

2.3 STANDARD DEFENCE CONTRACTING TEMPLATES

INTRODUCTION

- 1 The aim of this chapter is to outline the policy relating to the common templates used for procurement in Defence and the Defence Materiel Organisation (DMO).

MANDATORY POLICY

- Where an approved Defence contracting template exists for the type of procurement being undertaken, Defence staff must use that template as the basis for developing request documentation.
- The Infrastructure Division suite of contracting templates must be used for construction procurements.
- Where Defence staff intend to use a contracting template other than an approved template referred to in this chapter, they must ensure that the template meets all of the mandatory Commonwealth and Defence procurement requirements and has been reviewed by a legal practitioner prior to tender release.

OPERATIONAL GUIDANCE

OVERVIEW

- 2 The aim of developing templates is to standardise, to the maximum extent practicable, the structure and the terms used by Defence when acquiring goods, services and facilities. This has the benefit of reducing administrative costs for both the Department and its suppliers. It also enables Defence to adopt a standard portfolio approach to contracting in line with Industry and Government best practice.
- 3 Defence has developed a range of tendering and contracting templates to suit most of the procurement situations encountered. Two particular Defence contracting template suites will be referred to in this chapter:
 - the ASDEFCON (Australian Standard for Defence Contracting) suite of tendering and contracting templates (ASDEFCON suite), managed by Procurement and Contracting Branch (PCB) within Office of Special Counsel, DMO; and
 - the Facilities suite of contracts, managed by Infrastructure Division, Defence Support Group (DSG).
- 4 Where an approved Defence contracting template exists for the type of procurement being undertaken, Defence staff must use that template as the basis for developing request documentation. These templates conform to policy and legal requirements. Where an official template is used in its approved form, it can be assumed to be legally sound and to conform to policy requirements for the purposes for which it was developed.
- 5 While the ASDEFCON suite is designed to be used 'as is', tailoring of the clauses to meet project specific requirements is often necessary. Tailoring is allowed for project specific reasons but should generally be kept to a minimum and only undertaken in consultation with the contracting staff specialists identified for each of these contract suites. For further information on requesting professional services please refer to the current Defence Procurement Policy Instruction on *Requesting professional services from the Office of Special Counsel Defence Materiel Organisation*.

ASDEFCON SUITE OF TENDERING AND CONTRACTING TEMPLATES

- 6 Due to the dynamic nature of the ASDEFCON suite, including the number and type of templates that have and are continuing to be developed, this chapter will not summarise the available templates. The complete and current ASDEFCON template suite can be accessed online via the links listed in the Key References section at the end of this chapter.
- 7 The ASDEFCON suite of tendering and contracting templates seek to:
- *standardise* Defence's business practices and procedures by providing documents that:
 - support Commonwealth and Defence policies;
 - reflect 'best practice'; and
 - provide a framework for obtaining value for money and ensuring accountability; and
 - *lead contracting reform in Defence* by taking into account the use of contracting options and strategies that reward performance.
- 8 The ASDEFCON templates must not be used for construction procurements as they do not comply with the *Australian Government Implementation Guidelines (Guidelines) for the National Code of Practice for the Construction Industry*.
- 9 Simple Procurement form AC565 – *Request for Quotation* and form SP020 – *General Conditions of Contract for the Supply of Goods and Repair Services* are the forms used to set out the conditions under which Defence conducts Simple Procurement.
- 10 An *ASDEFCON Template Selection Guide* has been developed to assist Defence staff to choose the most appropriate ASDEFCON template. This Guide can be accessed on line on the Procurement and Contracting Branch intranet page at [http://intranet.defence.gov.au/dmoweb/sites/PP/comweb.asp?page=21622&Title=ASDEFCON N%20Templates](http://intranet.defence.gov.au/dmoweb/sites/PP/comweb.asp?page=21622&Title=ASDEFCON%20Templates)

IMPROVEMENT OF ASDEFCON TEMPLATES

- 11 The ASDEFCON suite are dynamic documents that are updated to reflect the latest policy and other developments concerning tendering and contract law.
- 12 Changes to an ASDEFCON template can be suggested by completing an *ASDEFCON Document Change Proposal* form, which can be accessed online via the links listed in the Key References section at the end of this chapter. Defence and industry personnel are invited to submit document change proposals using the proforma available on the Internet.

DEFENCE FACILITIES CONTRACTING TEMPLATES

- 13 Infrastructure Division has developed and manages a suite of contracting templates that complies with the *Australian Government Implementation Guidelines (Guidelines) for the National Code of Practice for the Construction Industry* (“the Code”). The Code sets out the responsibilities of all parties on construction projects funded by the Australian Government. The *Guidelines for the National Code of Practice* (the “Guidelines”) have been developed to assist in the interpretation and implementation of the Code. The Code defines the “construction industry” as including “all organised activities concerned with demolition, building, landscaping, maintenance, civil engineering, process engineering, mining and heavy engineering”.
- 14 Activities which fall within the scope of the Code and Guidelines include:
- building refurbishment or fit out;
 - installation of building security systems;
 - fire protection systems;

- air conditioning systems;
- computer and communication cabling; and
- building and construction of landscapes.

15 Activities which do not fall within the scope of the Code and Guidelines include:

- mining operations;
- the maintenance of building systems;
- landscaping such as lawn mowing, pruning and other horticultural activities; and
- cleaning buildings.

Further information about the code and appropriate tendering and contracting templates can be obtained from the Infrastructure Division, or from <http://www.workplace.gov.au/workplace/Organisation/Industry/BuildingConstruction/CodeandGuidelinesforGovernmentagencies.htm>.

16 Infrastructure Division sponsors the Infrastructure Management website, which can be accessed online at <http://defweb.cbr.defence.gov.au/im/> and is to be used when contracting for the delivery of Defence Facilities. The Infrastructure Management (IM) Suite of Contracts User Guide, including attachment A – Risk Matrix, should be used to determine the best contract to use. This decision should be based on which contract is best suited to manage and mitigate the projects risk. The Infrastructure Division suite includes the following contracts:

- Head Contract (HC1-2003);
- Managing Contractor Contract (MCC-1-2003);
- Medium Works Contract (MW-2-2004);
- Short Form Minor Works Contract; and
- Design Services Contract (DSC-1-2003).

17 Defence adopts one of the above standard delivery methods at the inception of a project in order to effectively manage issues such as Life Cycle Costing, Ecologically Sustainable Development, Relationship Contracting and Risk Management.

Head Contract (HC-1-2003)

18 HC-1-2003 represents a flexible standard form which can be used for:

- construct only delivery;
- documents and construct delivery;
- full design and construct delivery;
- lump sum or schedule of rates delivery; and
- major or medium works.

Managing Contractor Contract (MCC-1-2003)

19 The Infrastructure asset development model involves a two pass strategy for determining the viability of projects:

- strategic business case; and
- detailed business case.

It is against this backdrop that MCC-1-2003 has been developed. MCC-1-2003 involves a two phase delivery method comprising an initial preliminary contract in the *planning phase* and a

subsequent consolidated contract in the *delivery phase*. More specifically, under contract, Defence engages a Contractor to:

- plan and design works in the *planning phase*; and
- complete the design of, commence, construct, commission, complete and handover the works in the *delivery phase*.

Medium Works Contract (MW 2-2004)

20 This contract was developed as a plain English flow chart contract, primarily for the delivery of construction work. This form of contract can be used either for the Head Contract, Design and Construct Contract, or Document and Construct Contract methods of delivery.

Short Form Minor Works Contract

21 This contract was developed as a plain English flow chart contract, primarily for the delivery of construction work to maximum value of \$250,000. This form of contract can be used either for the Head Contract, Design and Construct Contract, or Document and Construct Contract method of delivery.

Design Services Contract (DSC 1-2003)

22 Design services will be procured by a dedicated Design Services Contract with Design Consultants.

NON APPROVED DEFENCE CONTRACTING TEMPLATES

23 Where Defence staff intend to use a contracting template other than an approved template referred to in this chapter, they must ensure that the template meets all of the mandatory Commonwealth and Defence procurement requirements (notably mandatory template advice contained in relevant DPPIs) and has been reviewed by a legal practitioner prior to tender release.

KEY REFERENCES:

- *ASDEFCON suite of tendering and contracting templates available online at http://www.defence.gov.au/dmo/DMO/function.cfm?function_id=45 and through the Procurement and Contracting Branch intranet website at <http://intranet.defence.gov.au/dmoweb/sites/PP/comweb.asp?page=21622&Title=ASDEFCON%20Templates>*
- *Infrastructure Management which is available online at <http://www.defence.gov.au/im/>*
- *Defence Procurement Policy Instruction 15/2009 - Requesting professional services from the Office of Special Counsel Defence Materiel Organisation*