



Australian Government
Department of Defence

ASDEFCON

(Invitation to Register)

Incorporating:

Covering Letter

Conditions of Registration

Statement of Requirement



Australian Government
Department of Defence

FOREWORD

ASDEFCON (*Invitation to Register*) is used to seek expressions of interest from Industry to participate in a procurement process to fulfil a known Defence requirement.

More specifically, ASDEFCON (*Invitation to Register*) Version 1.0 should be used:

- in a staged procurement to break the procurement process into more manageable parts;
- to establish if respondents have the technical, managerial and/or financial capacity to satisfy the requirement;
- for high value Complex and Strategic procurements;
- to reduce the time spent by Defence in evaluating a large number of very complex and detailed tender responses; and
- to allow prospective suppliers sufficient time to explore licensing requirements and establish their team and any subcontracts.

In addition, ASDEFCON (*Invitation to Register*) Version 1.0 is designed to incorporate options to allow drafters to tailor the template for procurements that are both covered and non-covered, in line with the requirements of the *Commonwealth Procurement Guidelines - January 2005*.

As with other ASDEFCON templates, Defence has consulted widely with commercial and technical advisors and Defence procurement staff. A continuing program of active review in the development of ASDEFCON (*Invitation to Register*) will help ensure the template reflects lessons learned and incorporates best practice.

Future changes to ASDEFCON (*Invitation to Register*) will be managed through the issue of new versions of the template and Departmental Procurement Policy Instructions on an 'as required' basis. This process will ensure that template remains current with legislation, policy and procurement practices. Suggestions for changes to the document are welcomed and should be in the form of an ASDEFCON Document Change Proposal, referred to in the General Information for Users section.

I trust you find ASDEFCON (*Invitation to Register*) useful for your contracting needs.

A handwritten signature in black ink, appearing to read 'Gillian Marks', is written over a light grey background.

Gillian Marks
General Counsel, DMO
September 2005

GENERAL INFORMATION FOR USERS

USE OF ASDEFCON (INVITATION TO REGISTER)

1. ASDEFCON (*Invitation to Register*) is used to seek expressions of interest from Industry to fulfil a known Defence requirement.
2. ASDEFCON (*Invitation to Register*) is a proforma template used:
 - a. in a staged procurement to break the procurement process into more manageable parts and refine the market testing process;
 - b. generally for high value Complex and Strategic procurements;
 - c. to establish if respondents have the technical, managerial and/or financial capacity to satisfy the requirement;
 - d. to reduce the time spent by Defence 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.
3. ASDEFCON (*Invitation to Register*) should not be used to:
 - a. seek proposals or offers;
 - b. see indicative pricing;
 - c. require unpaid research and development; or
 - d. require the creation of any intellectual property by the respondent.
4. ASDEFCON (*Invitation to Register*) is designed to be used for procurements that are both covered and non-covered for the purposes of the *Commonwealth Procurement Guidelines – January 2005*. For information on whether a procurement is covered see the *Defence Procurement Policy Manual (DPPM)*. The version of the DPPM referred to throughout ASDEFCON (*Invitation to Register*) is referenced in the Glossary at Annex C to the draft conditions of registration.

STAGED PROCUREMENT

5. ASDEFCON (*Invitation to Register*) governs the first stage of a staged procurement. To ensure that the ITR is conducted consistently with other planned stages, drafters should ensure that the information requested from Respondents:
 - a. does not overlap or duplicate unnecessarily information requested in later stages;
 - b. is not so detailed or onerous that no value is obtained from conducting an initial screening process like an ITR;
 - c. is consistent with the level of detail provided in the Statement of Requirement on the Commonwealth's capability requirements; and
 - d. is sufficient to shortlist Respondents for a later procurement process.
6. Subsequent documentation should:
 - a. reflect that the procurement process is restricted to the Respondents that participated in this ITR process, or to companies that meet the requirements of this ITR process;
 - b. allow evaluators to use and compare information provided and positions established by Respondents during this ITR process to analyse and evaluate the information provided in the later procurement process
 - c. allow evaluators to reject companies that modify or revise the position or information originally proposed or who provide information inconsistent with that provided in this ITR process; and
 - d. not request information (except supplementary information) provided in this ITR process, or used to shortlist Respondents for this ITR process.

7. Other ASDEFCON templates have been developed for use as part of single procurement process. If a subsequent procurement process (like a request for tender) is to be governed by an ASDEFCON template, guidance should be sought from a contracting specialist to modify that template accordingly.

STRUCTURE AND FORMAT OF ASDEFCON (INVITATION TO REGISTER)

8. *ASDEFCON (Invitation to Register)* contains the following sections, which are also depicted in the attached flow chart:
 - a. Preliminary pages;
 - b. Covering Letter;
 - c. Part 1: Conditions of Registration – including Annexes; and
 - d. Part 2: Statement of Requirement.
9. The clauses and annexes constituting *ASDEFCON (Invitation to Register)* have been divided into two categories, 'Core' and 'Optional'. Any condition within *ASDEFCON (Invitation to Register)* described as:
 - a. 'Core' must be included in all ITRs; and
 - b. 'Optional' must be included in an ITR if required for the particular project requirements.

All references to 'Core' and 'Optional' should be deleted prior to ITR release.

10. The structure of *ASDEFCON (Invitation to Register)* should be retained regardless of whether clauses have been modified or deleted or whether new clauses have been inserted.
11. If 'Optional' clauses in *ASDEFCON (Invitation to Register)* are not applicable to the particular purchase, the clause title should be replaced with 'Not Used' and the numbering sequence should be retained. If new clauses are added they should be included at the end of the most relevant section of the document. If new clauses must be inserted between existing clauses an alpha suffix (e.g. clause 4.1, 4.1A, 4.2 etc) or equivalent regime should be used.
12. *ASDEFCON (Invitation to Register)* also contains 'Options' within clauses where the drafter is required to choose from two or more alternatives. A brief note describing the circumstances in which an 'Option' must be used precedes the clause. 'Options' not selected for use should be deleted in their entirety prior to ITR release and the clause title replaced with 'Not Used'.
13. *ASDEFCON (Invitation to Register)* contains notes to drafters and Respondents, which provide guidance during the preparation of the ITR and industry Responses. All notes to drafters should be deleted prior to release of the ITR to industry.
14. There are instances in the conditions of registration and draft statement of requirement of the ITR where additional details are required prior to the release of the ITR to industry. These are marked in the document as follows:

[...BRIEF INDICATION OF INFORMATION REQUIRED TO BE INSERTED PRIOR TO ITR RELEASE...] i.e. square brackets.

FURTHER ADVICE

15. For further advice on the use of this template and the provisions included in this template, users should in the first instance contact a procurement officer in their Group or Division.
16. Where a procurement officer has not been assigned by the Group or Division, users may contact the General Counsel Division through the Contracting Help Desk email or phone number that is found on the internal Defence National Telephone Directory. Further guidance on the services provided by General Counsel Division can be obtained from DPPI No. 6/2005.

TAILORING OF ASDEFCON (INVITATION TO REGISTER) CLAUSES

17. The aim of developing standard tendering and contract documents, such as *ASDEFCON (Invitation to Register)*, is to standardise, to the maximum extent practicable, the structure, and the terms and conditions used by Defence when acquiring goods and services. This has the benefit of reducing administrative costs for both Defence and respondents and allows Defence to adopt a standard portfolio approach to contracting for goods and services in line with best practice.
18. ITRs should be prepared in consultation with the relevant procurement officer. Users should also consult the *ASDEFCON (Invitation to Register) Handbook* which provides guidance against all parts of the template.
19. Wherever possible, the form of the template should be adhered to and project specific tailoring of *ASDEFCON (Invitation to Register)* should be kept to a minimum. However, when tailoring is necessary, clauses should only be added, modified or deleted after seeking advice in accordance with paragraphs 15 to 16.

REPORTING OF VARIATIONS AND EXPERIENCE IN THE USE OF THE ASDEFCON SUITE

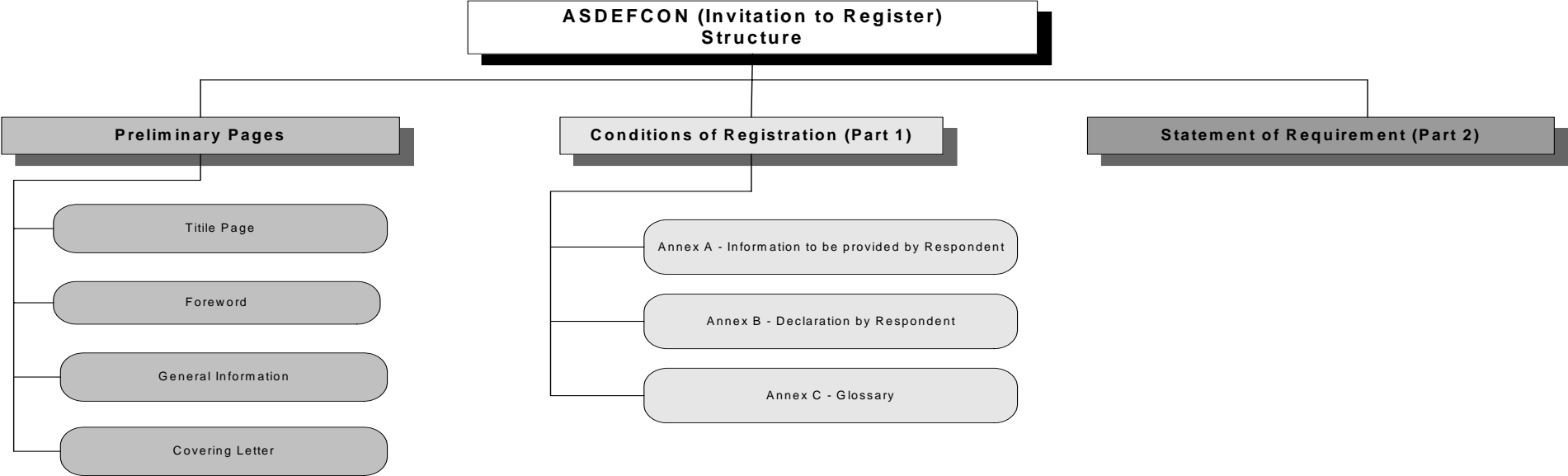
20. Prior to an ITR based on *ASDEFCON (Invitation to Register)* being submitted to the Project Director for approval (or where no Project Director exists, to the delegate approving the ITR) a matrix of changes must be completed. The aim of the matrix of changes is to facilitate the internal review process and provide notification to industry of areas that vary from the standard *ASDEFCON (Invitation to Register)*.
21. The Project Director or delegate approving the ITR is responsible for ensuring that the completed matrix of changes is provided to GCD. These documents should be provided either directly to the procurement officer who is assisting with ITR development or to the Contracting Help Desk.
22. Collectively this information will provide feedback on the use of the ASDEFCON templates and ensure that the suite is subject to continuous improvement and that it reflects best practice.

CHANGES TO ASDEFCON (INVITATION TO REGISTER)

23. *ASDEFCON (Invitation to Register)* is a dynamic document that will be amended on an 'as required' basis to reflect changes in legislation, policy and procurement practices. Template users are also welcome to suggest changes to the template by using a Document Change Proposal (DCP) proforma. A copy of the form can be downloaded from the addresses specified at paragraph 25.
24. Changes to *ASDEFCON (Invitation to Register)* will be released through the issue of a new version of the template. All new versions of the template will be issued on the DEFWEB and internet sites listed in paragraph 25.

DISSEMINATION OF ASDEFCON (INVITATION TO REGISTER)

25. *ASDEFCON (Invitation to Register)* can be downloaded from the DEFWEB via the 'Contracting – General Counsel Division' link on the DMO homepage at the following address:
<http://intranet.defence.gov.au/dmoweb>
or from the internet via the 'Contracting' link on the DMO homepage at the following address:
<http://www.defence.gov.au/dmo>
26. The *ASDEFCON (Invitation to Register) Handbook* can be downloaded from the same address as the template. The *ASDEFCON (Invitation to Register) Handbook* has been designated 'Commercial-In-Confidence – Defence Use Only'.
27. *ASDEFCON (Invitation to Register)* and its associated handbook are not available in hardcopy from GCD.





Australian Government
Department of Defence

[...INSERT DEFENCE GROUP...]

[...INSERT DIVISION...]

[...INSERT RESPONDENT'S ADDRESS...]

You are invited to provide a response to Invitation to Register [...INSERT ITR NUMBER...] indicating the extent of your willingness and capacity to provide [...INSERT DESCRIPTION OF SUPPLIES...].

[...INSERT BACKGROUND FROM CLAUSE 1.1 OF CONDITIONS OF REGISTRATION...]

This ITR comprises:

- a. this Covering Letter;
- b. Part 1 – Conditions of Registration;
- c. Annexes to the Conditions of Registration; and
- d. Part 2 – Statement of Requirement.

Responses must be submitted by the Response Closing Time specified in clause 3.1 of the conditions of registration. Any questions in relation to this ITR should be directed to the Contact Officer specified in clause 2.5 of the conditions of registration.

Note to drafters: If classified material forms part of the ITR, you should seek advice from your procurement officer who can provide clauses for identification of and access to classified documents for insertion here.

Option: For when funding for the procurement has not yet been approved.

Responses must be submitted on the basis that funding for this procurement has not yet been approved and that the Commonwealth may, in accordance with the conditions of registration, decide not to proceed with this ITR process or any further procurement process.

Subject to the conditions of registration, the proposed schedule for conducting the ITR process is:

[...INSERT RELEVANT DATES FROM ITR...].

Respondents should note that the above schedule is subject to change at any time and is not to be relied on by Respondents.

Yours sincerely

[...INSERT RELEVANT SIGNATORY...]

[...INSERT DATE...]

**PART 1 - CONDITIONS OF REGISTRATION
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1 GENERAL

1.1 General (Core)

Note to drafters: This clause should include a broad acquisition strategy, including indicative timings for key activities and a sufficient description of the requirement to enable prospective Respondents to determine their ability to meet the requirement. The list in clause 1.1.3 is not exhaustive and is entirely dependent on the nature of this ITR. The requirements should reflect the nature of the task and highlight the relevant features of the required work.

- 1.1.1 The Commonwealth requires [...DRAFTER TO INSERT DESCRIPTION OF REQUIREMENT...].
- 1.1.2 Following this ITR process, the Commonwealth proposes to conduct a [...DRAFTER TO DESCRIBE THE PROPOSED NEXT STAGES AND TIMINGS OF THE PROCESS E.G. RFT PROCESS...].
- 1.1.3 In conducting this ITR, the Commonwealth is seeking an outcome that will:
- a. identify potential suppliers capable of fulfilling Defence's requirements;
 - b. establish if Respondents have the technical, managerial or financial capacity to satisfy the requirements;
 - c. reduce the time spent by Defence in evaluating a large number of very complex and detailed Responses;
 - d. allow prospective suppliers sufficient time to explore licensing requirements and establish their team and subcontractors;
 - e. determine the Commonwealth's approach to any subsequent procurement process; and
 - f. [...INSERT SPECIFIC OUTCOMES IF ANY...].
- 1.1.4 The Commonwealth may, at any time, alter its requirements, process or outcomes described in this clause 1.1.

1.2 Interpretation of Invitation to Register (Core)

Note to drafters: Prior to any ITR release, the Glossary at Annex C should be updated.

- 1.2.1 In this ITR, unless the contrary intention appears:
- a. headings are for the purpose of convenient reference only and do not form part of this ITR;
 - b. the singular includes the plural and vice-versa;
 - c. a reference to one gender includes the other;
 - d. a reference to a person includes a body politic, body corporate or a partnership;
 - e. if the last day of any period prescribed for the doing of an action falls on a day, which is not a Working Day, the action shall be done no later than the end of the next Working Day;
 - f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
 - g. a reference to a clause includes a reference to a subclause of that clause;
 - h. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication or document, in effect on the date of

release of this ITR or alternatively, a reference to a revised version of the document if agreed in writing between the parties;

- i. the word 'includes' in any form is not a word of limitation;
 - j. a reference to a party includes that party's administrators, successors, and permitted assigns, or its officers, employees, agents or advisers; and
 - k. defined terms used in this ITR have the meaning set out in Annex C.
- 1.2.2 This ITR must not be construed, interpreted, or relied upon, whether by expression or implication, as an offer capable of acceptance by any person, or as creating any form of contractual, quasi-contractual, restitutionary or promissory estoppel rights, or rights based upon similar legal or equitable grounds.

1.3 Inconsistency (Core)

- 1.3.1 If there is an inconsistency between any part of this ITR, a descending order of precedence shall be accorded to the:
- a. conditions of registration;
 - b. the Glossary in Annex C to the conditions of registration;
 - c. Annexes A to B to the conditions of registration;
 - d. Statement of Requirement including annexes, if any;
 - e. covering letter; and
 - f. any other document expressly incorporated by reference,
- so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

1.4 Amendment of the Invitation to Register (Core)

- 1.4.1 The Commonwealth may, at its discretion, add to, vary modify or amend this ITR by:
- a. giving the Respondents timely written notice of such addition, variation or amendment; or
 - b. if this ITR has been published through AusTender, issuing a formal amendment via AusTender.

Note to Respondents: If this ITR has been published through AusTender, Respondents should register with AusTender to receive notification of amendments to this ITR made through the AusTender internet site at <http://www.tenders.gov.au>.

- 1.4.2 Respondents will have no claim against the Commonwealth in connection with either the exercise of, or failure to exercise its discretion.
- 1.4.3 If the Commonwealth adds to, varies, modifies or amends this ITR under clause 1.4.1 after Responses have been submitted, it may seek amended Responses.
- 1.4.4 The Commonwealth accepts no responsibility if a Respondent fails to become aware of any alteration, correction or notice, which would have been apparent from a visit to the AusTender internet site, or fails to implement any written notice of an amendment provided by the Commonwealth under 1.4.1.
- 1.4.5 Any amendment made to this ITR in accordance with this clause 1.4.1 will take precedence over any other version of this ITR or amendment if there is any inconsistency.

1.5 Termination of Invitation to Register Process (Core)

Note to drafters: For information on whether a procurement is covered see the DPPM – Section 1, Chapter 1.2.

Option: For when the procurement is a non-covered procurement

- 1.5.1 Without limiting its rights at law or otherwise, the Commonwealth may, at its discretion, suspend, defer or terminate this ITR process at any time. The Commonwealth must notify Respondents to this effect.

Option: For when the procurement is a covered procurement.

- 1.5.2 Without limiting its rights at law or otherwise, the Commonwealth may, at its discretion, suspend, defer or terminate this ITR process where:
- a. it is in the public interest to do so;
 - b. no Respondent meets the Conditions for Participation, if any, at clause 5.4; or
 - c. no Respondent meets the requirements, if any, identified as essential in the Statement of Requirement, and
- the Commonwealth must notify Respondents to this effect.

1.6 Other Commonwealth Rights (Core)

- 1.6.1 Without limiting the Commonwealth's rights in this ITR, the Commonwealth may at any time during this ITR process, select one or more Respondents to conduct any procurement process.

Option: For when the procurement is a non-covered procurement.

- 1.6.2 Despite any indication by the Commonwealth as to the conduct of any subsequent procurement process, including that any subsequent procurement process will occur, the Commonwealth may:
- a. undertake a different procurement process, with or without the Respondent;
 - b. not complete this ITR process; or
 - c. not conduct any subsequent procurement process.

- 1.6.3 Any time or date in this ITR is for the convenience of the Commonwealth. The establishment of a time or date in this ITR does not create an obligation on the part of the Commonwealth to take any action or exercise any right established in this ITR or otherwise. The Commonwealth will notify affected Respondents of any changes to this ITR or ITR process in accordance with clause 1.4, but will not be obliged to provide any reasons for its actions.

1.7 Australian Government Requirements (Core)

Note to drafters: Prior to ITR release the Glossary at Annex C should be updated to reflect the version of the following documents and policies current at the time of ITR release. Version numbers should not be included in this clause as they are set out in the Glossary at Annex C.

Note to Respondents: The Glossary lists the version of the following documents and policies current at the time of ITR release.

- 1.7.1 Respondents should familiarise themselves with the following Commonwealth policies:
- a. Australian Government Policy and Guidance on Industry Development and Local Purchasing as detailed in the DPPM, Section 3, Chapter 3.12;
 - b. Company ScoreCard policy as detailed in the *Defence Company ScoreCard Policy Statement*;
 - c. Conflict of Interest policy as detailed in the DPPM, Section 3, Chapter 3.13;

- d. Contract publication policy as detailed in the DPPM, Section 5, Chapter 5.8;
- e. Defence Equity and Diversity policy as detailed in the *Defence Plain English Guide to the Managing and Reporting Unacceptable Behaviour*, DPI 1/2001; and DI(G) PERS 35-3;
- f. Equal Opportunity for Women in the Workplace policy as detailed in the DPPM, Section 3, Chapter 3.10;
- g. Freedom of Information policy as detailed in the DPPM, Section 3, Chapter 3.13;
- h. Hazardous Substances policy as detailed in the DPPM, Section 3, Chapter 3.14;
- i. Industry Capability Network as detailed in the DPPM, Section 3, Chapter 3.12;

Option: For when the procurement is valued at or in excess of \$5 million.

- j. Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the DPPM, Section 3, Chapter 3.10; and
- k. Ozone Depleting Substances policy as detailed in the DPPM, Section 3, Chapter 3.16.

Note to Respondents: An electronic version of the DPPM can be accessed via the 'Contracting' link on the DMO internet site at <http://www.defence.gov.au/dmo/>. An electronic version of the Defence Equity and Diversity policies can be accessed at <http://www.defence.gov.au/equity/>. An electronic version of the Company ScoreCard policy can be accessed at the 'Business' section via the 'Industry Resources' link on the DMO internet site at <http://www.defence.gov.au/dmo/>. The AusTender internet site may be found at <http://www.tenders.gov.au/>.

- 1.7.2 Respondents acknowledge that as a Commonwealth agency, Defence is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of this ITR process.

2 RESPONSE PREPARATION

2.1 Respondents to Inform Themselves (Core)

- 2.1.1 The Commonwealth makes no representations or warranties that the information in this ITR or any information communicated or provided to Respondents during this ITR process is, or will be, accurate, current or complete.
- 2.1.2 Respondents are responsible for:
- a. examining this ITR, any documents referenced in or attached to this ITR and any other information made available by the Commonwealth to Respondents in connection with this ITR process;
 - b. obtaining and examining all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their Responses; and
 - c. satisfying themselves as to the accuracy and completeness of their Responses.
- 2.1.3 Respondents prepare and lodge a Response based on the Respondents' acknowledgment and agreement that:
- a. they do not rely on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending these conditions other than as expressly stated by the Commonwealth in writing;
 - b. they have relied entirely upon their own inquiries and inspection in respect of the subject of their Response; and
 - c. they are aware of Part V of the *Trade Practices Act 1974*, and Division 137 of the *Criminal Code* under which giving false or misleading information is a serious offence.

2.2 Language and Measurement (Core)

- 2.2.1 Any Response, including all attachments and supporting documentation, must be written in English.
- 2.2.2 All measurements must be expressed in Australian legal units of measurement unless otherwise specified in this ITR.

2.3 Response Preparation (Core)

- 2.3.1 Unless otherwise agreed, Respondents must complete and provide the information requested in the Annexes to these conditions of registration and must do so in the manner requested in the Annexes to these conditions of registration.

2.4 Responsibility for Response Costs (Core)

- 2.4.1 The Respondent's participation in any stage of this ITR process, or in relation to any matter concerning this ITR, is at the Respondent's sole risk, cost and expense. The Commonwealth will not be responsible for any costs or expenses incurred by any Respondent in preparation or lodgment of a Response or taking part in this ITR process.
- 2.4.2 In addition to clause 1.2.2, the Commonwealth is not liable to the Respondent for any costs on the basis of any promissory estoppel, quantum meruit or any other contractual, quasi contractual or restitutionary grounds whatsoever as a consequence of any matter or thing relating to, or incidental to the Respondent's participation in this ITR process, including without limitation, instances where:
- a. a Respondent is not invited to participate in any subsequent procurement process;

- b. the Commonwealth varies or terminates the evaluation and selection process;
- c. the Commonwealth decides not to proceed with this ITR process;
- d. the Commonwealth's defence capability requirements change; or
- e. the Commonwealth exercises any other right under this ITR or at law.

2.5 Contact Officer for Invitation to Register Inquiries (Core)

- 2.5.1 The Contact Officer for this ITR is:
[...INSERT CONTACT OFFICER DETAILS...]
- 2.5.2 Respondents must direct any questions regarding this ITR to the Contact Officer in writing.
- 2.5.3 Respondents submit questions or requests for clarification on the basis that the Commonwealth may circulate the Respondent's inquiry and Commonwealth's answer to all other Respondents without disclosing the source of the inquiry or revealing Commercial-in-Confidence Information or the substance of the proposed Response.

2.6 Preparation and Transmission of Classified Responses (Core)

- 2.6.1 Classified content in Responses must be avoided if possible. If this cannot be achieved, Respondents should seek advice from the Contact Officer in clause 2.5 on how Responses containing classified content must be prepared and transmitted.

2.7 Defence Security Clearance Requirements (Core)

- 2.7.1 On request by the Commonwealth, the Respondent must comply with the Commonwealth security clearance process, including obtaining the level of security clearance required by the Commonwealth.

3 RESPONSE LODGMENT

3.1 Lodgement of Responses (Core)

- 3.1.1 Responses must be lodged in accordance with the Tender Lodgment Procedures and Late Tenders policy detailed in the DPPM, on or before 12.00 pm local time on [...INSERT DATE...] (the 'Response Closing Time') at:
[...INSERT TENDER BOX ADDRESS...]
- 3.1.2 The Respondent must include [...INSERT ITR NUMBER...] on the packaging of the Response.

3.2 Copies of Responses (Core)

- 3.2.1 The Respondent must lodge the original and [...INSERT NUMBER OF COPIES...] copies of the Response and any supporting documentation (such as brochures, handbooks and sample drawings). The original must be marked as the original and each copy sequentially marked with a copy number. In the event of any discrepancy between any copy and the original, the original must take precedence.
- 3.2.2 The Respondent must, in addition to lodging the hard copies required by clause 3.2.1, lodge with the original Response one electronically stored copy of the Response and supporting documentation, with read only access, which is machine readable in [...INSERT FORMAT...] format. In the event of any discrepancy between any electronically stored copy and the original, the original must take precedence.
- 3.2.3 The Commonwealth may, but is not obligated to, review or consider any supporting documentation.
- 3.2.4 Responses must not exceed any page limits specified in Annex A. The Commonwealth may not consider any part of a Response which is in excess of any specified page limit.

3.3 Alterations, Erasures or Illegibility (Core)

- 3.3.1 Any alterations or erasures made to a Response by a Respondent must be initialled by that Respondent. Responses containing alterations or erasures that are not initialled, or pricing or other information that is not stated clearly and legibly, may be excluded from consideration.

4 MATTERS CONCERNING RESPONSES

4.1 Collusive Bidding (Core)

- 4.1.1 Respondents must not engage in any collusive bidding, anti-competitive conduct, or any other similar conduct in relation to:
- a. the preparation or lodgment of Responses; and
 - b. the evaluation and clarification of Responses,
in respect of this ITR or ITR process or any other procurement process being conducted by the Commonwealth in respect of its defence capability requirements.
- 4.1.2 For the purposes of clause 4.1.1, collusive bidding, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) unless the disclosure, exchange or clarification is otherwise permitted by this ITR.
- 4.1.3 In addition to any other remedies available under any law or any contract, the Commonwealth may, at its discretion, immediately reject any Response lodged by a Respondent that, in the Commonwealth's reasonable opinion, has engaged in any collusive or anti-competitive conduct, or any other similar conduct with any other Respondent or any other person in relation to the preparation or lodgement of Responses whether in respect of this ITR or ITR process or any other procurement process being conducted by the Commonwealth in respect of its defence capability requirements.

4.2 Unlawful Inducements (Core)

- 4.2.1 Respondents must, at all times during the ITR process, comply with any applicable laws or Commonwealth policies regarding the offering of unlawful inducements in connection with the preparation of their Response.

4.3 Improper Assistance (Core)

- 4.3.1 Responses that, in the opinion of the Commonwealth, have been compiled:
- a. with the improper assistance of employees of Defence or former employees of Defence or contractors or former contractors of Defence;
 - b. with the utilisation of information unlawfully obtained from the Commonwealth;
 - c. in breach of an obligation of confidentiality to the Commonwealth; or
 - d. contrary to the conditions of registration in this ITR,
- may be excluded from further consideration.

4.4 Use of Former Defence Personnel in Response Preparation (Core)

- 4.4.1 Without limiting the operation of clause 4.3, a Respondent must not, in the absence of written approval from the Commonwealth, permit a person to contribute to, or participate in, any process relating to the preparation of the Respondent's Response or the ITR process, if the person:
- a. at any time during the six months immediately preceding the date of issue of this ITR, was an employee of, service provider to, or otherwise engaged by Defence ('Employee of Defence');
 - b. at any time during the 12 months immediately preceding the date of issue of this ITR, was an Employee of Defence involved in the planning or performance of the project or activity to which the ITR relates; or

- c. at any time, was an Employee of Defence involved in the preparation of this ITR or management of the ITR process.

4.5 Conflict of Interest (Core)

- 4.5.1 A Respondent must not, and must ensure that its officers, employees, agents and advisers do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Commonwealth and the Respondent's interests during this ITR process.
- 4.5.2 If during the ITR process a conflict of interest arises, or appears likely to arise, the Respondent must notify the Commonwealth immediately in writing and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict. If the Respondent fails to notify the Commonwealth or is unable to resolve or deal with the conflict as required, the Respondent may be excluded from further consideration.

4.6 Use of Response Documents (Core)

- 4.6.1 All Response documents submitted in response to this ITR become the property of the Commonwealth. Respondents submit documents in response to this ITR on the basis that the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:
- a. preparation and conduct of any procurement process subsequent to this ITR;
 - b. verifying the currency, consistency and adequacy of information provided under any other procurement process conducted by the Commonwealth; and
 - c. subject to its IP and Commercial-in-Confidence obligations, the development of any other procurement process conducted by the Commonwealth.
- 4.6.2 In addition to clause 4.6.1, the Commonwealth may disclose all or part of the Response documents to a third party for the purposes of assisting the Commonwealth in the conduct of this ITR process and any future procurement process, including evaluation, negotiation and preparation of any contract. The Commonwealth may, at its discretion, obtain appropriate confidentiality undertakings from the third party prior to disclosure.
- 4.6.3 Nothing in this clause 4.6 changes or affects the ownership of IP in the information contained in the Response documents.

4.7 Teaming Arrangements (Optional)

Note to drafters: Defence has a policy of contracting only with one supplier for each requirement. This clause should be included if an assessment of the market indicates that no one supplier may be able to meet the Statement of Requirement or that value for money will be achieved in the procurement process by encouraging teaming or partnering arrangements.

- 4.7.1 Respondents may provide a Response that:
- a. meets all of the elements of the Statement of Requirement;
 - b. meets one, or some of the elements of the Statement of Requirement; or
 - c. reflects the Respondent's capacity to integrate or coordinate the work of other contractors to meet the Statement of Requirement.
- 4.7.2 The Commonwealth may in accordance with the Information Privacy Principles of the *Privacy Act 1988*, if applicable and otherwise in its discretion provide a list of all Respondents that provided a Response in accordance with clause 4.7.1b or 4.7.1c, to any Respondent or to any other prospective supplier to facilitate the development of teaming arrangements, for the purposes of any subsequent procurement process.
- 4.7.3 Responses provided in accordance with clause 4.7.1b or 4.7.1c must include sufficient information to allow comparison of the Response with Responses provided in accordance with clause 4.7.1a.

- 4.7.4 Failure to provide the information requested in clause 4.7.3 may result in the Commonwealth excluding the Respondent from further consideration.

5 COMPETITIVE SELECTION PROCESS

5.1 Response Presentations (Optional)

- 5.1.1 The Commonwealth may, at any time after the Response Closing Time and having provided Respondents with reasonable notice, require any or all Respondents to provide a presentation on their respective Responses at [...INSERT LOCATION...].

5.2 Response Evaluation (Core)

- 5.2.1 Responses will be evaluated utilising the Response evaluation criteria at clause 6. No Response will necessarily be shortlisted by the Commonwealth.
- 5.2.2 The Commonwealth may:
- a. consider additional information related to any evaluation criteria;
 - b. use material provided in response to one evaluation criterion in the evaluation of other criteria; or
 - c. subject to its IP and Commercial-in-Confidence obligations, use material provided by the Respondent in other procurement processes conducted by the Commonwealth for purposes consistent with the Commonwealth's procurement objectives.
- 5.2.3 If additional criteria are intended to be applied for the purposes of evaluation, the Commonwealth will notify Respondents in accordance with clause 1.4 who will be given an opportunity to respond.
- 5.2.4 Responses which are incomplete or clearly non-competitive may be either excluded from consideration at any time during the evaluation process at the Commonwealth's discretion or the Commonwealth may consider such Responses and seek clarification under clause 5.5.
- 5.2.5 If a Respondent is found to have made a false, misleading or deceptive claim or statement, the Commonwealth may exclude the Response from further consideration at any time.

5.3 Minimum Content and Format Requirements (Optional)

Note to drafters: This clause should be used when the procurement is a covered procurement.

- 5.3.1 Subject to the Respondent being allowed to correct any unintentional errors of form, the Commonwealth will exclude a Response from further consideration if the Commonwealth considers that:
- a. the Response does not meet the requirements set out in clause 2.2; or
 - b. the Respondent has not provided a signed Declaration by Respondent in the form required at Annex B to the conditions of registration.

5.4 Conditions for Participation (Optional)

Note to drafters: This clause should be used when the procurement is a covered procurement.

- 5.4.1 The Commonwealth will exclude a Response from further consideration if the Commonwealth considers that the Respondent does not comply with:
- a. the Commonwealth's security requirements set out in clause 2.6 and 2.7; or
 - b. the requirements (if any) identified as essential in the Statement of Requirement.

5.5 Clarification (Core)

- 5.5.1 The Commonwealth may at any time during this ITR process, seek clarification from and enter into discussions with any or all of the Respondents in relation to their Responses.
- 5.5.2 The Commonwealth may seek additional information in respect of any aspect of a Response at any time. The Commonwealth may use such information in interpreting the Response and in evaluating the risk to the Commonwealth of inviting the Respondent to participate in any subsequent procurement process.
- 5.5.3 The Commonwealth is not under any obligation to take into account additional information provided by a Respondent in response to a request or consider additional information which would result in a Respondent obtaining an unfair advantage over other Respondents.
- 5.5.4 Subject to clause 2.5, Respondents may seek clarification of the meaning of the content of this ITR, or request additional information beyond that contained in this ITR or briefings, if any, from the Contact Officer up until five Working Days prior to the Response Closing Time.

5.6 Shortlisting (Core)

- 5.6.1 The Commonwealth may set aside or develop a shortlist of one or more Respondents at any time during this ITR process. Shortlisting will be conducted on the basis of an assessment of the Responses against the requirements of this ITR and Respondents that are not included on any shortlist will not generally be considered in any subsequent procurement process.
- 5.6.2 Participation in this ITR process does not entitle the Respondent to participate in any subsequent process. Participation in any subsequent process is not limited to Respondents who participate in this ITR process.

Option A: For when the procurement is a non-covered procurement.

- 5.6.3 The Commonwealth may invite additional tenderers to participate in any subsequent procurement process, irrespective of whether or not such additional tenderers submitted a Response.

Option B: For when the procurement is a covered procurement.

- 5.6.4 Subject to clause 5.6.5, the Commonwealth may invite additional tenderers to participate in subsequent procurement process, irrespective of whether or not such additional tenderers submitted a Response.
- 5.6.5 The Commonwealth will not invite additional tenderers unless in the Commonwealth's opinion, those potential tenderers have satisfied the requirements for being shortlisted under this ITR.

5.7 Debriefing of Respondents (Core)

- 5.7.1 The Commonwealth will notify unsuccessful Respondents at the conclusion of this ITR process.
- 5.7.2 Respondents may request a debriefing following the conclusion of this ITR process. Respondents requiring a debriefing should contact the Contact Officer specified in clause 2.5.1 of this ITR.
- 5.7.3 If a debriefing is requested under clause 5.7.1, Respondents will be debriefed against the evaluation criteria contained in clause 6. In accordance with Commonwealth policy, a Respondent will not be provided with information concerning other Responses, except for publicly available information such as the name of successful Respondent(s). No comparisons with other Responses will be made.

6 RESPONSE EVALUATION CRITERIA

6.1 Response Evaluation Criteria (Core)

Note to drafters: Additional or alternative evaluation criteria may be included in the following list where appropriate.

Option A: For when the procurement is a covered procurement.

6.1.1 Subject to clauses 5.2 to 5.4, the criteria to be applied for the purposes of evaluation are as follows, not in any order of importance:

Option B: For when the procurement is a non-covered procurement.

6.1.2 Subject to clause 5.2, the criteria to be applied for the purposes of evaluation will include the following, not in any order of importance:

- a. past performance of contractual obligations of the Respondent and any subcontractors or team nominated in its Response;
- b. the Respondent's degree of overall compliance with this ITR;
- c. the extent to which the Response meets the technical, functional, operational and performance requirements of the Statement of Requirement, including any specifications;
- d. the nature and extent to which the Response identifies risks to the Commonwealth or to the Contractor's capacity to meet the Commonwealth's requirements;
- e. the proposed corporate structure and the financial and corporate viability of the Respondent to provide the Supplies; and
- f. the Respondent's demonstrated technical and managerial capability to meet the requirements of the Statement of Requirement.

ANNEX A**INFORMATION TO BE SUPPLIED BY RESPONDENTS (CORE)**

Note to drafters: Specify any page limits here – either a total page limit or for each question or section.

1 RESPONDENT'S ABILITY TO SUPPLY (CORE)

1.1 Respondents are to provide the following information:

- a. details of the Respondent's background, experience and resources relevant to its ability to meet the requirement;
- b. the proposed corporate structure and the financial and corporate viability of the Respondent to fulfil contract obligations;
- c. the following details of the Respondent as applicable:
 - i. the full name of the Respondent, including any trading or business name;
 - ii. if a company, the registered office, principal place of business and an outline of the company structure;
 - iii. particulars of any foreign national, foreign bodies etc in a position to exercise or influence control over the Respondent;
 - iv. for a foreign firm or company, details of its registration, incorporation and place of business in Australia and the name of any Australian representative and it's A.B.N./A.R.B.N. (if any);
 - v. if an Australian company it's A.C.N. and A.B.N.

1.2 For each subcontractors or team member nominated by the Respondent in its Response, the Respondent must provide the information specified in clause 1.1.

2 IDENTIFICATION OF RISKS (CORE)

Note to Respondents: Respondents should provide details of any benefits to the Commonwealth as a result of their Response in their Response Against the Statement of Requirement.

2.1 Respondents are to indicate any risks that might prevent or limit the Respondent's capacity to meet the Statement of Requirement in whole or in part, due to, but not limited to:

- a. achievability of the Commonwealth's proposed schedule;
- b. access to, or use of critical personnel, subcontractors or resources;
- c. qualifications, competencies or certifications required;
- d. Commonwealth resources required;
- e. access to, or use of Intellectual Property or Commercial-in-Confidence information, whether owned by, or licensed to or from the Commonwealth or any other party

ANNEX A

- including any proposed subcontractor;
- f. industry development;
 - g. insurances held or required;
 - h. the provision or use of warranties or indemnities;
 - i. occupational health and safety implications;
 - j. export and import approvals required;
 - k. proposed use of or management of ozone depleting or hazardous substances;
 - l. Commonwealth access to the Respondent's premises and records or the premises and records of any proposed subcontractors (if any);
 - m. technical and managerial risks associated with the Commonwealth's proposed requirements;
 - n. the Commonwealth's security requirements; and
 - o. [...INSERT PROCUREMENT SPECIFIC ISSUES IF ANY...].
- 2.2 For risks identified in accordance with clause 2.1, Respondents should also indicate how they intend to reduce, mitigate or otherwise manage those risks.

3 RESPONSE AGAINST THE STATEMENT OF REQUIREMENT (CORE)

Note to drafters: If the Responses to the Statement of Requirement is required in a particular format, insert the format in this clause. Alternatively, a note can be provided indicating that the Response is to be in the Respondent's format. It is preferable to include a template for the format as this may streamline the process for Defence to review Responses.

- 3.1 Respondents must provide evidence as to their willingness and capacity to meet the technical, functional, operational and performance requirements of the Statement of Requirement, including any specifications.

4 TEAMING ARRANGEMENTS (OPTIONAL)

- 4.1 Respondents must indicate:
- a. whether the Response meets some or all of the elements of the Statement of Requirement;
 - b. whether they wish to explore licensing requirements or establish a team or any Subcontractors in order to meet the Statement of Requirement; and
 - c. for Responses provided in accordance with clause 4.7.1a of the conditions of registration, their willingness or otherwise to have their details provided to any Respondent or to any other prospective supplier, or to be provided with details of other Respondents or prospective suppliers in order to facilitate the development of teaming arrangements for the purposes of any subsequent procurement process.

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5 [...INSERT PROCUREMENT SPECIFIC REQUIREMENTS IF ANY...] (OPTIONAL)

Note to drafters: This clause should only be included if the Commonwealth requires information about Respondents that is essential to determining whether the Respondent should be shortlisted or which can not be obtained during a subsequent procurement process.

6 STATEMENT OF NON-COMPLIANCE (CORE)

- 6.1 If Respondents are non-compliant with any clause of the ITR they must state their non-compliances in accordance with the Statement of Non-Compliance Format at Table 1. Responses must be in the order in which the clauses appear and refer to the relevant clause number or Annex.

Note to Respondents: Failure to indicate all non-compliances in Table 1 may constitute false, misleading or deceptive conduct for the purposes of Part V of the Trade Practices Act 1974 or Division 137 of the Criminal Code.

Table 1: Statement of Non-Compliance Format

	Clause No. (Note 1)	Comments (Note 2)
Conditions of Registration		
Annexes to Conditions of Registration		
Statement of Requirement		
Annexes to Statement of Requirement (if any)		

Notes to Respondents:

1. ***If appropriate, non-compliance may be indicated against groups of clauses, e.g. clause 3.1 to 3.3 inclusive.***
2. ***If a Response does not comply with a particular clause, the Respondent is to state:***
 - a. ***the extent, justification and impact of non-compliance;***
 - b. ***full details of any alternative proposal; and***
 - c. ***the location in the Response where non-compliance details or comments can be found.***

ANNEX B**DECLARATION BY RESPONDENT (CORE)**

Note to drafters: Specify any page limits here – either a total page limit or for each question or section.

1 DECLARATION BY RESPONDENT (CORE)

1.1 Respondents are to provide a declaration in the following format:

(...INSERT NAME OF RESPONDENT AND A.C.N./A.R.B.N. and A.B.N...) submits its Response to provide the requirements specified by this ITR [...INSERT ITR NUMBER...]. In preparing this Response, the tenderer acknowledges that it is aware of Part V of the *Trade Practices Act 1974* and Division 137 of the *Criminal Code* and that its tender does not contain any false, misleading or deceptive misrepresentations, claims or statements.

By submitting its Response, the Respondent acknowledges and agrees:

- a. to the Commonwealth's rights in the ITR;
- b. that Responses are prepared in accordance with the ITR and are accurate, complete and not misleading;
- c. that the Commonwealth can utilise all relevant information about the Respondent's performance on Commonwealth procurement activities;
- d. that the Respondent conducted itself in a manner that is at least consistent with the Commonwealth's obligations to act in accordance with the applicable Commonwealth procurement framework.

2 IMPROPER ASSISTANCE

2.1 This Response has been compiled without the improper assistance of employees or former employees of Defence, and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to the Commonwealth.

REGISTERED OFFICE OR OTHER
ADDRESS OF RESPONDENT:

POSTAL ADDRESS:

.....

.....

.....

.....

TELEPHONE NUMBERS:

FACSIMILE NUMBERS:

.....

.....

Signature of Respondent or person authorised to sign the response on behalf of the Respondent.

Note to Respondents: If made on behalf of Respondent details of the official position held by the signatory are to be included, for example, Director, Manager etc.

SIGNATURE:

DATE OF SIGNATURE:

.....

.....

NAME (Block Letters):

POSITION HELD:

.....

.....

SIGNATURE OF WITNESS:

ADDRESS OF WITNESS:

.....

.....

.....

NAME (Block Letters):

ANNEX C

GLOSSARY (CORE)

Note to drafters: The listing of all acronyms, abbreviations, definitions and referenced documents, and the version numbers of all referenced documents should be reviewed for currency prior to release of the ITR.

1. ACRONYMS AND ABBREVIATIONS

Abbreviation	Description
A.B.N.	Australian Business Number
A.C.N.	Australian Company Number
All	Australian Industry Involvement
A.R.B.N.	Australian Registered Business Number
CPGs	Commonwealth Procurement Guidelines – January 2005
DI(G)	Defence Instruction (General)
DPI	Departmental Personnel Instruction
DPPM	Note to drafters: Prior to ITR release, this reference should be updated to reflect the version of the DPPM current at that time. Version number and update number , if applicable, are to be included. Defence Procurement Policy Manual, Version 5.0, Update 5.6
DSM	Defence Security Manual
ED	Effective Date
GST	Australian Goods and Services Tax
IP	Intellectual Property
ITR	Invitation To Register
RFP	Request for Proposal
RFQ	Request for Quotation
RFT	Request for Tender

2. DEFINITIONS

Term	Definition
Annex	means an Annex to this ITR and includes any document expressly incorporated by reference as part of the Annex.
Commercial-in-Confidence Information	means information including trade secrets and know-how that: <ul style="list-style-type: none"> a. Is by nature confidential; or b. The receiving party knows or ought to know is confidential; but does not include information which: <ul style="list-style-type: none"> c. Is or becomes public knowledge other than by breach of the ITR; d. Is in the possession of a party without restriction in relation to disclosure before the date of receipt; or e. has been independently developed or acquired by the receiving party.

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Term	Definition
Commonwealth	means the Commonwealth of Australia.
day	means a calendar day.
Defence	means the Department of Defence, the Australian Defence Force and its agencies including the Defence Materiel Organisation.
Document	includes: <ul style="list-style-type: none"> a. any paper or other materials on which there are writing, marks, figures, symbols or perforations having meaning for persons qualified to interpret them; and b. any article or material from which sounds, images, or writings are capable of being reproduced with or without the aid of any other article or device.
Intellectual Property or IP	means all copyright (including Moral Rights) and all rights in relation to inventions (including patent rights), registered and unregistered trade marks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know how), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
Month	means a calendar month.
Moral Rights	means: <ul style="list-style-type: none"> a. a right of attribution of authorship; b. a right not to have authorship falsely attributed; or c. a right of integrity of authorship.
Respondent	means a respondent to this ITR.
Response	means a response provided by a Respondent to this ITR.
Response Closing Time	means the time specified in clause 3.1.
Statement of Requirement or SOR	means the draft document at Part 2 to this ITR and includes any document expressly incorporated by reference as part of the SOR.
Supplies	means goods and/or services including Intellectual Property required by the Commonwealth under any resultant contract and includes any items acquired in order to be incorporated in the Supplies.
Working Day	in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

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3 REFERENCED DOCUMENTS

Reference	Description
	Corporations Law Act 2001
	Australian Industry Involvement Manual, January 2001
CPGs	Commonwealth Procurement Guidelines – January 2005
	Defence Intellectual Property Policy 2003 ' <i>Developing and Sustaining Defence Capability</i> '
DI(G) FIN 12-1	The Control of Fraud in Defence and the Recovery of Public Monies
DI(G) LOG 07-15	Stocktaking of Defence Assets
DI(G) PERS 35-3	Management and Reporting of Unacceptable Behaviour
DPI 1/2001	Defence Plain English Guide to the Managing and Reporting Unacceptable Behaviour
DPPM	Note to drafters: Prior to ITR release, this reference should be updated to reflect the versions of the DPPM current at that time. Version number and update number, if applicable, are to be included. Defence Procurement Policy Manual Version 5.0, Update 5.6
DSM	Note to drafters: All or part of the DSM should only be released to Respondents after consultation with the Defence Security Authority. Defence Security Manual
	Division 187 of the Criminal Code
	Equal Opportunity for Women in the Workplace Act (Cth) 1999
	Fraud Control policy as detailed in Defence Instruction (General) Finance 12-1
	Occupational Health and Safety (Commonwealth Employment) Act 1991
	Ozone Protection Act 1989
	Privacy Act 1988
	Trade Practices Act 1974

PART 2 - STATEMENT OF REQUIREMENT

Note to drafters: This clause should be consistent with clause 1.1 in the conditions of registration. The Statement of Requirement should set out the capability required in broad terms so that the likelihood of alternative Responses is lessened.

1 INTRODUCTION (CORE)

1.1 [...INSERT SUMMARY OF REQUIREMENT...]

1.2 [...INSERT BACKGROUND TO REQUIREMENT...]

2 STATEMENT OF REQUIREMENT (CORE)

2.1 [...DRAFTER TO DESCRIBE THE DESIRED REQUIREMENTS, OUTCOMES AND OBJECTIVES OF THE PROCUREMENT...]

Note to drafters: A Statement of Requirement should describe Defence's requirement, reflect the nature of the Supplies, and highlight any other relevant features of the required work. This clause should be considered with and contain more detail than the information provided in clause 1.1 in the conditions of registration. The information provided should be sufficient for the Respondent to determine whether it has the capacity to and is willing to provide the requirements and should allow the Respondent to develop a basic solution.

3 DELIVERABLES OR PHASES (OPTIONAL)

Note to drafters: Highlight any specific deliverables and/or phases of work.