

ASDEFCON Handbook

(Shortform Services)

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ASDEFCON (Shortform Services) Handbook

1 When should you use ASDEFCON (Shortform Services)?

ASDEFCON (Shortform Services) contains the standard terms and conditions under which low risk and low value services are contracted for Defence. For higher risk services, *ASDEFCON (Services)* or *ASDEFCON (Standing Offer for Services)* should be used.

Simple procurement is a procurement category where the overall level of risk and complexity of the procurement is assessed as being low. Refer to the Defence Procurement Policy Manual chapter on simple procurement for further guidance on determining whether a procurement is a simple one.

ASDEFCON (Shortform Services) has been developed specifically for those service requirements that are low risk and low value, and therefore categorised as simple procurements and its use may be appropriate following an approach to the market using Form AC565 – General Conditions of Quotation. *ASDEFCON (Shortform Services)* must **not** be used for complex or strategic procurements.

Procurements for which the overall level of risk and complexity is assessed as medium or high are at least complex procurements. Set out below are **some** examples of factors which will result in the level of risk for a procurement being assessed as medium or high:

- procurements which require detailed planning documentation or the development of a statement of work or other specifications;
- procurements which require substantial amendments to *ASDEFCON (Shortform Services)* or which alter the risk allocation between the Commonwealth and the Contractor; and
- procurements which:
 - limit the liability of the Contractor;
 - require the Commonwealth to obtain significant intellectual property rights from the Contractor; or
 - require the payment of liquidated damages by the Contractor.

The *ASDEFCON (Services)* template should be used for these more complex procurements.

2 Is ASDEFCON (Shortform Services) suitable for your particular Simple Procurement?

While *ASDEFCON (Shortform Services)* has been drafted in a manner so that it is suitable for a wide range of simple procurements, it will not be suitable for all kinds of simple procurement. Procurement officers are required to assess whether the template meets all the requirements of their particular simple procurement activity.

ASDEFCON (Shortform Services) should only be used where the services to be procured are low risk, low value and are of a short term nature.

ASDEFCON (Shortform Services) is suitable for simple procurements involving the procurement of:

- a range of office services including clerical or administrative services;
- basic trade services including basic repair work;
- ad hoc services such as gardening or cleaning services; and
- basic consultancy services.

ASDEFCON (Shortform Services) is not suitable for the procurement of:

- (as outlined above), services where the overall level of risk and complexity of the procurement is assessed as being medium or high;
- procurements involving the provision of professional services by professional service providers such as lawyers, accountants or architects, etc;
- specialised trade or repair services;
- consultancy services (other than basic consultancy services); and
- 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*. Procurement officers should contact the Special Counsel to CEO DMO in relation to the use of the *Eminent Persons Engagement Agreement*.

3 Structure of *ASDEFCON (Shortform Services)*

ASDEFCON (Shortform Services) comprises the following documents:

- **Contract Particulars** – this document includes details of the Contractor, Services being purchased, Contract Price, etc. The Contract Particulars must be completed by the Commonwealth. An outline of the information to be included by the Commonwealth in the Contract Particulars is detailed below;
- **General Conditions of Contract for the Supply of Services (“Conditions of Contract”)** – the Conditions of Contract represent Defence’s standard terms and conditions for the procurement of low risk low value services; and
- **Special Conditions (Optional)** – in some circumstances Special Conditions may be attached to the Contract Particulars and will, in accordance with clause 3 of the Conditions of Contract, take precedence over the Conditions of Contract (see paragraph 6, Using Special Conditions in *ASDEFCON (Shortform Services)* below).

4 How to complete *ASDEFCON (Shortform Services)*

In order to complete *ASDEFCON (Shortform Services)*, the following information must be included in the relevant sections of the Contract Particulars:

Contractor

Details of the name and address of the Contractor. Where the Contractor is a company, the full company name and Australian Company Number (ACN) should be included. Avoid using business names which may confuse the actual legal entity involved;

Service Commencement Date/Expiry Date

Where the Services are to be provided between specified dates, details of the Service Commencement Date and Expiry Date. Otherwise the Contractor will be obliged to provide the Services on and from the date of execution of the Contract. If there is no Service Commencement Date and Expiry Date, the words “Not Applicable” should be inserted.

Note, however, unless the Services have a natural expiry date (for example, the contract contains a firm date for delivery of say, a final report) it is essential for the Contract to specify an actual ‘Expiry Date’.

Services

Details of the Services being provided including as applicable a description of the Services (including details of any deliverables or milestones), any service requirements, the location in which the Services are to be provided, the timing for the provision of the Services (including details of any milestone dates), the personnel to be used in the provision of the Services and any other requirements in relation to the provision of the Services;

Contract Price

Details of the Contract Price. This should be the GST inclusive price. Note that *ASDEFCON (Shortform Services)* requires agreement to a firm Contract Price. Details of the manner of payment of the Contract Price must also be included, e.g. one off payment following completion of the Services, payment of the Contract Price by way of instalments or the payment of achieved milestones. Where the Contract Price is to be paid by way of instalments or milestone payments, full details of the arrangements must be included;

Contract Officer

Details of the name, address, phone number and facsimile number of the Defence contact for the procurement;

Contractor

Point of contact details of the name, address, phone number and facsimile number of the Contractor for the procurement;

Insurance requirements

Details of any insurances which the Contractor is required to take out in addition to workers compensation insurance. If no additional insurances are required, insert the words “Not Applicable”. See also guidance below on “Insurance”; and

Special Conditions

Attach any Special Conditions which are required.

5 Summary of key obligations in ASDEFCON (Shortform Services)

This section provides an outline of the key obligations of the Commonwealth and the Contractor under *ASDEFCON (Shortform Services)*.

Commonwealth's Key Obligations

The Commonwealth's key obligations under *ASDEFCON (Shortform Services)* are to pay the Contract Price and any agreed out of pocket expenses in accordance with the requirements of the Contract (clause 9). This includes making payment to the Contractor within 30 days of receipt of a 'correctly rendered invoice'. An invoice is correctly rendered if it claims payment for Services that meet the requirements of the Contract and satisfies the other requirements of clause 10.1. Note that the Contract may provide for the payment of the Contract Price by way of a lump sum, instalments or milestone payments.

Contractor's Key Obligations

The Contractor's key obligations under *ASDEFCON (Shortform Services)* are to:

- provide the Services for the period, at the times and locations specified in the Contract Particulars and in accordance with the requirements of the Contract. The Contractor must promptly notify the Commonwealth if it becomes aware that it will be unable to comply with this obligation (clauses 2 and 5);
- use the personnel identified in the Contract Particulars (if any) or otherwise use appropriately qualified, skilled and experienced personnel (clause 5);
- comply with any Special Conditions attached to the Contract Particulars (clause 4);
- provide a 'correctly rendered invoice' in the appropriate form to the Commonwealth together with such verifying or supporting documentation reasonably required by the Commonwealth (clause 10);
- not use any Commonwealth Items (being information, including Confidential Information, property or facilities made available by the Commonwealth to the Contractor), for any purpose other than for the provision of the Services. The Contractor must protect all Commonwealth Items from loss or damage, maintain the Commonwealth Items in good order and promptly return the Commonwealth Items to the Commonwealth upon request by the Commonwealth, when they are no longer required to provide the Services or otherwise upon termination of the Contract (clause 15);
- comply with the requirements of the Privacy Act 1988 (Cth) (clause 23); and
- not disclose any Confidential Information to any third party without the prior written consent of the Commonwealth (clause 24).

6 Key provisions in ASDEFCON (Shortform Services)

This section summarises key provisions in *ASDEFCON (Shortform Services)*.

Price Basis

The Contract Price is a firm price and is inclusive of all:

- GST and all taxes, duties and government charges imposed or levied in Australia or overseas;
- remuneration to the Contractor's officers, employees, agents and subcontractors, including salaries, wages, fees, superannuation, annual leave, sick leave, long service leave and all other benefits to which any of them may be entitled under any contract with the Contractor or under any award, statute or at common law;
- costs in respect of procuring and maintaining insurances; and
- costs of compliance with all other statutory, award or other legal or contractual requirements with respect to the Contractor's officers, employees, agents and subcontractors (clause 12).

Late Payment

If the Contractor is a Small Business and the Contract Price is valued up to A\$1 million, the Contractor is entitled to claim simple interest calculated in accordance with clause 9 in the event of late payment by the Commonwealth of a 'correctly rendered invoice' (clause 10).

A Small Business is defined as being an enterprise that employs less than the full time equivalent of 20 persons on the day that the Contract is entered into. If the enterprise forms part of a group, this test is applied to the group as a whole.

Deduction from payment of Contract Price

The Commonwealth may deduct from any payment of the whole or part of the Contract Price any taxes, charges, insurance premiums or levies imposed by law upon the Commonwealth which are ordinarily required to be paid by the Contractor as a result of the Contractor providing the Services (clause 11).

Out of Pocket Expenses

Unless agreed otherwise, the Contractor must perform its obligations under the Contract at its own cost and the Contractor will not be entitled to be reimbursed for any out of pocket expenses incurred in providing the Services. Any entitlement of the Contractor to be reimbursed for out of pocket expenses must be specified in the Contract Particulars (clause 13).

Removal of Contractor Personnel

The Commonwealth may require the Contractor to remove any personnel from work in respect of the Services. The Contractor must promptly arrange

for their replacement with personnel of appropriate qualifications, skills and experience acceptable to the Commonwealth (clause 8).

Intellectual Property

- Ownership of all Foreground IP vests on its creation in the Commonwealth;
- The Contractor must grant (or ensure the grant) to the Commonwealth of a royalty free, irrevocable, non-exclusive, perpetual, world wide licence (including the right to sub-licence) of the Background IP to use, copy, adapt, expand, develop, publish or otherwise change, any pre-existing material; and
- The Contractor warrants the provision of the Services (and the Commonwealth's use of any deliverable or material developed or supplied under the Contract) will not infringe the Intellectual Property or moral rights of any person.

Quality

ASDEFCON (Shortform Services) contains a number of requirements and warranties in relation to the quality of the Services:

- the Contractor must provide the Services in a professional manner consistent with industry or professional best practice (clause 5);
- the Contractor must provide the Services to the satisfaction of the Contract Officer and in accordance with the directions of the Contract Officer as may be given from time to time (clause 5); and
- the Contractor warrants that:
 - the Services will be fit for the purpose or purposes for which services of that kind could be reasonably expected to be applied by the Commonwealth; and
 - the Services will be provided by appropriately qualified, skilled and experienced personnel (clause 14).

Failure to provide the Services

If the Contractor fails to deliver the Services in accordance with the terms of the Contract, the Commonwealth may:

- direct the Supplier to provide replacement Services at the Supplier's cost or take any other action to rectify any aspect of the Services which do not comply with the Contract (clause 6);
- if the Contractor does not provide replacement personnel acceptable to the Commonwealth where the Commonwealth requires the Contractor to remove any personnel from work in respect of the Services, terminate the Contract (clause 17);
- if the Contractor breaches the Contract and such breach is not capable of remedy, terminate the Contract (clause 17);
- if the Contractor fails to remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth, terminate the Contract (clause 17); and

- if the Contractor becomes bankrupt or insolvent, terminate the Contract (clause 17).

Termination for Convenience

The Commonwealth may at any time terminate the Contract or reduce the scope of the Contract by notifying the Contractor in writing. Following termination for convenience, the Commonwealth will be liable for payments to the Contractor for Services accepted before the date of termination and any reasonable costs incurred by the Contractor that are directly attributable to the termination (clause 18).

Insurance

The Contractor must effect and maintain:

- workers' compensation insurance in respect of those Contractor's officers, employees, agents and subcontractors involved in the provision of the Services;
- any insurances specified in the Contract Particulars; and
- such other insurances and on such terms and conditions as a prudent supplier, providing services similar to the Services, would procure and maintain (clause 20). For example, although Defence policy is to not contract directly with individuals (see "Contracting with Individuals" below), in rare circumstances this will be required. In such a circumstance the individual should be required to effect and maintain adequate personal income protection insurance. Details should be recorded in the Contract Particulars.

7 Using Special Conditions in ASDEFCON (Shortform Services)

Procurement officers may attach Special Conditions to the Contract Particulars. Special Conditions often relate to matters such as specific packaging requirements, the shelf life of the goods being purchased or special delivery instructions. Special Conditions should only be included where the procurement warrants the inclusion of Special Conditions and the Special Conditions have been pre-approved by Procurement and Contracting Branch.

Care needs to be taken in attaching any Special Conditions to the Contract Particulars in order to ensure that they are consistent with the Conditions of Contract or, where they are inconsistent, the inconsistency is intentional and fully understood. This is because the Special Conditions have priority over the Contract Particulars and the Conditions of Contract to the extent of any inconsistency.

Before including any Special Conditions, procurement officers should assess if the inclusion of the Special Condition changes the procurement from a simple low risk low value procurement to a complex or strategic procurement, e.g. where the Special Conditions change the risk allocation under the Contract or alters the nature of the Commonwealth's obligations under the Contract. Where a procurement activity is actually a complex or strategic procurement activity, the delegate should be advised that an alternate

template may be required, such as *ASDEFCON (Services)*, and that the appropriate delegations at that level will be required.

8 Amendments to *ASDEFCON (Shortform Services)*

Amendments to clauses in the Conditions of Contract must not be made unless they are approved by a person with a complex procurement competency; and where they are proposed to be a standard Special Condition clause, approved by Procurement and Contracting Branch.

9 Existing Arrangements

Those wishing to contract for the provision of services must, in the first instance, consider whether the services can be procured under an existing standing offer arrangement e.g. the DMOSS panel.

Where services are procured under an existing standing offer arrangement, the terms of the engagement will be governed by the relevant documentation establishing that arrangement.

10 Contracting with Individuals

It is Defence policy not to enter into a contract that will create an employee/employer relationship between Defence and any individual engaged under *ASDEFCON (Shortform Services)*.

Entering into a services contract with an individual increases the risk that the relationship will be treated as an employer/employee relationship. The creation of an employer/employee relationship may result in additional obligations or liabilities for Defence including in relation to superannuation contributions, PAYG tax, workers compensation and liability for the actions of the employee. Accordingly, it is strongly recommended that services contracts not be entered into with individuals. If there is a requirement to enter into a contract with an individual, the preferred contracting option is through a temporary employment contract. Procurement officers should refer to the *Defence Procurement Policy Manual* for more information.

11 Different types of service providers

To comply with Commonwealth reporting requirements, procurement officers must use the correct account code for ROMAN in order to distinguish between consultancy services, professional service providers and those services provided by a contractor. The person responsible for reporting in ROMAN will need to independently determine the nature of the services. Procurement officers should refer to the *Defence Procurement Policy Manual* for further guidance.

12 Further Information

For further information please see the *Defence Procurement Policy Manual* (and its related *Defence Procurement Policy Instructions*) or contact the Contracting Help Desk on 1800 100 605 or via contracting@defence.gov.au.