

ASDEFCON and Defence Procurement Review

Terms of Reference

Background

The Minister for Defence Industry engaged with the Australian Defence industry which identified a number of opportunities to improve Defence engagement with industry and to build a more resilient Defence industrial base.

A key opportunity identified is that it may be timely for the Department of Defence (**Defence**) to conduct a review of the Australian Standard for Defence Contracting (**ASDEFCON**) suite of tendering and contracting templates and relevant procurement processes and practices to support these objectives.

Some of the opportunities for Defence procurement contracting processes and practices identified by the survey responses include:

- simplifying and streamlining the ASDEFCON contracting templates;
- removing complexity and onerous flow down obligations that lead to additional cost and risk to the suppliers;
- developing subcontracting templates for industry to use;
- expanding Defence commercial acumen within its procurement practices;
- mandating Defence payment terms through the supply chain and considering partial payments of milestones to facilitate cash flow to industry, including small to medium enterprises (SMEs); and
- relaxing some barriers to industry's (particularly SMEs) participation in Defence's supply chain.

Review Authority

On 26 August 2020 the Minister for Defence Industry (in conjunction with the Minister for Defence) wrote to the Department Secretary requesting the Review be undertaken by Andrew Staines (First Assistant Secretary, Procurement and Contracting) and Francesca Rush (Assistant Secretary, General Counsel – Commercial).

Mr Staines and Ms Rush will be described as the 'Reviewers' in these Terms of Reference.

Timing

The Review team will report to Government by the end of Q2 2021.

The Government will release a summary of the findings.

Review Governance

The Reviewers have established a Working Group (chaired by the Reviewers and supported by senior Defence personnel). The Working Group will comprise Defence personnel with legal, engineering, project management (including materiel logistics project management)

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and commercial expertise. The Working Group will also include a number of non-Defence subject matter experts.

An advisory group comprised of senior Defence officials (drawn from the Capability Acquisition and Sustainment Group, Estate and Infrastructure Group and Defence capability managers) will be used to provide advice and guidance during the Review.

The Review will be overseen by the Minister for Defence Industry, the Hon Melissa Price MP.

Review Context

The Review is to consider:

Do the ASDEFCON contracting suite and Defence's procurement processes and practices remain contemporary and do they appropriately balance the needs of both the Australian defence industry and the Australian Defence Force (ADF) war fighter?

The Review should have regard to the following initial questions:

1. *Can Defence better identify and describe what the ADF war fighter needs?*

To build an appropriate procurement framework, Defence needs to better understand what the ADF war fighter needs and how industry can meet those needs. Once understood, this needs to be translated into Defence's contracts to ensure industry clearly understands what they are being asked to deliver.

This includes gaining a greater understanding of what industry can offer through broader and deeper industry engagement at all stages of the procurement process, including pre-gate 0 and, through that engagement, assessing what industry needs to further develop; and for Defence to adapt its procurement and commercial strategies to meet those capability needs.

2. *Do Defence's processes and practices need to evolve to the new environment?*

Defence recognises that the opportunity of this review is to look beyond the language in the templates.

Defence must also look at its procurement processes and practices. Defence's processes also need to respond to an evolving regulatory and threat environment. Defence's processes must ensure that appropriate terms and conditions are applied to its procurements. Defence must also ensure it has evolved its procurement practices by further developing its commercial acumen. Defence will consider if its existing processes can be better leveraged to achieve a better outcome for both Defence and its industry partners.

3. *Defence knows time = money, can timeframes be reduced?*

Can the time from tender release to contract execution be shortened without compromising ADF capability needs? What greater flexibility can be provided to

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Defence personnel to shorten the length of tender evaluation without compromising ADF capability needs?

4. *Can Defence do anything to improve cash flow to the supply chain?*

Cash flow is one of the most important fundamentals of operating any business. Defence recognises that timely payment, particularly to SMEs is of primary importance. Defence intends to consider if it is possible to try and de-couple prime and subcontractor payments and potentially unbundle milestone payments.

5. *Does Defence understand risk and can it accept manageable risk?*

Over time, Defence has tended to adopt a rigorous and detailed approach to try and better manage all risk regardless of project complexity. Overly complicated contracts (and subcontracts) can also make it more difficult for the project and Defence program offices to manage the delivery of ADF capability.

Defence needs to better assess risk early in the process, seek to appropriately allocate those risks and then look to manage risks through its engineering, project and contract management functions. Can the Smart Buyer framework be improved or be applied with greater flexibility? Additionally, are there any template terms that should be entirely common across the ASDEFCON suite, and which are non-negotiable (e.g. requirements to comply with laws and policy).

6. *Does Defence ask for only the information it needs when it needs it?*

Defence should only ask for what it needs when it needs it. Defence may be able refine its processes to seek only the information it needs to evaluate for the purposes of shortlisting at an earlier stage. It may be appropriate to consider a two stage process and seek contract management artefacts only after shortlisting. Similarly, Defence will consider if it is asking for the right types of information, and in the right form, to best manage the relevant commercial and procurement risks.

7. *Would a Contractor accreditation program (centrally managed) help industry?*

Could a better system be developed within Defence to centrally hold and manage these artefacts and oversee compliance functions? The responsible group could offer assurance to project teams through the evaluation process. This system could be used to identify primes and SMEs as “Defence ready”. This would require projects to operate on a more centralised basis rather than project-centric basis. Defence will examine ASDEFCON as it applies to Defence panels.

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8. *Can Defence use technology solutions to support its template use and the development of appropriate tender and contractual artefacts?*

The current template selection guide may be able to be automated in a way to make it more useful to project teams.

Also there are particular artefacts in the ASDEFCON contracting suite (e.g. data item descriptions (DID) and checklists) that may be able to be automated.

9. *What can Defence do to gain a better industry understanding and develop its commercial acumen and skills to achieve better capability outcomes?*

Aligned to Defence's broader reform programs, what practical steps can Defence take to improve its overall skills and industry acumen?

Would a more structured exchange of ideas and experience between Defence and industry, including secondments into businesses, help Defence better appreciate the perspective and objectives of industry and build trust and appreciation of each other's perspectives.

Could any current courses or training administered by Defence be modified to facilitate greater commercial acumen and understanding of the Australian defence industry?

Targeted consultation

The Reviewers and the working group intend to engage across the Defence stakeholder groups, across industry and relevant agencies.

Within the scope of the Review and given the timing of the delivery of the report and recommendations to Government, there will be targeted consultation with:

- Defence industry participants – including participants headquartered overseas (via virtual engagement);
- Defence personnel (Capability Acquisition and Sustainment Group (CASG), Estate and Infrastructure Group (E&IG), Non-Materiel Procurement, Chief Information Officer Group (CIOG), Capability Managers (inc ADF) and Strategic Policy);
- Defence industry associations and advocacy bodies at a national and state level;
- Relevant Commonwealth, State and Territory government agencies; and
- Ministers and officials from State and Territory governments.

Reviewers

Mr Andrew Staines – Andy leads the Commercial Division as First Assistant Secretary Procurement and Contracting. The Commercial Function provides procurement, contracting and commercial expertise and support across the procurement lifecycle. Before re-joining Defence in mid-2019 Andy held numerous roles in the Department of Finance with a focus on simplification and modernisation of the Commonwealth's procurement policy and its application to whole of Government procurement arrangements.

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Francesca Rush – Fran is Defence’s General Counsel – Commercial and leads the Defence Legal branch that supports Defence’s Capability, Acquisition and Sustainment Group, CIO Group, Defence Science and Technology Group and Non-Materiel Procurement group. Before joining Defence in October 2019 Fran was a senior partner of a leading law firm specialising in big-ticket asset finance and procurement for private and public sector clients.

Mr Andrew Staines and Ms Francesca Rush will report directly to the Minister for Defence Industry.

Support to the Reviewers

The Reviewers will be supported by the Working Group as well as a secretariat, domiciled in the Department of Defence, consisting of staff from CASG, Defence Legal and the Associate Secretary’s Group within the Department of Defence.

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