

CHAPTER 11

ALLEGATIONS/COMPLAINTS BY C²I² SYSTEMS (PTY) LTD

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CHAPTER 11

ALLEGATIONS/COMPLAINTS BY C²I² SYSTEMS (PTY) LTD

C²I², a company that participated in the procurement process of the SDP complained to the three investigation agencies that they had been treated unfairly and improperly by the government agencies and certain of the officials involved. The agencies conducted an in-depth investigation into these allegations, albeit in different formats. Those allegations that point to criminal conduct form the subject of an investigation by DSO, the contents of which are, for the reasons explained earlier, not discussed in this report. This chapter deals with the investigations conducted by the Office of the Auditor-General and the Public Protector. To avoid duplication, the investigations are not referred to separately, but reference is made, where necessary and appropriate, to evidence specifically obtained by either one of the two investigation agencies.

11.1 BACKGROUND

11.1.1 Introduction

11.1.1.1 Since 1980, the SA Navy had been planning to replace its frigates. In 1993, Project Sitron was registered for this purpose and steps were taken to obtain proposals from different suppliers. A request for Best and Final Offer (BAFO) was issued in 1994 to shipyards in Spain and Britain, and the former was eventually selected as the preferred bidder. In 1995 the then Minister of Defence deferred the decision to procure the vessels and Project Sitron was suspended, pending the Defence Review.

11.1.1.2 During June 1997, Cabinet approved the Defence Review in terms of which, *inter alia*, four Corvettes (and 6 helicopters) would be acquired. Parliament approved the Defence Review in April 1998. Project Sitron was subsequently revived.

11.1.1.3 The Technology Retention Programme of the S A Navy commenced in 1992 as Project Diodon. When Project Sitron was started in 1993, it consisted of small contracts issued by Armscor, and not by a main contractor, for the development of certain project elements. Project Sitron came to a halt when the Corvette acquisition programme was deferred by Cabinet in 1995. It was then decided to introduce a technology retention programme, called SUVECS (Surface Vessel Combat Suite), in an attempt to preserve the local naval technology base that had been nurtured at substantial cost to the State for years during the time that the Defence Review was conducted. SUVECS consisted of small contracts issued to a number of local companies, on a year-to-year basis, not to develop products, but rather technology demonstrators; in other words something that could work and could be considered for further development. Other important considerations were the following:

- (a) The strategic advantages of local sourcing of sensitive combat technologies; and
- (b) The economic advantages of supporting an industry that has a major job creation factor and significant export potential.

11.1.2 The Combat Suite Element Costing and Description

11.1.2.1 When Government in September 1997 eventually in principle approved the acquisition of the patrol Corvettes under Project Sitron, Armscor formally issued a Request for Information to a number of countries. Responses were received in October 1997. The short-list of four potential suppliers was approved in December 1997 and a Request for Offer issued to them.

11.1.2.2 The document titled "SA Navy Patrol Corvette Combat Suite Element Costing and Description" that formed part of the RFO, contained various provisions with the following specific extracts being of cardinal importance:

"ii.....The Combat Suite Element, comprising of systems developed and produced by nominated RSA industry,"

3. *"..... The Vessel Contractor will be a teaming arrangement between the ship platform supplier and the nominated RSA combat suite supplier, with sub-contracts placed on nominated companies for the various sub-systems"*

"9. *The Combat Suite consists mainly of sub-systems developed or under development by South African industry, in addition to some items of equipment from the SA Navy inventory; and three major sub-systems to be acquired from foreign suppliers"*

11.1.2.3 It is therefore clear that nominated South African industry was to play a significant role in the supply of the Combat Suite. The total cost of the Combat Suite amounts to approximately R2,6 billion in 1998 Rands, according to the evidence of the programme manager, Mr Nortjé. The value of the local elements of the Combat Suite amounted to R1,938 billion and the foreign elements to R671 million.

11.1.3 Relevant entities involved

11.1.3.1 Altech Defence Systems (Pty) Ltd (ADS)

(a) It appears from the evidence that an organisation called Thomson-CSF had, until 1997, been a French government-owned enterprise. It was one of the largest providers of defence electronic equipment and the largest exporter in this field. In October 1997, the French Government decided to privatise Thomson-CSF and other multi-national companies, such as ALCATEL and Dassault Electronique, were invited to take part in the process. This resulted in a merger between Thomson-CSF and Dassault in January 1999 and a new entity called Thomson-CSF Detexis was created.

- (b) The acronym "ADS" previously represented a South African Company by the name of Altech Defence Systems (Pty) Ltd. In 1996 Altech absorbed the activities of two companies operating in the defence industry, namely UEC Projects and Teklogic.
- (c) After 1994, a revolution occurred in the arms industry in South Africa. From 1996 the S A Navy and Armscor required any contractor of a major acquisition to accept full responsibility for its product. Previously Armscor carried the risks in this regard. It is against this background that Altech and other companies started to look for commercial and technical support from the major players in the international defence industry.
- (d) In April 1998, Thomson-CSF acquired 50% of Altech and the remaining 50% in February 1999. At that time Thomson-CSF was actively looking for a black empowerment partner in South Africa. As a result, Thomson-CSF sold 80% of its shares in Altech to its South African subsidiary under the name of African Defence Systems. The remaining 20% was sold to a company called FBS.
- (e) Altech Defence Systems (Pty) Ltd, whose name was changed to African Defence Systems after the above-mentioned transfer of shares, was a nominated or listed supplier for various elements of the combat suite, as well as the Combat Suite integrator.

11.1.3.2 *The German Frigate Consortium (GFC)*

- (a) The German Frigate Consortium was selected as the preferred supplier of the Corvettes by Cabinet on 18 November 1998. The Consortium consisted of the following companies:
- Blohm and Voss GmbH;

- Thyssen Rheinstahl GmbH; and
 - Howaldtswerke - Deutsche Werft AG.
- (b) In their bid, dated 11 May 1998, the Consortium offered to form a consortium with ADS in order to supply at least 60% of the Combat Suite from the local industry, but without committing themselves to a particular subcontractor. At the time of the selection of the German Frigate Consortium (GFC), as the preferred main contractor, it already included, for all intents and purposes, ADS. The GFC was then requested on 12 December 1998, to expand their offer to include an offer for the Combat Suite in terms of the S A Navy User Requirement Specification wherein all candidate suppliers, including C²I² were listed.
- (c) Armscor concluded a contract with the GFC on 3 December 1999.
- (d) All contractors for the sub-systems of the Combat Suite therefore submitted their offers to the GFC, who submitted its offer to Armscor. As the cost of the Combat Suite was far beyond what the SA Navy could afford, the GFC was requested, in March 1999, to submit a more affordable offer, with the option of submitting alternative contracting models or alternative sources of supply.

11.1.3.3 C²I² Systems (Pty) Ltd

- (a) C²I² is a Cape Town based company and Dr R M Young is its Managing Director. C²I² has, since August 1996, been accredited by Armscor as a supplier of software and computer systems for naval, airborne and mobile applications.
- (b) C²I² was the recipient of funding from Armscor in terms of its technology retention programme.

- (c) Separate contracts were signed with C²I² in respect of the technology funding. In respect of the IMS, most contracts specify that the SANDF shall retain ownership and copyright of the product once full and final payment has been made. One contract stipulates that the SANDF and C²I² shall have joint ownership. In respect of the NDSS, the contract stipulates that Armscor and the Navy shall have joint ownership.
- (d) C²I² submitted their quotation for the IMS to Blohm & Voss GmbH on 9 February 1999.

11.2 SCOPE OF THE INVESTIGATION

- 11.2.1 Dr Young was requested to assist in the public phase of the investigation by testifying in public about the contents of and the reasons for his complaints. The persons and institutions that might be implicated by his testimony were alerted in advance of their right to question Dr Young and to respond to his testimony. DoD, Armscor, Mr S Shaik (the Chief of Acquisitions of DoD), the German Frigate Consortium, African Defence Systems (Pty) Ltd (ADS), and Mr L Swan (the former CEO of Armscor) responded and were all represented by legal counsel. Dr Young's testimony, which consisted of much detail, technical and otherwise, together with the response by DoD (in the form of testimony by R Adm Kamerman, the leader of the project team during the acquisition process of the Corvettes) lasted five days. A request by ADS to provide a response in writing was granted and copies thereof were provided to all the affected parties.
- 11.2.2 The mandate of the public and forensic phases of the investigation was to investigate the non-selection of C²I² as the subcontractor for the IMS and to make a determination on the following issues:
- 11.2.3 The validity of the R40 million risk premium added to the price of C²I² for the IMS.

- 11.2.4 Whether C²I²'s commercial specifications were released to competitors.
- 11.2.5 The regularity or otherwise of the non-selection of C²I²'s IMS.
- 11.2.6 The fact that a R20 million technology retention product (whether fully developed or still under development) was not used by the Navy.

11.3 THE COMPLAINTS OF C²I²

Dr Young primarily had the following complaints regarding the process followed for the selection of various subsystems of the Combat Suite:

- 11.3.1 The non-selection of his company regarding the supply of the databus for the IMS.
- 11.3.2 The addition of a R40 million risk premium to the IMS.
- 11.3.3 That the Detexis databus is an inferior product when compared to the databus created by his company.
- 11.3.4 That there were irregularities in the award of the contract for the SMS.
- 11.3.5 That ADS a competitor of his, obtained full technical details and pricing information of his product. He is of the opinion that this led to a substantial conflict of interest and subsequent unfair and unlawful competition. Examples of such conflict were listed by Dr Young as follows:
 - (a) That ADS, the nominated and main contractor eventually selected, could compete with other bidders for the sub-system contracts.

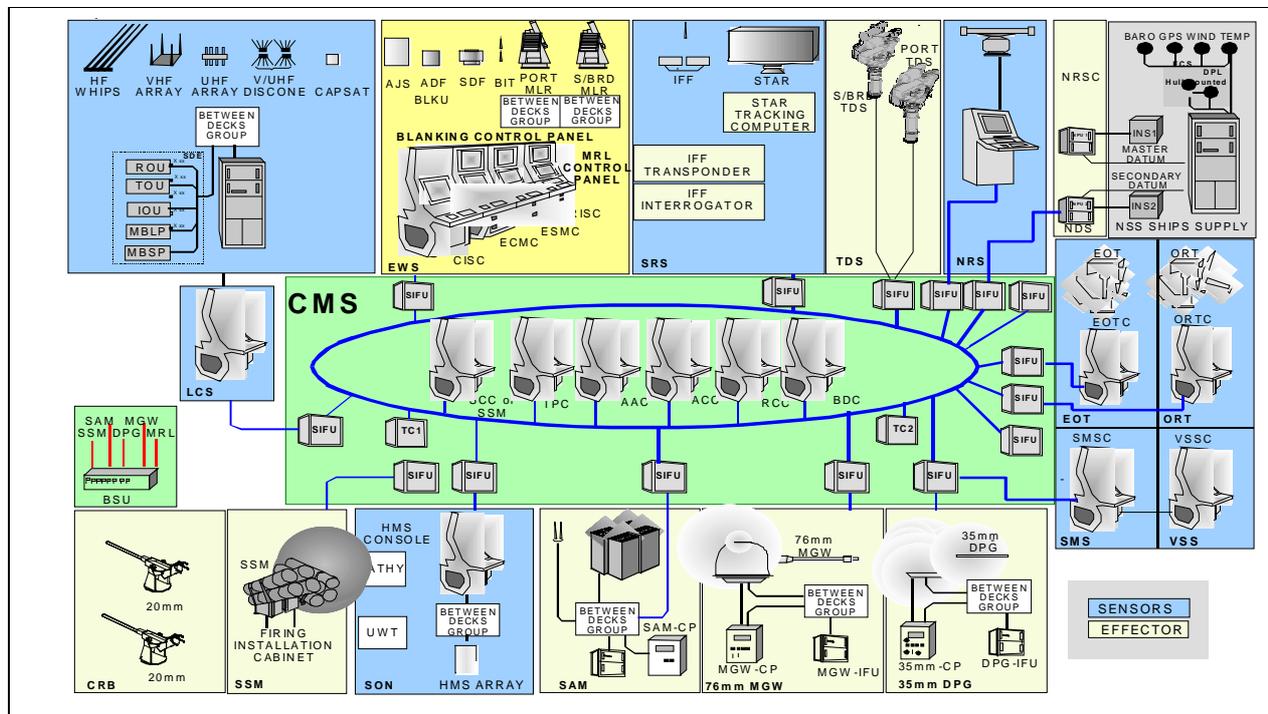
- (b) That ADS obtained C²I²'s price and technical specifications and directly or indirectly disclosed these to what later became C²I²'s competitor.
- (c) That Detexis and ADS are both in the Thomson-CSF group and form part of the prime contractor, i.e. the European South African Corvette Consortium (ESACC).
- (d) That Mr S Shaik played a role in the process regarding the selection of the contractors for the Combat Suite. This was improper, considering that his brother, Mr Schabir Shaik, has a direct interest, as director of and shareholder in both ADS and Thomson.

11.4 WHAT IS THE IMS?

In order to understand some of the technical issues referred in this chapter, one needs to have a basic understanding of what the IMS is and of the importance attached to it in terms of the effective functioning of a vessel.

- 11.4.1 A patrol Corvette consists mainly of a hull, propulsion system and a Combat Suite. The Combat Suite includes basically everything that provides the Corvette with its fighting capabilities. A fundamental part of the Combat Suite is the Combat Management System (CMS). This is the brain of any modern combat system. It provides the electronic impulses and data to the different components of the Combat Suite to enable it to operate in a co-ordinated manner. The different components of the Combat Suite are connected to the CMS via a databus. This is a very sophisticated fibre optic cable plant. The IMS developed by C²I² is such a databus. Failure of the databus will result in total failure of the Combat Suite and will thus cause the ship to become completely deficient.

11.4.2 In the diagram below, the databus is depicted as the encircled area of the CMS in the centre.



11.5 INVESTIGATION CONDUCTED WITH REGARD TO THE PROCESS FOLLOWED FOR THE ACQUISITION OF THE COMBAT SUITE

11.5.1 The Joint Project Team

11.5.1.1 The role of, the procedures followed and the decisions taken by the JPT were ascertained by the investigation team.

- (a) The JPT played a major role in the nomination of element suppliers and the decision regarding the award of the contracts to subcontractors: it was the JPT that had the necessary technical know-how and also negotiated with both the main contractor and the subcontractors. The JPT took decisions, e.g. regarding the categorisation of subcontractors as either Category B or Category C subcontractors, and submitted their decisions to

the Project Control Board (PCB), which consisted of SA Navy, Armscor and DoD officials.

- (b) Apart from this, the Project Officer and Programme Manager reported to their supervisors, which in the case of the Project Officer included the Naval Board.
- (c) Furthermore, relevant issues were discussed at the regular so-called Friday-morning meetings in the office of Mr Swan, the CEO of Armscor, attended by Mr Hanafey, R Adm Kamerman, Mr Nortjé, Mr Shaik and others.
- (d) The evidence indicates that certain members of the PCB did not have the technical knowledge to interfere with the decisions of the JPT and it appears that the PCB merely ratified the decisions of the JPT (only one recommendation of the JPT was not accepted). As R Adm Howell put it, the PCB had basically to trust their experts, i.e. the members of the JPT. It seems that the PCB relied heavily on the input of the Project Officer. In actual fact, therefore, relevant decisions regarding the award of contracts to subcontractors appear to have been taken by the JPT. To complicate matters, the JPT did not keep minutes of its meetings.
- (e) It should be pointed out that conflicting versions were given about whether minutes were kept of formal JPT meetings. No minutes were found during the investigation. This, coupled with the evidence, leads to the conclusion that minutes were not kept; this is not in accordance with good procurement practice.
- (f) The lack of record-keeping complicated the issue as it made it difficult to establish objectively what took place and to determine responsibility. Furthermore, Mr Nortjé testified that all decisions were not necessarily

taken by the whole JPT as decisions could also have been taken at component level and from there be taken to the next level, i.e. the PCB. This complicated issues even further.

- (g) Mr Mathieson, the Armcor Acquisition Manager of the Combat Suite, testified that in the case of the IMS, SMS and NDSS, a cost evaluation was done by the Project Team. No records were kept of decisions reached. Scorecards were kept, but they could have been kept on a white board. The only records kept were reports produced by them. The proposals however, would also be reflected in spreadsheets. He stated that this was not the process normally followed with acquisitions because the GFC was responsible for the subcontractors and because of time pressures in terms of getting things done.
- (h) Based on the above, it can be stated that proceedings of the JPT were not properly recorded so as to create a proper audit trail.
- (i) It is clear that the JPT played an important, if not crucial, role in the whole process. In this regard the following is pointed out:
- The JPT was mandated to negotiate with contractors about, *inter alia*, the price and specifications of products. According to R Adm Kamerman, the International Offers Negotiating Team (IONT) was regularly briefed by them.
 - Although the JPT did not deal directly with subcontractors regarding the subcontracts, they did have direct contact and negotiations with the subcontractors who received technology retention funding about technology development. Annual audit and risk assessments were done of all the contractors who received funding in terms of the technology retention programme. Mr Nortjé explained that, in

dealing with these subcontractors, the JPT members therefore had to wear two hats.

- (j) It is therefore clear that it is not correct, as apparently alleged by DoD and Armscor, that they had nothing to do with the choice of subcontractors.
- (k) All the evidence points to the contrary and Mr Nortjé in fact admitted it when asked about it specifically.
- (l) The fact that the JPT exercised considerable power in the choice of subcontractors is clear from all the evidence. It is also pointed out that, according to R Adm Kamerman's evidence, they requested the GFC to replace ADS with C²I² for the supply of the NDS, an issue which is discussed later on in this report.

11.5.2 The nomination of suppliers for the Combat Suite

- 11.5.2.1 In the presentation by DoD to SCOPA it is stated that *"At no stage in the RFO or Combat Suite tender process was any company designated by the DoD or Armscor as a 'nominated supplier'."*
- 11.5.2.2 As has been pointed out, at least in the SA Navy Patrol Corvette Combat Suite Element Costing and Description, there was a reference to certain "nominated" suppliers.
- 11.5.2.3 Whatever was intended by the use of the word "nominated", it is clear that a list of Combat Suite suppliers was compiled, and given to the GFC. This was apparently done in terms of the RFO.

- 11.5.2.4 This list was compiled by the JPT. No tender procedures were applied and other potential suppliers had no opportunity of applying for inclusion in the list that listed only one supplier per element. No records were kept of the process.
- 11.5.2.5 There is no record of the JPT having compiled a list of subcontractors. Some witnesses suggested that R Adm Kamerman compiled the list himself. However, Mr Mathieson testified that the project team compiled the list, and that he took part in the process. The reason why certain companies were listed had to do with their past performance and the fact that they are local entities. R Adm Howell testified that the list of subcontractors was compiled under his supervision and that the Navy wanted to list as many local companies involved as possible and attempt to utilise the investments already made in some of them.
- 11.5.2.6 According to R Adm Kamerman, the list of nominated suppliers was compiled by the project team, transposed into documents and submitted to the Armscor Secretariat to make sure that they complied with Armscor tender regulations, before they were issued.
- 11.5.2.7 C²I² was not listed for the supply of the Navigation Distribution Sub-System (NDSS), even though it had received technology retention funding in respect of it. No reason for this omission could be found during the investigation. ADS was the only nominated supplier in this regard.
- 11.5.2.8 The nomination of a single supplier also created the potential for abuse of the nomination process and potential prejudice to the State, as was demonstrated by ADS's high tender of R64,73 million for the System Management System (SMS), which was reduced to R29,647 million after a competitive quote was obtained from C²I². ADS was the only nominated supplier for the SMS, and C²I², though not nominated, was apparently only invited to quote in order to lower ADS's quote. This aspect is dealt with more fully below.

- 11.5.2.9 The nomination of suppliers was clearly not intended to indicate that they had to be contracted. Tender documents also referred to candidate suppliers in this regard and allowed the main contractor to submit alternative offers.
- 11.5.2.10 During the investigation no acceptable explanation for not applying a fairer and more transparent process was offered.
- 11.5.3 The tender process**
- 11.5.3.1 Different procedures for obtaining offers for sub-systems of the Combat Suite were used.
- 11.5.3.2 The GFC was supplied with the URS for the Combat Suite and a list of nominated South African companies as local suppliers. The GFC was required to obtain quotations from these companies, but was free to submit alternatives. This happened in the case of the Diacerto bus of Detexis, which was submitted as an alternative to the IMS of C²I².
- 11.5.3.3 Where the GFC submitted only one quotation for a particular sub-system, the JPT evaluated the offer and, if it thought that the price was too high, negotiated with the subcontractor in the presence of the main contractor in an attempt to reduce the price to a level which the JPT found acceptable.
- 11.5.3.4 In two instances the JPT requested the GFC to obtain competitive tenders, as the negotiation process did not achieve the required result. This related to the System Management System (SMS) and the Navigation Distribution Sub-System (NDS or NDSS).
- 11.5.3.5 In the case of a group of three sub-systems, the decision was taken that it should be procured from abroad. The GFC was requested to obtain competitive quotes from the outset. These sub-systems are the Hull-mounted Sonar (HMS),

the Surveillance and Target Acquisition Radar (STAR) and the Surface to Surface Missiles (SSM).

11.5.3.6 The tendering process in respect of subcontractors was administered by the GFC.

11.5.3.7 Mr Nortjé testified that the details of the tenders received were submitted to the JPT by the GFC on spreadsheets. The JPT did not receive the actual tenders, except in those cases where the JPT obliged the GFC to obtain and submit formal competitive tenders. Such competitive tenders, as well as the tenders for the foreign procured items, were received via the GFC.

11.5.3.8 R Adm Kamerman testified that this procedure was also followed in respect of the IMS/Detexis databus.

11.5.3.9 R Adm Howell testified that there was no control from the Navy's side over the fairness of the tender process conducted by the GFC, and that in fact no normal state tender procedures were applied in respect of the approximately R2,6 billion to be spent on the Combat Suite.

11.5.3.10 Witnesses stated that time constraints precluded a thorough procedure from being applied and that the Navy and Armscor did not have experience of such a major acquisition process.

11.5.3.11 Criticism of the process followed apparently also came from the project team. A document entitled "*Selection of Foreign Procured Items*" deals with four elements to be procured from abroad via a competitive bidding process, i.e. the STAR, HMS, SSM and INS. It is stated that the GFC had been provided with detailed URS for each element in order to solicit competitive bids, but "*as far as can be ascertained, no uniform closing date was set*". It is further stated that "*although the situation was of GFC's making, it could be argued that, technically, Armscor's tender*

process has been compromised” and “to rectify the situation, the JPT has decided to consider the exercise as a Request for Information only”. This proposal of 16 April 1999 by R Adm Kamerman and Mr Nortjé, as contained in the above-mentioned document, was accepted by Adm Howell and Mr Hanafey.

11.5.3.12 Although the GFC was required to tender in accordance with the URS, it was free to offer alternatives that did not comply with the URS but that, as a witness put it, *“could also do the job”*.

11.5.3.13 Various witnesses testified that the URS was not a minimum standard, but that it was the ideal towards which the Navy was striving.

11.5.3.14 The URS was not changed. Where products did not comply with it, the Navy compiled a Delta document, which captured the deviations from the URS.

11.5.3.15 Bearing in mind the manner in which the list of nominated suppliers was compiled and Armscor’s and the Navy’s lack of any effective control over the tendering process, the whole process of acquiring the Combat Suite, involving some R2,6 billion, was conducted outside Armscor’s and the Navy’s normal tender provisions. It is not clear who authorised this, and whether he/she had the necessary authority to do so.

11.5.3.16 Although the process of tendering was not investigated in respect of all subcontracts, there is nevertheless evidence that a fair and regular process was followed regarding certain subcontracts.

11.6 NON-SELECTION OF THE IMS OF C²I² SYSTEMS (PTY) LTD

11.6.1 The C²I² and Detexis proposals

11.6.1.1 The JPT categorised contracts into three groups, i.e.:

- (a) Category A, which consisted of the vessel platform.
- (b) Category B, which consisted of all sub-systems, which have a critical effect on the overall vessel delivery and for which the prime contractor retains full responsibility.
- (c) Category C, which consisted of sub-systems whose performance and delivery remained the responsibility of the subcontractors until delivery to the prime contractor for integration into the vessel.

11.6.1.2 The SA Navy accepted some risk with respect to Category C products.

11.6.1.3 According to the evidence, the IMS was regarded as a critical sub-system of the Combat Suite. (Category B).

11.6.1.4 A request for an offer for the IMS was issued to C²I² by ADS on their letterhead and C²I²'s Best and Final Offer, dated 14 May 1999, was addressed to ADS.

11.6.1.5 C²I² quoted a price of R37 863 086-00 excluding VAT, which equates to R44 303 918-00 including VAT.

11.6.1.6 The GFC was not prepared to accept the risk for the C²I² IMS as a Category B item, and offered an alternative, i.e. the so-called Diacerto bus of Detexis, a Thomson company. It offered the C²I² IMS with a risk premium added to its price, which almost doubled it to R89 255 000.

11.6.1.7 It appears from the presentation to SCOPA that the main contractor submitted the Detexis offer as part of its BAFO on 24 May 1999, as an alternative to the IMS of C²I² and added a risk premium of some R42 million to C²I²'s price: R12 million for a risk analysis and R30 million to cover integration risks and the risk of having to replace the system if it failed. The Detexis product was offered at R49 million.

11.6.1.8 The investigation team did not have access to the Detexis proposal, which is in the GFC's possession. The JPT merely received spreadsheets from the GFC reflecting details of the tenders submitted. Evidence indicates though that the Detexis product was offered at a price of R49 255 000.

11.6.1.9 An ADS letter addressed to R Adm Kamerman on 26 May 1999, entitled "*Response to questions arising from BAFO delivered on 24th May 1999*" states the following:

Item 13. Information Management System

The current price of R77 157k is based on a formal BAFO received from CCII (CCII/PROP/051 dated 14th April 1999). The increase in price to is due to:

- *An increase in the price quoted by CCII;*
- *The moving of the IMS from "Part C" to Part B" of the contract; and*
- *Specific Terms & Conditions of CCII offer.*

Item 14. IMS Study

ADS confirms its best and final quote at R12 098k".

In a further ADS letter of the same date, addressed to Messrs. Kamerman and Nortjé, the following appears:

"This letter is a follow up to the meeting held this morning at the Secretariat of Defence.

3. The bus to be used is now the Dassault Electronique one".

11.6.1.10 It is obvious that at the time when the GFC presented the Detexis proposal, it was in possession of the C²I² proposal.

11.6.2 Background to the non-selection of the IMS

11.6.2.1 The possibility of replacing the IMS was first reported to the PCB, according to its minutes, on 27 May 1999, when R Adm Kamerman submitted his status report, in which the following is stated:

"Dassault databus now offered i.p.o C²I² bus: project team awaiting full specification and system architecture implications before this can be deemed to be acceptable".

11.6.2.2 This issue was not dealt with at the next PCB meeting on 8 June 1999 and is only recorded in the minutes of the PCB meeting on 24 August 1999.

11.6.3 The SCOPA presentation

11.6.3.1 In their presentation to SCOPA, DoD stated that, *"at no point in the entire tendering process did the SA Navy indicate a preference for the C²I² IMS product or technology, even though the SA Navy being (sic) a co-owner of the C²I² IMS technology", and "on the contrary, the final selection between the C²I² option and the proposed alternative Detexis option was ratified by the PCB which was chaired by the Chief of the Navy".*

11.6.3.2 Mr Shaik testified before SCOPA on 11 October 2000 that (the decision not to bear the risk of the IMS of C²I²) *"was taken by the Chief of the Navy who chaired*

the meeting on the Project Control Board with the approval of his Naval Command Council”.

11.6.3.3 These statements raise several issues, which will be discussed below.

11.6.4 The Navy's preference

11.6.4.1 Apparently in support of the statement mentioned in paragraph 11.6.3.1 above, the Chief of the Navy, Vice Adm R C Simpson-Anderson, drafted a letter, dated 18 September 2000 and marked “Without prejudice”, for action by the Chief of Acquisition, in which he stated the following: *“The Combat Suite databus selected for the Patrol Corvette by the Project Control Board was considered the best option. At no stage was the C²I² option the SA Navy's selected or preferred option”.* This letter was submitted to SCOPA.

11.6.4.2 From the investigation it appears that, up to a point, the C²I² IMS was the preferred databus of the SA Navy. This is clear, not merely from its nomination as the IMS supplier and the amounts spent by the Navy on its development, but also from the conclusion of the Navy (and Detexis) engineers as reflected in the “Report on the Diacerto bus”. It was also confirmed by different witnesses. It is difficult to accept, in the light of the evidence, that the C²I² option had at no stage been the Navy's preference, in spite of R Adm Kamerman's statement that it is not correct to say that the Navy preferred the C²I² bus.

11.6.5 Report on the process followed for the IMS

11.6.5.1 During the investigation clear indications were found that the JPT preferred the IMS of C²I² on technical grounds. This aspect requires some elaboration. The technical evaluation of the Detexis bus took place over three days early in June 1999, and was conducted, according to the *“Report on the Process followed for Information Management System (IMS) for the SAN of Project Sitron”* by Combat

Suite and Detexis engineers. It was also attended by Dr Wolfgang Vogel, an expert in the field, employed by the GFC. Note that Dr Young alleged that the Detexis representatives were not engineers.

11.6.5.2 This Technical Evaluation report was drafted by Messrs Mathieson and Nortjé and submitted to Mr Thomo, the CEO of Armscor, in approximately February 2001. Mr Thomo testified that it was submitted to him at his request, soon after his appointment as CEO of Armscor.

11.6.6 Report on the Diacerto Bus

11.6.6.1 Following the technical evaluation, Mr Mathieson in conjunction with Lt Cmdr Cothill and Cmdr Egan-Fowler, compiled the "*Report on the Diacerto bus proposed by the SAN of Project Sitron*". It is not clear who all the recipients of the report were, but Mr Mathieson testified that it was initially given to R Adm Kamerman, Mr Nortjé and his divisional manager, Mr P Meiring. Later it was also supplied to Mr Thomo. R Adm Kamerman went further and stated that it was issued to PCB members and the Armscor top management prior to contract signature, under cover of a letter signed by Mr Nortjé. It is clear, however, that it was not submitted to the PCB.

11.6.6.2 R Adm Kamerman's sworn evidence provided during the forensic investigation (during an 18 hour consultation) differs in this regard materially from his testimony provided during the public phase of the investigation. In the latter investigation he testified that:

(a) The report (i.e. on the Diacerto) bus was only "*an interim preliminary evaluation report*".

(b) "*Mr Lewis Mathieson absolutely stands by the fact that this was a preliminary report to the project executive*".

- (c) That Detexis was then invited to send a senior engineering team, which had several sessions with the JPT, at least one of which, namely that on 16 June 1999, was recorded.
- (d) That Mr Mathieson then wrote further reports.
- (e) That he, Mr Nortjé, Mr Mathieson and Lt Cmdr Cotthill were then of the unanimous opinion that the Detexis bus was a *"perfectly satisfactory technical alternative to IMS bus"*; and
- (f) That Mr Emmanuel Mary from the main contractor's side, *"one of the leading integration experts of naval combat systems today in Europe"*, took part in the evaluation.

11.6.6.3 Mr Mathieson was requested to respond to these conflicting statements. Two statements were provided, i.e. a joint sworn statement of Mr Mathieson and Andrew Cothill dated 11 September 2001, and an unsworn statement of Mr Mathieson, dated 26 September 2001, which can be summarised as follows:

- (a) The brief of the technical evaluation team from the Project Executive was to undertake a preliminary technical evaluation of the Detexis Combat Suite databus.
- (b) As the output of this preliminary evaluation, a preliminary internal technical report was produced by the technical evaluation team.
- (c) Subsequent to the workgroup of 3 and 4 June 1999, various additional technical exchanges took place between the project team and ADS.
- (d) The results of these technical interchanges did not result in any further technical reports being written.

(e) Further reports were written on the IMS bus. These focussed more on the processes followed.

11.6.6.4 The investigation team did not have access to any other technical reports in this regard, as they were not part of the documents that were made available.

11.6.6.5 It should be pointed out that there appear to be two copies of this report, a shorter and a longer version. The shorter version was used when witnesses were examined during the investigation.

11.6.6.6 The Report on the Diacerto bus, in its opening paragraph, states that it *"is intended to provide a brief overview of the bus architecture being proposed by Thomson ADS for the SAN Patrol Corvette"*. It is also mentioned that Detexis is *"another Thomson company"*.

11.6.6.7 Although it is stated that the proposed LAN will do the job required, aspects are listed which negatively reflect on the Detexis product. These include the following:

(a) *"Extensive use of copper enhances the expected EMI/EMC problems which Thomson has already said they will not be accepting any responsibility for"*.

(b) *"The proposed 100 Mbit/s ethernet products still require a degree of development"*.

(c) *"The SAN will have to rely heavily on the supplier for future support, despite allegations to the contrary by the supplier"*.

(d) *"The 100 Mbit/s ethernet system has never been done on a warship before"*.

(e) *"The design is in fact only a concept at this stage"*.

- (f) *"Strategically the core technical understanding and support of this system will lie in the hands of the supplier".*
- (g) *"It is the CS (i.e. combat suite) project team's expert opinion that for a mid-life upgrade of the vessels, the entire LAN will have to be replaced with the associated consequences on the CS".*

11.6.6.8 The report concludes with the following:

- (a) *"From a technical point of view, the CS project team proposes that the current architecture based on the IMS be retained"*

Mr Mathieson emphasised in his testimony that the recommendation was not that the IMS be retained, but that, from a technical point of view, its architecture be retained.

- (b) *"Both Thomson and GFC recognise that the IMS is a superior product".*

Mr Mathieson testified that this was hearsay, and that the Detexis engineers did not express any opinion.

11.6.6.9 The longer version of the report, contains the following in its last two paragraphs:

"1.6 CONCLUSION

After the above report had been completed, it was provided to the Project Officer and Programme (sic) under cover of a memorandum. While the report clearly shows a preference for the CCII option, it must be stated that the evaluation undertaken was purely of a technical nature and that the technical potential of the CCII is preferred for all of the reasons listed in section 1.5.

The Detexis option was selected purely on financial constraints placed on the project. The risk, as determined by the main contractor, translated into financial penalties for the CCII option. The databus is a critical sub-system to the overall performance of the Combat Suite of the SAN Patrol Corvette. As such, from a technical point of view, the Main Contractor has to assume the responsibility for ensuring that it works.

1.7 FURTHER NOTES ON THE DETEXIS BUS

In short, after delving a bit more into the Detexis bus, the technology is more widely used than that of the CCII option without any degradation in performance"

11.6.6.10 A senior naval officer testified that he and others recommended to the JPT Executive that C²I² and Detexis should be given the opportunity to present their systems on a competitive basis to prove maturity, reliability and performance. Their recommendation was, however, not accepted. The same happened in respect of a recommendation that ADS should be requested to substantiate and explain, in detail, the reasoning behind their statement of high risk and immaturity of the C²I² system and why they were adding so many millions to the C²I² price.

11.6.6.11 Another officer confirmed that, in view of the risk premium added, they asked for a risk evaluation to be done so that the apportionment of risk could be justified. He was unsure, but seemed to think some evaluation was done.

11.6.6.12 A senior naval officer, who took part in the evaluation which led to the "Report on the Diacerto bus", testified that in October and December 1999, C²I² demonstrated its bus to the Navy "*with resounding success, confirming the reason why we still prefer that system*". He testified that he was concerned about the long-term support of the Corvettes if the Detexis system was used, "*because any minor change or addition or modification to the combat suite, will necessitate major modifications and changes to the databus, which can only be done in France by the particular company*".

- 11.6.6.13 During the public phase of the investigation, R Adm Kamerman testified that Dr Young, on several occasions, proposed a full risk evaluation of the IMS, including a demonstration of functionality on a strike craft. This proposal was not accepted as, *inter alia*, "the Chief of the Navy was not prepared to take one of his last remaining and precious few operational warships and turn it into a guinea pig laboratory under a technology demonstrator program".
- 11.6.6.14 According to R Adm Kamerman, the mandate of technical team was to ascertain whether the Detexis bus could do the job. He and Mr Nortjé, thereafter, also considered other relevant factors and the full team then decided that the most cost-effective bus was the Detexis bus. He explained that the Report on the Diacerto bus formed "the input to an extensive work session with the full project team and the result of that work session was consensus, full consensus, on the project team that we should recommend the technical, the Detexis solution". No minutes were kept.
- 11.6.6.15 This evaluation was vital to the acceptance of the Detexis bus and the rejection of C²I²'s IMS.
- 11.6.6.16 Had it been found, that the Detexis bus was not acceptable, the chain of events leading to the non-selection of C²I² would probably not have taken place.
- 11.6.6.17 This significant report, which provided a lot of clarity, was not submitted to the PCB, or to SCOPA. R Adm Kamerman's allegation that it was submitted to the PCB members, is not borne out by the evidence obtained. Likewise, his statement that the PCB was advised that Detexis is a Thomson company is not reflected in the PCB minutes and was not mentioned or confirmed by any of the witnesses.
- 11.6.6.18 The failure to advise the PCB of the report, is explained by R Adm Kamerman in his evidence during the public phase of the investigation, as follows:

"It is bizarre to consider that we should or would have taken a preliminary high level report commissioned internally on a project team which had no status except within that team, to the PCB, which was alleged by Dr Young, and I tell you now, personally it was put to me by members of the forensic committee, forensic team, which it is their perfect right to do so. But my response then and my response now remains, that we would never have taken a preliminary high level, untested, unsubstantiated technical report that was commissioned internally, solely for the further internal considerations, to a higher forum until we were certain of our facts. It is only when we were certain of our facts, several weeks later, in fact a month or so later - two months later, that when we went to the PCB we were able to state, gentlemen, these are real alternatives and these are the risks and cost - this is the risk and cost scenario with the buses".

This explanation was certainly not provided by R Adm Kamerman during the forensic investigation.

11.6.6.19 The failure to submit the said report on the Diacerto bus to the PCB has a bearing on the above-mentioned statement to SCOPA that the PCB ratified the selection of the Detexis product. Coupled with this is the fact that the PCB was not informed of the Thomson take-over of ADS (although it was apparently a known fact).

11.6.6.20 Furthermore, there is a lack of clarity about what the PCB decided or ratified. It is therefore necessary to refer, in some detail, to the minutes of the PCB meeting of 24 August 1999.

11.6.7 The PCB meeting of 24 August 1999

11.6.7.1 Witnesses were generally of the view that the meeting of 24 August 1999 took the decision to opt for the Detexis bus, rather than the IMS of C²I².

11.6.7.2 The minutes show firstly that Mr Shaik was the chairperson. There is no indication that he, at any stage, handed the chair over to the Chief of the Navy.

The minutes therefore do not support the statement to SCOPA that the Chief of the Navy chaired this meeting.

11.6.7.3 Item 5 of the minutes refers to the Corvettes, and reads as follows:

- "9. Contracting Model Categories of Risks. *The acting project officer briefed the board on combat suite risk and risk management pertaining to project-contracting model, contained at Appendix A. He emphasised that, although the SAN accepts some risk with Category C products the Prime Contractor retains full responsibility for the delivery and performance of a fully integrated vessel, which includes the full integration of the combat suite ashore and abroad. (All to take note).*
10. Combat Suite Data BUS.
 - a. *The project team categorised the C²I² Bus as a Category B risk, i.e. the Prime Contractor retains full responsibility for the delivery and performance of a fully integrated vessel, which includes sub-systems that have a critical effect on the overall vessel delivery. Further, acting POPS informed the board that if the C²I² Data BUS option was selected over the ADS Detexis Data BUS the project team would have to find the extra funds required to bring both options on a par wrt risk coverage. This would result in lifting the ceiling price of the Corvettes.*
 - b. *C Acq informed the board that the CEO of ARMSCOR had presented this matter to the AAC and that the Minister supported the issue of the main contractor carrying the overall risk and the responsibility for the sub-contractors. If the principle of the Main Contractor carrying the risk for the sub-suppliers is changed, then the added difference in costs will have to be borne by the DoD. The principle of the contractor carrying the risk must be adhered to. The AAC decided that the ceiling price per equipment should not be raised.*

- c. *Mr Swan and R Adm Howell will meet with Mr Richard Young from C²I² to discuss the matter with him. (Mr Swan and R Adm Howell for action)*”.

11.6.7.4 Apart from showing that Mr S Shaik took part in the discussion, the minutes merely reflect that the PCB was informed of certain facts.

11.6.7.5 Paragraph 15 of the minutes is headed “Ratification by the Board” and reads as follows:

“The following proposals by the project team, detail of which are contained at Appendix F, were ratified by the board (Note: Refer to C Acq’s possible conflict of interest as indicated in par. 13 of the minutes of the PCB held 28 April 1999):

- a. *Combat Suite software only to be frozen by the delivery of the third vessel.*
- b. *Delivery of Cat C sub-systems to Main Contractor to extended by six months.*
- c. *SAN takes delivery of platforms in Germany.*
- d. *Navy accepts risk for CS equipment while in Dockyard awaiting installation”.*

11.6.7.6 The reference to Appendix F, is clearly wrong, and should be a reference to Appendix D of which the covering page contains the following:

“Project Sitron
Presentation to special PCB meeting regarding contracting model
Combat Suite
19/08/1999

Background/problem
List of Category B Equipment;
List of Category C Equipment.
Risk reduction measures
Other areas
Implications”

11.6.7.7 However, Appendix D contains no reference to the IMS of C²I², and there is therefore no indication of any decision, or ratification of a decision.

11.6.7.8 Appendix C, according to the minutes, is a project status report. Only the first page is relevant and it reads as follows:

*“PROJECT SITRON: PROJECT REPORT
REPORT TO PROJECT CONTROL BOARD 24 AUGUST 1999*

RISK COST PERTAINING TO CS BUS

- 1. Equivalent risk to project:*
 - a. CCII databus + RM40*
 - b. DETEXiS databus*
- 2. Legal*
 - a. State advised not at legal risk*
 - b. ADS refuting CCII legal action, referring to State*

CONTRACTING MODEL AND CATEGORIES OF RISK

MANAGEMENT COSTS”

11.6.7.9 There is no reference to either any decision or ratification in regard to Appendix C.

11.6.8 The alleged PCB meeting of 19 August 1999

11.6.8.1 It is alleged by some witnesses that a special PCB meeting took place on 19 August 1999 to discuss the categorisation of sub-systems as either Category B or Category C, i.e. shortly before the PCB meeting of 24 August 1999.

11.6.8.2 This special meeting, if it took place, was one of the most crucial meetings of the PCB. The investigation team has ascertained that all other special PCB meetings were duly recorded and minuted.

11.6.8.3 However, various factors create doubt whether this meeting on 19 August 1999 in fact took place; alternatively, if it is accepted that it did take place, serious doubt exists whether it was a properly constituted and valid meeting. Some of the pertinent factors are the following:

- (a) Although all PCB meetings were minuted, this one was not. No reason for such omission could be advanced; nor is it obvious.
- (b) The minutes of the meeting of 24 August 1999, refer back to the minutes of the previous meeting of 6 June 1998, and contain absolutely no reference to a meeting on 19 August 1999. The minutes of the meeting of 24 August 1999 were accepted as correct at the next meeting, which took place on 6 October 1999.
- (c) No agenda for such a meeting could be found. Only the agenda for the meeting of the 24th August was found.
- (d) There does not seem to be any reason why a meeting had to be held on Wednesday, 19 August 1999 only five days before the regular PCB meeting of Monday, 24 August 1999.
- (e) Likewise, the exclusion of certain people from the meeting casts doubt on its being properly constituted and the issues discussed.

11.6.8.4 R Adm Kamerman testified that a special PCB meeting was held on 19 August 1999 to discuss the risk issue, although no record of such a meeting exists. He and Mr Nortjé made a presentation, and the same presentation was done five

days later at the PCB meeting of 24 August 1999 (although he was not present then). He testified that not all members attended, but that there was certainly a quorum in terms of the PCB constitution. The meeting was requested by Mr Swan, and was attended by Messrs Swan and Shaik, the Chief of the Navy, R Adm Howell, R Adm Van der Schyff and Mr Hanafey. He is not sure if Mr Thomo attended. As far as R Adm Van der Schyff's attendance is concerned, he added that *"he subsequently does not remember it, but, not maliciously, he just said 'I do not recall the meeting'".* As far as Mr Shaik's attendance is concerned, he initially stated that he believed that he had attended. Later, however, he said, *"I cannot recall that Mr Shaik was there. I cannot say that he was there (inaudible). Really, but I do not know, I would be trying to invent something if I said he was or he was not. I cannot recall it".* He and Mr Nortjé made their presentations to the meeting. The presentation was also made to the Naval Board.

11.6.8.5 Mr Nortjé testified that a special PCB meeting was called by Messrs Shaik and Swan and that it took place on 19 August 1999. Only the Combat Suite issue was on the agenda, and he had to make a presentation on the Category B and C risk issue. The proceedings were not minuted. The meeting was chaired jointly by Messrs Shaik and Swan, and attended, as far as he recalls, by Mr Hanafey, Capt Watson, R Adm Howell, R Adm Van der Schyff and the Chief of the Navy, who stayed only for a short period of time. Mr Shaik remained present during the whole discussion and took part in it. The presentation made by him is Appendix "D" to the minutes of the meeting of 24 August 1999. His impression was that the PCB approved his proposals.

11.6.8.6 According to Mr Nortjé, the proposal put forward was not a proposal of the JPT, but of Kamerman, Cothill, Watson, Mathieson and himself; it was also not decided at a specific meeting, but evolved over time.

- 11.6.8.7 Mr Mathieson testified that the project team decided that both options should be presented to the PCB for a decision, and that the project team did not decide on any of the two products. The decision of the project team was not minuted. He did not assist in preparing the presentation to the PCB, and does not know what was presented. He stated that R Adm Kamerman and Mr Nortjé prepared the presentation.
- 11.6.8.8 It should be pointed out that dates of PCB meetings were usually arranged telephonically and agendas were prepared and issued. No agenda for a meeting of 19 August 1999 could be found, according to Capt Clayden-Fink, whose responsibility it was to arrange meetings, prepare agendas and keep minutes of PCB meetings regarding Project Sitron.
- 11.6.8.9 Mr Hanafey of Armscor testified that he does not remember such a meeting or attending a meeting on 19 August 1999, and that, if it did take place as described, it would have been irregular. Mr Thomo's evidence was that he never attended a special PCB meeting. R Adm Howell testified that he would have to check his diary in this regard. He did and advised that it showed an entry relating to a PCB meeting on 24 August 1999, which means that it did not take place on the 19th but on the 24th of August 1999. R Adm Van der Schyff makes no mention of such a meeting in his statement.
- 11.6.8.10 Mr Shaik testified that there was no PCB meeting on 19 August 1999, and when he asked R Adm Kamerman about it, he said that there was "*a briefing on the categories of contractual risk and the contractual model to the CEO of ARMSCOR*".
- 11.6.8.11 This clearly casts serious doubts on the veracity of the versions of R Adm Kamerman and Mr Nortje.
- 11.6.8.12 To complicate issues further, Mr Swan sent a letter, dated 29 June 1999, (i.e. well before the PCB meeting of 24 August 1999) to the GFC regarding "*Project*

Control Board decisions regarding the Project Sitron Technical baseline”, in which he stated that, “at a meeting held recently regarding the selection of major products and their suppliers for the Corvette programme, the following were selected (see attached list)”.

11.6.8.13 The PCB meeting prior to Mr Swan’s letter (and the last one before the meeting of 24 (or 19) August 1999) was a decision-making PCB meeting held on 8 June 1999. The minutes record that the following relevant recommendations were presented by the Project Officer:

Element	Contenders	Selected suppliers
STAR	Thomson Dasa Ericsson	Thomson NDS
IFF System	Thomson Reutech	Thomson NCS/Tellumat
HMS	Thomson STN Alenia	Thomson Marconi
SSM	Aerospatiale SAAB DASA	Aerospatiale

11.6.8.14 It also records that the decisions (regarding the selected suppliers) were ratified by the board. (The minutes contain no reference at all to the C²I²/Detexis issue).

11.6.8.15 It is therefore not known to which meeting Mr Swan referred, and some of the details on the list seem to be wrong in any event.

11.6.8.16 When R Adm Kamerman testified during the public phase of the investigation, he made no mention of the meeting of 19 August 1999. This is a further indication that, in all probability, no such meeting took place.

11.6.8.17 Based on the above-mentioned evidence, the only conclusion that can be drawn is that, if a decision was taken regarding whether the IMS of C²I² should be a

Category C item, doubt exists regarding the regularity and validity of such a decision and the process followed in arriving at such a decision.

11.6.9 The imposition of a risk premium on the IMS of C²I²

11.6.9.1 As has been stated, the GFC placed a risk premium on the IMS of C²I².

11.6.9.2 R Adm Kamerman testified that the GFC submitted a high-level work breakdown regarding the R12 million cost for the risk assessment of the IMS.

11.6.9.3 It is clear from the evidence that the IMS was a critical sub-system, that it was still under development and that it was reasonable to expect either the State or the GFC to assume responsibility for the risk attached to the IMS, if C²I² could not assume such responsibility.

11.6.9.4 It is not clear how the risk premium was calculated. Furthermore, the calculation of the risk premium cannot be evaluated without evidence from the GFC and the assistance of an expert witness.

11.6.9.5 It seems that the risk premium placed on the IMS of C²I² was merely accepted by the JPT and PCB, without any attempt to properly evaluate or assess it. One would have expected a proper assessment by the JPT instead of a mere acceptance.

11.6.9.6 Sufficient documentary and other evidence regarding risk premiums placed on other products has not been obtained. In regard to risk premiums placed on other products, it was stated in the SCOPA presentation that risk premiums were also placed on other subcontractors by the main contractor, "*mainly due to most of them still being under technology development*", and that in addition to the main contractor's risk premiums, "*most of the RSA sub-contractors included an internal development risk allocation in their quotations to the main*

contractor". Some witnesses also referred to these risk premiums; e.g. Mr Mathieson, who testified that it varied from 40% to 100% and probably 120% in the case of Kentron, which would be reflected on the spreadsheets provided to the GFC. R Adm Kamerman testified that risk premiums were placed on all subcontractors.

- 11.6.9.7 Other subcontractors were not consulted during the investigation.
- 11.6.9.8 Witnesses generally seem to have accepted that there was a risk attached to the application of C²I²'s IMS. According to R Adm Kamerman, their assessment of the IMS was that, regarding technical aspects, the risk to the Combat Suite was "relatively benign", and was "a manageable technical risk". However, there is no evidence to indicate that a proper risk assessment of the IMS was made.
- 11.6.9.9 R Adm Kamerman conceded that, with hindsight, the Navy could have obliged the GFC to go out on competitive tender.
- 11.6.9.10 The investigation team is of the view that it cannot be found that the imposition of a risk premium on the IMS of C²I² was unreasonable. On all accounts the IMS is a critical sub-system and it appears reasonable that the GFC would not have been prepared to accept the IMS as a Category B system.
- 11.6.9.11 Whether the decision of the State not to bear the risk was reasonable, especially in view of the R22 249 592-42 spent on the development of the IMS, is open to question. However, it will probably be impossible to prove that the decision was unreasonable, in view of the fact that the SANDF remains the owner of the technology developed during the technology retention programmes.

11.6.10 Effect of funding of C²I² by Armscor

11.6.10.1 The investigation was required to verify the fact that more than R20 million had been invested in C²I² up to the point of its non-selection as a supplier of the IMS. From a review of documentation that was made available to the investigation team it was established that, according to invoices and credit notes presented to Armscor by C²I² in respect of the development of the IMS and NDSS, that amounted to R23 149 508-42, R22 249 592-42 was paid in respect of the IMS, and R899 916-00 in respect of the NDSS.

11.6.10.2 Separate contracts were signed with C²I² in respect of the technology funding. In respect of the IMS, most contracts specify that the SANDF shall retain ownership and copyright of the product once full and final payment has been made. One contract stipulates that the SANDF and C²I² shall have joint ownership. In respect of the NDSS, the contract stipulates that Armscor and the Navy shall have joint ownership.

11.6.10.3 In light of the explanations received regarding the use of technology retention funding, we cannot conclude that it was unreasonable not to use the product for which the particular funding had been provided.

11.7 THE RELEASE OF C²I² SPECIFICATIONS TO COMPETITORS

11.7.1 As indicated above, ADS became part of the GFC, i.e. the main contractor, and was also the Combat Suite contractor and a contender for subcontracts.

11.7.2 As far as the complaint that the specifications and quoted price of C²I² were disclosed to Detexis is concerned, the investigation revealed the following:

11.7.2.1 On 11 November 1998 ADS submitted a RFQ for the IMS to C²I², with which C²I² complied.

11.7.2.2 On 13 May 1999 ADS, on an ADS letterhead, submitted the following request to C²I²:

"The Consortium of African Defence Systems (ADS) and German Frigate Consortium (GFC) have undertaken to submit a Best and Final Offer (BAFO) for the Vessel System as requested by the South African Navy and ARMSCOR.

The BAFO needs to be submitted by ADS/GFC on Wednesday, 19th May 1999 at 15h00. The pertinent parts of the request from SAN to ADS/GFC is provided in Appendix A.

You are requested to submit a best and final offer for your segment/sub-system by Friday, 14th May 1999 at 16h30 in order that ADS/GFC is able to consolidate the offer from all the segment/system suppliers for Wednesday, 19th May 1999".

11.7.2.3 On 14 May 1999 C²I² submitted its BAFO to the GFC.

11.7.2.4 On 24 May 1999 the GFC submitted its BAFO. It is not clear whether the Detexis bus was part of the offer, although in the presentation to SCOPA it was stated that it was.

11.7.2.5 On 29 July 1999, in response to a letter from Dr Young, Mr P Moynot of ADS sent a letter on an ADS letterhead to C²I² stating the following:

*"However, I would like to strongly contest your saying that I told you that I have passed your confidential business information to competitors. What I have told you is that when confronted with price reductions we have asked Dassault Electronique (now part of Detexis, subsidiary of Thomson), to provide us with a price which we then **internally** compared to your price to see it if was affordable. This is the normal practice and no prejudice can have been created in doing so. I would appreciate your acknowledgement of this fact as soon as possible so that the possible relationship between our Companies becomes normal and not antagonistic as it seems to have been in the last few months"(our emphasis).*

11.7.2.6 Bearing in mind that both ADS and Detexis were Thomson companies and that ADS was part of a consortium with the GFC, there was certainly the possibility that C²I²'s specifications and price were disclosed to Detexis.

11.7.2.7 R Adm Kamerman testified that the C²I² and Detexis offers would not be "on file". He stated: *"they are only on file at the level of the information that we were obliging him (i.e. the GFC) to record on a line item basis and our spreadsheet in terms of those various columns that we had and the subsequent negotiation on each of those line items. We did not take his quote, or the quote received by him from Detexis and the quote received by him from C²I² and do a comparison"*.

11.7.2.8 A senior naval officer testified that he suspected unethical business practice on the part of ADS, by making C²I²'s prices available to Detexis prior to the latter submitting their proposal. He stated that he heard two Detexis employees talking on 3 June 1999 in Cape Town where one of them said that they were offering their bus system approximately 30% cheaper than the C²I² bus.

11.8 THE COMPLAINT BY C²I² IN RESPECT OF THE SYSTEM MANAGEMENT SYSTEM AND NAVIGATION DISTRIBUTION SUB-SYSTEM

11.8.1 The gist of the complaint

11.8.1.2 In April 1999 C²I² was requested by the German Frigate Consortium to submit an offer for two sub-systems of the Combat Suite of the Patrol Corvette, namely the System Management System (SMS) and the Navigation Distribution Sub-System (NDSS). C²I² was eventually awarded the contract for the NDSS. On 1 September 1999 C²I² was informed that their tender for the SMS had not been successful.

11.8.1.3 From a document entitled *"Report on the Process followed for System Management System and Navigation Distribution Sub-System for the SAN of*

Project Sitron” prepared by Armscor, Dr Young came to learn that ADS was awarded the contract. C²I² regards the process that was followed to award the contract to ADS as fundamentally flawed.

11.8.2 The award of contracts for the SMS and NDSS

11.8.2.1 The process followed for the award of the contracts for the System Management System (SMS) and the Navigation Distribution Sub-System (NDSS) indicates how a procurement system can be manipulated.

11.8.2.2 Mr Nortjé testified that the “*Report on the Process followed for the System Management System (SMS) and Navigation Distribution Sub-System (NDSS) for the SAN of Project Sitron*” was compiled by Mr Mathieson. For his part, Mr Mathieson testified that he compiled it in conjunction with the programme manager who was Mr Nortjé.

11.8.2.3 ADS was the only nominated supplier for both the SMS and NDSS.

11.8.2.4 The above-mentioned report states, inter alia, the following:

"This report is intended to provide a brief overview of the process that has been followed for the acquisition of the System Management System (SMS) and Navigation Distribution Sub-System (NDSS) for the SAN patrol corvette of Project SITRON.

PROCESS

In a letter, dated 12th April 1999, the German Frigate Consortium (GFC) was requested by the Project Team to obtain competitive quotes for the SMS and NDSS of the Combat Suite of Project Sitron. The two parties requested to quote were ADS (Pty) Ltd and CCII (Pty) Ltd.

The Offers were presented to the Project Team on 16th April 1999, the defined closing date.

Thereafter, a team of technical personnel, comprising SAN and ARMSCOR engineers did an evaluation on the Offers and made recommendations to the Programme Manager and Project Officer.

SYSTEM MANAGEMENT SYSTEM

For the SMS, the following prices were evaluated:

<u>ADS</u>	<u>CCII</u>
R29.647m	R30.04m

"NAVIGATION DISTRIBUTION SYSTEM

For the NDSS, the following prices were evaluated:

<u>ADS</u>	<u>CCII</u>
R18.9m	R15.99m

"NOTES

A fundamental point to note in this whole exercise is that the first quote received from ADS on 15th March 1999 for the SMS was R64.73m and subsequent quote on 07th April 1999 was R37.62m. In going out on competitive tender, a normal business practice, the price was reduced to R29.65m. This equates to a saving to the State of at least R7.9m for the SMS.

Similarly for the NDSS. The first quotation received from ADS on 15th March 1999 was R45.94m and the subsequent quote on 07th April 1999 was R25.03m. As a normal business practice, the eliciting of a competitive quote reduced this price to R15.99m, a saving of at least R9.0m to the State"

- 11.8.2.5 The request to obtain competitive quotes for the SMS and NDSS, was conveyed to the GFC by means of a letter from R Adm Kamerman, dated 12 April 1999, in

which it was specified that quotes should be obtained from ADS and C²I² and that the closing date would be 16 April 1999.

- 11.8.2.6 The contract for the SMS was awarded to ADS and for the NDSS to C²I².
- 11.8.2.7 According to the witnesses, the process of inviting further tenders was aimed at lowering the price and took place as part of the negotiation process.
- 11.8.2.8 C²I² was not given the opportunity of submitting a second tender, because, according to Mr Mathieson, C²I² was not the designated SMS supplier and because of tender regulations. He stated that: *"you cannot keep going back to any one of the parties and say, listen, do you not want to lower your price?"*.
- 11.8.2.9 The mentioned report shows the following:
- (a) The unfairness of the process of nominating one supplier only in a unilateral way. It is clear that C²I² was a contender who should have qualified during the nomination process for inclusion in the list of nominated suppliers for both the SMS and NDSS.
 - (b) The first quotation of ADS for the SMS was not reasonable and was inflated.
 - (c) ADS was given the opportunity of lowering its tender of R64,73 million for the SMS to just below that of C²I² over a period of more than a month; C²I² was given four days at the most to submit its tender. This seems to have been unfair and created the impression that C²I² was merely requested to quote in order to bring down ADS' price.
 - (d) The GFC requested C²I² to submit its quotation for the SMS by 15 April 1999, as it had to lodge its tender by 16 April 1999. C²I² submitted its

quote on 14 April 1999. ADS submitted its third quote on 15 April 1999. It is not clear if ADS had access to C²I²'s quote. A letter from ADS to R Adm Kamerman dated 26 May 1999, seems to indicate that it may have had access to the quote because the following is stated:

"Item 20. Navigation Distribution System (NDS).

The current offer from CCII (CCII/PROP/055 dated 14th April 1999) does not comply with our terms and conditions (base date May 1998, 1 USD = R5.5) and thus requires some financial adjustment prior to being integrated into our offer. Also, a risk assessment needs to be carried out in order to add relevant provisions, if these are required. The lack of time to properly assess financial and technical implications resulted in the CCII system not being included in the offer submitted on 24th April 1999. Consequently this offer included the ADS Navigation Distribution System".

- 11.8.2.10 The last point demonstrates the ease with which a contractor can get access to a competitor's quotation if proper procurement procedures are not followed.
- 11.8.2.11 It can be argued, however, that the fact that ADS submitted a higher quote for the NDSS than C²I², is an indication that they did not have access to C²I²'s price, and that the GFC was administering the tendering process fairly.
- 11.8.2.12 As far as the NDSS is concerned, the contract was awarded to C²I² as stated above. This fact demonstrates a lack of fairness in the process of nomination of single suppliers per system. Clearly C²I², who had been the recipient of R899 916-00 technology funding in respect of the NDSS, should have been listed with ADS as a potential supplier.
- 11.8.2.13 A further point regarding the SMS proposal of C²I², is that a cheaper option was offered by C²I², which reads as follows:

"The SMS is offered with the standard ADS VMC frame and housings, with Multibus II processor units. An option available for the SMS will be to provide a C²I² Systems console. The savings for four systems would be R1 500 000.00 (excl. VAT). Therefore the SMS total with C²I² Systems consoles would be: R21 680 922.00".

11.8.2.14 It was apparently not properly considered by the project team. No acceptable explanation in this regard was offered by the various witnesses.

11.8.2.15 R Adm Howell testified that the facts regarding the SMS and NDSS tenders were not disclosed to the PCB. They merely got the recommendation of the Project Team.

11.9 THE COMPLAINT BY C²I² IN RESPECT OF THE INTEGRATED PLATFORM MANAGEMENT SYSTEM SIMULATOR (IPMS)

11.9.1 The Complaint

C²I² complained that they were requested by the GFC to submit an offer for the IPMS on 23 June 1999. After C²I² had been selected by the Project Control Board to supply the IPMS, an extension of their offer was requested twice. Eventually they were requested to provide a last and final offer by 2 March 2001. On 11 April 2001 C²I² was informed that their tender had been unsuccessful. C²I² had thus been deselected in respect of the IPMS in an improper manner.

11.9.2 The response by the Department of Defence

R Adm Kamerman testified in response to this complaint that the contract between the State and the main supplier signed in December 1999 stated that Siemens would be the preferred supplier of the IPMS. However, it was also

stated that during the design phase, the system offered by C²I² had to be explored as an option and that the final selection would only be made after such investigation. It was thus the S A Navy that suggested that the offer of C²I² be considered as they had been involved in the development of similar systems and had a reasonable potential to participate in the supply of the IPMS. That did not amount to a selection and the main contractor was not influenced in any way to make a particular choice. It appears from the records of meetings between C²I² and the GFC that the main contractor had difficulties with the increase in the price by C²I², their inability to meet time limits, their demand for free technology to be provided to them by Siemens and their inexperience in contracting for systems of this nature. The contract was awarded to Siemens South Africa.

11.10 CONFLICT OF INTEREST OF MR SHAIK

- 11.10.1 The regularity or not of the decision not to select the IMS of C²I², may also have been affected by the position of Mr Shaik.
- 11.10.2 The minutes of a special meeting to discuss the way ahead with Projects Sitron and Wills, held on 29 September 1998 under the chairmanship of Mr Shaik, do not reflect that any conflict of interest was disclosed, but show that Mr Shaik informed the meeting that the Combat Suite had become a political issue and should be resolved urgently.
- 11.10.3 At the first PCB meeting on 4 December 1998, again chaired by Mr Shaik, it was recorded that: *"The chairperson informed the meeting that, due to a conflict of interest, he is to recuse himself from the combat suite element of the corvette and submarine requirement"*. These minutes were accepted as correct at the next PCB meeting of 8 March 1999.

11.10.4 There is no indication in those minutes, or the minutes of subsequent meetings, exactly what interest he declared. It does appear though that it related to his brother's involvement with ADS and possibly his wife's involvement as well. R Adm Kamerman even went so far as to say that Mr Shaik declared that his brother was a director of Nkobi Holdings.

11.10.5 With this as background, reference should be made to the letter of 17 October 2000 by Chief of the Navy, Vice-Adm RC Simpson-Anderson, to the Secretary of Defence, which reads as follows:

3. *Chief of Acquisition.* On 4 Dec 98, before preferred Main Contractors were requested to solicit offers for any combat suite equipment, the Chairman, Mr S Shaik, Chief of Acquisition, informed the first Project Control Board meeting of a family member's business connection with one of the tendering parties for the Corvette and Submarine combat suites, viz. ADS. Although he personally had no interest in ADS, he proposed to recuse himself from any decision making related to the Corvette and Submarine combat suites on the grounds that a perception of bias might exist. It was agreed that whenever the combat suites were discussed I would take over the chair and that Mr Shaik would not take part in any discussions, consultations or decisions. This process in the Project Control Board was followed throughout the period leading to final contract signature. I consider it laudable of Mr Shaik to have voluntarily recused himself early on, despite having no actual "conflict of interest" as defined" (Our emphasise).

11.10.6 The above-mentioned minutes clearly do not bear out what was stated in the letter.

11.10.7 In the presentation by the DoD to SCOPA, it was stated that Mr Shaik disclosed "his potential conflict of interest due to a family member being associated with one of the candidate suppliers"; further that the "PCB agreed that the procedure to be followed would be that he would hand over chairmanship of the PCB to the Chief of the Navy during discussion/decisions on combat suite matters in which he would take no

part unless requested to amplify a point. This procedure was followed throughout the combat suite tendering and contract negotiations phase. In several instances the Chief of Acquisitions physically absented himself from the meeting room during such discussions/decisions”.

- 11.10.8 During the public phase of the investigation, Vice Adm Simpson-Anderson testified that at the first PCB meeting held on 4 December 1998, Mr Shaik informed the meeting about his possible conflict of interest with regard to discussions in connection with the Combat Suite because of his brother’s involvement with ADS. He informed the meeting that he would recuse himself from discussions about the Combat Suite and he handed the chair of the meeting to Adm Simpson-Anderson in that and subsequent meetings whenever the Combat Suite came up for discussion. Mr Shaik’s recusal did, however not mean that he left the room where the meeting was held. This did not bother Adm Simpson-Anderson as Mr Shaik did not participate in discussions or the decision making process. As he was the link between the PCB, the Acquisition Division of the Department of Defence, the Secretary for Defence, the SOFCOM, the Minister of Defence and the Ministers` Committee, Mr Shaik had to provide relevant information to the PCB meeting and had to attend the PCB meetings to enable him to convey important decisions and other information to the above-mentioned persons and institutions.
- 11.10.9 Adm Simpson-Anderson held the view that Mr Shaik’s presence when the Combat Suite was discussed did not put him in a position to influence the final decisions taken in that regard. As a matter of fact, as the decision making process pertaining to the Combat Suite was such a long and interactive process involving personnel from the Navy, Armscor, DoD and the main contractor, it was impossible for one individual to have had a manipulating influence. Mr Shaik’s presence at the PCB meetings that he attended was in no way intimidating to the other members. Even if Mr Shaik were not allowed to attend the PCB meetings when the Combat Suite was discussed, he, as Chief of

Acquisitions, would have been informed of the details of the decisions taken in connection with the Combat Suite. He would thus in any event have been in a position to convey such information to his brother, if he wished to do so. There is, however, no indication that he did so.

11.10.10 The alleged agreed procedure does not appear in the PCB minutes. Had it been agreed upon, one would have expected it to be recorded.

11.10.11 An example of Mr Shaik's "recusal" is to be found in the minutes:

11.10.11.1 At the PCB meeting of 23 March 1999 held at the Departmental Acquisition and Procurement Division (DAPD), the following was recorded:

"13. The Chairperson re-iterated that, due to a possible conflict of interest, he will recuse himself from any decisions taken on the combat suite, but will not recuse himself from the meeting".

11.10.11.2 After paragraphs 14 and 15, dealing with the Corvettes platforms, the following appears:

"Note: The Chief of Acquisition handed over the Chair to C Navy for the discussion on the combat suite".

"18. Technology Effort: C. Acq. indicated that care should be taken to indicate

Note 1 : C. Acq. again took over the chair;

Note 2 : Members of Corvette team withdraw".

11.10.12 It is evident from these minutes that there was no recusal in the true sense of the word, and that in spite of his "recusal" Mr Shaik took part in the discussions. His taking part in discussions is contrary to what Vice Adm Simpson-Anderson stated in this regard.

PCB Meeting attended	Chairman	Interest declared	Recused	Comments	Page
29/09/1998	S Shaik	No	No	Took part in discussion of Combat Suite	15002881
04/12/1998	S Shaik	Yes	No	Combat suite discussed	15002872
08/03/1999	S Shaik	Yes	Yes - Will recuse himself from decisions taken but not from the meeting	Chair handed over to Chief of Navy for Combat Suite discussion, but Mr Shaik remained present.	16000440
28/04/1999	S Shaik	Yes	Yes - Will recuse himself from decisions taken but not from the meeting	Mr Shaik handed over to Chief of Navy, but he remained present.	16001068
27/05/1999	S Shaik	No	No	Project report <i>inter alia</i> on Combat Suite presented by project officer. Combat Suite reductions discussed in Chair's presence.	16001046
08/06/1999	S Shaik	No	No	Decisions regarding Combat Suite were ratified.	16001005
24/08/1999	S Shaik	Yes	No	Decisions regarding Combat Suite were ratified	15002764
06/10/1999	S Shaik	No	No	PCB amended Constitution approved.	15002745
11/02/2000	RC Simpson-Anderson	No	Yes	Mr Shaik joined meeting later and took part in discussion of Corvettes	14008395
04/08/2000	RC Simpson-Anderson	No	No	Mr Shaik joined meeting later and took part in discussion of C ² I ² issue	15002714
06/10/2000	SJ Verster	No	No	Combat suite not discussed	15002681

11.10.13 Mr Shaik testified before SCOPA on 11 October 2000 that "*I had a conflict of interest with ADS as a family member became a director this year in ADS and I have declared that conflict of interest*".

11.10.14 As stated, the details of what Mr Shaik disclosed, were not minuted. However, it is clear that his disclosure related to a family member's interest in ADS.

11.10.15 As far as Mr Shaik's conflict of interest is concerned, it would of course have been a factor also affecting his other capacities in the procurement process.

11.10.16 It is clear that Mr Shaik's "recusal" from PCB meetings, was no recusal at all.

11.11 FINDINGS

11.11.1 The Joint Project Team

A Joint Project Team (JPT), was appointed to manage the procurement project in respect of the patrol Corvettes, consisting of SA Navy and Armscor personnel, with the project officer being R Adm J E G Kamerman, and the programme manager being Mr F Nortjé of Armscor. The JPT played a major role in the nomination and eventual selection of element suppliers.

11.11.2 The nomination of suppliers for the Combat Suite

11.11.2.1 A list of suppliers for the Combat Suite was compiled by DoD. Only one supplier per element was listed, and the list was made available to the GFC. No records were kept of the process and no tender procedures were applied, which means that potential suppliers could not apply for inclusion in the list. Evidence obtained indicates that the suppliers listed were those who had received funding in terms of the technology retention programme.

11.11.2.2 The nomination of suppliers was clearly not intended to indicate that they had to be contracted. Tender documents also referred to candidate suppliers in this regard and allowed the main contractor to submit alternative offers.

11.11.2.3 The compilation of the list of nominated suppliers was not a fair and transparent procurement practice.

11.11.3 The tender process

11.11.3.1 The GFC, being the main contractor, had to administer a tender system that was not subject to the control of Armscor or the SA Navy.

- 11.11.3.2 All contractors for the sub-systems of the Combat Suite had to submit their tenders to the GFC.
- 11.11.3.3 The GFC evaluated tenders received by it and recorded the relevant details on spreadsheets, which were then submitted to the JPT. The JPT, therefore, did not have access to the tenders.
- 11.11.3.4 This had the effect that the award of contracts worth approximately R2,6 billion took place without the normal Armscor or State Tender Board procedures being applied.
- 11.11.3.5 The fact that ADS became part of the GFC, i.e. the main contractor, and was also the Combat Suite contractor and a contender for subcontracts, probably created a conflict of interest situation that amounts to non-compliance with good procurement practice.
- 11.11.4 **The non-selection of the IMS of C²I²**
- 11.11.4.1 At some stage the JPT categorised contracts into three groups, i.e.:
- (a) Category A, which consisted of the vessel platform.
 - (b) Category B, which consisted of all sub-systems which have a critical effect on the overall vessel delivery and for which the prime contractor retains full responsibility.
 - (c) Category C, which consisted of sub-systems, whose performance and delivery remain the responsibility of the subcontractors up to the point of delivery to the prime contractor for integration into the vessel.

- 11.11.4.2 The SA Navy accepted some risk with respect to Category C products.
- 11.11.4.3 According to the evidence, the IMS was regarded as a critical sub-system of the Combat Suite.
- 11.11.4.4 The request for an offer for the IMS was issued to C²I² by ADS on their letterhead and C²I²'s Best and Final Offer, dated 14 May 1999, was submitted to ADS. It is therefore clear, as Dr Young alleged, that the C²I² proposal was presented to ADS.
- 11.11.4.5 C²I² quoted a price of R37 863 086-00 excluding VAT, which equates to R43 163 918.00 including VAT.
- 11.11.4.6 The GFC was not prepared to accept the risk for the IMS as a Category B item, and offered an alternative, i.e. the so-called Diacerto bus of Detexis, a Thomson company. It offered the IMS with a risk premium added to its price, which almost doubled it to R89 255 000.
- 11.11.4.7 The investigation team did not have access to the GFC documentation, and had to rely on the following version of the Department of Defence:
- A risk premium of some R42 million was added, consisting of R12 million to conduct a risk analysis of the IMS and R30 million to cover integration risks and the risk of having to replace the system if it failed.
- 11.11.4.8 The investigation team is of the opinion that the risk premium placed on the IMS was merely accepted by the JPT and PCB, without any attempt to properly evaluate or assess it.

- 11.11.4.9 Furthermore, there is no evidence to indicate that a proper technical risk assessment of the IMS was made.
- 11.11.4.10 The JPT had an evaluation of the Detexis databus done in June 1999, which led to the compilation of the *"Report on the Diacerto bus proposed by the SAN of Project Sitron"*. In terms of this report, it was found that the IMS was a superior product and the JPT consequently, from a technical point of view, proposed that the IMS be retained. It was further found, however, that the Diacerto bus of Detexis could also do the job. Although further technical interchanges between the JPT and ADS/Detexis took place, no further technical reports were produced.
- 11.11.4.11 It appears that the JPT, or the members involved with the IMS, decided to opt for the Detexis product in view of the fact that it was cheaper, bearing in mind the risk premium placed on the IMS.
- 11.11.4.12 No PCB minutes reflecting a decision to award the contract to Detexis, or ratifying such a decision, could be found. It appears from the minutes of the PCB meeting of 24 August 1999 that the PCB was merely informed of the JPT's view.
- 11.11.4.13 The project officer and programme manager testified that, five days prior to this PCB meeting, i.e. on 19 August 1999, a special PCB meeting was held where it was decided to award the contract to Detexis. However, their evidence is contradicted by other witnesses and the available documentation.
- 11.11.4.14 Furthermore, no minutes of Naval Board meetings, reflecting a decision to opt for the Detexis bus, could be found.

- 11.11.4.15 It is therefore not clear when and by whom the decision was taken not to award the contract to C²I². However, it is clear that such a decision was taken and that it was taken, generically speaking, by the State.
- 11.11.4.16 The investigation team is of the view that it cannot be found that the imposition of a risk premium on the IMS of C²I² was unreasonable. On all accounts the IMS was a critical sub-system and it appears reasonable that the GFC would not have been prepared to accept the IMS as a category B system.
- 11.11.4.17 Whether the decision of the State not to bear the risk was reasonable, especially in view of the R22 249 592.42 spent on the development of the IMS, is open to question. However, it will probably be impossible to prove that the decision was unreasonable, in view of the fact that the SANDF remains the owner of the technology developed.
- 11.11.4.18 Risk premiums were also placed on other subcontractors.
- 11.11.5 The award of the contract for the SMS**
- 11.11.5.1 ADS was the only supplier nominated or listed for the SMS. ADS submitted its first quote for the SMS on 15 March 1999 for R64,73 million. On 7 April 1999, ADS submitted a lower quote for R37,62 million. The JPT thereafter requested the GFC to obtain competitive quotes, which resulted in a further quote being obtained from ADS, and a quote also being obtained from C²I². ADS then, on 15 April 1999, submitted its third quote for an amount of R29,647 million. C²I² submitted a quote for R30,04 million. All quotes were submitted to the GFC.
- 11.11.5.2 ADS therefore had three chances to quote. Their third offer was R35,08 million less than their first quote, and R390 000 less than that of C²I². ADS was awarded the contract.

11.11.5.3 It is clear that the first ADS quotation was inflated. Furthermore, ADS was given the opportunity of lowering its tender of R64,73 million for the SMS to just below that of C²I² over a period of more than a month. C²I² was given a maximum of four days to submit its tender. This creates the impression that C²I² was merely requested to quote in order to bring down ADS's price.

11.11.6 The awarding of the contract for the NDSS

11.11.6.1 ADS, who was the only nominated supplier for the NDSS, submitted a quotation of R45,94 million on 15 March 1999, and subsequently, on 7 April 1999, a quotation of R25,03 million.

11.11.6.2 The JPT then requested the GFC to obtain competitive quotes, as a result of which ADS submitted a quote of R18,9 million. C²I² was also invited to submit a quote, and submitted one for R15,99 million. The contract was awarded to C²I².

11.11.6.3 This demonstrates a lack of fairness in the process of the nomination of single suppliers per system. Clearly C²I², who had been the recipient of technology funding in respect of the NDSS, should have been listed with ADS as a potential supplier.

11.11.7 The awarding of the contract for the IPMS

It appears from the evidence that the State had not been involved in the selection of the subcontractor for the IPMS.

11.11.8 Conflict of interest of Mr S Shaik

11.11.8.1 Mr S Shaik chaired most of the PCB meetings. He disclosed a conflict of interest at the second PCB meeting and indicated that he would recuse

himself from decisions regarding the Combat Suite, but not from the meeting.

11.11.8.2 His recusal was no recusal at all. It appears that he mostly remained present during discussions of the Combat Suite and that he also, on occasion, took part in discussions of the topic.

11.11.8.3 Mr Shaik's presence at certain meetings of the PCB, even though he declared a possible conflict of interest, created a perception of impropriety. The mere fact that he remained in the room and that he made certain inputs could have created a belief that he could have influenced certain decisions in favour of ADS or Thomson-CSF, as some of the other members of the Board might have regarded his presence as intimidating.

11.11.8.4 Although the explanation provided by Vice Adm Simpson-Anderson about why Mr Shaik was allowed to remain present during discussions of the Combat Suite might be regarded as reasonable under the circumstances where Mr Shaik played a key role in almost all aspects of the acquisition, it in no way negates the perception of improper influence that was created.

11.11.8.5 The fact that the procurement policy and procedures of DoD did not contain any provisions or prescripts pertaining to a conflict of interests is a fundamental shortcoming.

11.11.9 The validity of the R40 million-risk premium added to the price of C²I² for the IMS

11.11.9.1 The imposition of a risk premium was not unreasonable.

- 11.11.9.2 The calculation of the risk premium cannot be evaluated without evidence from the GFC and the assistance of an expert witness. From a cost and time point of view it was not considered feasible to pursue this matter.
- 11.11.9.3 The JPT and PCB did not attempt to evaluate or assess the risk premium.
- 11.11.10 Whether C²I²'s commercial specifications were released to competitors**
- 11.11.10.1 This cannot be conclusively proven, because the GFC administered the tender process and the GFC's evidence was not obtained.
- 11.11.10.2 The fact that ADS was part of the main contractor and Combat Suite contractor does give rise to a probable conflict of interest. Due to the lack of proper procurement procedures, it cannot be confirmed that this did occur.
- 11.11.11 The regularity or not of the non-selection of C²I²'s IMS**
- The process followed is not properly documented and proper tender procedures were not followed, which makes it difficult to assess.
- 11.11.12 The Navy did not use a R20 million technology retention product**
- 11.11.12.1 No logical explanation was found. However, it will probably be impossible to prove that the decision not to select the IMS was unreasonable, in view of the fact that the SANDF remains either the owner or joint-owner of the technology developed. While an expectation had been created that the particular technology would be used, this expectation was not contractually enforceable.