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Australian Government

Department of Defence

CONTRACT TEMPLATE SELECTION AND TAILORING GUIDE V1.0.

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INTRODUCTION

1. The *Contract Template Selection and Tailoring Guide* (the Guide) has been designed to provide guidance to personnel conducting procurements. The Guide is aimed at assisting with the categorisation of the procurement, selection of an appropriate contracting template and outlining the policy associated with tailoring the templates.
2. The Guide provides details of Defence and Commonwealth contracting templates however, its primary focus is on the suite of procurement templates managed and owned by the Directorate of Commercial Innovation and Practice within the Office of Special Counsel, Commercial Group. Detailed descriptions for these templates are available in Annex A which includes the Australian Defence Contracting (ASDEFCON) suite of tendering and contracting templates and sponsored webforms. The ASDEFCON suite provides a set of proforma documents for use by procurement officers when drafting request documentation for the acquisition of goods and services by Defence.
3. Due to the subjective nature of some of the criteria, risk factors and assessment of risk, the Guide cannot foreshadow all eventualities in any given procurement. If, after using the Guide, there are any doubts regarding the categorisation of the procurement or the template selection, specialist advice must be sought. DMO personnel should seek advice from the relevant divisional Contracting Services Directorate, Contracting Support. Defence personnel should seek advice from their relevant contracting areas, including Non-Equipment Procurement in Defence Services Group.
4. The Guide assists with template selection particularly for Simple and Complex Procurements at the lower end of the risk profile. Accurately selecting and tailoring templates for high risk Complex and Strategic Procurements, including Major Capital Equipment (MCE) or Minor Capital acquisitions, will always require specialist technical assistance, including financial and contracting advice, and this Guide is only a starting point for these procurements.
5. The Guide does not address the specific requirements applicable to acquisitions conducted via Foreign Military Sales, Direct Commercial Sales (DCS) through the Counsellor Defence Materiel (CONDMAT) in the UK, Defence Materiel Branch (DEFMAT) in the US, or cooperative agreements.
6. The Guide is divided into four Steps:
 - **Step 1** – categorises the procurement as either a Simple Procurement or a Complex/Strategic Procurement, in accordance with the [Defence Procurement Policy Manual \(DPPM\)](#);
 - **Step 2** – identifies whether it is appropriate to use other Defence (non-ASDEFCON) or Commonwealth contracting templates or existing Standing Offers;
 - **Step 3** – determines the most appropriate contracting template based on responses given to a series of questions provided via a selection matrix. Annex A to the Guide provides information about the various contracting templates, including the Simple Procurement contracting templates (ie. OSC sponsored webforms such as SP020 and AC565) and the ASDEFCON suite of templates.
 - **Step 4** – details the policy regarding the tailoring of template clauses.
7. The structure of the Guide is detailed at [Figure 1: Summary of Template Selection and Tailoring Guide](#).

Procurement and Contracting Business Process Ownership

8. The Chair – Procurement Council, General Manager Commercial is the business process owner for the procurement and contracting process for DMO and Defence. The Commercial Group provides a range of specialist advice and services to DMO under the following key positions:
 - a. Special Counsel to the CEO DMO (SCCEO) presides over:

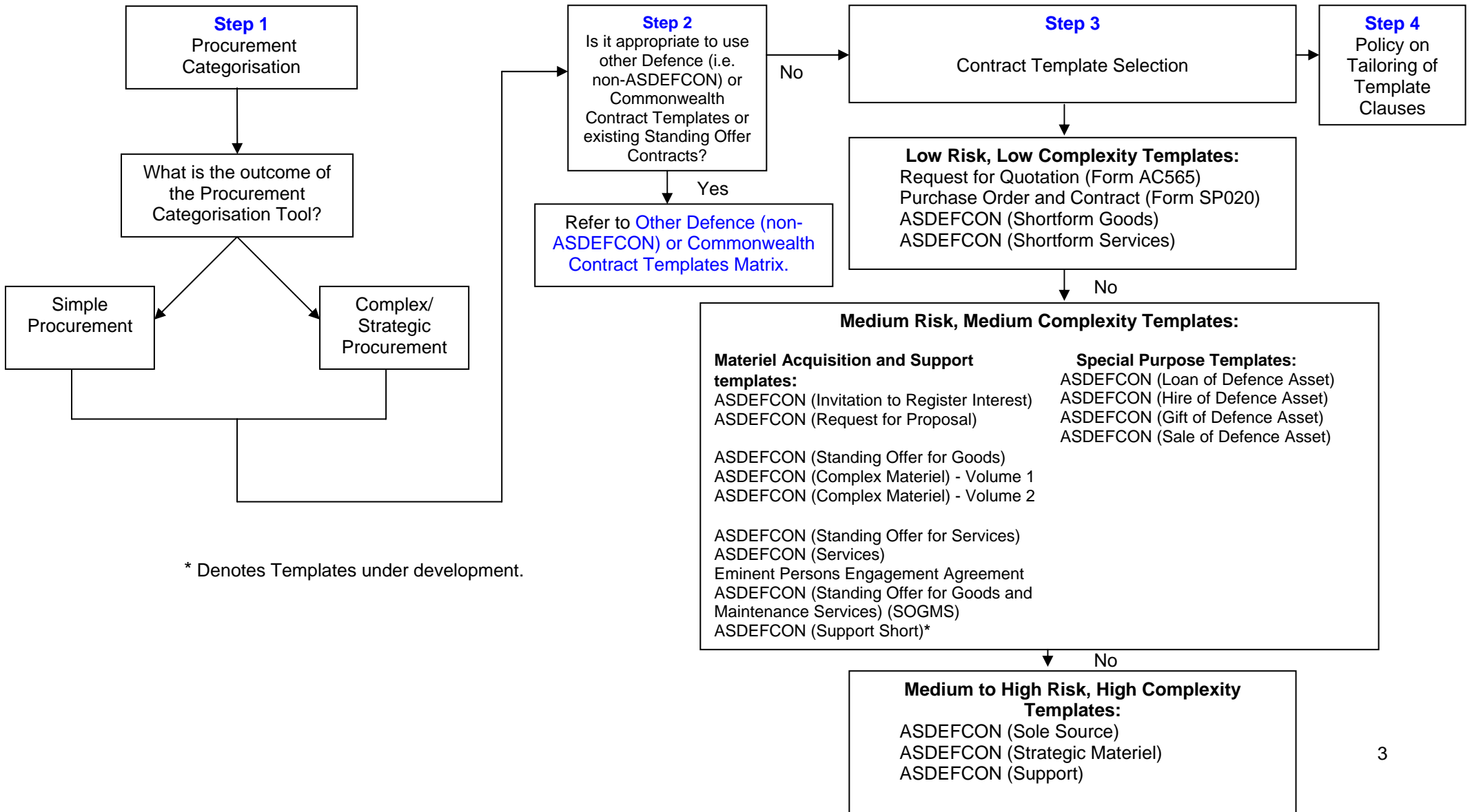
- i. DMO Legal Branch; and
 - ii. Commercial Policy and Practice Branch.
- b. Head Commercial Enabling Services (HCES) presides over:
- i. Contracting Support Branch;
 - ii. Capability Delivery Support Branch; and
 - iii. the offices of Counsellor Defence Materiel London (CONDMAT) and Defence Materiel Branch Washington (DEFMAT).
- c. Head Commercial and Industry Programs (HCIP) presides over:
- i. Export Programs and Industry Engagement Branch; and
 - ii. Economic and Commercial Analysis Branch.
9. CES allocates resources and Contracting Officers based on the categorisation and risk of procurements. Acquisitions for capital equipment, through life support and sustainment requirements stem from acquisitions funded either under the Defence Capability Plan (DCP) or the Minor Project projects (with the exception of Rapid Acquisitions), though the acquisitions are often conducted as a series of discrete procurements. CES is only able to provide Contracting Officers in support of procurements where the resources have been allocated in the DMO FTE guidance as a result of DMO being allocated funding post first pass approval.
10. Departmental Procurement Policy Instruction 22/2010 provides guidance to Defence and DMO personnel of the procedures to obtain professional services from OSC.

11. Standardisation Office (SO) is responsible for developing and maintaining the ASDEFCON statements of work. There are a range of products and services provided by SO including the ASDEFCON Statement of Work Helpdesk, ASDEFCON tailoring guides, SOW Handbooks and training materials. Further information can be accessed on the following link: <http://intranet.defence.gov.au/dmo/standardisation/asdefcon.htm>

Feedback on the Contract Template Selection and Tailoring Guide

12. The Commercial Innovation and Practice Directorate welcomes feedback and suggestions for improving the *Contract Template Selection and Tailoring Guide*. Feedback may be provided via commercial.innovationandpractice@defence.gov.au.

Figure 1: Summary of Template Selection and Tailoring Guide



STEP 1 - PROCUREMENT CATEGORISATION

Introduction

1. Categorising the procurement as either Simple or Complex/Strategic is the first step in determining the most appropriate contracting template.

Procurement Categorisation Tool

2. The Procurement Categorisation Tool located in the DMO Process Template Library assists with determining whether the procurement is either Simple or Complex/Strategic. This template is available at the following link: <http://intranet.defence.gov.au/dmoweb/sites/PP/comweb.asp?page=76498&Title=Process%20Templates%20Library>.

Simple Procurement Categorisation

3. Simple procurement is a procurement category where the scope of the procurement and the overall level of risk and complexity are assessed as low after a suitable risk assessment has been conducted.

4. For further information on the definition of Simple Procurement, refer to the *DPPM, Section 1.3, Simple Procurement Defined*.

Complex/Strategic Procurement Categorisation

5. Complex procurement is a procurement category where the scope of the procurement and the overall level of risk and complexity is assessed as medium to high after a suitable risk assessment has been conducted. The analysis must include how risk can be mitigated, so that the residual risk exposure is manageable.

6. For further information on the definition of Complex Procurement, refer to the *DPPM, Section 1.3 Complex Procurement Defined*.

7. If the outcome of the Procurement Categorisation Tool determines that the procurement is Complex/Strategic, review the additional risk factors listed in the DPPM to determine if the procurement is a Strategic Procurement. For further information on the definition of Strategic Procurement refer to the *DPPM, Section 1.3, Strategic Procurement Defined*.

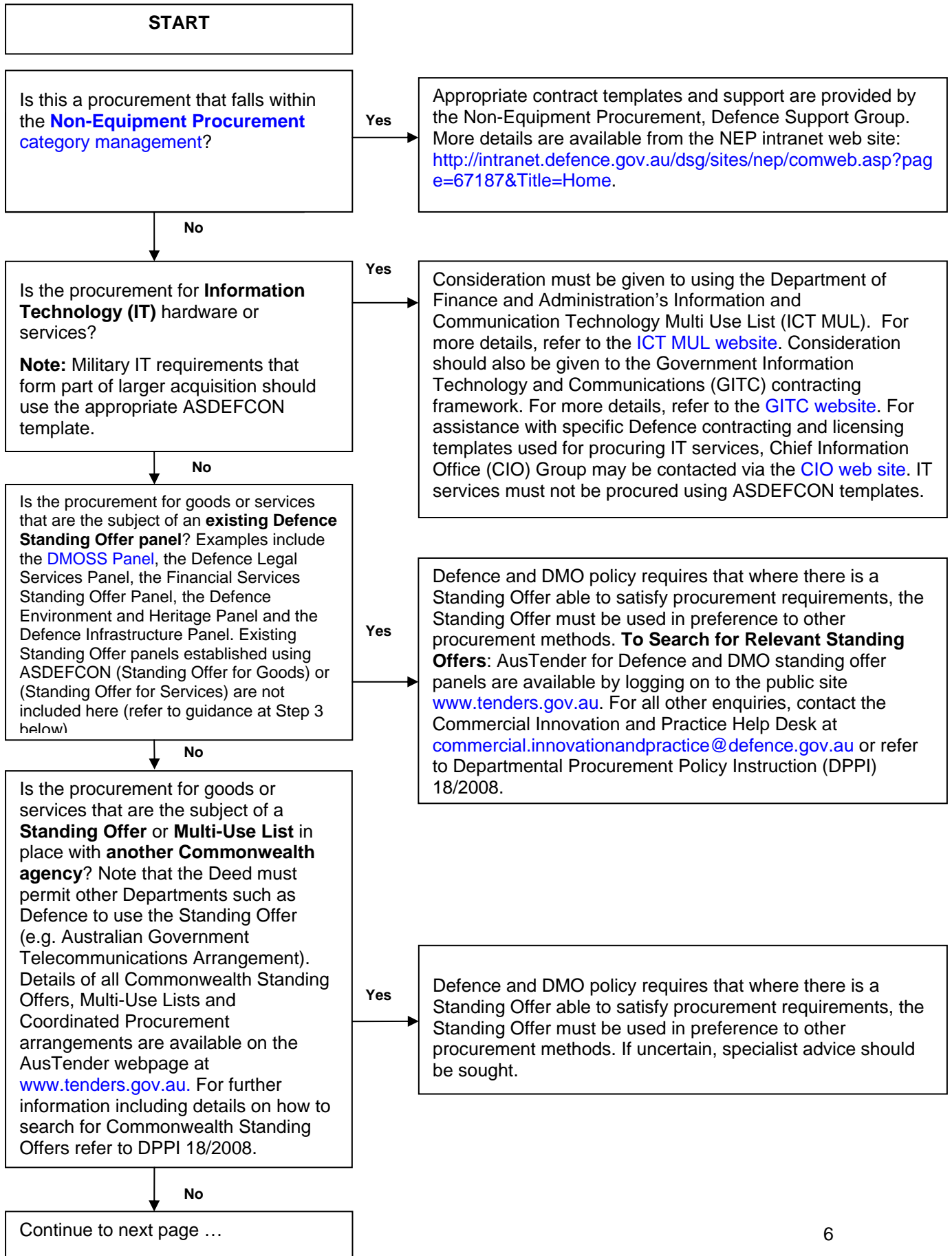
8. Where a procurement activity is assessed as being a Strategic Procurement, advice must be sought from a contracting specialist.

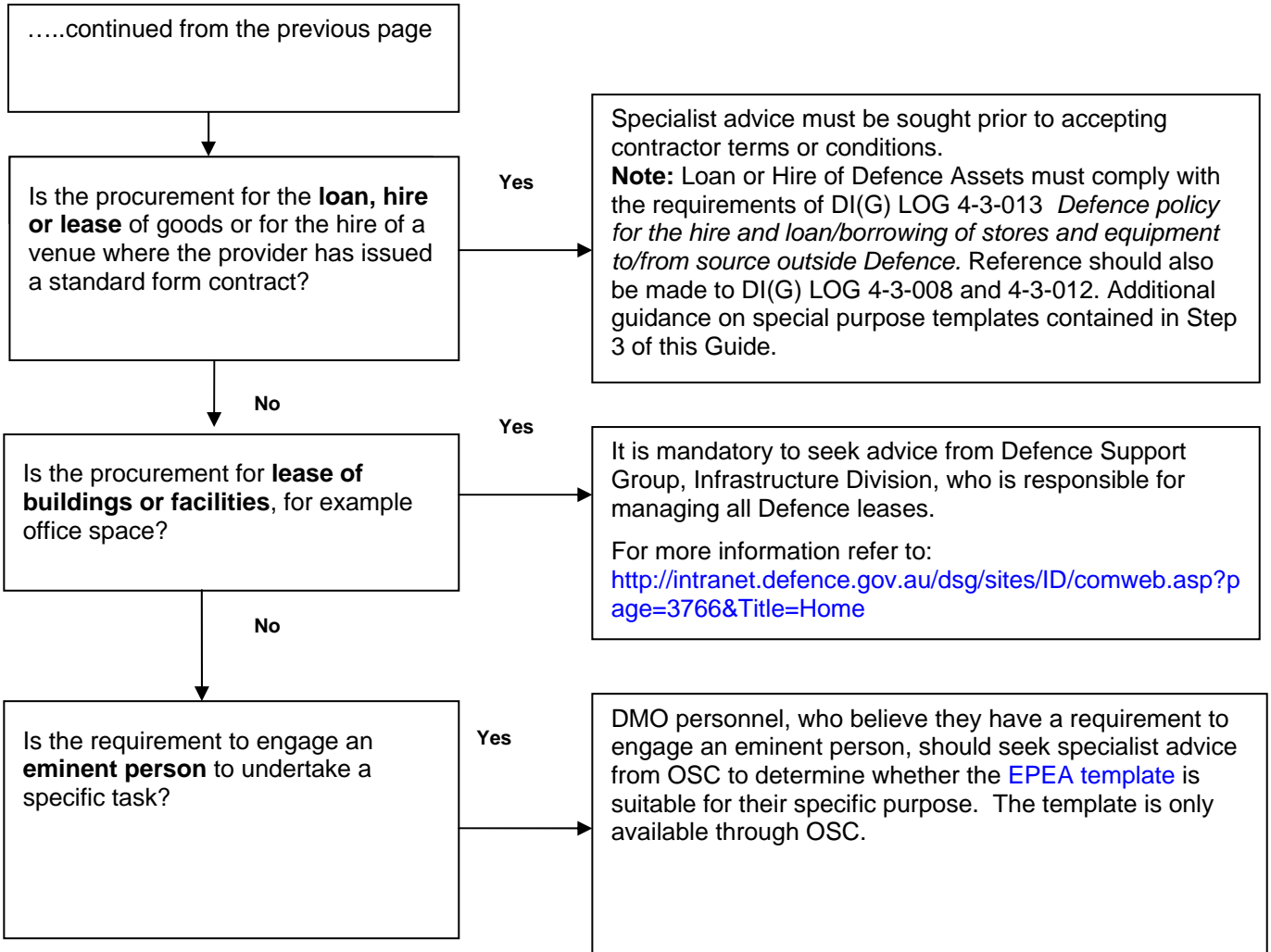
STEP 2 - OTHER DEFENCE (NON-ASDEFCON) OR COMMONWEALTH CONTRACT TEMPLATES

Introduction

1. There are several contracting templates available within Defence and the Commonwealth for specific types of procurements, such as requirements for construction, which the ASDEFCON suite does not accommodate.
2. The Non-Equipment Procurement (NEP) area within Defence Services Group provides a range of templates and assistance when conducting procurements that are subject to NEP category management.
3. The selection matrix entitled 'Other Defence (non-ASDEFCON) or Commonwealth Contract Templates Matrix' at Figure 2 below assists with determining whether there is a Defence or Commonwealth contract template or existing Standing Offer contract which could be used.
4. If the answer is **No** to all the questions raised in the selection matrix in Figure 2, then you should proceed to [STEP 3](#).
5. Use of a non-approved Defence contracting template, other than an approved template referred to in Figure 2, must meet all the mandatory Commonwealth and Defence procurement policy requirements. Within the DMO the development of an appropriate Statement of Work (SOW) for inclusion in a non-approved template should be reviewed by an appropriate subject matter expert, as coordinated by SO. This is to ensure that the SOW incorporates all necessary requirements. Non-approved templates have to be reviewed by a legal practitioner prior to release (*refer to DPPM Section 2, Chapter 2.3*).

Figure 2: Other Defence (non-ASDEFCON) or Commonwealth Contract Templates Matrix





STEP 3 – TEMPLATE SELECTION

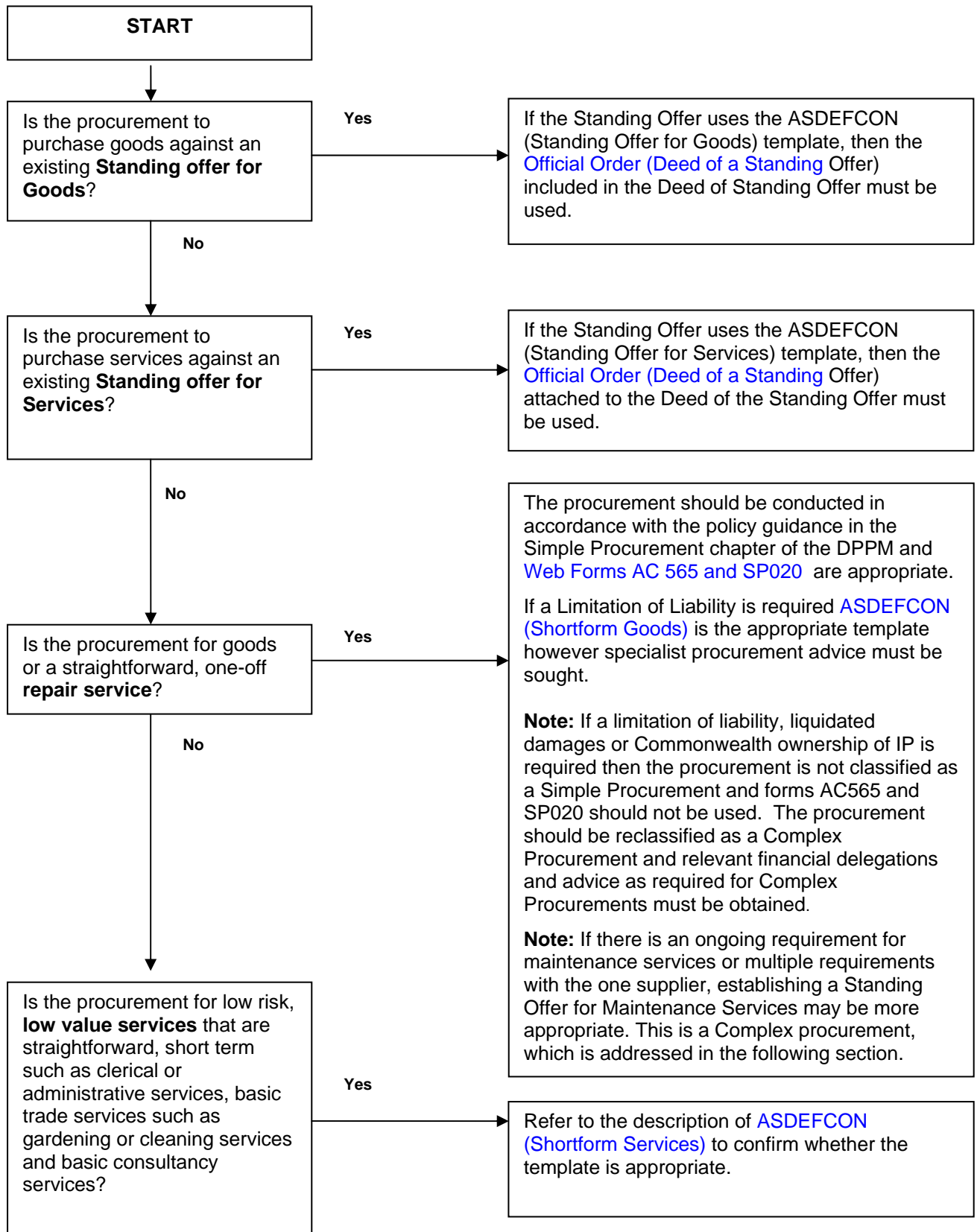
Introduction

1. If there is no appropriate Defence (non-ASDEFCON) or Commonwealth template or existing Standing Offer contract, then consideration must be given to the use of the ASDEFCON suite of templates or an appropriate webform sponsored by OSC.
2. This section comprises a number of selection matrices to assist in determining the most appropriate contracting template. It is divided into two sections, one for Simple Procurements and one for Complex/Strategic Procurements. The Complex/Strategic Procurement section is further divided into:
 - a. Materiel Acquisitions – procurement of materiel and goods;
 - b. Acquisition of Materiel Support – encompassing the procurement of services and in-service support; and
 - c. Special purpose ASDEFCON templates.
3. The template selection process for Materiel Acquisition uses selection matrices however; Materiel Support makes use of a combination of selection matrices for services based requirements and a Statement of Work Modelling Tool for in-service support requirements. These tools aim to assist in determining the most appropriate template for the procurement.

How to use the Selection Matrix

4. Select the link in paragraph [8](#) below to the procurement category applicable to the procurement, based on the categorisation of the procurement from Step 1.
5. Progress through the selection matrix, answering the questions and following the prompts through the decision boxes. This will lead to an appropriate contracting template for the procurement. Click on the template link for a summary of the template and more detailed guidance.
6. Progressing through the decision matrix requires consideration be given to the scope, complexity and risk associated with the requirement. Once the template has been selected, it is critical to ensure that the selected template is tailored appropriately and the Statement of Work is developed.
7. The ASDEFCON (Sole Source) template has intentionally not been included as an option within the decision matrices. This template is designed to streamline the process when a single supplier direct source procurement process has been selected for highly complex and strategic procurements where there is a clear benefit to be gained from working with a single preferred supplier to collaboratively develop the contract documents. For further information regarding the use of [ASDEFCON \(Sole Source\)](#) please follow the link.
8. To begin the process select the appropriate link below:
 - a. [Simple Procurement](#); or
 - b. [Complex/Strategic Procurement](#).

Figure 3A: Simple Procurement Template Selection Matrix



Complex/Strategic Procurement

9. Complex/Strategic Procurement acquisition is broadly divided into either:
 - a. Materiel Acquisitions – encompassing procurement of materiel or goods; or
 - b. Acquisition of Materiel Support – encompassing the procurement of services and in-service support.
10. Although it is possible to have elements of materiel support within a materiel acquisition contract it is important to identify the primary purpose of the acquisition. Consideration needs to be given to the scope, complexity and risk associated with the requirement when selecting an appropriate template. An initial requirements determination enhances understanding of the underlying risk factors and assists with template selection.
11. Based on an initial requirements definition, select the link to the broad acquisition type:
 - a. [Materiel Acquisition](#); or
 - b. [Acquisition of Materiel Support](#).

Materiel Acquisition

12. This section comprises two selection matrices to assist in determining the most appropriate contracting template. Progress through the selection matrix, answering the questions and following the prompts through the decision boxes. This will lead to an appropriate contracting template for the procurement. Click on the template link for a summary of the template and more detailed guidance. If the outcome of the selection matrix results in the selection of ASDEFCON (Complex Materiel), an additional selection matrix will assist in determining whether ASDEFCON (Complex Materiel) Volume 1 or Volume 2 is appropriate.
13. To begin the process select the link below:
 - a. [Figure 3B-1: Materiel Acquisition Template Selection Matrix](#).

Figure 3B-1: Materiel Acquisition Template Selection Matrix

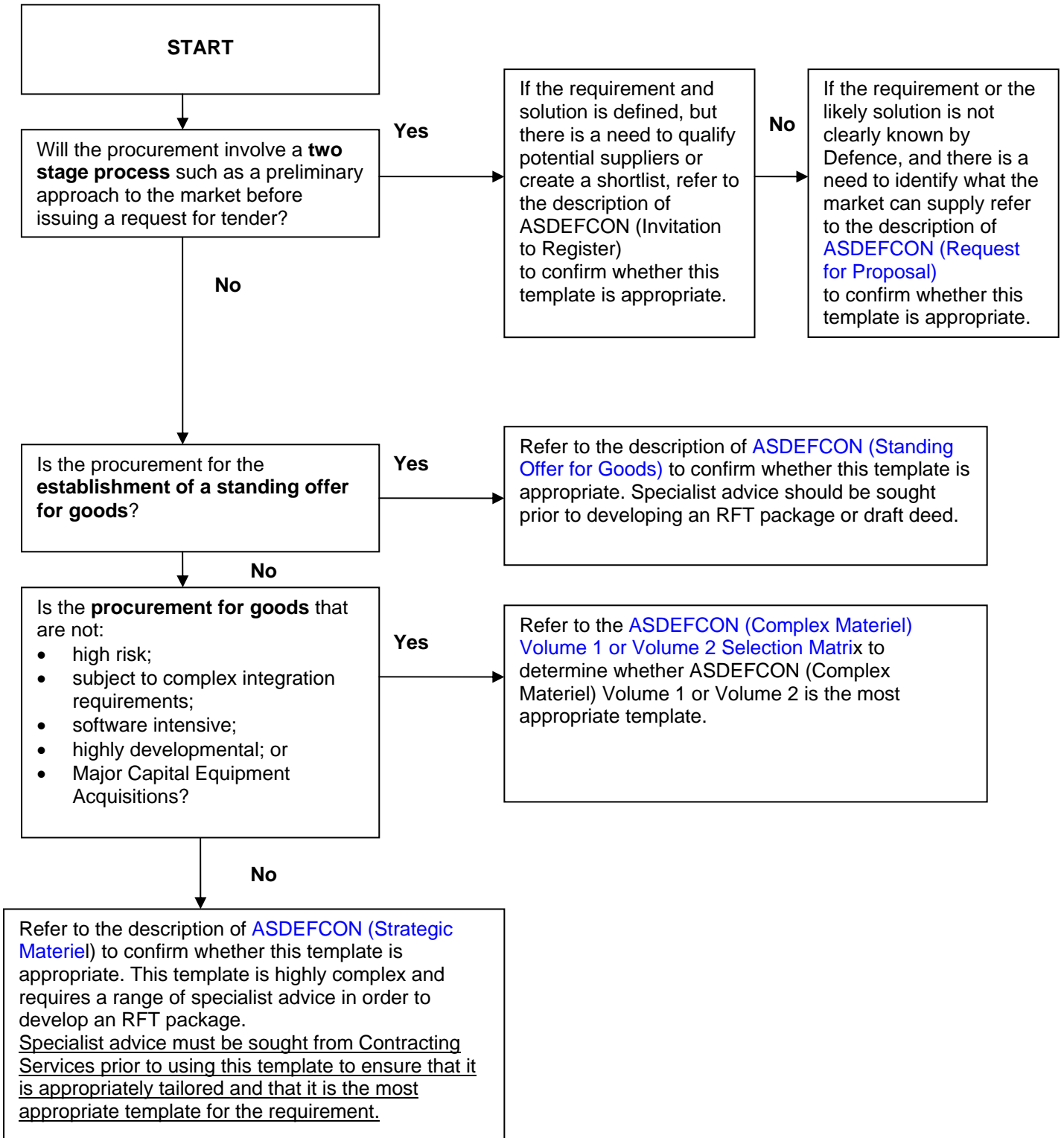
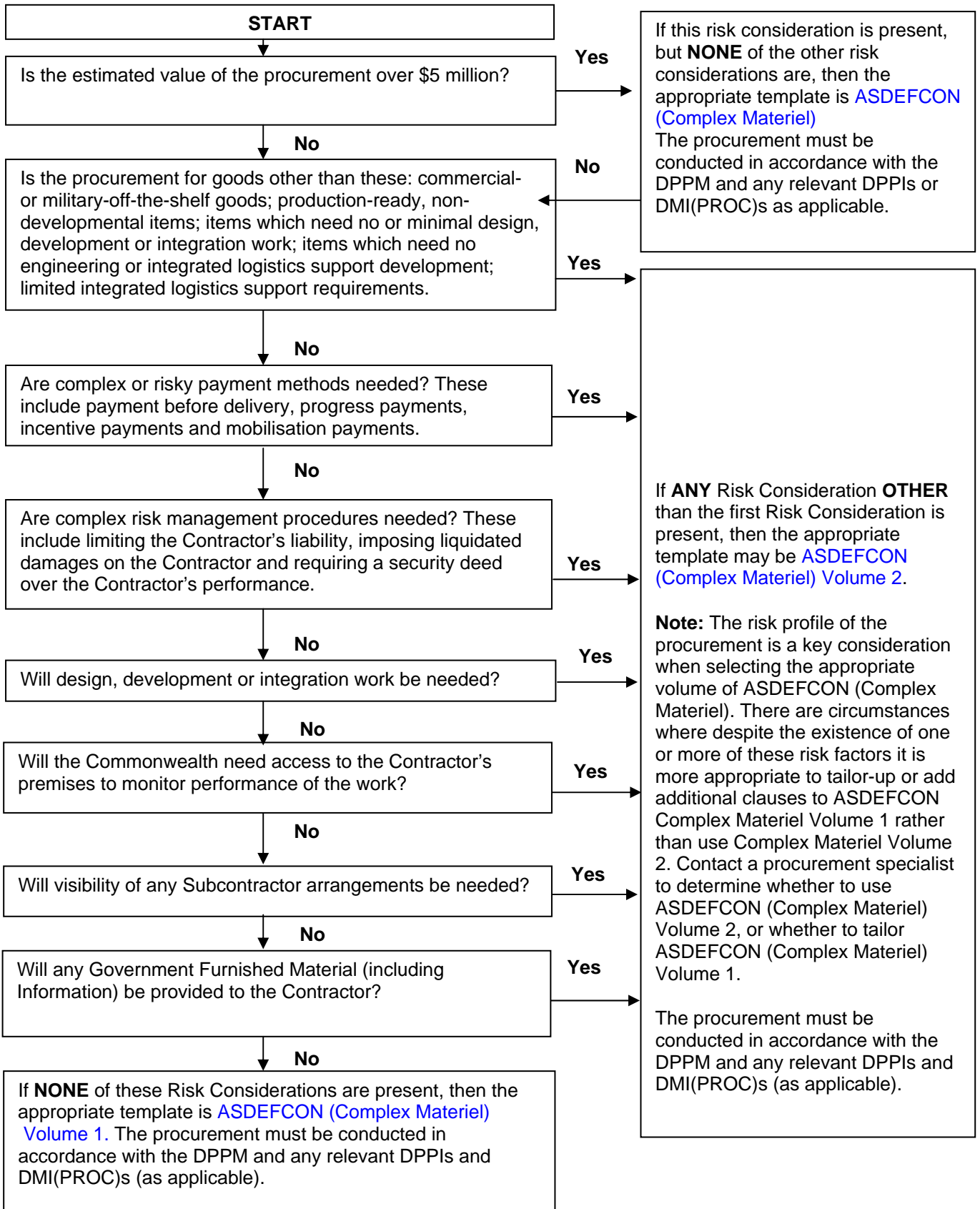


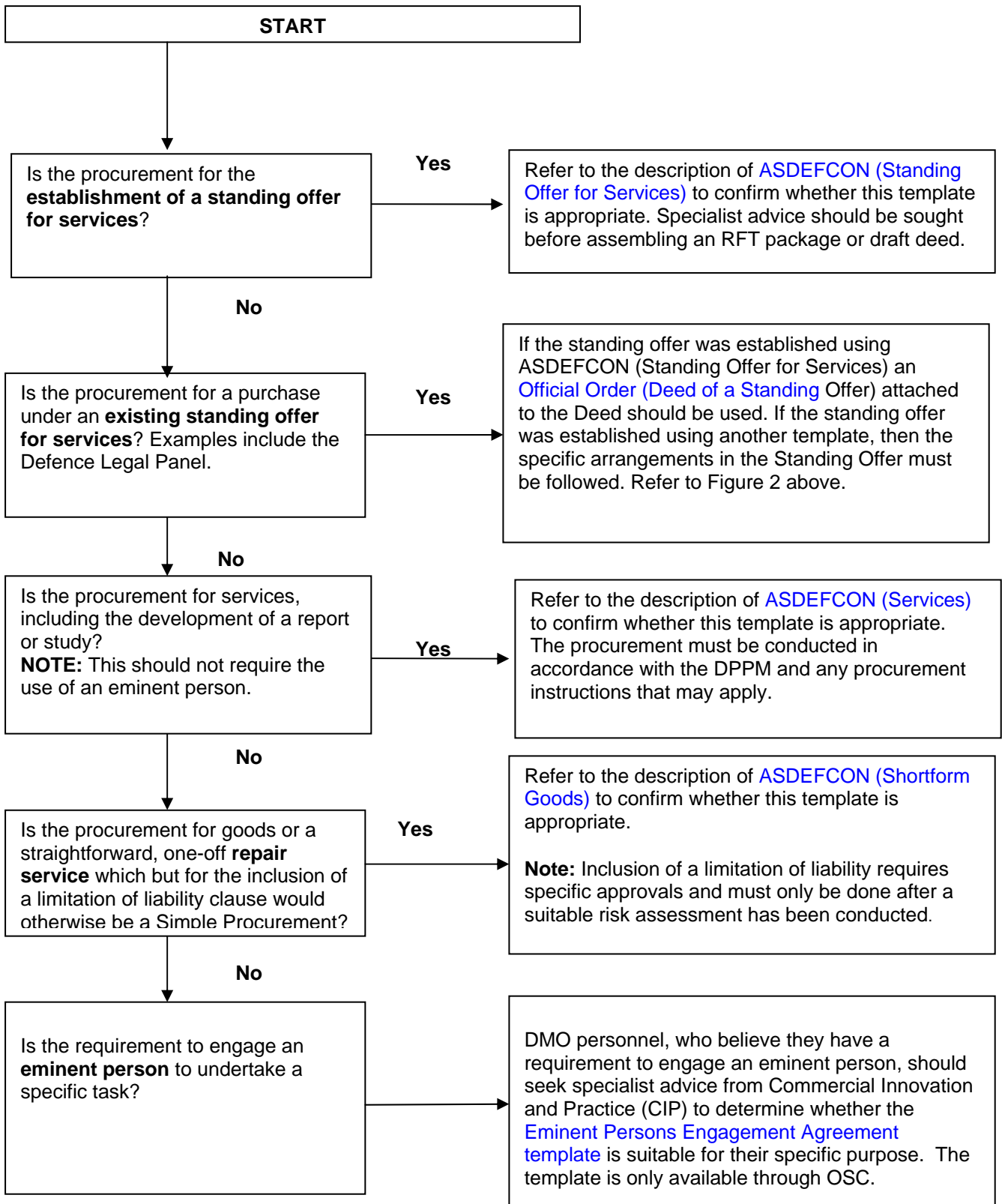
Figure 3B-2: ASDEFCON (Complex Materiel) Volume 1 or Volume 2 Selection Matrix



Acquisition of Materiel Support

14. Acquisition of Materiel Support is broadly divided into either:
 - a. acquisition of Services – including Professional Service Providers and other services; or
 - b. In-Service Support – encompassing the constituent logistic support elements.
15. Although it is possible to have some services provided within an in-service support contract, it is important to identify the primary purpose of the acquisition.
16. This section comprises a selection matrix to assist with determining the most appropriate template for the acquisition of services however the Statement of Work is the key driver for selecting a template for the acquisition of in-service support requirements. An initial requirements determination enhances understanding of the underlying risk factors and assists with template selection. In these circumstances the Statement of Work Modelling Tool has been developed to assist with determining the most appropriate template.
17. For the acquisition of Materiel Support, progress through the selection matrix, answering the questions and following the prompts through the decision boxes. This will lead to an appropriate contracting template for the procurement. Click on the template link for a summary of the template and more detailed guidance.
18. Based on the definitions above, select the link to the broad acquisition type:
 - a. [Services](#); or
 - b. [In-Service Support](#).

Figure 3C-1: Services Selection Matrix



In-Service Support

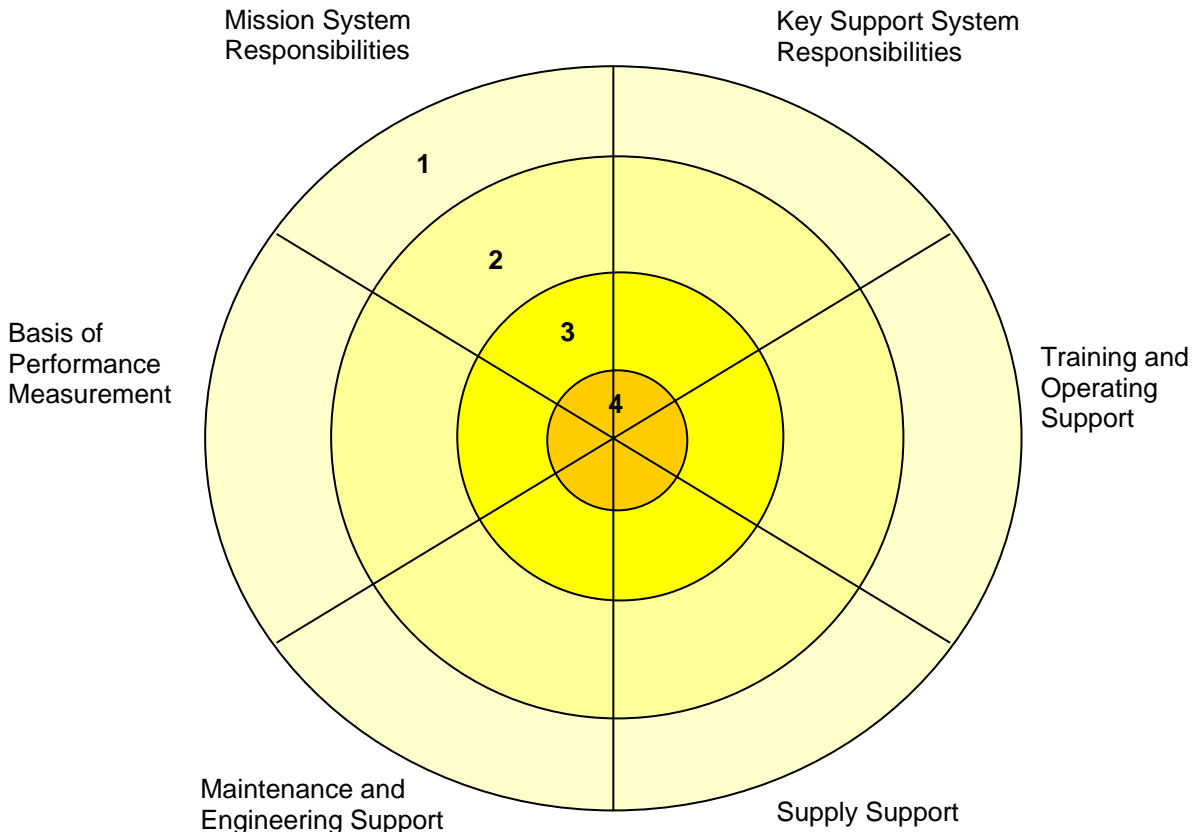
19. The figure below contains the key components that underlie the structure of the Statement of Work (SOW) that forms part of the ASDEFCON (Support) and ASDEFCON (Support Short)* templates. While these key sections are not expressly included in the SOW for the Standing Offer for Goods and Maintenance Services (SOGMS) template, they also underlie the structure of that SOW. (* Denotes template under development)

20. The key features of the requirement should be examined against the four Support Scenarios detailed in the Support Concepts and Contract Requirements in Annex A to the ASDEFCON (Support) SOW Tailoring Guide. Users should examine each of the key components in turn and consider the scope and complexity of their requirement. The concentric rings on the diagram and the correlating numbers represent the four Support Scenarios detailed in the tailoring guide. The ASDEFCON (Support) SOW Tailoring Guide can be located at the following link: http://intranet.defence.gov.au/dmoweb/sites/PP/docs/12-_SOW_Tailoring_Guide.pdf

21. Users should read each of the Support Scenarios and contrast them against the requirement and then select which support scenario best maps to their requirement. For example, if the Contractor will have total responsibility for supporting the Mission System, then that element of the requirement is consistent with Support Scenario 1. Users should then continue through the rest of the modelling tool and identify how their requirement maps against the Support Scenarios for each of the elements outlined in Figure 3C-2 below. This can be done by printing out the copy of the diagram in Annex B to this Guide and shading in the diagram.

22. The individual outcomes in each of the components must be considered together as a whole when determining which of the Support Scenarios best matches the requirement. Users should then refer to Table 1 In-Service Support Template Look Up Table in paragraph 23 to determine which template is appropriate to the requirement. For example if the requirement is mainly consistent with Support Scenario 1 then the appropriate template will be ASDEFCON (Support) in accordance with the look up table.

Figure 3C-2: In-Service Support Statement of Work Modelling Tool



23. The different Support Scenarios are mapped to a template that should be considered in the first instance for the proposed requirement, as detailed below. The different support scenarios broadly correspond to the shortlist of appropriate templates as detailed in the table below:

Table 1: In-Service Support Template Look Up Table

TEMPLATE	Support Scenario 1	Support Scenario 2	Support Scenario 3	Support Scenario 4
ASDEFCON (Standing Offer for Goods and Maintenance Services)				Yes
ASDEFCON (Support Short)*			Yes	Yes
ASDEFCON (Support)	Yes	Yes	Yes	Yes

* Denotes a template under development.

24. While the ASDEFCON (Support) template can be used for all of the Support Scenarios, this requires a high level of tailoring for requirements that are at the lower end of complexity.

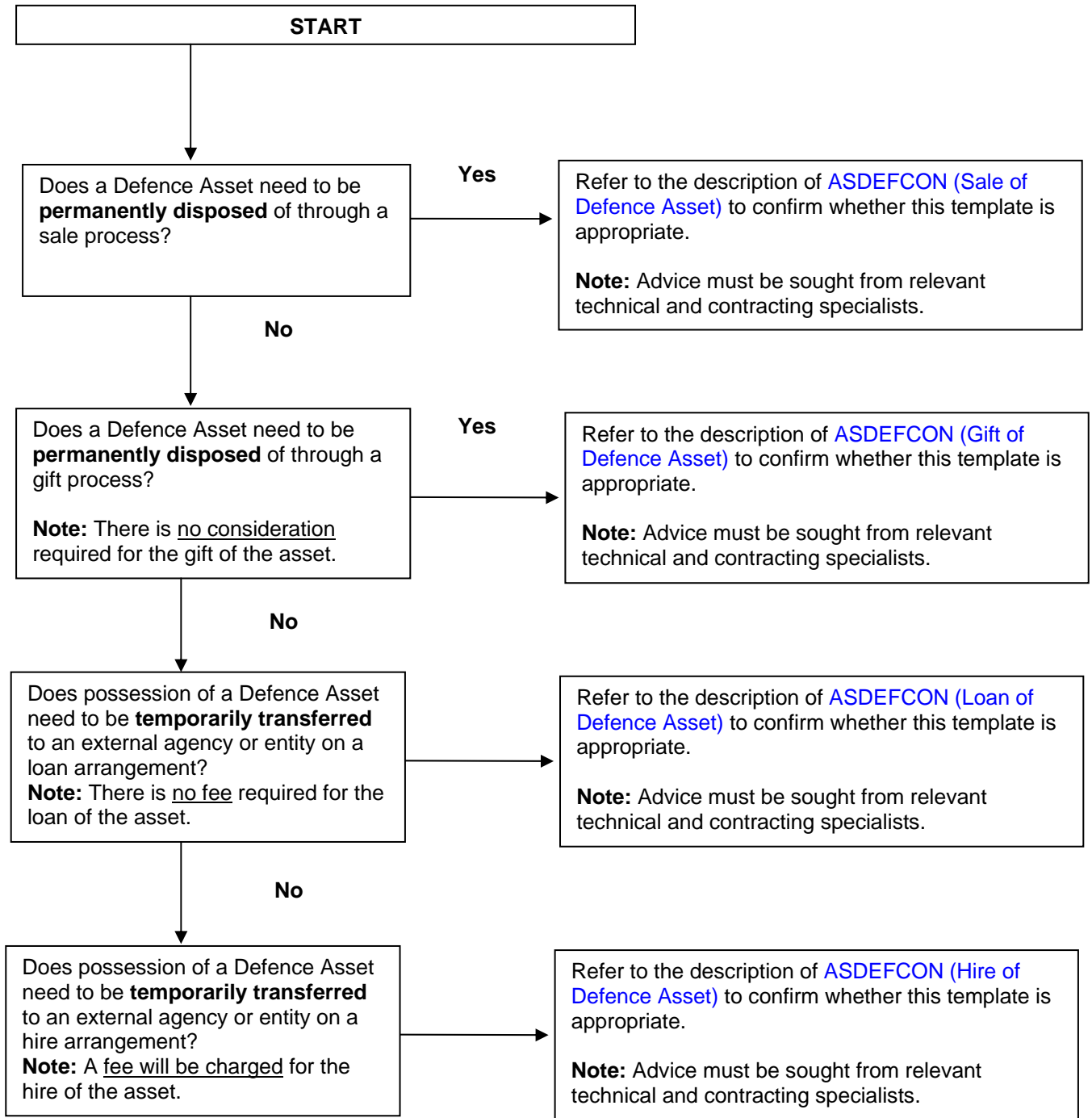
25. It is important to recognise that each requirement is unique and may not directly correlate to the listed requirements. While the Modelling Tool represents each of the sections as pictorially equal, users will need to take into consideration whether there are dominant factors in their requirement. The most appropriate template can then be determined based on the scenario that best matches their requirement.

26. It is critical that appropriate training in the use of the ASDEFCON (Support) template be undertaken prior to tailoring the template. The Detailed Service Descriptions (DSDs) and Data Item Descriptions (DIDs) that must be used with the ASDEFCON (Support) template are located in the ASDEFCON Asset Library available via the ASDEFCON intranet page. Users should make use of the resources provided by SO including the ASDEFCON Statement of Work Helpdesk, ASDEFCON tailoring guides and training materials. Further information can be accessed on the following link:
<http://intranet.defence.gov.au/dmo/standardisation/asdefcon.htm>

Special Purpose ASDEFCON Templates

27. Special purpose ASDEFCON templates have been developed to either:
 - a. permanently dispose of a Defence asset; or
 - b. temporarily transfer possession of a Defence asset to an external agency or entity.
28. These templates must be used in conjunction with relevant policy including:
 - a. DI(G) LOG 4-3-008;
 - b. DI(G) LOG 4-3-012;
 - c. DI(G) LOG 4-3-013; and
 - d. the Electronic Supply Chain Manual.
29. This section comprises a selection matrix at [Figure 3-D1](#) to assist with determining the most appropriate template for the situations outlined above.
30. Progress through the selection matrix, answering the questions and following the prompts through the decision boxes. This will lead to an appropriate contracting template. Click on the template link for a summary of the template and more detailed guidance.

Figure 3D-1: Special Purpose Selection Matrix



STEP 4 - TAILORING OF ASDEFCON TEMPLATES

Standardised Templates

1. Standardised tendering and contract documents ensures, to the maximum extent practicable, consistency and uniformity in the terms and conditions used by Defence when acquiring goods and services. This has the benefit of minimising risk, reducing administrative costs for both Defence and the tenderers and allows Defence to adopt a best practice approach across the portfolio when procuring goods and services.
2. 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. 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 in accordance with DPPM chapter 2.3.
3. Wherever possible, the form of the template should be adhered to and bespoke tailoring of the templates should be kept to a minimum. However, when tailoring is necessary, clauses should only be added, modified or deleted after seeking advice from the relevant legal, procurement or technical specialist. "Core" clauses must not be amended or deleted except on specialist advice. In particular, tailoring of the Data Item Descriptions should be kept to a minimum as these have been developed to accommodate the broadest application and changes to naming conventions or other alterations can have unintended ramifications within other sections of the template.
4. It is critical when drafting an RFT package to only ask for the information that will be necessary to fully evaluate the submitted bids. Drafters need to carefully consider their requirements and ensure that an appropriate level of documentation is requested commensurate with the risk profile and characteristics of the procurement. Drafters must ensure that there are adequate and appropriately trained resources within the Commonwealth to comply with the obligations of any subsequent contract.
5. Drafters should refer to any specific tailoring instruction that may be contained in the General Information for Users contained within the Preliminary Pages of each template.

Categories of ASDEFCON Clauses

6. There are three categories of ASDEFCON clauses (a) RFT CORE, (b) CORE and (c) OPTIONAL.
 - a. RFT CORE
 - i. These clauses must not be deleted from the RFT, nor any changes made to the template wording of these clauses, unless specialist legal or contracting advice is obtained. Any tailoring of these clauses should be kept to a minimum and tailored to the requirements of the procurement. (Note: this represents the 'general position' as a further requirement applies if the clause is a 'liquidated damages' (LD) or 'limitation of liability' (LoL) clause - refer to DMO CEI 8.7, DMO CEI 8.6 and DMI(PROC) 13-0-001).
 - ii. Depending on a tenderer's response, these clauses may not be included in the final contract. If the clause is included in the contract, it must be treated as a 'Core' clause in accordance with the guidance below.
 - iii. If the clause is an LD or LoL clause, any material change to the clause's template wording must be cleared by DMO Legal (refer to DMO CEI 8.7, DMO CEI 8.6 and DMI(PROC) 13-0-001).
 - b. CORE
 - i. These clauses must not be deleted from the RFT or contract. No changes should be made to the template wording of clauses in the conditions of tender and draft conditions of contract, unless specialist legal or contracting advice is obtained.

- ii. Where a clause is marked as “Core” within the SOW, specialist technical advice must be sought prior to tailoring the wording of clause. Any tailoring of these clauses should be kept to a minimum and be tailored to the requirements of the procurement. If the clause is an Liquidated Damages (LD) or Limitation of Liability (LoL) clause, any material change to the clause's template wording must be cleared by DMO Legal (refer to DMO CEI 8.7, DMO CEI 8.6 and DMI(PROC) 13-0-001).
- c. OPTIONAL
- i. These clauses must be included in all RFTs and contracts if required for the particular project.
 - ii. If the clause is included in the RFT or contract, the template wording of the clause in the conditions of tender and draft conditions of contract must not be amended, unless specialist legal or contracting advice is obtained.
 - iii. If a clause is marked as “Optional” within the SOW, it can be omitted as required however, specialist technical advice must be sought prior to tailoring the wording of the clause. Any tailoring of these clauses should be kept to a minimum and be tailored to the requirements of the procurement. (Note: this represents the 'general position' as a further requirement applies if the clause is a LD or LoL clause).
 - iv. If the clause is an LD or LoL clause, any material change to the clause's template wording must be cleared by DMO Legal (refer to DMO CEI 8.7, DMO CEI 8.6 and DMI(PROC) 13-0-001).

Statement of Work Tailoring

7. Many ASDEFCON templates include a draft SOW, with the level of detail varying according to the complexity of procurements suitable for that template. Prior to drafting the SOW, users must read the relevant sections of the applicable SOW Handbook or tailoring guide. It is strongly recommended that drafters attend the relevant ASDEFCON training courses, where available, prior to drafting any SOW.

8. There are SOW Handbooks for ASDEFCON (Strategic Materiel), ASDEFCON (Complex Materiel) Volumes 1 and 2 and ASDEFCON (Standing Offer for Goods and Maintenance Services). There is a SOW tailoring guide for ASDEFCON (Support).

Requirements for all DMO Acquisitions

9. Clauses in a draft contract limiting the liability of a contractor must comply with the requirements of DMO CEI 2.1. The methodology described in the Liability Risk Management Process must also be used when conducting a liability risk assessment. Where the standard ASDEFCON clauses are used without material variation, and where the approved methodology (in accordance with the Liability Risk Management Process) for conducting the liability risk assessment is used, DMO Legal advice on the clause is not required prior to seeking approval. DMO Legal advice must be sought where a material variation is proposed to the standard ASDEFCON limitation of liability clause.

ANNEX A - SUMMARY OF TEMPLATES AND FORMS SPONSORED AND MANAGED BY OSC

Official Order (Deed of a Standing Offer)

1. A Standing Offer is not a contract but a continuing offer by a supplier or suppliers to provide a specified good or service for a pre-determined length of time, usually at a predetermined price. A Standing Offer is usually in the form of a deed and no contract is made until an order (referred to as an Official Order in ASDEFCON Standing Offer templates) is placed, at which point a contract is formed only in relation to that order.
2. The summary of ASDEFCON (Standing Offer for Goods) and ASDEFCON (Standing Offer for Services) describe in detail when they are to be used.

Forms AC565 (Request for Quotation) and SP020 (Purchase Order and Contract)

3. The AC565 (Request for Quotation) and SP020 (Purchase Order and Contract for the Supply of Goods and Repair Services) forms include attached General Conditions and are designed for use when undertaking Simple Procurements.
4. The AC565 and SP020 forms should be used when undertaking procurements which are for firm price, commercially available goods and repair services, where the risk to the Commonwealth is low and where the time frame for delivery is short.
5. Form SP020 is suitable for the procurement of:
 - a. Goods - commercially available goods comprising equipment, spares, materials, consumables, etc; and/or
 - b. Repair Services - being low risk services required on a 'one-off basis' for the repair of existing Defence equipment, spares, materials, etc. Form SP020 is also suitable where the supplier supplies Goods which are incidental to the Repair Services, e.g. the replacement of damaged parts.
6. The AC565 and SP020 forms should not be used:
 - a. for procurements which require special conditions relating to limitation of liability, liquidated damages or financial or other securities;
 - b. for in-service support requirements, other than for individual Repair Services, as identified above;
 - c. to change the scope of an existing contract;
 - d. for the engagement of external service providers, including consultants, contract staff or professional service providers;
 - e. for procurements which involve hazardous substances. The Occupational Health and Safety Regulations list a number of hazardous substances which are prohibited from use and must not be used in any circumstances unless exempted by the Safety, Rehabilitation and Compensation Commission. Where a procurement potentially involves hazardous substances, procurement officers must refer to the Defence Safety Manual 'SAFETYMAN'. The SP020 form may be used for the procurement of supplies containing less significant hazardous substances such as paint, certain gases, detergents or cleaning compounds provided that the overall level of risk and complexity of the procurement is assessed as being low;
 - f. for procurements which require substantial amendments to Form AC565 or which alter the risk allocation between the Commonwealth and the respondent;
 - g. for procurements that involve the provision of Government Furnished Materials to the supplier.

- h. if a tasking statement and official order template exist as part of a standing offer or contract under which a quotation is sought or an order is being placed;
- i. if the procurement involves a higher risk than appropriate for a Simple Procurement. Higher risks can be indicated by:
 - i. procurements which involve design, development or integration work;
 - ii. procurements which require detailed planning documentation or the development of a SOW or other specifications;
 - iii. procurements which do not involve the purchase of commercially available off the shelf (COTS) goods or repair services.

ASDEFCON (Shortform Services)

7. ASDEFCON (Shortform Services) has been developed specifically for those service requirements that are low risk and low value and, therefore, categorised as Simple Procurements. For higher risk more complex services, ASDEFCON (Services) or ASDEFCON (Standing Offer for Services) should be used.

8. Use of ASDEFCON (Shortform Services) may be appropriate following an approach to the market using Form AC565 - General Conditions of Quotation. Examples of when it may be appropriate to use ASDEFCON (Shortform Services) include straightforward, short term work such as clerical or administrative services, basic trade services, ad hoc services such as gardening or cleaning services and basic consultancy services.

9. ASDEFCON (Shortform Services) is not suitable for the procurement of:
- a. complex or strategic procurements where the overall level of risk and complexity of the procurement is assessed as being medium or higher (see paragraph 10 below);
 - b. procurements involving the provision of professional services by professional service providers such as lawyers, accountants or architects, etc;
 - c. specialised trade or repair services;
 - d. consultancy services (other than basic consultancy services); and
 - e. services to be provided by an eminent person e.g. the appointment of a person to conduct an inquiry for Defence. Such persons will generally be appointed under the Eminent Persons Engagement Agreement.

10. Set out below are some examples of factors which will result in the level of risk for a procurement being assessed as medium or higher:

- a. procurements which require detailed planning documentation or the development of a SOW or other specifications;
- b. procurements which require substantial amendments to ASDEFCON (Shortform Services) or which alter the risk allocation between the Commonwealth and the contractor; and
- c. procurements which:
 - i. limit the liability of the contractor;
 - ii. require the Commonwealth to obtain significant intellectual property rights from the contractor; or
 - iii. require the payment of liquidated damages by the contractor.

ASDEFCON (Shortform Goods)

11. ASDEFCON (Shortform Goods) is based on Form SP020, which contains the standard terms and conditions under which Simple Procurement is conducted by Defence, but also includes a clause limiting the liability of the supplier. The inclusion of the limitation of liability clause in ASDEFCON (Shortform Goods) means that any procurement using ASDEFCON (Shortform Goods) will be a Complex Procurement requiring the exercise of Complex Procurement delegations.

12. ASDEFCON (Shortform Goods) is drafted in a manner that makes it suitable for a wide range of procurements which, but for the inclusion of a limitation of liability clause, would otherwise be classified as Simple Procurements. ASDEFCON (Shortform Goods) should only be used where procurement officers have determined that there is a compelling reason to limit the liability of the supplier and procurement officers have complied with the requirements for limiting the liability of the supplier. The limitation of liability clause must not be amended without first seeking advice from DMO Legal.

13. ASDEFCON (Shortform Goods) is suitable for the procurement of:

- a. Goods - commercially available goods comprising equipment, spares, materials, consumables, etc; and/or
- b. Repair Services - being low risk services for the repair of existing Defence equipment, spares, materials, etc. on a "one-off basis". ASDEFCON (Shortform Goods) is also suitable where the supplier supplies Goods which are incidental to the Repair Services, e.g. the replacement of damaged parts.

14. ASDEFCON (Shortform Goods) must not be used for procurements which are complex or strategic procurements for any reason other than the inclusion of the limitation of liability clause.

15. Set out below are some examples of factors which will result in the level of risk for a procurement being assessed as medium or higher and as such ASDEFCON (Shortform Goods) is unsuitable to use:

- a. procurements which involve design, development or integration work;
- b. procurements which require detailed planning documentation or the development of a SOW or other specifications;
- c. procurements which do not involve the purchase of commercially available off the shelf (COTS) Goods or Repair Services;
- d. procurements which involve certain hazardous substances. The Occupational Health and Safety Regulations list a number of hazardous substances which are prohibited from use and must not be used in any circumstances unless exempted by the Safety, Rehabilitation and Compensation Commission. Where a procurement potentially involves hazardous substances, procurement officers must refer to the Defence Safety Manual 'SAFETYMAN'. ASDEFCON (Shortform Goods) may be used for the procurement of supplies containing less significant hazardous substances such as paint, certain gases, detergents or cleaning compounds provided that the overall level of risk and complexity of the procurement is assessed as being low;
- e. procurements which require substantial amendments to ASDEFCON (Shortform Goods) or which alter the risk allocation between the Commonwealth and the supplier; and procurements which:
 - i. require the Commonwealth to obtain intellectual property rights from the supplier;
 - ii. require the payment of liquidated damages by the supplier; or
 - iii. involve the provision of Government Furnished Materials to the supplier.

ASDEFCON (Complex Materiel)

16. ASDEFCON (Complex Materiel) is designed for use when undertaking complex acquisitions of equipment and supplies and consists of two volumes, each volume addressing a different level of complexity and risk.

ASDEFCON (Complex Materiel) Volume 1

17. ASDEFCON (Complex Materiel) Volume 1 is aimed for use in low to medium risk complex procurements where the supplies being acquired are commercial-off-the-shelf or military-off-the-shelf items, require minimal or no design, development or integration activities and where the contract will generally be completed within 2 years and cost less than \$5 million.

18. ASDEFCON (Complex Materiel) Volume 1 is designed for procurements that are both covered and non-covered, and subject to, and exempt from, the Mandatory Procurement Procedures (MPPs) for the purposes of the Commonwealth Procurement Guidelines – December 2008. For information on whether a procurement is covered or subject to the MPPs, refer to the DPPM.

19. Where it is expected that any resultant contract will be of higher risk or take longer than 2 years to complete, additional issues will need to be considered and ASDEFCON (Complex Materiel) Volume 1 may need to be tailored or consideration given to using ASDEFCON (Complex Materiel) - Volume 2. Drafters should be aware that it is not simply a process of adding or subtracting clauses from an existing template. Care must be taken not to destroy the integrity of the whole document package.

20. This template is appropriate for complex procurements of goods in the following situations:

- a. the procurement is considered a low to medium risk procurement;
- b. the procurement is expected to be less than \$5 million;
- c. there will be no management of design, development or integration activities;
- d. the contractor will undertake only simple component manufacturing or production activities;
- e. the contract will normally be completed within 2 years;
- f. the goods acquired are commercial-off-the-shelf, military-off-the-shelf products, or non-developmental items;
- g. the goods acquired may require installation in Commonwealth premises;
- h. there may be requirements to provide particular integrated logistics support requirements (eg, training and codification data);
- i. supplies may be imported from overseas;
- j. the only intellectual property rights needed are to use, maintain and dispose of the supplies;
- k. there may be variations to the contract price to reflect fluctuations in exchange rates;
- l. work under the contract may be classified;
- m. the Commonwealth may need access to the contractor's premises to monitor performance of the work.

21. This template should not be used in the following situations:

- a. the contract will not be completed within 2 years;
- b. the intellectual property rights needed are rights to modify, develop or manufacture the supplies;
- c. additional payments as incentives for contractor performance may be used;
- d. a financial security over the contractor's performance is required;

- e. any damages for delay in delivery will be pre-agreed and specified in the contract;
- f. configuration detail to a greater extent than is provided by item identification details included in the contract Price and Delivery Schedule or within data included for delivery, is required;
- g. Quality Assurance will require the contractor to provide a contract Quality Plan;
- h. Verification of the Supplies (to assure compliance with the contract, and their quality) will be required at times other than source selection and contract negotiation, or Final Inspection and testing;
- i. the contractor will need to be involved in validation of the supplies; or
- j. additional contract management mechanisms, other than periodic contractor Contract Status Reports and the holding of Extraordinary Meetings, will be needed.

ASDEFCON (Complex Materiel) Volume 2

22. ASDEFCON (Complex Materiel) - Volume 2 is the standard template and is aimed for use in medium to high risk procurements which do not justify the use of ASDEFCON (Strategic Materiel).

23. ASDEFCON (Complex Materiel) Volume 2 is designed for procurements that are both covered and non-covered, and subject to, and exempt from the MPPs for the purposes of the Commonwealth Procurement Guidelines – December 2008. For information on whether a procurement is covered or subject to the MPPs, refer to the DPPM.

24. Template users should also note the ASDEFCON (Complex Materiel) Volume 2 Asset Library, which should be used in conjunction with the template. The Asset Library consists of Data Item Descriptions (DIDs). In addition, template users should note the GFF Licence, which may be required to be used in conjunction with the template.

25. This template should be utilised for complex procurements of goods that align to the following criteria:

- a. the procurement is considered a medium to high risk procurement;
- b. the procurement may, but does not have to, involve some software development;
- c. the procurement involves design, development or integration activities;
- d. Industry Requirements may be identified, and thus a full Australian Industry Capability Plan will be required;
- e. the contractor will need Government Furnished Material or Facilities to complete the contract;
- f. the intellectual property rights needed are rights to modify and develop the supplies and manufacture the supplies for Defence Purposes;
- g. the contract price may be paid after delivery and acceptance of the supplies, or progressively in the form of milestone payments;
- h. the contract price may be varied to reflect fluctuations in the cost of labour and materials;
- i. the contractor may be paid a mobilisation payment to cover start-up costs;
- j. the contractor may be paid incentive payments for performing highly;

- k. the project may require a financial security or a guarantor's undertaking to secure the contractor's performance;
 - l. damages for delay in delivery will be pre-agreed and specified in the contract;
 - m. the Commonwealth may need protection for latent defects that may appear in the supplies over and above the warranty;
 - n. part or all of the work may be completed on Commonwealth premises;
 - o. the Commonwealth will require visibility of the contractor's subcontracting arrangements and the flow-down of certain contract requirements to certain subcontractors; and
 - p. the Commonwealth will require visibility of the work performed under the contract through the use of a formalised Earned Value Management System, where appropriate.
26. This template is not appropriate for those procurements that align to the following criteria:
- a. extensive software development will be undertaken;
 - b. there are complex integration requirements; or
 - c. part of the contract will be highly developmental.

ASDEFCON (Services)

27. ASDEFCON (Services) is designed to be used to engage consultants, professional service providers and other contractors to provide services to Defence (where this is to be done outside of the DMOSS Panel arrangements). The template is to be used where the services to be procured are low to medium risk, relatively low value and of short to medium duration and categorised as complex procurement.

28. ASDEFCON (Services) is designed to be used for procurements that are both covered and non-covered, and subject to, and exempt from, the MPPs for the purposes of the Commonwealth Procurement Guidelines - December 2008. For information on whether a procurement is covered or subject to the MPPs, refer to the DPPM.

ASDEFCON (Standing Offer for Goods)

29. ASDEFCON (Standing Offer for Goods) is for use when establishing a standing offer arrangement with a supplier or a panel of suppliers for low value, low to medium risk procurements of goods up to an aggregate value of \$5 million. Standing offer arrangements are appropriate where the Commonwealth has an ongoing requirement for commercial-off-the-shelf supplies to be delivered on an 'as required' basis, including spare parts; consumables; and food supplies. It should not be used to acquire spare parts for equipment required as part of a project that has established its own arrangements for the acquisition of spare parts. This template is not suitable for use when procuring services or software.

30. ASDEFCON (Standing Offer for Goods) is designed to be used for procurements that are both covered and non-covered, and subject to, and exempt from, the MPPs for the purposes of the Commonwealth Procurement Guidelines – December 2008. For information on whether a procurement is covered or subject to the MPPs, refer to the DPPM.

31. While the template is designed to be tailorable with respect to the length of the standing offer period, it has been drafted on the basis that each standing offer would generally be in place for three years, with an option for two additional 12-month extensions.

32. Where it is expected that the value of goods will be greater than \$5 million, seek contracting advice from a procurement specialist.

ASDEFCON (Standing Offer for Services)

33. ASDEFCON (Standing Offer for Services) is for use when establishing a standing offer arrangement with a supplier or a panel of suppliers for the engagement of consultants and professional service providers to provide low value, low to medium risk services to Defence up to an aggregate value of \$5 million. Standing offer arrangements are appropriate where the Commonwealth has an ongoing requirement for low value, low to medium risk services to be delivered on an 'as required' basis. This template is not suitable for procuring any other types of services or for use when procuring goods or software.

34. ASDEFCON (Standing Offer for Services) is designed to be used for procurements that are both covered and non-covered, and subject to, and exempt from, the MPPs for the purposes of the Commonwealth Procurement Guidelines – December 2008. For information on whether a procurement is covered or subject to the MPPs see the Defence Procurement Policy Manual (DPPM).

35. While the template is designed to be tailorable with respect to the length of the standing offer period, it has been drafted on the basis that each standing offer would generally be in place for three years, with an option for two additional 12-month extensions.

ASDEFCON (Invitation to Register)

36. This template should be used to seek expressions of interest from industry as to their willingness and capacity to participate in a procurement process to fulfil a known Defence requirement.

37. ASDEFCON (Invitation to Register) should be used for complex or strategic procurements that align to the following criteria:

- a. as part of a staged procurement to break the procurement process into more manageable parts and refine the market testing process;
- b. to assess the interest of local and overseas suppliers to supply goods or services to meet the advertised requirement and determine the Commonwealth's approach to any subsequent procurement process;
- c. to establish if respondents have the technical, managerial and financial capacity to satisfy the requirement;
- d. to reduce the time spent by the Commonwealth in evaluating a large number of very complex and detailed tender responses;
- e. to allow prospective suppliers sufficient time to explore licensing requirements and establish their team and any subcontracts; and
- f. to allow prospective suppliers sufficient time to undergo any security requirements before the release of a classified Request for Proposal or Request for Tender.

38. This template should not be used for complex or strategic procurements where the procurement is not using a staged procurement process or where Defence does not know the basic solution it wishes to use to resolve a problem or achieve a particular outcome, in which case ASDEFCON (Request for Proposal) should be used instead.

ASDEFCON (Request for Proposal)

39. ASDEFCON (Request for Proposal) is a proforma template used as part of a staged procurement to break the procurement process into more manageable parts and refine the market testing process. It is used mostly for high value complex and strategic procurements.

40. ASDEFCON (Request for Proposal) incorporates options to allow drafters to tailor the template for procurements that are both covered and non-covered, and subject to, and exempt from the MPPs, in line with the requirements of the Commonwealth Procurement Guidelines – December 2008.

41. Specifically, the ASDEFCON (Request for Proposal) aims to:

- a. determine a preferred solution to an identified requirement;
- b. encourage suppliers to propose solutions, whether innovative or not, to meet the requirement and by doing so enable the Commonwealth to assess the range of options available in order to release a Request for Tender or other procurement process (e.g. Project Definition Study); and
- c. lead to better outcomes for the Australian Defence Force.

42. This template should not be used for complex or strategic procurements where the procurement is not using a staged procurement process or Defence knows the basic solution it wishes to use to resolve a problem or achieve a particular outcome, but needs to either qualify potential suppliers or create a shortlist in which case ASDEFCON (Invitation to Register) should be used instead.

ASDEFCON (Sole Source)

43. ASDEFCON (Sole Source) is designed to streamline the direct source procurement process in highly complex and strategic procurements where there is a clear benefit to be gained from working with a single preferred supplier to collaboratively develop the contract documents. ASDEFCON (Sole Source) is not suitable for all direct source procurements and should only be used where the Commonwealth works collaboratively with a single supplier to develop technical and functional specifications, and a detailed draft SOW.

44. Use of ASDEFCON (Sole Source) should be confined to procurements at the complex or strategic end of the contracting spectrum. Direct source procurement should only be used if, after an assessment of alternative procurement options, it is selected as the option that both achieves the required procurement objective (outcome) and represents the best value for the Government, while taking into account all relevant benefits and costs over the whole of the procurement cycle as well as all relevant legislation and Government policies.

45. Due to the specialised nature of the ASDEFCON (Sole Source) template and the fact that many projects do not find it suitable, it is not available for download from the OSC website. Current policy is for contracting officers to confirm with their Chief Contracting Officer that it is the correct template for their purposes before the template is made available.

ASDEFCON (Strategic Materiel)

46. ASDEFCON (Strategic Materiel), and in particular the SOW, has been developed primarily for the acquisition of high risk, high value, and/or software intensive systems with complex integration or highly developmental requirements which may include major platforms.

47. In most, if not all circumstances, procurements that are using the ASDEFCON (Strategic Materiel) template fall under an exemption category listed in the DPPM or Division 2 of the Commonwealth Procurement Guidelines – December 2008.

48. Template users should note the ASDEFCON (Strategic Materiel) Asset Library, which should be used in conjunction with the template. The Asset Library consists of Data Item Descriptions (DIDs) and Defence Materiel Organisation (DMO) Checklists. In addition, template users should note the GFF Licence, which may be required to be used in conjunction with the template.

ASDEFCON (Support)

49. ASDEFCON (Support) is designed for the provision of in-service support services for Defence materiel capabilities. ASDEFCON (Support) has been developed for use in Maritime, Land, Aerospace and Electronic support environments.

50. ASDEFCON (Support) incorporates options to allow drafters to tailor the template for procurements that are both covered and non-covered, and subject to, and exempt from, the MPPs, in line with the requirements of the Commonwealth Procurement Guidelines – December 2008.

51. To meet the varying complexities that apply in the support environments the template, especially the SOW, has been designed for tailoring.

52. Template users should also note the ASDEFCON (Support) Asset Library, which should be used in conjunction with the template. The Asset Library consists of Detailed Service Descriptions (DSDs) and Data Item Descriptions (DIDs). In addition, template users should note the GFF Licence, which may be required to be used in conjunction with the template.

ASDEFCON (Support Short)

53. This template is under development and aims to fill an identified gap in the current ASDEFCON suite. It will aim to provide a versatile template for drafting low to moderate complexity support contracts that provide Services to support materiel including stand-alone equipments, fleets, and Repairable Items or subsystems of more complex systems. The template has been designed to provide the breadth of Services of the larger ASDEFCON (Support) template, but with reduced depth and without the more demanding governance requirements.

ASDEFCON (Standing Offer for Goods and Maintenance Services)

54. ASDEFCON (Standing Offer for Goods and Maintenance Services) ("SOGMS") should be used when establishing a standing offer where goods are to be acquired and/or maintenance services are to be provided. It can be used for either or both of these purposes. ASDEFCON (SOGMS) is closely based on the AC565 and SP020 forms used for Simple procurement and includes the necessary additional provisions for these standard terms and conditions to be used under a Deed of Standing Offer. This template is for use at the low end of complexity in relation to both acquisition and support where the risks to technical integrity (ie, safety, fitness for service and environmental compliance) are minimal.

55. The template is not to be used for:

- a. design and development activities;
- b. modification of systems;
- c. systems installation or integration; and
- d. maintenance activities on Defence premises.

56. The template has been drafted for a maximum standing offer period of five years and it does not contain clauses for optional extensions. ASDEFCON (SOGMS) is a simplified standing offer arrangement and has not been designed for use in panel arrangements where multiple parties are required to sign up to a standing offer arrangement. Specialist advice should be sought where a multiple suppliers are needed to meet a requirement, and a more complex template, such as ASDEFCON (Standing Offer for Goods) or ASDEFCON (Standing Offer for Services) may be required.

Eminent Persons Engagement Agreement

57. The "Eminent Persons Engagement Agreement" is available exclusively for use in connection with the engagement of high profile individuals to undertake specific tasks on

behalf of DMO. These tasks could include the appointment of the individual to a governance committee or to conduct an enquiry or other review. It is expected that all such engagements will be coordinated and approved by a member of the DMO Executive. DMO Officers who believe they have a requirement for which this template may be suitable, should contact their relevant contracting specialists for advice on whether the template is suitable for their specific purpose and, Commercial Innovation and Practice for a copy of the template.

ASDEFCON (Hire of Defence Asset)

58. The ASDEFCON (Hire of Defence Asset) is designed for use when the Commonwealth agrees to provide a Defence Asset to the hirer in return for a payment to the Commonwealth for the use of that Defence Asset. This template must be used in conjunction with the policy requirements outlined under the heading ‘Special Purpose ASDEFCON Templates’ in Step 3 above.

ASDEFCON (Loan of Defence Asset)

59. The ASDEFCON (Loan of Defence Asset) is designed for use when the Commonwealth agrees to provide a Defence Asset to the borrower without the payment of money, but with the payment of a security deposit. This template must be used in conjunction with the policy requirements outlined under the heading ‘Special Purpose ASDEFCON Templates’ in Step 3 above.

ASDEFCON (Sale of Defence Asset)

60. The ASDEFCON (Sale of Defence Asset) should be used when the Commonwealth agrees to sell a Defence Asset to the purchaser in return for the purchase price. This template must be used in conjunction with the policy requirements outlined under the heading ‘Special Purpose ASDEFCON Templates’ in Step 3 above.

ASDEFCON (Gift of Defence Asset)

61. The ASDEFCON (Gift of Defence Asset) should be used where the Commonwealth agrees to gift a particular Defence Asset to the recipient and to transfer all rights, title and interests in the asset. This template must be used in conjunction with the policy requirements outlined under the heading ‘Special Purpose ASDEFCON Templates’ in Step 3 above.

ANNEX B – STATEMENT OF WORK MODELLING TOOL

In-Service Support Statement of Work Modelling Tool Diagram

