thus:

	GFC Rm	BAZAN Rm	DCN Rm	GEC Rm
Contract	846 964 000	73 7053 000	903 600 000	863 600 000
DIP Value	255 962 000	676 000 000	377 450 000	967 000 000
NIP Value	2 730 783 000	2 722 645 000	1 684 037 000	413 936 000
%DIP	30	91.7	41.8	112
%NIP	322.4	69.4	186.37	49.48
NIP Ranking	100	48	52	11
DIP Ranking	81	100	96	92
Average	90.5	74	74	51.5
Final IP Ranking	100	82	82	57

observed the non-compliances of DCN, GEC and GFC with DIP critical minimum criteria as catalogued in paragraph 7.3.3.5 of the JIT Report, these non-complying bidders would have been disqualified and would not have proceeded to the next round of the evaluation process. Appallingly, no evidence of the approval, by any person(s), of the decision for non-conforming bidders to be evaluated in the second round of the evaluation process could be found and, according to the JIT Report (7.3.3.5(a)(iv)), “Shamin Chippy Shaik was not aware of these failures to conform” with the technical evaluation prescriptions, and the technical evaluation team appears not to have helped investigators, in this regard, either.

According to the JIT Report (7.3.6.3(c)), in the absence of a clear statement as to the manner of calculating the scores with regard to the NIP and DIP value systems, it could not be ascertained if the scoring complied with the prescribed value system.

Approval of the financing value system, as compiled by the Finance and Administration of ARMSCOR, was not evident. Investigation further revealed that some of the criteria of the financing value system were included in the evaluation worksheets but were not evaluated.

Overall financing evaluation ranking of bidders:

OFFEROR	SCORE	RATING	RANKING
United Kingdom GEC F3000	2.2071	100	1
Germany GFC MEKO 200	2.786	79	4
Germany GFC MEKO A200	2.786	79	4
France DCN Patrol Corvette	2.497	90	2
Spain BAZAN 590B	2.659	84	3

In terms of the financing evaluation report and evaluation worksheets, none of the bidders complied with the minimum criteria set out in the financing value system. These non-conformances were reported to SOFCOM, and the Committee instructed the evaluation team to continue evaluating the proposals with an indication of their non-conformances.

The finance evaluation worksheets show a series of *adjustments* made on the cash flow, net present value (NPV) and contract value of GFC's proposals - GFC Meko 200 SAN and GFC Meko A200 SAN – without any reasons being advanced. It was in deviation of the finance value system that s 2(a) was evaluated by four of five evaluators and this, according to JIT (JIT 2001 7.3.7.3(f)), could have influenced the ultimate evaluation of the bidders. But whether this actually influenced the choice of the preferred bidder could not be ascertained, as the scores that might have been allocated by the other evaluator could not be determined.

No provision was made for the rating in instances where the information had not been provided. In such cases nothing was scored and the result was that the bidder who provided no information had the lowest score, which placed that bidder in a more favourable position than those who had furnished the information. In terms of the finance value system, the bidder with the lowest score was ranked first. Yet, SOFCOM authorized the evaluation of all bids in spite of their apparent non-conformances to the minimum critical criteria as stipulated in the value system and, as the JIT Report (7.3.7.3(i)) confirmed, no review of the evaluation results was performed.

Evidence is abundant that the countless deviations from and non-compliances with time-tested procurement procedures, criteria and formulas led to the choice of GFC as the preferred bidder for the supply of the Corvettes. The decision of the collective of the evaluation teams, evaluation results coordinators, the auditor and moderator of the evaluation processes and, in the main, SOFCOM Chairpersons, to allow bidders who failed to comply with the critical minimum criteria regarding the technical, financing and DIP evaluations, not only constitute a gross deviation from the approved value systems, but, importantly, both kept an otherwise disqualified GFC in contention for supply of the Corvettes and eventually secured the contract for the bidder. JIT concurs: “the decision to allow bidders who did not conform with the critical minimum criteria in respect of technical, financing and DIP evaluations was a deviation from the approved value systems. Had this decision not been taken, only Bazan could have been evaluated on two of three domains. All the others did not comply with all three and Bazan did not comply with one. This could have resulted in Bazan being the preferred bidder. Bazan was the only bidder that complied with all the critical minimum criteria in respect of technical and DIP evaluation. Bazan obtained the highest military value and DIP scores. Bazan provided the highest percentage of DIP and NIP in relation to the contract price. Bazan offered the lowest price of the four bidders. GFC, however, was nominated the preferred bidder on the basis of their NIP offer. This is despite the fact that NIP is not ascertainable in terms of achievability” (JIT 2001 7.4.5.4(h)(i)).

In all but the bid for preferred supplier of the Corvettes, NIP value systems were analysed, showing, *inter alia* analysis of bidders’ NIP projects against NIP benchmarks performed by DTI evaluation teams among others in a) the quantitative phase which entails i) detailing how NIP credits for the value of items such as export sales, domestic sales and investments are obtained ii) looking at the items contained in bidders’ business plans and iii) multiplying the weighting as per the approved value system; and b) the

more qualitative phase within which there were sections in which points were allocated to offers, showing visibility of the allocation of scores for each section as well as the maximum possible score. The NIP value system analyses a) the decision-making procedure through which scoring was arrived at by team leaders b) the consensus objective combination of scores acquired by bidders in both phases of the evaluation process c) the NIP team leaders' communication of the scores to SOFCOM d) the normalization and communication of scores regarding the final NIP recommendation presented to SOFCOM e) the Committee's combined results, non-compliances, non-conformances, and deviations against the benchmarks for NIP evaluation and f) comments in this regard. However, in respect of NIP value system of the Corvettes, the JIT Report found that a) "no approved NIP value system could be found" (JIT 2001 7.3.6.1(a)); b) "there is no evidence regarding the manner of awarding the NIP quality multipliers of 1 to 25, as these were not linked to any documented benchmarks" (JIT 2001 7.3.6.3(a)); and c) "there was lack of a clear statement as to the manner of calculating the scores with regard to the NIP and DIP value systems in the absence of which it could not be ascertained if the scoring complied with the prescribed value system" (JIT 2001 7.3.6.3(c)). Yet, GFC won the bid for the supply of the Corvettes "on the basis of their NIP offer"²⁴ (7.3.5.4(i)).

It must be observed in the strongest terms that none of the main contracts was awarded without a gross disregard for standard, time honoured procurement procedures. The Cabinet sub-Committee, whose recommendations and decisions, as in paragraph 3.2.6 of the JIT Report, equals Cabinet's final decisions on the respective preferred bidders for the supply of weapons throughout the SDP programme, must have been too busy to engage in the daily affairs of Departments of Government and a careful review of the work done by SOFCOM, AASB/AAC *vis-à-vis* the benchmarks for evaluations (leading to the recommendations these bodies made which have significant implications for Government's arms purchases) was not considered. It would have entailed too broad a responsibility on the Ministers and involvement in the daunting "detailed and often technical tender procedures" in which ministerial responsibility "would either have been

²⁴ Senior members of Government have made statements in which they imply that all contenders unfairly treated in the arms acquisition process have either laid complaints or gone to courts (JIT 2001 4.6.9). This is unfair and untrue. The highest reaches of Government have also claimed that "Bazan entered the competition to supply the four corvettes, and lost to the GFC" and that it is natural for arms suppliers who failed in their bids for contracts to complain (*ANC Today* 3 (21) 30 May-5 June 2003); But Bazan lost unfairly as the circumstances surrounding Bazan's loss to GFC make clear.

made unlimited or its currency devalued or both,” as “Cabinet’s supreme maestro of media manipulation,” AK Asmal, claimed (Hansard SA, col. 2291, 5 June 1996; *Mail & Guardian* 1 January 2004, 9).

The cost of the Corvettes presented to Cabinet by SOFCOM on 18 November 1998 was R6 001 million. The costs presented to Cabinet on 15 September 1999 by the International Offers Negotiating Team (IONT) for the Corvettes, based on the affordability report issued on 31 August 1999, amounted to R6 917 million (JIT 2001 7.5.3.1-2, 8.11.1.1).²⁵ The costs presented by IONT were inclusive of the statutory and management costs, while the costs presented by SOFCOM did not take into account all the elements for each and every package of the purchases. *Affordability of the Defence Strategic Armaments Packages Report*, by the Affordability Team of IONT and presented to Cabinet sub-Committee on 31 August 1999 in paragraph 2.1.1, outlined the total cost of the procurement:

The contact price, which is the actual military equipment as procured from suppliers.

- (a) Statutory costs, which consist of items such as freight, insurance and taxes. The largest portion is incurred in SA.
- (b) Project management costs incurred by the DoD and ARMSCOR in managing the procurements.
- (c) Financing costs for deferring payments to suppliers so as to fit more closely into an optimum cash-flow schedule.

²⁵ The appointment of the Chief Negotiator between 23 and 24 November 1998 to represent the Office of the Deputy President during the Defence Packages negotiations (and whose fees and other operational costs associated with his activities were to be borne by the DoD) did not follow the ARMSCOR tender procedures as prescribed in policy document STD 20 and, therefore, irregular (JIT 2001 8.1, 8.4.2, 8.6.1-3). ARMSCOR is the procurement arm of the DoD. Its Board of Directors is the Tender Board of the DoD, as provided for by the provisions of the State Tender Board Act. It functions as the Defence Material Tender Board where the Board considers and evaluates all acquisition recommendations made by project teams, approves the supplier, the product and the agreed price (JIT 2001 3.1.2.1). Yet, no recommendations of the Chief Negotiator was made by ARMSCOR gave no approval to this appointment and may have had no contract with Jayendra Naidoo. JIT makes no finding on who made this improper appointment of the Chief Negotiator as if all that mattered was to report that “no evidence was found of any improper or unlawful conduct by the Government.”

(d) ECA premium, which is payable on all ECA-backed loans.²⁶

(e) Escalation on all of the above payments made in future years.

IONT directed the Ministers' Committee to the increase in the overall procurement costs presented to Cabinet on 18 November 1998, directly related to the technical performance of the equipment and the programme management costs associated with the equipment acceptance. The affordability team of IONT sufficiently equipped Ministers with adequate information for the ultimate decision makers to make properly informed choices about what the country could and could not afford. Thus, the Committee was put in the know concerning the risk associated with the Government's intent to acquire military equipment above the R16.5 billion expenditure level. However, the Ministers' Committee recommended the R21.6 billion scenario as a baseline figure, and the full package requirement of all three tranches, into which the procurement was later split at a total cost of R29.9 billion with an option to cancel/acquire tranche 2 in 2002/-3 and to cancel/acquire tranche 3 in 2004/-5 (JIT 2001 8.8.3.5, 9.2.3.7(a)(b), 9.2.3.8).²⁷

The contract price (cash price/real Rand value) of the procurement (exclusive of financing costs amounting to 49% of the procurement costs) at the time of the signing of

²⁶ Each offer for the supply of military equipment was accompanied by a financing package to fund the purchase. Preferred bidders' offers included financing the total contract in the form of foreign currency offshore loans consisting of a) export finance supported by export credit agency of the supplying country (ECA loans) and b) foreign commercial credits at normal market rates and terms (commercial loans). IONT, in this regard, according to the Chief Negotiator, avoided commercial loans and raised the ECA loan coverage to cover 100 per cent of the imported content of the packages, hence creating a substantial cash flow benefit for the Government.

²⁷ IONT's duly considered recommendation to the Ministers' Committee on 26 May 1999 that the procurement of the Advanced Light Fighter Aircraft (ALFA) be deferred on the basis that a) the SAAF, by 1999, still had a number of Cheetah fighter aircraft that could operate effectively until 2012 b) the currency risk associated with procuring the Gripen in advance of requirements c) the risk that a substantial percentage of the promised IP benefits would not materialize and d) the possibility that better priced alternatives might become available at the appropriate time, was not heeded solely because of the anticipated significant IP benefits the planned procurement of Gripen would generate for SA (JIT 2001 8.8.2.4, 8.10.3.1-2). At the end of the day, however, this expected enormous benefits hangs like a pie in the sky although NIP accounts for over 86 per cent of the IP. NIP promised during the arms procurement process is "not ascertainable" as delivery cannot easily be monitored, as benefits are not amenable to measurement.

the contracts on 3 December 1999 was R30 300 million (JIT 2001 9.2.3.9-10, 9.3.1-2).²⁸ Two cost estimates were made to the Ministers' Committee in August 1999 on two different bases. The first assumed a Rand exchange rate at the August 1999 rate to calculate a nominal or cash price, i.e., the cost should a single payment be made at the time of the signing of the contract. As it would be very difficult to fix a value on the arms purchases because of the continuous fluctuations in the exchange rate, a second cost estimate was calculated, taking into account the risk that the Rand could depreciate in real terms over the duration of the procurement period resulting in an increase in the present value of the contractual commitments, deliberately to alert the Ministers' Committee to the possible impact of future Rand weakness on the aggregate cost of the procurement. In light of the fact that the costs of the arms procurement packages does not consist in a once off payment at the time of signing of the contracts, but span over a period of 10 to fifteen years of payment (JIT 2001 8.8.3.2, 9.2.3.9), the cash price of the procurement at the time of the signing of the contracts, is unrealistic.

The value of the defence procurement packages at December 1999 does not reflect the actual cost and financial and fiscal implications of the procurement to the SA state over the twelve to 15 years span within which payment spreads. The second estimate, any other estimate for that matter, being a projection which only took into account the risk that the Rand could depreciate *vis-à-vis* major currencies involved in the procurement over the life of the contracts, is indefinite. The Rand could as well averagely appreciate, or remain the same in real terms as in August/December 1999, over the duration of the procurement period, hence the indeterminacy of the actual total cost of Government's arms acquisition programme up until after the final payment on the procurement has been made. Now, whereas the projection of cost in the affordability report on 31 August 1999 was R36 482 million, evidence provided by R Admiral Verster to SCOPA in October 2000 approximated this figure to R43 billion, based on the exchange rate at the time, and hence the reference to the procurement as "the R43 billion arms deal," in popular parlance (*confer* JIT 2001 9.2.3.6(b), 9.2.3.13). Be this as it may, of much more concern to this work is whether the process in question was transparent and whether it conformed to acceptable protocols and standards.

²⁸ The difference between the total equipment costs R29 992 million and R30 285 million (rounded off) is the cost of the simulator equipment for the Hawk and Gripen, if procured in tranches 2 and 3.