

A collage of various military and defense-related images, including aircraft, ships, vehicles, and personnel, arranged in a hexagonal grid pattern. The images depict a wide range of military assets and operations, such as fighter jets, transport planes, helicopters, submarines, naval vessels, armored cars, and ground troops. Some images show military equipment in action, while others show personnel or specific components like missiles. The collage is set against a background of solid-colored hexagons in shades of grey, blue, and orange.

Version 0.9 (Exposure Draft)



Authority

This *Guide* does not create procurement policy. This *Guide* refers to mandatory procurement policies contained in the *Commonwealth Procurements Rules*, the *Defence Procurement Manual*, and other Defence policies (refer to the “Reference section”), which are applicable to *Australian Standard for Defence Contracting* (ASDEFCON) templates. Any mandatory procurement guidance referred to in this *Guide* is sourced from appropriate legislation and mandatory Commonwealth and Defence policy.

Note to Defence Staff and External Agencies

Defence staff and external agencies intending to use an associated *ASDEFCON* template will need to tailor that template to their specific procurement requirements and should seek appropriate professional guidance as required.

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The terms under which the Coat of Arms can be used are detailed on the [Commonwealth Coat of Arms website](https://www.pmc.gov.au/government/commonwealth-coat-arms)².

Feedback

Feedback and suggestions should be sent to: procurement.ASDEFCON@defence.gov.au

Amendment Record

Version	Release Date	Description of Amendments
V0.9	September 2021	Release of exposure draft to coincide with the Introduction of the enhanced AIC framework to ASDEFCON (Strategic Materiel).

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CHAPTER 1: INTRODUCTION

BACKGROUND

Purpose

The *Australian Industry Capability Guide for ASDEFCON* (this guide) outlines the background to the enhanced Australian Industry Capability (AIC) program embedded within the *ASDEFCON* templates. The guide is applicable to *ASDEFCON (Strategic Materiel)*, as the first template to include the “Enhanced AIC Framework”, and it will be updated as the framework is applied to additional *ASDEFCON* templates. This guide also includes a chapter on Australian Contract Expenditure (ACE), which complements the *ACE Measurement Rules*.

The purpose of this guide is to assist Defence staff to understand, develop and implement an effective AIC program, for a contract that uses an *ASDEFCON* template, in order to achieve AIC Objectives. This guide explains numerous issues to be considered when developing and undertaking an individual AIC program; however, as each contract will be different in scope the issues discussed will not cover every possibility. This guide may assist industry with a general understanding of an AIC program within a contract that uses *ASDEFCON*, noting that each implementation will be different.

The principles and AIC provisions described in this guide apply to the *ASDEFCON* templates for materiel contracts that exceed a \$20 million dollar threshold and that are required to incorporate an AIC program. Similar principles may be applied in some lower cost contracts.

What is Australian Industry Capability?

In general, Defence’s approach to AIC is directed by the 2016 Defence Industry Policy Statement (2016 DIPS) and related government policies (see references below). For Defence, and in particular Defence materiel, the AIC Program is:

“... a major lever to increase Australian industry involvement in Defence materiel procurement. Through industry involvement, the AIC Program aims to build a robust, resilient and internationally competitive Australian defence industrial base.

The AIC Program plays an important role in driving Australian industry as a Fundamental Input to Capability and supports the delivery of the Sovereign Industrial Capability Priorities. The AIC Program ensures industry is considered across the entire Capability Life Cycle.”

(Fact Sheet: AIC Program <https://objective/id:BN19618071>)

The AIC Program encompasses a number of obligations and objectives that aim to maximise the opportunities for competitive companies within Australian Industry to participate in the delivery of Defence capability. For further information regarding AIC, readers should refer to the AIC policies listed in the references section below.

References

The following government policies are applicable to the implementation of AIC:

2016 DIPS	2016 Defence Industry Policy Statement 2016 Defence White Paper
2018 DES	2018 Defence Export Strategy
2018 DICP	2018 Defence Industrial Capability Plan
2019 DPIP	2019 Defence Policy on Industry Participation Australia-New Zealand Closer Economic Relations Trade Agreement
CPRs	Commonwealth Procurement Rules (December 2020) Defence Industry Skilling and STEM Strategy (2019)
IPP	Indigenous Procurement Policy 2020

Other references applicable to AIC, and applied through ASDEFCON templates, are:

ACE Measurement Rules
Australian Contract Expenditure Guide for ASDEFCON
SICP Implementation Plans
SICP Industry Plans

AIC policies, guidance and plans may be obtained from the following websites:

These web links are subject to change and may be updated periodically.

- <https://www1.defence.gov.au/business-industry/>;
- <https://www1.defence.gov.au/business-industry/capability-plans/>;
- <https://www1.defence.gov.au/business-industry/capability-plans/implementation-industry-plans/>; and
- <https://www1.defence.gov.au/business-industry/export/strategy/>.

The meaning of defined terms used within this guides are included in the glossary at Attachment M to the *ASDEFCON (Strategic Materiel)* template.

Defence personnel seeking further advice may contact the following help desks:

- AIC Directorate, Defence Industry Policy:
AIC.Info@defence.gov.au
- ASDEFCON templates:
procurement.ASDEFCON@defence.gov.au

AIC in Contracts

Commonwealth Procurement Rules

Commonwealth Procurement Rules (CPRs) provide the basis for the Government's procurement policy framework and direction for all contracting activities. CPRs require government procurements to achieve value for money outcomes, and for procurement officials to consider the broader benefits of each procurement to the Australian economy (which for Defence materiel contracts, includes AIC).

Australian Industry programs, including AIC, are undertaken in the context of various free trade agreements, while seeking the benefits from effective competition that are enabled by a non-discriminatory and competitive procurement process.³

Contracting types and AIC thresholds

The ASDEFCON templates, used for drafting contracts to acquire or support Defence materiel, include specific AIC requirements. For contracts valued above A\$20 million, the AIC program requires detailed planning of activities that are to be undertaken in order to satisfy the AIC Obligations, as specified within each contract, and to achieve broader AIC Objectives for Defence. The templates also include detailed reporting requirements, the measurement of ACE, and oversight of the AIC program via an independent AIC audit framework and program.

Defence materiel contracts valued between A\$4 million and A\$20 million are addressed by the 2019 DPIP, with a simpler set of contract requirements that identify the Australian businesses involved, relevant contract expenditure, work locations, and the applicability of related AIC policies. Below A\$4 million (including GST), there are no formal AIC program management requirements beyond those in the CPRs.

Non-materiel Defence contracts implement Australian Industry policies in a similar manner, tailored to the policies that apply to the nature of the goods or services being acquired.

³ Refer to sections 4.4 and 5.1 of the CPRs, December 2020.
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ASDEFCON (Strategic Materiel)

Implementation of AIC within the ASDEFCON templates follows the 'ASDEFCON philosophy' in regards to defining and managing work. At a high level, the following table identifies how the standard ASDEFCON process applies the AIC program:

Standard ASDEFCON process	Application to AIC
Commonwealth specifies the required outcomes for supplies / services and identifies objectives and compliance obligations.	Specifications may include Australian components and materials in supplies ⁴ and local in-service support. AIC Objectives maximise opportunities for local work under the contract.
Tenderers propose how they will meet draft contract requirements. Details from the winning tender are captured in the contract.	Tendered solutions include AIC. Details of AIC strategies, subcontracts and ACE are included in the contract.
Contractor plans 'how' to achieve contract requirements.	AIC and related plans developed from tendered strategies, including how to engage competitive local suppliers.
Commonwealth Approves the Contractor's plans.	Commonwealth Approves the AIC Plan and related plans, including the Contract Work Breakdown Structure.
Contractor works in accordance with the Approved plans.	Contractor engages local suppliers and subcontractors as planned.
Commonwealth monitors the Contractor's progress against the Approved plans.	Progress for AIC is reported within Contract Status Reports (CSRs) and considered at Contract Performance Reviews (CPRs). When applicable, the Commonwealth audits the Contractor's AIC program.

During acquisition, contract progress is measured by Milestones, some of which involve the delivery of major systems. For AIC, the work activities undertaken in Australia and the resulting ACE achieved up until each ACE Measurement Point (linked to selected Milestones) enable the Commonwealth to monitor the progress of the AIC program in expenditure terms.

ASDEFCON (Complex Materiel) Volume 2

The process described for *ASDEFCON (Strategic Materiel)* can also be applied to *ASDEFCON (Complex Materiel) Volume 2*. However, the reduced amount of new design work generally results in greater use of established supply chains and fewer opportunities for new industry participants. Smaller project teams will also have limited capacity to manage more complex AIC programs. Accordingly, some contractual provisions in *ASDEFCON (Strategic Materiel)* are scaled-down for *ASDEFCON (Complex Materiel) Volume 2*, commensurate with the expected reduction in the scope of new design work and capacity to manage the program.

ASDEFCON (Support)

Contracts using *ASDEFCON (Support)* and *ASDEFCON (Support Short)* templates provide Services that sustain materiel systems and products. Due to the recurring nature of these Services, a level of AIC is established in the early stages of a contract and, unless there is a significant contract change, there may be few opportunities to meaningfully increase the amount of work performed in Australia. Support contracts have few (or no) milestones used to measure the progress; hence, achievement of the AIC Obligations under a contract is reviewed on a periodic basis (eg, annually).

This section will be expanded when ASDEFCON (Support) updates are developed.

⁴ Subject to the application of Division 2 of CPRs.
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KEY CONCEPTS

Introduction

An AIC program within a contract can be seen as having two major outputs: Industry Capability and Australian content. Industry Capability refers to the contribution that industry makes to producing and sustaining Defence capabilities. Economic benefit is a more general reference to the benefits of performing work in Australia, as measured by contract expenditure. Each concept is explained below.

Industry Capability

Industry is considered to be an enabler of Defence capability, for both the acquisition and sustainment of Defence materiel. This was recognised in the 2016 DIPS, which introduced Sovereign Industrial Capability Priorities (SICPs). Industry is also recognised in the *Capability Life Cycle Manual* as one of the Fundamental Inputs to Capability (FIC). As an element of the FIC, 'industry' considers the resilience and capacity of industry, including the reliability, security and health of supply chains.

Having Industry Capabilities within Australia provides the benefit of Sovereignty, with local production and support capabilities being a method to provide security for the supply chain and sufficient freedom from foreign influence which, in turn, enables Defence to achieve its capability objectives as and when required.

Within *ASDEFCON* required Industry Capabilities can be specified as contract outcomes, for the production and/or support of the relevant Materiel System; these are called Australian Industry Activities (AIAs). AIAs may implement aspects of a SICP, including Critical Industrial Capabilities (CICs) described in the relevant SICP Implementation Plan and SICP Industry Plan. Other AIAs are identified from the capability definition process (even if there is no associated SICP). Whether related to a SICP or not, Commonwealth requirements are identified through the Smart Buyer Framework.

Tenderers may also propose activities, which they consider important, to be performed in Australia as part of their tender responses. These could be managed as AIAs under the Contract, if agreed by the Commonwealth.

Within a contract, AIAs can be included in a number of forms, such as:

- a. a Defence-Required Australian Industry Capability (DRAIC);
- b. 'required activities' to be performed by Australian Industry to introduce or sustain an Industry Capability, but which are not managed as DRAICs; and
- c. other requirements for Australian Industry, including the need to implement a government direction in respect of specific purchases.

AIAs are included as AIC Obligations. For *ASDEFCON (Strategic Materiel)* these are specified in Attachment F and contractually these will be required to be undertaken by the Contractor. Other activities that are performed in Australia but not listed by the Commonwealth, are not AIAs. The Contractor will describe the scope of work performed in Australia, including AIAs and non-AIA work, in the AIC Plan.

Defence-Required Australian Industry Capabilities

DRAICs are identified and defined by the Commonwealth as specific AIAs of high importance, with commensurate levels of planning and monitoring under a contract. A DRAIC is defined in the *ASDEFCON (Strategic Materiel)* Glossary as follows:

DRAIC: means an Industry Capability provided by one or more Australian Entities that provides specific outcomes required by Defence, and described in Attachment F. A DRAIC is a combination of DRAIC Elements that can be:

- a. organised and operated to provide the required outcome; and
- b. applicable to the acquisition and/or the sustainment of a Materiel System.

A DRAIC may establish a significant new manufacturing or support capability within Australia, or enhance an existing one. An important difference between DRAICs and other AIAs is that DRAICs are specified (even if in a simple form) and the DRAIC or DRAIC Elements are subject to assurance / Verification and Acceptance (even

though Defence will not take ownership following Acceptance). Due to the importance and general complexity of a DRAIC, there is usually a significant amount of management overhead required from both the Contractor and the Commonwealth.

DRIACs may be considered as 'acquisition' DRAICs or 'sustainment' DRAICs. For example, an acquisition DRAIC might establish a new production capability and then use that capability to manufacture Supplies. To continue this new Industry Capability there will need to be a plan for on-going build activities or some other follow on work.

A sustainment DRAIC might be a new in-service maintenance capability, with many of the required Support Resources delivered under the Contract (Acquisition) and Accepted as Supplies. These Support Resources are referred to as DRAIC Elements. In this case, the DRAIC may not be completed and Accepted under the Contract (Acquisition), instead, the DRAIC is Accepted under the Contract (Support) when all of the other required elements, such as the Contractor (Support)'s facilities and workforce, are also established and all of the Industry Capability is established.

Not only does DRAIC Acceptance signify the creation of a new in-country capability, creating a Milestone that can also benefit the Contractor. For example, if a DRAIC requires a new production facility to be built a corresponding Milestone Payment may cover some or all of the related investment cost. In other circumstances, the investment cost (and interest charges) would have been amortised over the delivery of many production items, and may not be recouped until much later in the Contract.

While Acceptance is a logical Milestone for a DRAIC, this does not preclude having other Milestones during the implementation of a DRAIC, when it makes sense.

As an AIA, a DRAIC may introduce an Industry Capability applicable to more than one project or contract. This creates a challenge if the Industry Capability itself only becomes economically viable with the quantity of work generated by multiple systems and contracts. A Milestone Payment related to DRAIC Acceptance, or a related milestone, might fund the establishment costs; however, further investment by Defence may be required to sustain the DRAIC until the workload, from several contracts, is sufficient to enable the new Industry Capability to be self-sustaining.

Required Activities

'Required Activities' are also AIAs. Like DRAICs, these AIAs are also important to Defence, are to be performed by Australian Industry, and are identified in the contract as AIC Obligations. These AIAs may also originate from SICPs and/or the capability definition processes, or from tenderer / contractor proposals.

Required activities may make use of Industry Capabilities that were previously established through a DRAIC or other AIA, and they may allow an Industry Capability to be sustained. In this case, there may not be anything particularly new or enhanced that would require the management, assurance and Acceptance processes applicable to a DRAIC, hence these are simply identified as 'required activities'.

Required activities can introduce a new Industry Capability or enhance an existing one; however, unlike DRAICs they do not require the same degree of specification, assurance or Acceptance, and do not incur the same contract management overheads for the Contractor and the Commonwealth. Even for a significant and complex new Industry Capability, treating an AIA as a 'required activity' may be preferable when the Commonwealth team does not have the resources to monitor the development and assurance, and perform Acceptance of a DRAIC.

Other requirements for Australian Industry

'Other requirements for Australian Industry' identified in Attachment F may result from government direction to source particular goods or services from Australian Industry⁵, due to specific national interest or security needs. Such requirements may be included in contracts to develop or sustain industry capabilities that benefit the broader economy. In the case of government direction, Defence may be one of several customers to benefit from such activities and a government-level economy / industry-wide perspective provides the basis for identifying such needs.

⁵ Note that the definition of Australian Industry includes New Zealand business entities.
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Overseas inputs into AIAs

While AIAs emphasise Australian Industry the need for overseas input cannot be ignored. Inputs to enable AIAs can include access to Technical Data and Intellectual Property (IP), specialist equipment, and/or the development of specialised skills that can only be obtained from overseas suppliers. Overseas inputs may not be specified in Attachment F, but they should be described in the contractor's plans.

Due to overseas involvement in AIAs, the cost of establishing an Industry Capability will often be comprised of both Australian and imported content. Hence, the Commonwealth does not expect AIAs to be 100% ACE. While there may be a large overlap between AIAs and expenditure, it is not a one-to-one relationship.

Example AIAs

As an example of related AIAs, a SICP is "Land Combat and Protected Vehicles and Technology Upgrades" and two of the four critical industry capabilities are:

- Protection Technologies
- Sustainment

An example project may decide to introduce a new form of reactive vehicle armour and, having considered the SICP in the application of the Smart Buyer Framework, identifies two DRAICs that apply to the production and the sustainment of this new protection technology. The project then includes these requirements in the subsequent project plans and in preparation of the request for tender.

The project defines the production capability as an acquisition DRAIC. Once the Contractor establishes the production capability, a DRAIC Readiness Review is held and the Contractor demonstrates that this DRAIC meets its (simple) specified requirements. The DRAIC is subsequently Accepted and this event becomes a Milestone, with a Milestone Payment made. The new production capability is subsequently used to produce the reactive armour for the new vehicles.

The reactive armour on each vehicle requires replacement after 10 years and, due to the methods and equipment required, the project defines this capability as a sustainment DRAIC. The required equipment is acquired under the Contract (Acquisition), delivered to the support facility, and Verified against the equipment's specification. The equipment and related resources are DRAIC Elements and Accepted as Supplies, but not as a completed DRAIC. The armour replacement capability was also included in the linked Contract (Support) as a DRAIC and, in this example, the Contract (Acquisition) ends before the first armour replacement is scheduled. At the appropriate time, Contractor (Support) personnel are trained and the equipment in the facility is prepared. With sufficient Verification of the new support capability, as a whole, the sustainment DRAIC can be Accepted under the Contract (Support).

The reactive armour is also to be fitted to a fleet of existing vehicles during a mid-life update using a different project. Under the upgrade contract, the production capability is identified as a "required activity to be performed by Australian Industry". As the capability exists, it does not need to be established and, therefore, it does not need to be managed as a DRAIC.

Australian Content and Economic Benefit

Policy

"The Government is committed to building a stronger, more prosperous and resilient economy where Australian businesses can be competitive on a domestic and international level."

- *Consideration of broader domestic economic benefits in procurement;*
Department of Finance, August 2020

In accordance with Commonwealth Procurement Rules (CPRs) all departments, including Defence, need to consider the broader domestic economic benefits of their

significant procurement activities. A range of policy measures are applied to promote domestic economic growth through government procurements, including:

- commitments to source a certain percentage of goods and services from Small and Medium Enterprises (SMEs);
- the Indigenous Procurement Policy (IPP);
- publishing procurement plans for significant procurements, to facilitate early engagement with the market; and
- requirements under the Australian Industry Participation National Framework, which for Defence includes the AIC program.

In general, domestic economic benefits result from:

- making better use of Australian resources that would otherwise be under-utilised;
- increasing productivity (eg, through innovation, developing in-demand skills, and ensuring the efficient allocation of resources); and
- the development and sustainment of industry capabilities, including enhancing key industry sectors through SICPs.

In accordance with CPRs, economic benefit is to be considered during procurement decisions. The Department of Finance provides directions for procurement officers evaluating tenders for economic benefits to the Australian economy; for details refer: <https://www.finance.gov.au/sites/default/files/2020-08/consideration-of-broader-economic-benefits-in-procurement.pdf>

Australian Contract Expenditure

Important note: The Commonwealth does not specify a required Prescribed ACE percentage or a minimum ACE for a proposed contract, but the ACE percentages and amounts submitted in tenders will be considered during evaluations.

Economic benefit encompasses a number of considerations, some of which are hard to quantify (eg, the extent and duration for which new skills can be effectively applied in the economy). As a measureable aspect of economic benefit, the ASDEFCON contracts measure Australian Contract Expenditure (ACE) and Imported Contract Expenditure (ICE), and calculate ACE as a percentage of contract expenditure:

$$ACE\% = \frac{ACE}{ACE + ICE} * 100\%$$

For an acquisition contract where the ACE percentage can be forecast, it can be specified as a 'Prescribed ACE Percentage' with achievement measured at ACE Measurement Points. A number of significant Milestones, such as deliveries of major Supplies, will be identified as ACE Measurement Points. To allow time for progress to be made, ACE Measurement Points should not be scheduled too frequently; one every couple of years may be suitable unless it makes sense to include more (eg, if two ships are delivered in the same year). Progress towards a final ACE percentage is measured and reported for each ACE Measurement Point and progress is also reported in the Contract Status Report (CSR).

There are two options in regards to ACE when tendering for a large acquisition contract. The Commonwealth may ask tenderers to propose an ACE amount and Prescribed ACE Percentage for any resultant Contract, or the Commonwealth may seek ACE percentages for a number of ACE Measurement Points. For the first option, Prescribed ACE Percentages are determined by the preferred tenderer(s) during Offer Definition and Improvement Activities (ODIA) or negotiations. In the second option, for higher value and longer duration contracts, the Commonwealth nominates a number of ACE Measurement Points in the draft contract and each tenderer is to propose the Prescribed ACE Percentages for each identified ACE Measurement Point. In both cases, the Prescribed ACE Percentages and any changes to the scheduling of ACE Measurement Points proposed by the successful

tenderer are, subject to negotiations, included in the Contract (noting that, during negotiations, the overall ACE percentage tendered would be considered as a minimum ACE percentage during negotiations). The Prescribed ACE Percentages are included in the AIC Attachment to the Contract and ACE amounts (in dollar terms) are included in the pricing Attachment.

In support contracts, with unpredictable components such as Survey and Quote (S&Q) Services, ACE can only be forecast for certain pricing elements. As many goods and services include both local and imported cost components, the *ACE Measurements Rules* identify how ACE and ICE is to be determined for various cost categories.

Support contract Services are mostly recurring and the scope of work can change in response to Commonwealth needs (eg, changes in rate of effort). In these cases, an ACE Percentage can be forecast on an annual basis for some cost components, measured, and then reviewed at Contract Performance Reviews (CPRs).

ACE Percentages and the associated dollar amounts need to be updated for contract changes. For an acquisition contract, a contract change may affect the Prescribed ACE Percentage specified for each ACE Measurement Point subsequent to that change. For a support contract, a contract change may only be applicable to the forecast ACE Percentage for that year or subsequent years, depending on the nature of the change.

Implementation and Enforceability

Industry Capabilities and economic benefits can be interrelated but not fully correlated. Accordingly, within the *ASDEFCON* framework the implementation of both are evaluated, and requirements for both can be enforceable under a contract.

Industry Capabilities are identified, developed, used and sustained through AIAs. As described above, DRAICs are Industry Capabilities that will, at the appropriate time, be Accepted under a contract. Other work performed in Australia and New Zealand (ANZ) is identified by the Contractor in their AIC Plan (ie, work performed in ANZ that is not part of an AIA).

The implementation of some AIAs can be evaluated from related technical activities including the Systems Engineering and Integrated Logistic Support (ILS) programs, whereby AIAs either contribute to the production or sustainment of the Materiel System. Furthermore, the delivery of DRAICs Elements and components of other AIAs during acquisition, to be implemented as part of the Support System, will be subject to the V&V program for the Support System.

Prescribed ACE Percentages for ACE Measurement Points, in acquisition contracts, are included in the AIC attachment. Forecast amounts for ACE and ICE, in dollars, are included in the pricing information in Attachment B. ACE and ICE are measured from actual expenditure (not just the invoices presented). ACE and ICE are reported in the AIC Progress Report, as a part of the CSR. In addition, ACE Measurement Reports are required to document the Achieved ACE Percentages at each of the ACE Measurement Points for an acquisition contract.

AIAs and Prescribed ACE Percentages are included in contracts as AIC Obligations, covering both AIC perspectives: industry capabilities and economic benefits. A key concept of the enhanced AIC framework is that of *enforceability*, to ensure that tendered and agreed proposals for AIC are implemented and the contractual obligations may be enforced by the Commonwealth through the resulting contracts. While addressed in the explanation of COC clauses (later sections), in summary, contracts contains the following mechanisms:

- Acceptance (or rejection) of DRAICs or DRAIC Elements, which can be linked to the achievement of Milestones and payments for the delivery of Supplies;
- AIC Remediation Plans, to plan and remediate shortfalls in the implementation of an AIA, or a failure to achieve a Prescribed ACE Percentage or other commitment, such as the IPP or the engagement of SMEs;

Note that Smart Buyer outcomes include the consideration of AIC aspects for the Project Execution Strategy (PES), Integrated Project Management Plan (IPMP), Planning Phase Design Documentation (PPDD) and the draft Contract, which may identify AIAs and implementation requirements.

The above diagram illustrates the flow of AIC-related information through an acquisition process and the related documents within an *ASDEFCON (Strategic Materiel)* contract. The left side of the document shows the AIC considerations from requirements definition activities being fed into a draft contract and the Tender Data Requirements (TDRs).

Tender Preparation and Response

Draft Contract

When preparing a draft Contract for a Request For Tender (RFT), AIAs need to be defined in the applicable Attachment for AIC⁶. Each AIA is categorised by type and, in summary, will include the following details:

- DRAICs, identifying related SICPs / CICs or other Industry Capabilities, and including operating and support concepts, specifications, and programmatic requirements. The specifications may be included in the Attachment and/or by reference to another document. DRAICs that will be part of the Support System must be consistent with, and may refer to, the Function and Performance Specification requirements for support.
- Required activities, to be performed by Australian Industry, with a brief description of each. These may also be related to SICPs and CICs but may not require a new capability to be established.
- Other requirements for Australian Industry, which may be related to a specific government initiative, direction or broader national security need.

Regarding ACE requirements, the Commonwealth should nominate preferred ACE Measurement Points within the tender data requirements and draft Attachment for AIC. ACE Measurement Points are generally major Milestones, including deliveries of major items of Supplies, which are included in draft price and deliver schedules⁷.

Note that the Commonwealth does not specify ACE as an amount in either dollars or as a percentage – these will be proposed by the tenderers (as described above).

SOW clauses need to be tailored for the required scope of the draft Contract. This involves the selection of optional clauses, identifying the data items that will be required and updating the draft Contract Data Requirements List (CDRL) to request those data items. Refer to the sections on SOW clauses for more details.

COC clauses can generally be included in the draft Contract without change. For AIC there are no optional clauses within the COC to be selected or specific clauses that require tailoring - the development effort is focussed on the AIC attachment.

The RFT

The draft Contract (including the COC, SOW and Attachments as mentioned above) is included in the RFT. In *ASDEFCON (Strategic Materiel)*, COT Attachment A, Annex G (ie, 'TDR G') seeks proposals from tenderers for implementing the AIC program outlined in the draft Contract. Hence, tenderers' proposals will need to address the identified AIAs and ACE Measurement Points.

When preparing an RFT the Commonwealth needs to consider an appropriate tender response period. As part of these broader considerations, the time needed to collect and collate ACE and ICE costs data from potential subcontractors, with a reasonable degree of accuracy, and to investigate the feasibility of implementing AIAs, including

⁶ Attachment F in *ASDEFCON (Strategic Materiel)*.

⁷ Attachments B and C in *ASDEFCON (Strategic Materiel)*.
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a new Industry Capabilities as DRAICs, will need to be allowed for. Publishing an intention to investigate and implement certain AIAs, before the RFT, can assist.

The Commonwealth team should also consider the Commonwealth resources needed to evaluate the responses, including both the financial aspects (eg, with support from Financial Investigation Services (FIS)) and Industry Capabilities (eg, a DRAIC may be considered like another 'segment' of a complex materiel system).

Tender Responses

In responding, tenderers need to describe how their team (including Subcontractors) would implement the AIAs under any resulting contract. Tenderers may also identify other Industry Capabilities that they consider should be treated as AIAs (eg, if the Commonwealth did not realise such work could be undertaken in ANZ). Tenderers may propose that a potential new Industry Capability, which they consider important, to be treated as DRAICs (noting that DRAIC Acceptance can be a Milestone and the basis for a Milestone Payment).

Depending on the option chosen by the Commonwealth, tenderers will need to identify the overall ACE amount and Prescribed ACE Percentage, or a Prescribed ACE Percentage for each of the ACE Measurement Point identified in the tender data requirements. Prescribed ACE Percentages for any resulting contract are determined from the expected cumulative values of ACE and ICE up until each ACE Measurement Point. The ACE percentage will change over time as the value of work in ANZ, compared to the overseas work, changes as the contract progresses. Note that proposed ACE and ICE values (in Australian dollars) will be included within the tenderers' financial data.

Tender Evaluations

Tenders are evaluated for compliance with the draft Contract, including the AIC requirements. An AIC evaluation criterion and sub-criteria are included in clause 3 of the COT and can be used to inform the AIC component of the tender evaluation plan. Tenders are evaluated in accordance with Commonwealth and Defence policies, how their tendered proposals address the specific requirements of the draft Contract, and assessed risk. Responses for AIC are evaluated in the context of overall program objectives, capability requirements including the benefits of Sovereignty, constraints (eg, Intellectual Property (IP) rights), schedule, and value for money.

In the context of AIC, there may be no obvious conditions that help to identify a 'clear winner'. For example, one tender may propose a greater amount of ACE while a different tender would result in the development of more high technology skills, or one tender may include more opportunities for local industry during acquisition but another could result in a greater amount of long-term work during sustainment. As a result, each project and each tender will have unique aspects to be considered in order to determine the best overall solution.

The Commonwealth will also need to co-ordinate sufficient resources to perform the evaluation. As noted above, this may include resources from within the team, and the engagement of external support from FIS and Strategy, Policy and Industry (SPI) Group.

Notes to be added on AIC tender evaluation and Sovereignty.

Offer Definition and Improvement Activities, Negotiations and Pre-Contract Activity

There are a number of actions under a normal ASDEFCON process that can occur between initial tender evaluation and the Effective Date (ED). These include the completion of Attachments, some contractor plans, and 'capturing' tendered strategies and other draft data items on-contract. Which actions can be achieved depends on the inclusion of an Offer Definition and Improvement Activities (ODIA) phase and the scope for pre-contract work between negotiations and ED.

If there is no ODIA and no opportunity to undertake pre-contract work then the preferred tenderer's AIC 'strategy', which was provided in the tender response and may include any negotiated changes, is 'captured' on-contract via Attachment K of ASDEFCON (*Strategic Materiel*). Early in the contract, the AIC Plan will be

developed from, and is only Approved if it is consistent with, the AIC strategy at Attachment K. Once the AIC Plan is Approved under the Contract, the tendered AIC strategy is removed from Attachment K.

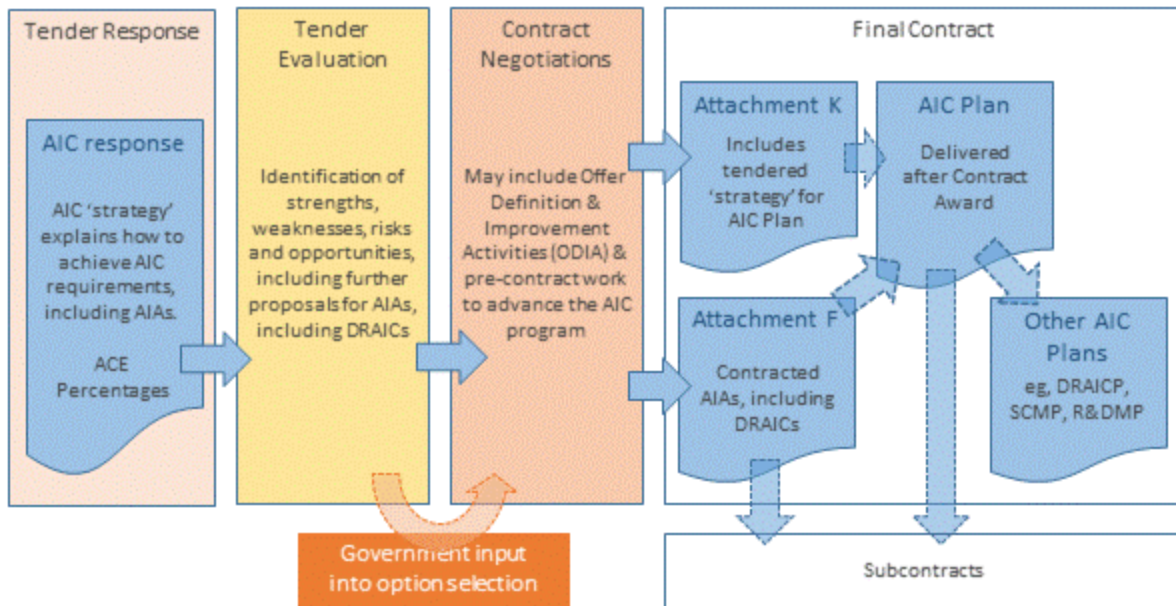


Figure 2: developing AIC Plans from Tender Responses

When there is no ODIA but sufficient time for pre-contract work, a draft AIC Plan may be developed from the preferred tenderer's AIC strategy. This is not always the case as there may be insufficient definition of scope and too few subcontracting arrangements agreed in order to provide an accurate plan. If developed, the draft AIC Plan is added to Attachment K and 'captured' on-contract in lieu of the tendered strategy. Under contract, and once the final version of the AIC Plan is delivered and Approved, the draft AIC Plan is removed from Attachment K.

Whether or not there is an ODIA and pre-contract work, Attachment F will be updated for the successful tenderer's AIC proposal for AIAs, and Prescribed ACE Percentages, subject to any negotiated changes.

If the project includes an ODIA, it is generally conducted with two preferred tenderers to better understand their offers and reduce program risks. For the AIC program, ODIA may help to define AIAs and, by better understanding the proposed work schedule. Near the end of ODIA, ODIA data requirements are submitted for the final evaluation, which could include draft AIC Plans developed from the tendered AIC strategies. Subsequent to ODIA, and if schedule permits, a final AIC Plan could be developed by the preferred tenderer during pre-contract work, including any negotiated changes, and submitted to the Commonwealth for Approval by ED.

As above, the ability to complete accurate AIC Plans prior to ED and before establishing the actual Subcontracts can be limited. In these situations, the tendered strategy or draft AIC Plan is held in Attachment K, until early in the Contract when the AIC Plan can be completed.

Whichever pre-contract process is followed, the RFT does not require completed AIC Plans to be tendered. Instead, planning strategies provide a description of the key elements of each tendered proposal, and only the preferred tenderer or Contractor will develop a full AIC Plan. This approach reduces the cost for each tenderer to prepare their AIC proposal and the Commonwealth effort needed to review each proposal.

In summary, the following *ASDEFCON (Strategic Materiel)* Attachments may be updated, prior to ED, with information from the successful tender and subsequent negotiations:

- finalising the AIC Obligations within Attachment F, including details of AIAs and updates to DRAIC specifications;

- adding the Prescribed ACE Percentages to the ACE measurement table in Attachment F, and amending the ACE Measurement Points (if changes are negotiated);
- including related prices and Milestone details in Attachments B and C; and
- identifying the AIC Subcontractors in Attachment H.

Acquisition Contract

Planning

Under contract, plans that were not Approved by ED are delivered in accordance with the CDRL. Any strategies and draft data items that were included in Attachment K are removed once the final versions of the applicable data items replace them (this applies to all strategies / draft data items, not just the AIC Plan).

Work under an ASDEFCON contract is managed in accordance with Approved⁸ plans. For the AIC program, this includes the AIC Plan and any subordinate AIC program plans (see the right-hand side of Figure 1) required by the SOW and CDRL. Most plans are 'maintained' for the term of the contract, which involves periodic review with updated plans delivered when changes are required.

Measuring ACE and ICE

To ensure suitable methods for data collection of ACE and ICE, the Contractor's financial information management system is reviewed early within the contract. If an Earned Value Management System (EVMS) is used to plan and track expenditure, the review of the methods for collecting expenditure data, including ACE and ICE, may be combined with the EVMS review. Additional reviews of the EVMS may be performed during the Contract.

Subsequent to the EVMS review, a Mandated System Review (MSR), the Integrated Baseline Review (IBR) will be held. The Contract Work Breakdown Structure (CWBS) and Contract Master Schedule (CMS) data items are usually finalised and delivered in preparation for IBR. Preparation of the CWBS and CMS involves detailed planning activities, which may result in updates being required for the AIC program plans and the AIC and pricing Attachments (eg, for a change in scheduled payments). Such updates should only include detailed refinements, not significant changes to the overall AIC program.

Monitoring and Reporting

During the Contract, the Contractor reports their progress via the Contract Status Report (CSR). The CSR includes a number of sub-reports that address the progress of the AIC program. These included an AIA report, which describes the progress for implementing AIAs. There is also an ACE report, which describes the progress of achieving ACE requirements, at and when in-between ACE Measurement Points. Other sub-reports, such as the Subcontractor Report, also contribute to reporting the overall progress of the AIC program. An AIC Compliance Certificate is delivered with the CSR. The progress of the AIC program will also be evident in other parts of the CSR, such as the Subcontractor status report.

In addition to the AIC Report, the progress of AIAs can often be traced from the progress made by Systems Engineering, ILS and V&V programs. For example, design and component selection will influence the location (ie, country) for the production of Mission System components or, alternatively, the source of data needed to manufacture items locally. AIAs for in-service support are included in the ILS program's definition of the Support System, and the V&V program will evaluate DRAICs for Acceptance and the readiness of the AIAs applicable to sustainment. Due to these inter-dependencies between programs, some MSRs have checklists with specific actions that relate to the AIC program. Furthermore, Internal System Reviews, such as a production readiness review, would confirm if AIAs applicable to manufacturing are progressing.

⁸ ASDEFCON applies a principle whereby the Contractor manages works in accordance with Approved plans rather than the Commonwealth specifying lower-level programmatic details within the Contract.
Australian Industry Capability Guide for ASDEFCON

During the Contract, the Commonwealth may also implement an independent AIC audit program to confirm the Contractor's ACE expenditure and their engagement of Australian Subcontractors. For details on the AIC audits contact aic.pmo@defence.gov.au, further guidance on the AIC audits may be included in subsequent iterations of this Guide.

Transition

When the first Mission System and related elements of the Support System are transferred to the ADF users, the support contract should also start to provide Services to support those Products. From these concurrent milestones (System Acceptance under the acquisition contract and the Operative Date under the support contract), both contracts can operate in parallel for several years, as new Mission Systems are delivered and Services ramp up.

Many sustainment AIAs require initial Supplies from the acquisition contract, plus trained personnel and additional resources from the support contractor (who may or may not be the same company as the acquisition contractor). Hence, sustainment AIAs can be applicable to the performance of obligations under both contracts.

Within the *ASDEFCON (Strategic Materiel)* V&V program the Support System and, consequently, sustainment-related AIAs are assessed. For example, maintenance demonstrations may require the acquisition contractor to demonstrate that the support contractor (with the resources and training provided by the acquisition contractor) can perform the in-country deeper maintenance activities required for an AIA. Subsequently, the support contractor will need to sustain such an AIA as part of its Industry Capabilities.

Support Contracts

For support contracts, may include DRAICs, required activities, and other requirements identified by the Commonwealth in the Contract. The AIAs may be transitioned from the acquisition program, be an existing sustainment capability that will be used by the support contract, or a new Industry Capability established under the support contract. For DRAICs in particular, DRAICs may be:

- a. transferred from the acquisition contract as an Accepted DRAIC that is used and sustained by the support contract;
- b. created by combining DRAIC elements from the acquisition contract with new elements under the support contract, in order to be Accepted as a complete DRAIC under the support contract; or
- c. created as a new Industry Capability under the support contract.

Like AIAs established under an acquisition program, AIAs for the support contract may implement elements of SICPs and CICs, or otherwise deliver capabilities that are components of Industry as an element of the FIC.

During the term of a support contract, the relevant AIAs may be sustained simply by the use of that Industry Capability by the support contract, or multiple support contract making use of the same capability. In other cases, specific activities may be required under a support contract in order to sustain the in-country capability during periods of low or intermittent use.

ACE and ICE are measured for the Recurring Services, and reported on an annual basis. ACE and ICE may also be forecast, measured and reported for high value S&Q Orders, particularly for major modifications and upgrades where the Contractor has scope to select suppliers and, as a result, the location of work activities. The limited scope of ACE and ICE measurement under a support contract is an acknowledgement that much of the scope is determined by the Commonwealth and that more detailed measurement (and the associated cost) doesn't act to identify further opportunities to increase AIC.

CHAPTER 2: ASDEFCON (STRATEGIC MATERIEL)

CONDITIONS OF TENDER

Tender evaluation criterion

<u>Status:</u>	Core
<u>Guidance:</u>	<p>The <i>ASDEFCON (Strategic Materiel)</i> conditions of tender (COT) outline the tender evaluation process and, under clause 3, identify evaluation criteria and indicative subordinate criteria. The table also identifies evaluation items, which are sections of the tendered responses used to evaluate tenders against each criterion. The AIC criterion and subordinate criteria address the applicable Tender Data Requirements (TDRs), primarily in Annex G to Attachment A to the COT (ie, TDR G) and TDR D.</p> <p><i>Notes may be added on upskilling tender evaluation teams and potential involvement with Smart Buyer.</i></p> <p>The Defence project team will require sufficient staff, with the appropriate knowledge, to support the tender process (eg, clarification questions) and perform evaluations. For example, if as an outcome of the Smart Buyer workshops the Commonwealth decides to introduce industry capability as a DRAIC, the team will need knowledge of the related technologies to be introduced, or have access to stakeholders who can provide this kind of support. The project team, when drafting Attachment F, should ensure that the description of AIAs are adequate for tenderers to understand the scope of these requirements and to identify the cost drivers and any other risks.</p> <p>The Defence project team will also require staff with sufficient knowledge of work breakdown structures, scheduling, accounting and the ACE Measurement Rules to firstly prepare the Strategic Materiel Pricing Workbook for the collection of ACE data, along with other pricing data, and to evaluate the ACE within tender proposals.</p> <p>Resource planning for the Defence project team needs to be included in the Project Execution Strategy and/or early project management plan.</p>
<u>Drafter's Action:</u>	If AIC-related TDRs are amended, then drafters should review the AIC subordinate criteria and amend them if required. The subordinate criteria are worded generically so that, in most cases, no amendment will be required.
<u>Related Clauses:</u>	COT Attachment A, Annex D, Financial COT Attachment A, Annex G, Australian Industry Capability

TENDER DATA REQUIREMENT G, AUSTRALIAN INDUSTRY CAPABILITY

<u>Status:</u>	Core
<u>Guidance:</u>	<p>Annex G to Attachment A to the COT (TDR G) defines the information required from each tenderer when describing their proposal for the AIC program.</p> <p>The initial notes to tenderers provide details of AIC references, objectives of the required tender data, related tender data, and guidance for the tenderer(s) selected to participate in any Offer Definition and Improvement Activities (ODIA) to be held.</p>
<u>Drafter's Action:</u>	<p>Drafters should seek advice as per the notes to drafters.</p> <p>Drafters should ensure that the web links in the notes to tenderers remain current and correct. If applicable, web links may be added for SICP Industry Plans relating to the draft Contract.</p> <p>Refer to the guidance below for each section of TDR G.</p>
<u>Related Clauses:</u>	COT clause 3.11.1.f, the criterion for evaluating AIC in tender responses.

TDR G-1, Australian Industry Capability Planning and Business Case

<u>Status:</u>	Core
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Guidance: The first requirement, TDR G-1, requests tenderers to propose a high-level strategy as the basis for conducting an AIC program under any resulting contract (if they were successful), and present a business case promoting the merits of their proposal.

AIC Planning

For evaluation purposes, this planning information and business case allow the Commonwealth to understand how a tenderer would meet AIC Obligations and pursue AIC Objectives under any resulting contract. If a tenderer is successful, this information will form the basis of the AIC Plan and subordinate plans (see Figure 2).

In their response, tenderers are to outline the scope of work to be undertaken in ANZ and identify the proposed Approved Subcontractors that would play such a significant role that they would be considered AIC Subcontractors (using the criteria in draft Attachment H, List of Approved Subcontractors).

Tenders are to describe the work applicable to the AIAs identified in draft Attachment F. Tenderers may also identify additional activities to be performed in ANZ that they consider to be similarly important as the AIAs. If agreed by the Commonwealth, such additional activities may be treated as AIAs and added to Attachment F during negotiations. Note that TDR G-2 addresses DRAICs specifically.

In addition to AIAs, tenders are asked how their work to be performed in ANZ will contribute to Sovereignty. Tenderers are also required to summarise the ANZ workforce required, which is important for evaluating the benefits of the proposed AIC program and associated risks.

Notes to be added on table G-1

Opportunities

The developmental nature of the Mission System (the reason for using *ASDEFCON (Strategic Materiel)*) means that the system will have a combination of off-the-shelf and new subsystems and components. The tenderer is also likely to have chosen a number of subsystems from existing suppliers to support their proposal. However, those subsystems and components still to be developed, and off-the-shelf items that are yet to be selected, can represent opportunities for Australian Industry, either for the tenderer or proposed Subcontractors within ANZ (ie, for 'make or buy' decisions). These opportunities are to be identified using the format of Table G-1.

Notes to be added on Table G-2, AIC Schedule and how the schedule transfers into AIC Plan for successful tenderer.

AIC Schedule

As a summary of all work proposed to be performed in ANZ, tenderers are to prepare and submit an AIC Schedule in the form of Table G-2. This table will identify the scope of work to be assigned to the tenderer and proposed Subcontractors within ANZ. This schedule also identifies where other Commonwealth policies would be addressed, including efforts to promote the use of SMEs in Defence work, the Indigenous Procurement Program, and the employment of veterans in accordance with the 2019 DPIIP.

For the successful tenderer, the AIC Schedule may be updated during ODIA and/or negotiations (eg, if opportunities identified in Table G-1 are won by Australian Entities in that period) and would be added to Attachment K for subsequent inclusion in the AIC Plan when it is prepared under the Contract.

AIC Business Case

The last part of this TDR requests a business case, allowing the tenderer to argue in support of their proposal by describing the activities already undertaken to engage with the broader Australian Industry, their commitments to the AIC program, and the overall benefits of their proposal. This section of the tender response is limited to 10 pages with the objective of receiving a concise summary of relevant information rather than general marketing material.

Drafter's Action: TDR G-1 has many standard requirements and few that can be tailored. Drafters should review and, if required, amend the requirements according to the scope of the proposed AIC program in draft Contract (particularly Attachment F and clause

10 of the draft SOW). For example, if the proposed Contract will not include an R&D program (or allow tenderers to propose one), then this requirement can be deleted.

Related Clauses: COT Attachment A, Annex D, Financial
Attachment F, Australian Industry Capability
Attachment H, List of Approved Subcontractors
Attachment K, Draft Data Items and Strategies
SOW clause 10, Australian Industry Capability

TDR G-2, Defence-Required Australian Industry Capabilities

Status: Optional

Guidance: TDR G-2 requires tenderers to address any DRAICs described by the Commonwealth in draft Attachment F. If draft Contract does not include DRAICs, then this requirement can be deleted.

Firstly, tenderers are to provide a viability assessment for implementing each DRAIC. A DRAIC could involve numerous complex processes, some of which may be easy to implement, and others that are not. Difficulties in implementation may be due to the limited time available within a project's schedule to establish a new Industry Capability, being cost-prohibitive, or being limited by export controls or other restrictions. Tenderers are to identify and address these issues, when applicable. With prior research, the Commonwealth should be able to specify DRAICs where a majority of the DRAIC's requirements have already been confirmed as viable.

Notes to be added on assessing the viability of DRAICs.

Whether a DRAIC is related to a SICP in general terms or a specific CIC, tenderers are to describe the contribution that their implementation would make to that SICP / CIC. Otherwise, tenderers would explain how their DRAIC supports the objectives for the identified Industry Capability.

Tender responses can vary depending upon whether some or all elements of the DRAIC can be implemented by each tenderer, using Australian Industry. Eventually, this may result in the DRAIC's specified requirements being amended.

The remaining tender data requirements ask tenderers to explain how they would implement each DRAIC, the assumptions and constraints for that implementation, the Australian Entities that would be involved, and the known risks.

The note to tenderers above this requirement identifies that a description of a DRAIC should not exceed three pages. This sets an expectation for a concise response, sufficient for evaluation. If draft Contract includes a particularly complex DRAIC then drafters may identify an increased number of pages for that DRAIC.

In some cases, it may be possible that a DRAIC requested in an RFT is substantially in existence with a successful tenderer. If so, this represents a significant reduction in risk and, during negotiations, it may be possible to reassign the DRAIC as a 'required activity' and avoid the management overheads for a DRAIC.

Drafter's Action: If the draft Contract includes one of more DRAICs then drafters should review this TDR; however, in most cases it can be included in the RFT without change.

If the draft Contract will not include DRAICs, drafters should delete the detailed requirements and annotate the heading as 'Not used'.

For further information on Attachment F, refer to the guidance below.

Related Clauses: Attachment F, Australian Industry Capability
SOW clause 10.3, Development and Sustainment of Defence-Required Australian Industry Capabilities
DID-PM-AIC-DRAICP specifies requirements for a DRAIC Plan under the Contract.

TDR G-3, Australian Contract Expenditure Measurement

<u>Status:</u>	Core
<u>Guidance:</u>	<p>TDR G-3 requires each tenderer to propose a Prescribed ACE Percentage in their tender submission. This Prescribed ACE Percentage applies to the tendered Contract Price, which will not include options for further quantities, optional extras or Not-To-Exceed prices as part of the tendered 'specific prices'.</p> <p>For larger contracts, such as those expected to be greater than A\$500m in value and take longer than 10 years, the Commonwealth may consider requesting Prescribed ACE Percentages for some or all of the ACE Measurement Points in draft Attachment F. In this case, drafters should replace TDR G-3 with the optional clause below, including Table G-1. If the acquisition process does not include an ODIA, the Commonwealth may also decide to request Prescribed ACE Percentages for ACE Measurement Points, noting the added work this places on all tenderers and the tender evaluation team.</p> <p>If the optional clauses are included, applicable ACE Measurement Points need to be listed in Table G-1. Not all ACE Measurement Points for the draft Contract need to be included, only a sufficient number to enable the evaluation the tendered AIC program. All remaining Prescribed ACE Percentages for other ACE Measurement Points will be determined during ODIA or contract negotiations. Note that all Prescribed ACE Percentages may need to be updated during ODIA / contract negotiations, if applicable, such as to include selected optional extras.</p> <p>The Strategic Materiel Pricing Workbook (in Microsoft Excel®) submitted with in response to TDR D will include calculations of ACE and ICE and, if applicable, a calculated ACE percentage for each required ACE Measurement Point. Tender responses to TDR G-3 should be consistent with the financial tender response (for TDR D-10), whether or not the optional clauses below are included.</p> <p>Refer also to the <i>Australian Contract Expenditure Guide for ASDEFCON</i>.</p>
<u>Drafter's Action:</u>	<p>If the Commonwealth will only require a Prescribed ACE Percentage for the tendered Contract Price then drafters need not change TDR G-3 (other than to delete the note to drafters).</p> <p>Where the Commonwealth decides that Prescribed ACE Percentages will also be required for a number of ACE Measurement Points, drafters are to replace the existing clause with the optional clauses below. Drafters should then include the applicable ACE Measurement Points (some or all) into Table G-1 to suit the purposes of the tender. The last ACE Measurement Point should be Final Acceptance / contract close, to capture ACE applicable to the Contract Price. The same ACE Measurement Points need to be identified in TDR D-10 (once optional clauses have also been included there).</p> <p>If all ACE Measurement Points in Attachment F are included in Table G-1, then the note to tenderers following Table G-1 should be deleted.</p> <p>Once Table G-1 has been added, the existing Tables G-1 and G-2 at the end of the Annex G, and cross-references to them, will need to be updated.</p>
<u>Related Clauses:</u>	<p>TDR D-10, Australian Contract Expenditure (requirement 10 of COT Attachment A, Annex D)</p> <p>Attachment B, Price and Payments</p> <p>Attachment C, Delivery Schedule</p> <p>Strategic Materiel Pricing Workbook (Microsoft Excel®)</p> <p>SOW clause 10.1, AIC Management</p>

Optional clauses:

Note to tenderers: Requirement 10 of Annex D to Attachment A to the Conditions of Tender (TDR D-10), requires tenderers to provide Australian Contract Expenditure (ACE) and Imported Contract Expenditure (ICE) values in dollar amounts, and calculate ACE percentages for each ACE Measurement Point. Prescribed ACE Percentages are to be included as part of the AIC response by completing a table in the form of Table G-1 (below), consistent with the response

to TDR D-10. Prescribed ACE Percentages may not be the same as the calculated ACE percentages.

- 1.1.1 Tenderers are to propose a Prescribed Australian Contract Expenditure (ACE) Percentage for each ACE Measurement Point listed in Table G-1, based on the calculated ACE percentages derived from the 'Pricing Schedule' worksheet of the Strategic Materiel Pricing Workbook and the tenderer's response to TDR D-10.

Table G-1: ACE Measurement Points and Prescribed ACE Percentages

ACE Measurement Point	Prescribed ACE Percentage
	()%
	()%
	()%

Note to tenderers: Table G-1 does not include all of the ACE Measurement Points to be considered for any resultant Contract. The Prescribed ACE Percentages for the remaining ACE Measurement Points are to be determined during the ODIA.

TDR G-4, Opportunities to Enhance AIC

<u>Status:</u>	Core
<u>Guidance:</u>	<p>TDR G-4 allows tenderers to propose opportunities to enhance the AIC program. These opportunities are not included in the baseline tender response (ie, TDR G-1) because the cost, schedule or associated risk may be perceived as reducing a tenderer's competitiveness. TDR G-4 allows tenderers to propose opportunities without completing (and fully costing) an 'alternative proposal' that would otherwise be required by COT clause 2.15.</p> <p>For each opportunity proposed, tenderers are to outline the scope, the recipient of the Industry Capability (ie, the Contractor or a Subcontractor), the parties that would be involved, an implementation plan (outlining costs, known risks, and if there are any restrictions in the draft Contract), and the expected benefits.</p> <p>Once evaluated, adopting a proposed opportunity may require the Commonwealth to agree to change the draft Contract. For example, the project schedule may need to be extended in order to establish a proposed in-country manufacturing capability, which may also be considered as a new AIA that is added to Attachment F.</p> <p><i>Note to be added on table G-2.</i></p> <p>The project team should be aware that the decision to include some opportunities within the Contract may be determined external to the project team, through the Integrated Investment Committee or during second pass approval by government.</p>
<u>Drafter's Action:</u>	This requirement should be reviewed but, in general, can be included in the RFT without amendment.
<u>Related Clauses:</u>	<p>TDR G-1, Australian Industry Capability planning and business case, for the baseline scope of work in ANZ and any proposed additional AIAs.</p> <p>TDR G-5, Research and Development, if a new R&D activity is proposed.</p> <p>COT clause 2.15, Alternative Proposals</p> <p>SOW clause 10.4, Supply Chain Management</p> <p>SOW clause 10.5, AIC Initiatives Program</p> <p>Attachment F, Australian Industry Capability</p>

TDR G-5, Research and Development

<u>Status:</u>	Optional
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<u>Guidance:</u>	<p>TDR G-5 requires tenderers to address R&D activities as part of the AIC program. If the Commonwealth does not intend to implement an R&D program, and R&D has been tailored out of the SOW, then this requirement can be removed.</p> <p>When R&D is included within the AIC Program, R&D activities should aim to realise benefits for both Defence and Australian Industry.</p> <p>Draft SOW clause 10.6 defines the requirements for managing R&D activities (refer to guidance below). Areas for R&D activity can be defined by the Commonwealth, using SOW clause 10.6 with reference to an annex for additional details. When the Commonwealth does not have specific requirements for R&D under the AIC program, the Commonwealth may still consider R&D proposals from tenderers, including any considered to be opportunities presented in response to TDR G-4.</p> <p>For each R&D activity (Commonwealth or tenderer proposed) tenderers are to provide the details required by TDR G-5.</p> <p>Additional considerations</p> <p>Drafters should note clause 2.7 of the SOW, Commonwealth-directed Trade Studies, may be used to research and develop new solutions for the Materiel System. This clause does not specify where trade studies are conducted (ie, locally or overseas), hence it is not a standard part of, but may be used with, R&D under the AIC program.</p> <p>R&D activities may be applicable to both the Materiel System being developed and follow-on sustainment activities. When an R&D activity will be on-going under a subsequent support contract, drafters should consider and develop appropriate requirements for the Engineering Support element of that draft contract.</p>
<u>Drafter's Action:</u>	<p>Drafters are to determine if tender responses are required for R&D as part of the AIC program, and/or if the Commonwealth will allow tenderers to propose R&D activities.</p> <p>If R&D is required under the AIC program, drafters should review TDR G-5 and, if required, amend it to suit the tailored SOW. If the draft Contract does not require R&D but tender proposals will be considered, then the requirement can be retained without change.</p> <p>If R&D is not included and R&D proposals for the AIC program will not be considered, drafters can delete the requirement details and annotate the heading with 'Not used'.</p>
<u>Related Clauses:</u>	<p>TDR G-4, Opportunities to Enhance AIC</p> <p>SOW clause 2.7, Commonwealth-directed Trade Studies</p> <p>SOW clause 10.6, Research and Development</p> <p>DID-PM-AIC-R&DMP defines requirements for a R&D Management Plan.</p> <p>DID-PM-AIC-AICP defines requirements for planning R&D when R&D is included but a separate R&DMP is not required.</p>

TDR G-6, AIC Past Performance

<u>Status:</u>	Core
<u>Guidance:</u>	<p>As a demonstration of experience and capability, TDR G-6 requires tenderers to describe their past performance in regards to AIC (or equivalent) programs.</p> <p>TDR G-6 requires tenderers to describe the work undertaken and their achievements under previous contracts in respect of AIC, or like activities under non-Defence contracts. If an overseas company has conducted limited or no prior work in Australia, the note to tenderers allows equivalent programs for other customer countries to be used as references. Non-Defence contracts, with requirements for local industry participation and development, may also be used.</p> <p>Drafters need to determine an appropriate number of 'referenced projects' to be described in tender submissions. A large number of referenced projects does not add significantly to the tender evaluation as there will be a limited number of recent Defence contracts for similar systems, meaning that each additional reference becomes less and less relevant.</p>

Performance Exchange Scorecards and other 'scorecards' used for previous contracts included an evaluation of performance of AIC programs. These scorecards are referenced in TDR G-6 and if a tenderer has a prior 'marginal' or 'unsatisfactory' rating they can explain how their tendered strategy can avoid similar outcomes.

Drafter's Action: Drafters are to insert the required number of 'referenced projects' where indicated, otherwise this requirement may be included without change.

Related Clauses: COT clause 1.4, Other Commonwealth Rights (including Projects of Concern)
COT clause 1.5, Australian Government Requirements
TDR E-2, Past Performance

TENDER DATA REQUIREMENT D, FINANCIAL

TDR D-10, Australian Contract Expenditure

Status: Core

Guidance: Tenderers are required to submit financial data, including the proposed Contract Price and payments for any resultant Contract. This data includes a detailed cost work breakdown structure for the proposed Contractor and Subcontractor work, and identifies the ACE and ICE values expected for each pricing element in that structure. The ACE and ICE values enable the determination of Prescribed ACE Percentages.

In the template, TDR D-10 requires tenderers to forecast their ACE and ICE, which can be calculated using the Strategic Materiel Pricing Workbook, in order to tender an overall Prescribed ACE Percentage. Following this process, the Prescribed ACE Percentages for the ACE Measurement Points (ie, in addition to the Prescribed ACE Percentage for the whole contract), will be determined during ODIA or contract negotiations. Using this approach, it means that only the preferred tenderer(s) need to undertake the additional effort of defining Prescribed ACE Percentages for each ACE Measurement Point.

For larger contracts, such as those expected to be greater than A\$500m in value and take longer than 10 years, the Commonwealth may consider requesting Prescribed ACE Percentages for some or all of the ACE Measurement Points proposed in draft Attachment F. In this case, the drafter will need to include the optional clause below in TDR D-10, and tailor to suit. If the acquisition process does not include an ODIA, the Commonwealth may consider requesting Prescribed ACE Percentages for some or all ACE Measurement Points as part of the tender, noting the added work this requires for all tenderers and also for the tender evaluation team.

Drafter's Action: If the Commonwealth requires tenderers to submit Prescribed ACE Percentages for ACE Measurement Points, then drafters need to replace the existing notes and clause under TDR D-10 with the optional clauses below.

If Prescribed ACE Percentages are required for all ACE Measurement Points, then all ACE Measurement Points need to be listed in column (a) of the table, and the note to tenderers following the table should be deleted.

If Prescribed ACE Percentages are required for a selection of ACE Measurement Points, then only those ACE Measurement Points need to be listed in column (a) of the table. The ACE Measurement Points listed in TDR D-10 and TDR G-3 (when optional clauses have been included) should be the same.

Related Clauses: TDR G-3, Australian Contract Expenditure Measurement
Attachment B, Price and Payments
Attachment F, Australian Industry Capability

Optional clauses:

Note to tenderers: Any resultant Contract will record the Australian Contract Expenditure (ACE) dollar amounts and calculated ACE percentages for each ACE Measurement Point at clause 7 of Attachment B. The Prescribed ACE Percentages required for Attachment F to the draft Contract

(in accordance with TDR G-3) are to be derived from, but may be different to, the calculated ACE percentages from Table D-2.

Draft COC reference: Attachment B clause 7, Attachment F clause 4

- 1.1 Tenderers are to complete the ACE Measurement Point in the format of Table D-2 (below) from the pricing information in the completed Strategic Materiel Pricing Workbook.
- 1.2 Table D-2 identifies, for each ACE Measurement Point (column a), the Australian Contact Expenditure (ACE) (column b) and the Imported Contact Expenditure (ICE) (column c) calculated in accordance with clause 7.15 of the COC, on a cumulative basis (ie, from ED to each identified ACE Measurement Point). Table D-2 further identifies a calculated ACE percentage (column d) for each ACE Measurement Point, where calculated ACE percentage is determined in accordance with the following formula:

$$ACE\% = \frac{ACE}{ACE + ICE} * 100$$

Table D-2: ACE Measurement Points and calculated ACE Percentages

ACE Measurement Point (in accordance with Attachment F) (a)	Cumulative ACE (\$) (b)	Cumulative ICE (\$) (c)	Calculated ACE% (d)
			()%
			()%
			()%
			()%

Note to tenderers: Table D-2 does not include all ACE Measurement Points to be considered under any resultant Contract. The Prescribed ACE Percentages for the remaining ACE Measurement Points are to be determined during the ODIA.

TDR D-11, Alternate and Additional Deeming Rates

<u>Status:</u>	Core
<u>Guidance:</u>	<p>The ACE Measurement Rules, paragraphs 3 and 4 define standard deeming rates for ACE and ICE for Subcontracts and indirect costs, respectively. When confirmed, and approved, alternate and additional (ie, changed and new) Subcontract categories, thresholds and deeming rates for a specific contract can be documented in Attachment B, under clause 7.2. Refer to the guidance for Attachment B, clause 7.2 (below), for more information.</p> <p>While the Commonwealth may or may not include alternate and additional Subcontract categories, thresholds and deeming rates in Attachment B prior to tendering, TDR D-11 allows tenderers to propose changes specifically to themselves and proposed Subcontractors. The requirements and tables under TDR D-11 reflect those in clause 7.2 of Attachment B, and do not require tailoring.</p>
<u>Drafter's Action:</u>	TDR D-11 should be reviewed but in most cases can be included without change.
<u>Related Clauses:</u>	<p>Attachment B, clause 7.2, Alternate and Additional Deeming Rates</p> <p>Refer also to the <i>ACE Measurement Guide</i>.</p>

RELATED TENDER DATA REQUIREMENTS

<u>Guidance:</u>	<p>In addition to TDR G, information in response to other TDRs can contribute to, and should be considered during, the evaluation of tendered AIC proposals. The most relevant tender data requirements are summarised below.</p> <p>TDR A, Overview. TDR A-3 identifies the proposed Approved Subcontractors for any resulting Contract, including Approved Subcontractors that would also be designated as AIC Subcontractors. Proposed AIC Subcontractors should be</p>
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consistent with the nature and value work to be allocated to Australian Industry, as identified in response to TDR G-1.

TDR E, Project Strategies and Experience. Tender responses are to include a draft CWBS and a draft CMS that support of the overall project management strategy for any resulting Contract. This information should be consistent with the allocation of work to Australian Industry that is described in response to TDR G-1, and the calculation of ACE.

TDR F, Materiel System Solution. Tender responses include a description of Mission System design maturity. This also identifies the suppliers of applicable components and should be consistent with the allocation of work for ANZ Subcontractors. Where the Support System will include AIAs, the proposal for AIAs should also be consistent with the development of these in-service capabilities.

Inter-relationships between the various TDRs means that an integrated, multi-disciplinary approach to tender request preparation and evaluation is required.

CONDITIONS OF CONTRACT

4 AUSTRALIAN INDUSTRY CAPABILITY

<u>Status:</u>	Core
<u>Guidance:</u>	Clause 4 of the COC is the primary clause use to scope the Contractor's AIC obligations under the Contract.
<u>Drafter's Action:</u>	Refer to the clause guidance below.
<u>Related Clauses:</u>	SOW clause 10, Australian Industry Capability Refer also to the following section on related COC clauses.

4.1 Australian Industry Capability

<u>Status:</u>	Core
<u>Guidance:</u>	Clause 4.1 is an introductory clause summarising the overall requirements of the AIC program. The clause also requires acknowledgement by the Contractor of the importance of compliance with AIC Obligations, and the pursuit of AIC Objectives.
<u>Drafter's Action:</u>	This clause may be included in the draft Contract without change.
<u>Related Clauses:</u>	All other clauses under COC clause 4.

4.2 Essential AIC Obligations

<u>Status:</u>	Core
<u>Guidance:</u>	<p>This clause is referenced by the Glossary to define the 'Essential AIC Obligations' in the draft Contract, which includes those AIC obligations related to AIAs and the achievement of ACE. For clarity, the clause identifies the related components in Attachment F and the SOW.</p> <p>Note that 'AIC Obligations' is a broader term that includes all AIC-related obligations, including those in addition to AIAs and ACE.</p> <p>If there is an Essential AIC Obligation, relating to AIAs or ACE, within another Attachment or Annex to the draft Contract (eg, for the detailed specification of a DRAIC), then the clause may be modified to include these additional reference(s).</p>
<u>Drafter's Action:</u>	Drafters should review clause 4.2 and amend it if required to refer to any additional Attachments or Annexes; otherwise, this clause may be included in the draft Contract without change.
<u>Related Clauses:</u>	All other clauses under COC clause 4. COC clause 1.3, Objectives SOW clause 10, Australian Industry Capability Attachment M, Glossary

4.3 Independent AIC Audit Program

<u>Status:</u>	Core
<u>Guidance:</u>	<p>Clause 4.3 states the requirement for an Independent AIC Audit Program that provides the Commonwealth with an assurance of compliance with AIC Obligations, or otherwise to identify any instances of underperformance. In coordination with the Commonwealth Representative, the Independent AIC Audit Program is managed by AIC Division within CASG.</p> <p><i>Notes to be added on AIC Audit Program.</i></p> <p>As identified in clause 4.3.1, the Independent AIC Audits are facilitated through the Commonwealth Access provisions under clause 11.7 of the COC. Clause 11.7 also</p>

identifies, in the reasons for audits, compliance with AIC Obligations and implementation of the AIC Plan(s) as a reference to clause 4.3.

Clause 4.3.2 allows for a third party to be appointed as an authorised representative of the Commonwealth to conduct these audits. The third parties may be accounting firms (not affiliated with the Contractor) with the requisite commercial, financial and analytic skills to assess the Contractor's subcontracting arrangements, ACE and ICE. AIC Division, CASG, engages and manages the tasking of the third party firms used to undertake these audits.

Drafter's Action: This clause may be included in the draft Contract without change.

Related Clauses: COC clause 4.2, Essential AIC Obligations
COC clause 11.7, Commonwealth Access
Attachment B, Price and Payments
Attachment H, List of Approved Subcontractors

4.4 AIC Remediation

Status: Core

Guidance: ASDEFCO seeks the remediation of underperformance in preference to applying remedies. In this clause, if the Contractor fails to comply with an AIC Obligation, or it is evident that they will fail to comply with an AIC Obligation (eg, the schedule provides evidence that an AIA cannot be established by the required Milestone) then the Contractor is to develop and then implement an AIC Remediation Plan.

Notes to be added on SICP prioritisation.

Clause 4.4 describes the process for requiring and then implementing the AIC Remediation Plan. A successful process can be summarised as follows:

- The Commonwealth considers that a failure to comply with an AIC Obligation has occurred, or there is evidence that a failure will occur, and notifies the Contractor of the need for an AIC Remediation Plan (note that either party can identify the relevant failure).
- The Contractor prepares an AIC Remediation Plan, defining the steps to rectify the problem, and submits this to the Commonwealth for Approval.
- If the Commonwealth Representatives considers the AIC Remediation Plan to be feasible, the plan is Approved (note that the meaning of Approval does not transfer any responsibility for the outcomes to the Commonwealth).
- The Contractor completes the steps in the Approved AIC Remediation Plan and the shortfall / problem is rectified.

The clause also defines the process when an AIC Remediation Plan is unsuccessful. Failing to provide an AIC Remediation Plan suitable for Approval, or failing to remediate the failure by following the Approved plan, may result in the application of the remedies identified in clause 4.5.

Before proceeding from an AIC Remediation Plan to the remedies under clause 4.5, the parties may decide to address the issue through the Contract Governance Framework under COC clause 2.3, and as defined in Attachment P. This may allow for the consideration of solutions beyond an individual contract; for example, across the broader Defence capability program and in coordination with related contracts held by the Contractor. Referring to the Governance Framework is not explicit in clause 4.4 as this would be undertaken as a function of normal contract management activities.

Drafter's Action: This clause has been drafted for broad application and it should not require tailoring.

Related Clauses: COC clause 2.3, Governance Framework

COC clause 4.3, Independent AIC Audit Program

COC clause 4.5, AIC Remedies

DID-PM-MGT-RP defines requirements for an AIC Remediation Plan.

DID-PM-STAT-CSR, for AIC reports and the progress made for Remediation Plans.

4.5 AIC Remedies

Status: Core

Guidance: Clause 4.5 identifies remedies that may be applied in the event of failure by the Contractor to achieve an AIC Obligation, noting also that under the Contract the Contractor also has responsibility for any outcomes provided through Subcontracts.

There are a number of actions that could be undertaken in response to an underperformance or a breach of an AIC Obligation, these include:

- suspending payments, including a partial suspension;
- termination for default;
- the award of poor performance ratings; and
- alternative solutions determined under the Contract Governance Framework.

Clause 4.5 refers to the first two of the actions listed above, which are remedies that operate in conjunction with clauses 7.9 and 13.2 of the COC. Of course, the application of any remedy should only be considered after a proper investigation of any extenuating circumstances, such as Excepted Risks and Commonwealth Default.

Suspending Payment

In accordance with clause 7.9 of the COC, some or all payments can be suspended for a period from a Stop Payment Milestone, or at any time as a result of clause 4.5.2, until the breach or underperformance issue is resolved.

In the instance of a Stop Payment Milestone, if the Contractor fails to deliver all requirements as identified in Attachment C (including checklists related to particular Milestones), then part of the Milestone Payment may be withheld until the outstanding requirements are met. In the context of an AIC Obligation, this may mean a partial suspension of payment if a DRAIC was not implemented by the applicable Milestone. *Note that this action is not explicitly mentioned by clause 4.5.*

A suspension of payments under clause 7.9 is a remedy that can also be applied if an AIC Remediation Plan was not submitted, or was submitted but not suitable for Approval, or if the implementation of an Approved AIC Remediation Plan was not successful, as described under clause 4.5.2.

Termination

Termination for default is the remedy of last resort. Termination for default may apply if the Contractor fails to comply with an Approved AIC Remediation Plan, or because a breach of an Essential AIC Obligation is considered as not being able to be remedied. Once a notice of Termination for Default is given, clause 13.2 and related clauses of the COC are clear as to the requirements.

Before termination is initiated, the Governance Framework (refer COC clause 2.3) would be engaged to assist in finding a resolution. Referring to the Governance Framework is not explicit in clause 4.5 as this would be undertaken as a normal practice of contract management.

Performance Ratings

Poor performance ratings, for the Contractor's performance of AIC Obligations, are not explicitly identified in clause 4.5 because they have no immediate effect under a current contract. Performance ratings may be awarded via a *Supplier Rating System or the (previous) Performance Exchange Scorecard*, which evaluate the Contractor's performance across a range of categories, such as compliance with AIC Obligations

and efforts to achieve AIC Objectives. These performance ratings are considered during tender evaluations, and low ratings in respect of AIC and/or other performance categories may be detrimental when competing for future work.

Additional Remedies and Liquidated Damages

If drafters are considering additional remedies to those identified in clause 4.5, then it should be noted that liquidated damages are not to be applied to the AIC program. This is a policy position first implemented in accordance with DEFGRAM 786/2011, following direction from the Minister for Defence Materiel in June 2011. While the DEFGRAM has expired, the policy position to exclude the use of liquidated damages for the AIC program remains valid.

Drafter's Action: Drafters are to review clause 4.5 and, if no additional remedies are to be specified, this clause may be included without change.

Related Clauses: COC clause 2.3, Governance Framework
COC clause 4.4, AIC Remediation
COC clause 7.9, Stop Payment
COC clause 13, Disputes and Termination
Attachment C, Delivery Schedule
Attachment F, Australian Industry Capability

RELATED CONDITIONS OF CONTRACT CLAUSES

Clause 1.3, Objectives

Clause 1.3 defines the 'AIC Objectives', which are presented in the context of 'ADF Capability Objectives'.

AIC Objectives include creating, maintaining and enhancing Industry Capabilities, which may also benefit other programs and other Defence contracts. AIC Objectives are applicable to, but have a broader scope, than the AIC Obligations.

The AIC Objectives are referred to from a number of places within the template, including the SOW and DID's for AIC-related plans and reports.

COC clause 2.3, Governance Framework

Clause 2.3 refers to the Governance Framework, which is described in detail within Attachment P. The Governance Framework has application across the Contract and can consider issues spanning Defence programs and across multiple contracts held by the Contractor's broader organisation.

The Governance Framework applies to the AIC program like any other part of the Contract; however, it is uniquely placed to consider AIC Objectives that span contracts while also being a mechanism, if required, to address unresolved shortfalls in AIC Obligations, disputes, and to consider any strategic change to the Contract.

COC clause 6.9, Final Acceptance

At Final Acceptance both parties agree that the obligations under the Contract have been completed. This activity is to include a consideration of the Contractor's AIC Obligations in respect of completing acquisition AIAs, and the progress made to implement in-service AIAs. After final invoices are presented and paid, the ACE and ICE amounts and the final ACE percentage can be calculated and assessed for Final Acceptance purposes.

COC clause 6.11, Ownership

DRAICs are treated as Supplies, however, unlike other Supplies each DRAIC and its components (other than any GFM), will be owned by one or more companies in Australian Industry. Accordingly, the Ownership clause allows for:

- a. Supplies where ownership transfers to the Commonwealth upon Acceptance, in the conventional manner; and

- b. DRAICs to be Accepted without ownership transferring to the Commonwealth.

This clause works with Attachment C, the Delivery Schedule, which identifies the DRAIC Readiness Review as a Milestone, and deliveries that lead to Acceptance with or without a transfer of ownership.

COC clause 7.9, Suspending Payments

Suspending payments, including partial suspension, is a remedy that may be applied as a result of under performance of the AIC program. Clause 7.9 refers to clause 4.5, AIC Remedies, to establish this link. Refer to the guidance for clause 4.5 above.

COC clause 7.15, ACE Measurement Rules

This clause requires the ACE Measurement Rules to be followed when calculating ACE and ICE for the Contract, including Subcontracts.

ACE and ICE calculations are subject to audit under COC clause 4.3, Independent AIC Audit Program. Not applying the ACE Measurement Rules, and presenting erroneous ACE data, would result in default.

Note to be added on ACE/ICE evidence.

COC clause 11.1, Change to the Contract

The effect of contract changes on AIC is not mentioned in clause 11.1; however, considerations are identified in the CCP form at Annex E to Attachment I (see below).

Note: The Approved Subcontractor Deed also requires AIC Subcontractors to re-calculate ACE and ICE in support of drafting CCPs to the Contract.

COC clause 11.7, Commonwealth Access

This clause requires the Commonwealth to be given access to Contractor and Approved Subcontractors premises for the purposes of audits. The identified reasons for audits include assessing Contractor and AIC Subcontractor compliance with AIC Obligations. This clause enables access for the Independent AIC Audit Framework under clause 4.3.

ATTACHMENT F, AUSTRALIAN INDUSTRY CAPABILITY

Status: Core

Guidance: Attachment F defines the AIAs applicable to the Contract and identifies the Prescribed ACE Percentages for the ACE Measurement Points. It can be summarised diagrammatically as follows:

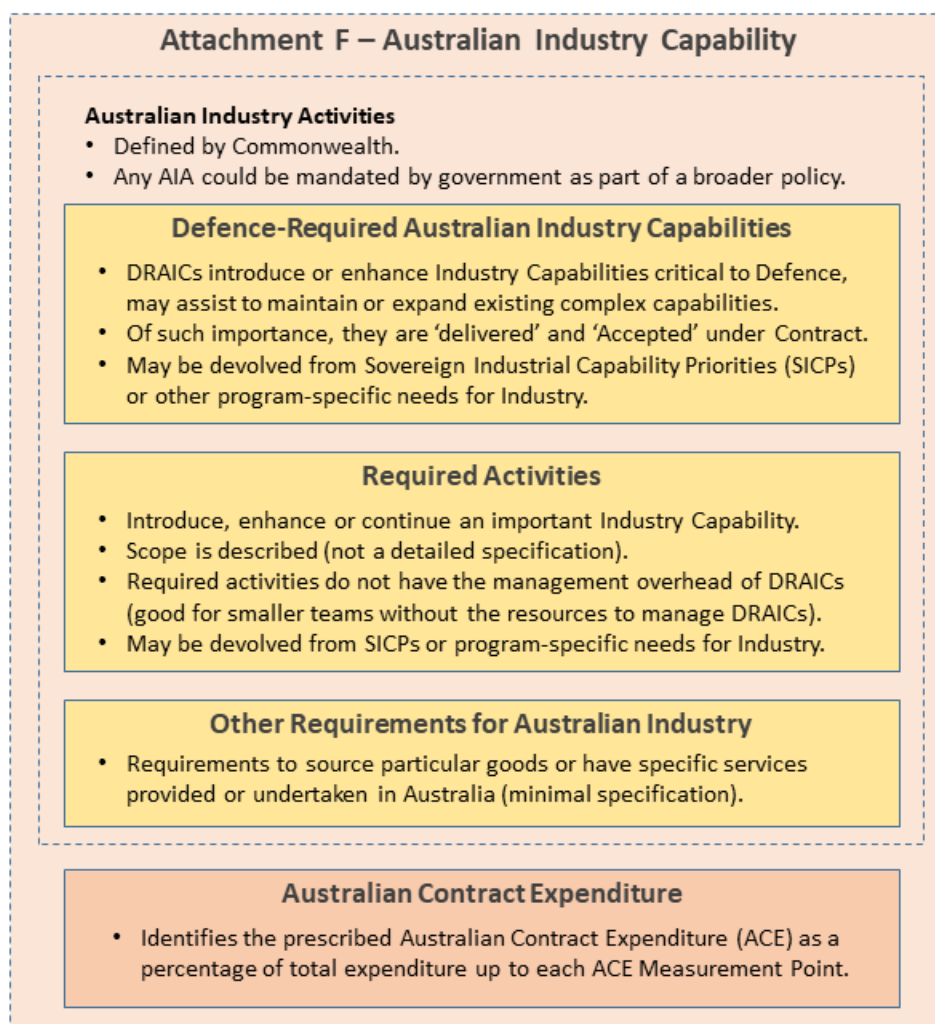


Figure 3: Attachment F Outline

The Defence project office needs to identify and describe the relevant AIAs and propose ACE Measurement Points in the draft Attachment F, for inclusion in the RFT. Details from the successful tender will be used to update Attachment F prior to Contract signature

Updates from the successful tender may be used to refine the scope of AIAs, or add new AIAs proposed by the tenderer, if agreed by the Commonwealth.

Prescribed ACE Percentages will also be transferred from the successful tender, and proposed changes to ACE Measurement Points may be agreed, if appropriate. To ensure consistency, the ACE Measurement Points in Attachment F will need to be confirmed against any applicable changes to Attachment C that may be negotiated.

Note that additional work identified by the Contractor, which will be performed by Australian Industry but which is not an AIA, will be described in the AIC Plan.

Drafter's Action: Refer to the guidance below for each clause in Attachment F.

Related Clauses: Annex G to Attachment A to the COT, Australian Industry Capability
COC clause 4, Australian Industry Capability
SOW clause 10, Australian Industry Capability

Clause 1, Introduction

<u>Status:</u>	Core
<u>Guidance:</u>	This initial clause identifies that the scope of Attachment F that, by definition, includes Essential AIC Obligations. Once the other clauses in the Attachment have been drafted, this clause should be amended to capture any differences in the draft Attachment to the default scope of the template.
<u>Drafter's Action:</u>	Drafters may amend clause 1.1.1a to suit the scope of Attachment F. For example, this may involve deleting the reference to DRAICs, if DRAICs will not be required under the Contract.
<u>Related Clauses:</u>	All other parts of Attachment F.

Clause 2, Defence-Required Australian Industry Capabilities

<u>Status:</u>	Optional
<u>Guidance:</u>	<p>DRAICs are optional in a contract. Refer to 'Industry Capability' under the 'Key Concepts' section (above) for an introduction to DRAICs. If a contract does not have DRAICs then the clauses can be deleted (and annotate the heading as 'Not used').</p> <p>Clause 2.1 requires the Contractor to implement and sustain each DRAIC defined under clause 2. The actions (ie, design, develop, etc) in this clause are "as applicable" because not all DRAICs will be Accepted, and some may be enhanced rather than being designed and developed from the ground up. Drafters may modify this clause if appropriate for the scope of the DRAIC(s), once specified in clause 2.</p> <p>Clause 2.2 is used to define each DRAIC applicable to the draft Contract. For each DRIAC this clause should be duplicated, and then developed to define the scope and unique requirements of the individual DRAIC. Heading clauses should be amended, where indicated, to identify a number and name of each DRAIC (these numbers are a useful reference in Attachment C and plans).</p> <p>Clause 2.2.1 is to explain the relevance and importance of the DRAIC to Defence. Where a DRAIC implements parts of one or more SICPs, including specific CICs, the SICPs and CICs should be identified using template clause 2.2.1. However, published SICPs do not apply to all Defence capabilities and if the project requires a new or enhanced Industry Capability, which is not covered by a SICP, then Drafters should replace clause 2.2.1 with a meaningful description of importance. Applicable Industry Capabilities should have been identified during application of the Smart Buyer Framework and if the need for a DRAIC was identified, the reason for it should have also been identified, and can be documented here.</p> <p>Descriptions should be concise and focus on the required scope and outcomes from the DRAIC. Other documents, such as SICP Industry Plans or more detailed DRAIC specifications included in annexes, should be referenced as required.</p> <p>Clause 2.2.2 contains the specification for the DRAIC. The note to drafters above clause 2.2.2 provides drafting guidance for this section. For DRAICs that will become part of the Support System (eg, a Contractor-owned deeper maintenance capability), this description may refer to the applicable Support System requirements in the Specification at Annex A to the SOW. In some cases, a separate annex (to the SOW or Attachment F) may be developed to specify the requirements for a DRAIC.</p> <p>As the resulting Industry Capability will be owned and operated by industry, DRAIC specifications should be brief and focus on the scope of the capability, not how it is to be implemented. For example, a specification for new a production capability would describe the type of manufacturing to be introduced to Australian Industry, rather than specifying the physical characteristics of the production facility.</p> <p>Under contract, DRAICs are designed, developed, manufactured, installed, tested and implemented, as applicable, in accordance with an Approved DRAIC Plan. Once implemented, DRAICs are assessed using the criteria in the DRAIC Readiness Review (DRAICRR) checklist. At the DRAICRR, which is a Mandated System</p>

Review, the assessment process considers the specifications in Attachment F (and any related specifications) to confirm that all requirements have been met.

When defining the number and scope of DRAICs to be included in the Contract, the Commonwealth project team should plan to ensure that adequate Commonwealth staff, with appropriate skills, will be available to monitor the Contractor's program to implement the DRAICs, including any Commonwealth involvement in Verification activities prior to Acceptance of the applicable DRAICs.

Note that, as Essential AIC Obligations, underperformance when implementing DRAICs under the Contract may result in AIC Remediation Plans and/or remedies being applied.

Drafter's Action: Drafters need to define the proposed DRAICs in Attachment F, prior to release of the RFT. DRAICRRs should also be scheduled in Attachment C. Updates to both Attachments may be required prior to contract signature to incorporate further details from the successful tenderer's AIC proposal.

If the proposed contract will not include DRAICs, the clauses below the heading can be deleted and the heading can be annotated with 'Not used'.

Related Clauses: TDR G-1, Australian Industry Capability Planning and Business Case
TDR G-2, Defence-Required Australian Industry Capabilities
COC clause 4.4, AIC Remediation
COC clause 4.5, AIC Remedies
Attachment C, Delivery Schedule
SOW clause 10.3, Development and Sustainment of Defence-Required Australian Industry Capabilities
DID-PM-AIC-DRAICP defines requirements for a DRAIC Plan.
MSR-CHECKLIST-DRAICRR defines requirements for a DRAICRR.

Clause 3, Required Activities to be performed by Australian Industry

Status: Optional.

Guidance: Clause 3 identifies AIAs other than DRAICs that Defence requires under the Contract. Two categories of 'Required Activities to be performed by Australian Industry' are identified in this section:

- a. 'Required Activities', and
- b. 'Other Requirements for Australian Industry'.

Refer to 'Industry Capability' under the 'Key Concepts' section (above) for a discussion on the categories of AIAs.

Clause 3.1 identifies that 'Required Activities to be performed by Australian Industry' are to be implemented in accordance with the Contract, which effectively means in accordance with the Approved AIC Plan. In general, 'Other Requirements for Australian Industry' do not require much planning but they should appear in the AIC Schedule, within the AIC Plan.

Clause 3.2 identifies the 'Required Activities' that are to be performed by Australian Industry. Clause 3.2.1 should be copied, duplicated, and then developed for each AIA in this category. Details should include sufficient information to outline the scope of work / Industry Capability that Defence expects will be performed in ANZ, without unduly limiting the Contractor's options for implementing the AIA.

'Required Activities' may be related to a SICP (including for one or more CICs) or otherwise important to Defence for reasons of Sovereignty and Industry as a FIC. Whichever is the case, the importance of the Required Activity to Defence should be identified in the description in order to provide context.

Required Activities may include new Industry Capabilities, without needing the specificity of a DRAIC, or the continued use / maintenance of existing Industry Capabilities that are important to Defence. For Required Activities the Acceptance process under the Contract is not applied; however, each Required Activity should be specified in sufficient detail so that it can be reasonably confirmed if the scope of the activity is being performed, by Australian Industry, consistent with the objectives for specifying it as a Required Activity.

Clause 3.3 identifies 'Other Requirements for Australian Industry'. These AIAs require minimal explanation, such as a requirement to source particular materials or services from an Australian supplier. Note that the government may identify AIAs in this category in order to pursue objectives for broader economic benefits that extend beyond the scope of Defence requirements. Generally, these can be described by a single sentence / sub-paragraph.

Note that, as Essential AIC Obligations, underperformance when implementing AIAs, under a contract may result in AIC Remediation Plans and/or remedies being applied.

Drafter's Action: Drafters need to identify the appropriate AIAs for this section and include them under the applicable heading. Descriptions should be concise, including just enough detail to describe Defence's requirements. Descriptions should focus on the scope of the activity and required outcomes, and reference other documents as applicable (eg, SICIP Industry Plans).

If a project office determines that one of these categories of AIA is not required (eg, if 'Other Requirements for Australian Industry' is not required), the applicable clause can be deleted and the heading annotated as 'Not used'.

Related Clauses: TDR G-1, Australian Industry Capability Planning and Business Case

COC clause 4.4, AIC Remediation

COC clause 4.5, AIC Remedies

SOW clause 10.1, AIC Management

SOW clause 10.2, General AIC Activities

DID-PM-AIC-AICP defines the requirements for planning these AIAs.

Clause 4, ACE Measurement

Status: Core

Guidance: Clause 4 lists the ACE Measurement Points and Prescribed ACE Percentages, as part of the Essential AIC Obligations for the Contract.

Drafters should propose ACE Measurement Points for inclusion in Table F-1. Other than Final Acceptance (the end of the Contract) there are no mandatory events that must be used as ACE Measurement Points; however, drafters should consider that:

- ACE Measurement Points should coincide with significant Milestones, such as the Detailed Design Review (DDR) and the Acceptance of major items of Supplies. These often represent the conclusion of a set of activities and the type and location of work may change at these Milestones. Draft Attachments B and C identify Milestones and Milestone criteria, and the milestones that are ACE Measurement Points need to be identified in these Attachments.
- ACE Measurement Points should occur no more frequently than once per year, unless there are two very significant Milestones in the same year. Time between ACE Measurement Points is required to enable meaningful progress to occur, and this also avoids further increasing the reporting overhead.

- Project teams should be aware of the work and spend profile for the Contract, as the nature and location of work and ACE will change from time to time.
- The ACE percentage is based on cumulative expenditure and it will not always increase with each ACE Measurement Point.

The ACE Measurement Points should also be inserted by the drafter into the table under clause 7.1 of Attachment B, which is where calculated ACE and ICE values will be recorded and used as the basis for determining the Prescribed ACE Percentages under the Contract.

ACE Measurement Points should be consistent with the Milestones in the Milestone Payment Schedule of the Strategic Materiel Pricing Workbook, which is captured by clause 3 of draft Attachment B. Drafters should ensure that the applicable Milestones in Attachment C are identified as ACE Measurement Points. Refer to the guidance for Attachment F (below) regarding the selection of Milestones as ACE Measurement Points.

In many cases, tenderers will only need to provide a Prescribed ACE Percentage for the tendered Contract Price in their response to TDR G-3. The Prescribed ACE Percentages for each ACE Measurement Point are then determined by the preferred tender(s) during ODIA or contract negotiations. However, for higher value (eg, more than \$500m) and longer duration (longer than 10 years) contracts, TDR G-3 may be changed to request proposed Prescribed ACE Percentages for some or all ACE Measurement Points. If additional Prescribed ACE Percentages are to be requested in the tender, then:

- the applicable ACE Measurement Points (all or a selection) should also be copied into TDR G-3 and TDR D-10 (when updated with optional clauses in this guide); and
- the note to tenderers for Attachment F should be updated with the note to tenderers included in the optional clauses below.

Note that SOW clause 10.1 requires an ACE measurement report to be submitted following each ACE Measurement Point. The CSR also reports on the ACE and ICE, often between ACE Measurement Points. Hence, visibility of ACE can be achieved without more frequent ACE Measurement Points.

During ODIA / contract negotiations, ACE percentages for each ACE Measurement Point are calculated for inclusion in Attachment B. The Prescribed ACE Percentages are determined from the calculated values but should be consistent with the tendered figure(s) given in response to TDR G-3, subject to any negotiated changes (eg, to include any 'optional extras'). The Prescribed ACE Percentages are listed in both Attachment B and Attachment F; however, Attachment F does not include ACE amounts in dollars, these are only included in Attachment B.

Note that tenderers / the Contractor may under-state Prescribed ACE Percentages compared to the calculated ACE percentages; the difference will depend on the Contract's risk profile. This reduces their risk of remedies being applied under the Contract, in respect of achieving every Prescribed ACE Percentage.

ACE Measurement Points may be amended during ODIA or contract negotiations if more suitable Milestones or events are proposed by the preferred tenderer(s). If changes to ACE Measurement Points are agreed, including changes in their scope or schedule, then any Prescribed ACE Percentages tendered (other than for the whole Contract Price) will most likely require change.

Once agreed, Prescribed ACE Percentages in Table 1 of Attachment F should be specified using integer values only (eg, 60%, not 60.2%). This considers the limited ability of all parties to see accurately into the future and this may also reduce the number of later contract changes for minor variations in expenditure.

ACE Percentages are measured on a cumulative basis from ED to the current ACE Measurement Point, not just between each ACE Measurement Point. Hence, during a contract, the Prescribed ACE Percentages in Attachment F will need to be updated for changes to contract scope, or if variable payments (eg, Cost Reimbursement)

effect the subsequent Prescribed ACE Percentages. Refer to the guidance for 'Contract Change Proposal, Annex E to Attachment I' (below).

Drafter's Action: If only a Prescribed ACE Percentage for the Contract Price is to be tendered, drafters do not need to amend this clause prior to RFT. However, if additional Prescribed ACE Percentages are to be tendered, the note to tenderers below should be used to replace the existing one.

Drafters should ensure that the ACE Measurement Points in Attachment B and Attachment F are aligned and, if required, applicable ACE Measurement Points have been copied into tables in TDR G-3 and TDR D-10.

Before contract signature, Table 1 will require population with the Prescribed ACE Percentages. These will be defined from the successful tenderer's response, any negotiated changes, and the calculation of ACE percentages in Attachment B.

Related Clauses: TDR G-3, Australian Contract Expenditure Measurement

TDR D-10, Australian Contract Expenditure

COC clause 4.4, AIC Remediation

COC clause 4.5, AIC Remedies

Attachment B, Price and Payments

Refer also to the Strategic Materiel Pricing Workbook.

Optional clauses:

Note to drafters: If more than one Prescribed ACE Percentage is to be requested with tender responses, replace the existing note to tenderers for clause 4 of Attachment F with the following.

Note to tenderers: Table F-1 will consist of an amalgamation of the table in TDR G-3 (which sets out the required ACE Measurement Points), the successful tenderer's response and any negotiated adjustments.

ATTACHMENT B, PRICE AND PAYMENTS

Status: Core

Guidance: Attachment B identifies the prices for the payments to be made under the Contract. Payment is generally made against the achievement of Milestones, including those required by the Commonwealth and others identified by the preferred tenderer / Contractor consistent with the expected progress of the Contract. For the purposes of the AIC program, some milestones will be particularly relevant, and pricing data needs to be broken down into ACE and ICE components, in order to calculate overall ACE and ICE values and to define Prescribed ACE Percentages.

Tenderers prepare pricing information in accordance with TDR D including through the population of the Strategic Materiel Pricing Workbook (the 'Workbook'); a Microsoft Excel® workbook developed for this purpose by Financial Investigation Services (FIS). Attachment B will be completed using the successful tenderer's response to TDR D and any negotiated changes, and uses a number of worksheets from the Workbook as Annexes (eg, saved as PDF files).

Schedule of Payments, under clause 3 of Attachment B, defines the Milestones and Milestone Payments for the Contract. A detailed listing is included at Annex B to Attachment B, the Milestone Payment Schedule.

Milestones applicable to the AIC program may include DRAICRRs and DRAIC Acceptance, and any other Milestones where elements of AIAs are developed and implemented, with Milestone Payments when appropriate. Milestone entry and exit criteria are included in Attachment C, which would identify if DRAIC Acceptance was an individual Milestone or included as part of another Milestone (eg, a production readiness review, proposed by the Contractor, where subsequent production activities will use that DRAIC). For some contracts, a Milestone Payment for DRAIC Acceptance can have the effect of bringing forward payments that would have otherwise be claimed as overheads to per unit production costs over several years.

Australian Contract Expenditure Amounts, clause 7.1 of Attachment B, lists the values of ACE and ICE for ACE Measurement Points. In accordance with clause 7.15 of the COC, ACE and ICE are to be calculated in accordance with the *ACE Measurement Rules*, a stand-alone document available from:

www1.defence.gov.au/business-industry/procurement/policies-guidelines-templates/procurement-guidance.

For further information regarding the determination of ACE and ICE, refer to the *ACE Measurement Rules* and the *Australian Contract Expenditure Guide for ASDEFCON*.

Clause 7.1 of Attachment B, Australian Contract Expenditure Amounts, explains how ACE as a percentage is calculated using the following formula:

$$ACE\% = \frac{ACE}{ACE + ICE} * 100$$

Clause 7.1 also includes Table B-1, which lists ACE and ICE values and calculated percentages for each ACE Measurement Point. ACE Measurement Points should be identified in the draft Attachment B before tendering, while the remainder of the table is completed using information from the successful tenderer.

The collection of ACE and ICE data is included as part of the tenderer's normal pricing process for the draft Contract, in accordance with TDR D, which avoids a parallel ACE / ICE accounting activity. In many cases, tenderers may only be asked (in TDR D-10) to provide a Prescribed ACE Percentage for the tendered Contract Price. If however, for larger and longer contracts, Prescribed ACE Percentages are requested for additional ACE Measurement Points, the note to tenderers that appears above Table B-1 should be replaced by the note to tenderers in the optional clauses (below).

The ACE and ICE values (ie, in dollars) are used to calculate an ACE percentage (as above) and a corresponding Prescribed ACE Percentage is determined for the last column of Table B-1. Prescribed ACE Percentages, determined by the Contractor, may be less than the calculated ACE percentages; where the difference depends on the risk profile for the Contract, including the assessed availability of

suppliers from Australian Industry. This difference reduces the Contractor's risk of remedies being applied in respect of achieving the Prescribed ACE Percentage for each ACE Measurement Point. Once defined, the Prescribed ACE Percentages are transferred across to Attachment F.

Alternate and Additional Deeming Rates for ACE and ICE, under clause 7.2 of Attachment B, document alternate and additional (ie, changed or new) deeming rates for ACE and ICE, as contract-specific variations to the *ACE Measurement Rules*. These fall into two categories:

- additional and alternate Subcontract categories, thresholds and deemed ACE and ICE percentages; and
- alternate deeming rates for indirect costs (including overheads and general and administrative costs) for the Contractor and specified Subcontractors.

Changes to categories of work, thresholds and deeming rates for Subcontracts (paragraph 3 in the *ACE Measurement Rules*) may be identified by the drafter if these are expected to be common to all tenderers, due to the nature of the Materiel System being acquired. Any changes proposed by the preferred tenderer (in response to TDR D-11) will need to be confirmed during ODIA / contract negotiations, before they can be Approved by the Commonwealth and included in Table B-2.

Deemed rates of ACE and ICE for indirect costs (including overheads and general and administrative costs) for the Contractor and Subcontractors are included in paragraph 4 of the *ACE Measurement Rules*. Alternate deeming rates for the Contractor and specified Subcontractor organisations may have already been determined by FIS as part of their regular review activities. If so, these rates may be used in their response to TDR D-11, if the tenderer identifies the rates and when they were confirmed by FIS. For the successful tenderer's team, these rates can be included in Table B-3.

For alternate and additional deeming rates, the drafter may include changes in Tables B-2 and B-3, otherwise, the clauses and tables should be left in the draft Attachment B pending any changes proposed by the successful tenderer. Accordingly, this clause is 'RFT Core'.

Drafter's Action: Drafters are to include appropriate Milestone definitions in the draft Contract within Attachment C, and identify applicable Milestones in the 'Milestone Payment Schedule' worksheet of the Workbook (which is the basis for Annex B to Attachment B). Table B-1 should be updated to identify those Milestones that will be used as ACE Measurement Points.

If Prescribed ACE Percentages are to be requested for additional ACE Measurement Points, drafters should use the note to tenderers in the optional clauses (below) to replace the note to tenderers that appears above Table B-1.

If applicable, drafters may include alternate and additional deeming rate information in Table B-2. Otherwise, the clause should be left in the draft Attachment, pending a possible update for the response provided by the successful tenderer. If there is no additional or alternate deeming rate information, clause 7.2 may be deleted prior to contract signature.

Related Clauses: TDR D, Financial
TDR G, Australian Industry Capability
COC clause 7.15, ACE Measurement Rules
Attachment C, Delivery Schedule, for DRAICRR, DRAIC Acceptance and related Milestones.
Attachment F, Australian Industry Capability
MSR-CHECKLIST-DRAICRR, the checklist items for DRAIC Readiness Reviews, which are included as Milestone entry and exit criteria in Attachment C.

Optional clauses:

Note to tenderers: Prescribed ACE Percentages are required to be submitted in accordance with TDR G-3, for inclusion at Attachment F to the draft Contract. For any resultant Contract, Table B-1 below will include a summary of the planned ACE and ICE expenditure, and calculated ACE percentages for each ACE Measurement Point, using pricing information from the Strategic Materiel Pricing Workbook. These calculated ACE percentages may not be the same as the Prescribed ACE Percentages at clause 4 of Attachment F.

Table B-1 will consist of the successful tenderer's response to TDR D-10 and any negotiated adjustments.

OTHER ATTACHMENTS

Attachment C, Delivery Schedule

<u>Status:</u>	Core, with optional requirements for AIC
<u>Guidance:</u>	<p>Attachment C identifies and describes the Milestones for the Contract, which include the scheduled delivery of Supplies and, as applicable, the DRAIC Acceptance Milestones and those Milestones designated as ACE Measurement Points.</p> <p>If one or more DRAICs are included in the Contract then DRAIC Acceptance Milestones should be identified in the Milestones Schedule and in the Schedule of Milestone Criteria, including entry and exit criteria.</p> <p>If a DRAIC establishes a new production capability, for example, and the Milestone for DRAIC Acceptance coincides with one of the Contractor's internal system reviews, such as a production readiness review, DRAIC Acceptance would be identified in the entry or exit criteria for that Milestone. If establishing the example production capability is a significant undertaking, effectively a project in its own right, then additional progress Milestones may be considered by the Commonwealth and also whether these will attract a Milestone Payment (included in Attachment B).</p> <p>If a DRAIC under the Contract (Acquisition) aims to introduce an in-service support capability, which does not commence until activities are completed under the Contract (Support) (eg, for deeper maintenance), then assurance activities for the DRAIC may be based on the delivery of related Support System Components (eg, equipment for that maintenance activity). In this case, a DRAICRR may be held with the related System Acceptance Audit, and would consider if the DRAIC Elements that can reasonably be delivered, have been delivered, installed, and verified to the extent that is practical.</p> <p>Draft details for Milestones should be developed, to the extent reasonable, prior to releasing Attachment C as part of the RFT. Milestone details will be updated for the successful tender, and any negotiated changes, prior to contract signature.</p>
<u>Drafter's Action:</u>	<p>Drafters are to identify proposed Milestones relating to AIC in the Milestone Schedule, and describe the entry and exit criteria in the Schedule of Milestone Criteria. Consideration should be given to which Milestones may be combined (eg, if a DRAICRR can be combined with another MSR) when drafting these schedules.</p> <p>Example DRAIC Acceptance Milestones and criteria are included in the template. These should be further developed, or deleted if DRAICs are not applicable.</p>
<u>Related Clauses:</u>	<p>Attachment B, Price and Payments.</p> <p>Attachment C, Delivery Schedule</p> <p>MSR-CHECKLIST-DRAICRR defines requirements for the DRAICRR, including entry and exit criteria. Other MSR checklists may be applicable when combining Milestone activities.</p>

Attachment H, Schedule of Approved Subcontractors

<u>Status:</u>	Core
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<u>Guidance:</u>	<p>Within ASDEFCON the term Subcontractor has a broad meaning; hence, those more prominent Subcontractors, that meeting certain defined criteria, are identified as Approved Subcontractors in Attachment H. In addition, Approved Subcontractors with a significant role in the AIC program can be identified as AIC Subcontractors by annotating Table H-1 within Attachment H.</p> <p>The criteria for identifying Approved Subcontractors and the additional criteria for identifying AIC Subcontractors, is included at clause 11.9 of the COC. This criteria may be tailored; for example, the reference to DRAICs can be removed if DRAICs will not be included in the Contract.</p> <p><i>Notes to be added on AIC Subcontractor Rights, SME flow down, Subcontractor ACE traceability and SME involvement.</i></p> <p>For AIC Subcontractors a number of Contract requirements are ‘flowed down’ into their Subcontracts and additional clauses within the Approved Subcontractor Deed will apply. These include requirements for Subcontractor AIC Plans, status reporting, ACE Measurement Reporting and the Commonwealth Access clauses that allow the Commonwealth to audit an AIC Subcontractor’s AIC program and ACE / ICE records.</p>
<u>Drafter’s Action:</u>	<p>Drafters should review the Approved Subcontractor criteria in clause 11.9 of the COC and amend those requirements if necessary.</p> <p>Prior to contract signature, Attachment H will need to be updated with details from the successful tender, including identification of which Approved Subcontractors will be AIC Subcontractors, thus requiring an Approved Subcontractor Deed that includes AIC requirements.</p>
<u>Related Clauses:</u>	<p>COC clause 11.9, Subcontractors</p> <p>Attachment I, Annex A, Approved Subcontractor Deed</p> <p>SOW clause 10.2, General AIC Activities</p> <p>DID-PM-AIC-AICP, for AIC Subcontractor planning requirements</p> <p>DID-PM-STAT-CSR, for Subcontractor reporting requirements</p>

Attachment I, Deeds and Forms

<u>Status:</u>	Core
<u>Guidance:</u>	Refer to the guidance for each annex below.

Approved Subcontractor Deed, Annex A to Attachment I

An Approved Subcontractor Deed, based on the template deed in Annex A to Attachment I, establishes a relationship between the Commonwealth and an Approved Subcontractor. The deed addresses functions that require the co-ordination and co-operation by the Commonwealth, Contractor and Approved Subcontractor; for example, Technical Data and Software rights, Confidential Information, AIC, and Commonwealth Access.

Drafters need to tailor the Approved Subcontractor Deeds to include the optional AIC requirements that apply to those Approved Subcontractors who are also identified as AIC Subcontractors in Attachment H. The AIC requirements cover AIC Obligations, the Independent AIC Audit Framework, and AIC-related reporting.

Note to be added on overseas approved AIC Subcontractors.

Contract Change Proposal, Annex E to Attachment I

AIC-related CCPs

The preparation of a CCP requires the parties to consider how a change affects the Contract. Annex E to Attachment I is a form for preparing a CCP, which requires the effects of those changes to be documented, including in respect of AIC Obligations. To emphasise both capability and expenditure aspects of AIC, the form expects parties to consider and document the effects on:

- AIAs; and
- Prescribed ACE Percentages at each future ACE Measurement Point.

How a CCP affects the AIAs and ACE, and included these in the Contract change, is important because these elements of the AIC program are enforceable and non-compliance may result in the remedies identified under clause 4.5 being applied.

As example CCPs, the Contractor may propose a new AIA as an Australian Industry Opportunity and, if the Commonwealth agrees, it will be added to Attachment F. Alternatively, a new Subcontractor may be engaged to implement a DRAIC and may need to be identified as an Approved Subcontractor, and possibly as an AIC Subcontractor, in Attachment H.

In terms of ACE, any change to the scope of the Contract has the potential to effect ACE percentages. An increase in the scope of work performed overseas may not increase ACE but it will increase ICE. Unless changes are minor, this will affect the Prescribed ACE Percentages for future ACE Measurement Points, as documented in Attachment F.

A CCP, which includes a change in schedule for work packages but not overall work, may also affect the Prescribed ACE Percentage for one or two ACE Measurement Points, but not the overall ACE for the Contract.

Note that the scope of work to be performed in ANZ is identified in the AIC Plan, even if the work is not part of an AIA. Accordingly, variations in this scope of work may not result in a change to the AIAs in Attachment F but it may affect ACE. In this case, a revised AIC Plan would be submitted for Approval and the ACE details in Attachments B and F may need update via CCP.

If applicable, Attachment B may include contract-specific deeming rates for ACE and ICE that differ to the ACE Measurement Rules. Changes to deeming rates (eg, after an audit to confirm the validity of a proposed change) would require a CCP. A consequence of this change could be an update to the calculated ACE and ICE amounts in Attachment B and the Prescribed ACE Percentages in Attachment F.

Other CCPs and their impact on AIC

Many CCPs will not be specific to the AIC program but will effect AIC, particularly as a result of changes to ACE and ICE amounts. These changes may be:

- part of a standard Contract process,
- requested by the Commonwealth,
- initiated by the Contractor,
- consequence of schedule changes,
- a result of a remedy, and
- other changes.

The following paragraphs identify examples from each item in the above list. The reason is to highlight the range of changes that may affect AIC, and the need to plan for Commonwealth, Contractor and, in some cases, Subcontractor resources to assess the impact on AIC.

Changes that are **part of a standard contract process** that will change the ACE and ICE amounts, and that will likely change the Prescribed ACE Percentages for future ACE Measurement Points, include:

- incorporating the Not-To-Exceed (NTE) prices for Supplies (Spares, S&TE, etc) when the recommended provisioning lists are Approved;
- expenditure from variable pricing methods such as the cost per item requiring Codification, or Cost Reimbursement payments if included in the Contract;
- changes in expenditure for Allowable Costs, such as travel, compared to the initial forecasts included in the price; and

- expenditure on NTE prices for preparing CCPs (as per COC clause 11.1.4).

Changes to the Contract that may be **requested by the Commonwealth** include:

- design changes to the Materiel System, such as those resulting from a trade study or other Commonwealth (Capability Manager) request;
- further quantities and optional extras;
- reductions in scope for convenience;
- any added cost resulting from GFE not being available as expected;
- costs of changes attributed to commercial terms in the Contract (eg, to apply a new government policy retrospectively to existing contracts).

Some changes that may be **initiated by the Contractor** and affect AIC include (noting that the Contractor remains responsible for achieving Prescribed ACE Percentages):

- engaging a new Subcontractor for a different price or ACE / ICE amounts to the tendered expectations; and
- a change in ownership of a Subcontractor (eg, an Australian company bought out by a foreign entity may introduce ICE within its overheads).

Consequences of a schedule change often include a change to the Contract (eg, the payment schedule in Attachment B). Changes to the timing of activities may also affect ACE/ICE percentages at given ACE Measurement Points, even if the changes do not affect the total ACE Percentage for the Contract. These may include:

- delays caused by Excepted Risks;
- schedule relief granted for Commonwealth caused delay or some other event beyond the Contractor's control, when agreed by the Commonwealth (eg, due to government-ordered lock-downs as a result of a pandemic); and
- schedule recovery payments.

A change to Prescribed ACE Percentages may be required as a **result of a remedy** being applied, such as suspending payments. Due to the timing of the remedy, and assuming the required outcome is achieved and the remedy concluded, this may affect one or more ACE Measurement Point even if the final ACE is unchanged.

Finally, there may be other events, including external events, which affect ACE and ICE and may change the Prescribed ACE Percentages. These include changes to:

- government charges, such as customs duties;
- tax laws or government policies (eg, accelerated depreciation rates); and
- finance and insurance costs and other charges that are not consistent with the indexation rates (ie, the rates used to calculate the Base Date amounts).

To minimise the impact of minor changes resulting in a CCP, and the extent of Contract changes caused by a minor change in costs, the Prescribed ACE Percentages in Attachment F should always be stated as integer numbers.

Project teams should be aware that some changes listed above, particularly the standard processes to incorporate provisioning lists into the Contract, are likely to have a significant effect on Prescribed ACE Percentages.

Effect of Proposed Change

Within the CCP form, at Annex E to Attachment I, clause 3 “Effect of Proposed change” requires the Contractor to assess the effects of each change on AIC, including the AIAs and Prescribed ACE Percentages for future ACE Measurement Points. The calculation of ACE and ICE for any change will need to be determined in Base Date amounts, as Base Date amounts are used in the calculation of ACE and ICE when assessing compliance with Prescribed ACE Percentages.

Note to be added on outcome of audits, changes due to changing tax policies and Base date financial changes.

AIC Compliance Certificate, Annex H to Attachment I

AIC Compliance Certificates are to be completed by the Contractor and AIC Subcontractors and delivered to the Commonwealth with each AIC report (a part of the CSR).

The Contractor is also required to deliver an AIC Compliance Certificate at each ACE measurement report, delivered to present ACE and ICE figures for each ACE Measurement Point. AIC Subcontractors are not required to provide an AIC Compliance Certificate at this time as the ACE Measurement Point may not apply to all AIC Subcontractors. However, as per the Approved Subcontractor Deed, AIC Subcontractors need to report ACE and ICE data to the Commonwealth when requested, which may be requested to support a Commonwealth review of an ACE Measurement Point.

Annex H to Attachment I includes a form for drafting an AIC Compliance Certificate. Drafters may amend the form to include the Contract name and number, and delivery details for the Commonwealth Representative. Some of the clauses within the form apply to either the Contractor or an AIC Subcontractor; hence, the submitted AIC Compliance certificates must be tailored accordingly.

Refer to the guidance for clause 10.1 of the SOW regarding the delivery of AIC Compliance Certificates with AIC reports and ACE measurement reports.

Note to be added on receiving deliverables.

Drafter's Action: The forms under Attachment I may be updated by the drafter with Contract details; however, there is no need for the drafter to undertake any AIC-specific tailoring.

Related Clauses: COC clause 11.1, Change to the Contract
COC clause 11.9, Subcontractors
SOW clause 10.1, AIC Management, for AIC Compliance Certificates.
SOW Clause 10.2, General AIC Activities, for AIC Subcontractor planning consistent with the Approved Subcontractor Deed.
Attachment F, Australian Industry Capability
Attachment H, List of Approved Subcontractors

Attachment K, Draft Data Items and Strategies

Status: Optional

Guidance: Attachment K is used to capture aspects of the successful tenderer's offer and transfer these into the Contract. This process is required because of the 'entire agreement' clause, at clause 1.5 of the COC, would otherwise leave many important details from the successful tender outside the scope of the Contract. Note that data items developed and Approved 'by ED' do not need to be listed in Attachment K because they will become part of the contract scope at ED.

Draft data items include draft specifications, the master schedule and resource lists, and strategies that represent the core information for the development of in-Contract plans. Commonwealth feedback and decisions agreed during negotiations may also be included in the Attachment to inform the subsequent development of the applicable data items. These documents, located in Attachment K at ED, are

subsequently removed once the completed or updated data items delivered under the Contract have replaced them.

For AIC, the AIC 'planning strategy' that is provided in response to TDR G (or a draft AIC Plan, if developed as pre-contract work) will be included in Attachment K and superseded by the AIC Plan when it is Approved under the Contract. Likewise for any other AIC-related plans (eg, a DRAICP) developed as pre-contract work.

Prior to tenders, drafters list the draft data items and other tender responses that are expected to be included in Attachment K at ED. Later, prior to the ED, the project office will need to include the applicable documents, for the successful tenderer, in Attachment K.

Drafter's Action: Drafters should identify the AIC-related tender responses and/or draft data items (eg, developed during ODIA or other pre-contract work) to be included in Attachment K.

Related Clauses: TDR G, Australian Industry Capability
COC clause 1.5, Entire Agreement
SOW clause 2.5, Draft Data Items and Strategies

Attachment M, Glossary

Status: Core

Guidance: The Glossary (combined with the Details Schedule) defines all terms used for the Contract where the terms have a meaning that is different to the definition in the Macquarie Dictionary.

Defined terms for the AIC program are included in the Glossary at Attachment M. As some elements of the AIC program in the SOW are optional, related definitions are optional. Drafters may also define new terms to be used for the AIC program, for example, the name of a specific AIA.

Drafter's Action: Drafters should delete those definitions, abbreviations and acronyms from the Glossary that are not required for the Contract. If applicable, any additional definitions for the specific AIC program should be added.

Related Clauses: All contract and tender documents.

Attachment N, Confidential Information and Reporting

Note to be added on Confidential Information in AIC Plans.

Attachment P, Contract Governance Framework

Status: Core

Guidance: The Contract Governance Framework provides management oversight of the Contract and may consider the interactions with other contracts and Defence programs related to the Contract.

For the purposes of AIC, the Contract Governance Framework may be involved when considering AIAs that span the Contract and related contracts. The Contract Governance Framework may also be called upon to resolve or endorse resolutions to shortfalls in AIC performance and related remedies.

Drafter's Action: Drafters do not need to amend this Attachment for the purposes of AIC.

Related Clauses: All contract documents.

STATEMENT OF WORK

Introduction

A Statement of Work (SOW) is intended to capture all work associated with the Contract, either explicitly through SOW clauses or implicitly via Approved plans. To allow the Contractor to define 'how' they will perform the work, an ASDEFON principle is for the Contractor to develop a management plan, Approval of the plan by the Commonwealth, and then for the Contractor to work in accordance with the Approved plan. Accordingly, a great deal of work will be defined through plans.

Within the *ASDEFCON (Strategic Materiel)* SOW, the primary work requirements for the AIC program are located in clause 10, and its related plans. AIC requirements can be scaled up or down using the optional clauses under clause 10. Other SOW clauses and DIDs capture requirements for the AIC program within broader whole-of-contract management activities.

10. AUSTRALIAN INDUSTRY CAPABILITY

10.1 AIC Management

Status: Core

Guidance: This clause defines the management planning and reporting functions for the AIC program. It is core for all *ASDEFCON (Strategic Materiel)* contracts.

This clause requires the Contractor to deliver and update an AIC Plan, prepared in accordance with DID-PM-AIC-AICP and the general requirements in the CDRL. The first delivery of the AIC Plan, in accordance with the CDRL, will supersede the 'AIC planning and business case' tender response in Attachment K (or a draft AIC Plan at Attachment K that was developed as pre-contract work). When considered suitable, the AIC Plan is Approved by the Commonwealth (and the related details under Attachment K deleted via CCP). The follow-on clause requires the Contractor to manage and conduct the AIC program in accordance with the Approved AIC Plan.

The AIC Plan performs an important function in allowing the AIC program to be scaled up or down by the Contractor to suit contract-specific needs. If management requirements for specific elements of the AIC program are light (eg, DRAIC planning and supply chain management) then planning for those functions can be included in the AIC Plan. Alternatively, if specific planning requirements are significant, the AIC Plan will summarise and cross-refer to the element-specific plan for the detail (eg, a DRAICP or SCMP). DID-PM-AIC-AICP has been written to allow the roll-up of, or cross-reference to, subordinate plans without needing to modify the DID.

A Contract Status Report (CSR), prepared in accordance with DID-PM-STAT-CSR, contains sub-reports related to AIC and several others with AIC-related information.

Note on AIC Report and CSR reporting periods to be added.

An AIC Compliance Certificate, in the form of Annex H to Attachment I, is required to be submitted by the Contractor with each CSR. The Contractor is also required to collect an AIC Compliance Certificate from each AIC Subcontractor to include with the CSR. Additionally, the Contractor submits an AIC Compliance Certificate within 30 Working Days following an ACE Measurement Point.

Requirements for the ACE measurement report are straightforward and have been included within SOW clause 10.1, rather than creating a separate DID. The ACE measurement report needs to detail the amounts for ACE and ICE, for comparison against the applicable ACE Measurement Point values in Attachment B.

The last set of subclauses under clause 10.1 relate to the conduct of AIC-related reviews, including an initial review and subsequent AIC progress reviews. The initial review evaluates the capability of the Contractor's financial management information systems and processes for collecting ACE and ICE data. If the Contract requires an Earned Value Management System (EVMS) then it will be required to be used for ACE and ICE data, hence the initial review may be combined with the EVMS review under SOW clause 3.2.5.1. In this case the optional clause for the EVMS should be included, otherwise it should be deleted.

Subsequent **AIC progress reviews** may be held annually at the Contractor's premises or at an AIC Subcontractor's premises, to verify the implementation and the work being performed as part of the AIC program. Although these reviews sound similar to AIC progress meetings under clause 10.2, they are different activities. In a contract with an overseas contractor and most local work managed under an AIC Subcontractor (eg, sometimes a subsidiary of the Contractor), then it can be more suitable to hold the review with the AIC Subcontractor. The final two clauses flow down the AIC progress review requirements to AIC Subcontractors.

Drafter's Action: Drafters should include or remove the option for an EVMS depending upon whether or not an EVMS is included under SOW clause 3.2.5. Other subclauses should be reviewed but, in most cases, can be included in the draft SOW without amendment.

Drafters need to ensure that the delivery requirements for the related data items in the CDRL are appropriate for the management of the AIC program.

Related Clauses: All other clauses under SOW clause 10.

SOW clause 3.2.5, Earned Value Management

Annex H to Attachment I, AIC Compliance Certificate

DID-PM-AIC-AICP, for planning requirements for the overall AIC program.

DID-PM-STAT-CSR, for AIC reporting requirements.

10.2 General AIC Activities

Status: Core

Guidance: Clause 10.2 implements the AIC Plan, and other AIC-related plans, in order to achieve the AIC Obligations and AIC Objectives for the Contract. This is a core clause for *ASDEFCON (Strategic Materiel)* contracts, but it includes some options.

Clause 10.2.1 outlines the requirements for executing the AIC Plan, including planning AIC-related activities, conducting AIC progress meetings, reporting on Industry Capabilities to the Commonwealth on an on-going basis, and undertaking all other AIC-related activities in accordance with the Approved AIC Plan.

Drafters need to insert the frequency for **AIC progress meetings** at subclause 10.2.1.1d. AIC is reviewed at each Contract Performance Review (CPR); hence, if CPR was held once a year then six-monthly AIC progress meetings would be held with each CPR and again, as an extraordinary meeting, at every other six-month interval. If CPRs are held often enough to monitor the AIC program, then this subclause may be deleted, or simplified to state that AIC progress meetings will only be conducted as part of CPRs. The optional subclause for industry forums should be included or deleted based on the selection of clause 10.2.2.

Clause 10.2.2 is optional and included in the SOW if the Commonwealth wants to specify that industry forums be held to engage with potential ANZ Subcontractors. Industry forums facilitate broad engagement with ANZ Industry and can encourage companies that are new to Defence, particularly from industries with comparable capabilities, to bid for Subcontract work.

Including the industry forums clause should be considered with clause 10.4.2, where the Contractor may undertake a range of market-engagement activities, including industry forums, to identify potential ANZ Subcontractors. If clause 10.4 is not included in the draft SOW, then industry forums may play a greater role. Both clauses 10.2.2 and 10.4 may be included when this suits the scope of Subcontractor engagement expected.

Clause 10.2.3 defines some of the subcontracting requirements for AIC, including the requirement for AIC Subcontractors to have Subcontractor AIC Plans. This requirement works with the Approved Subcontractor Deed and the Contractor's AIC Plan. The Contractor needs to define, in the context of the work allocated to the Subcontractor, the Approved Subcontractor Deed, and the requirements for the Contractor's own AIC Plan, the scope to be addressed by each AIC Subcontractor in their respective AIC plan. This scope could vary significantly, for example, depending upon whether or not the AIC Subcontractor is implementing a DRAIC.

The Contractor is also required to deliver an ANZ Subcontractor Technical Data List (ASTDL), which lists the Technical Data to be provided to ANZ Subcontractors in order to facilitate the conduct of work in ANZ, particularly for AIAs. Structurally, the ASTDL is similar to the Master Technical Data Index (MTDI) required by SOW clause 2.6, and the same tool could be used for both data items. However, IP rights required for a Subcontractor to manufacture an item are often different to the Commonwealth rights to sublicense for the maintenance of that item, hence the separate data items.

Drafter's Action: Drafters are to tailor clause 10.2.1 for the frequency of AIC progress meetings where indicated. Additional subclauses may be tailored in relation to other optional clauses included under clause 10. For example, drafters need to determine if industry forums will be required under the Contract, and include or delete clause 10.2.2 accordingly. If the clause is not required, drafters should also delete the presentation packages data item from the CDRL.

Drafters should review clause 10.2.3 but, in most cases, it can be included in the draft SOW without amendment.

Related Clauses: Annex A to Attachment I, Approved Subcontractor Deed

All other clauses under SOW clause 10.

SOW clause 3.9.2, Extraordinary Meetings

SOW clause 3.9.3, Contract Performance Reviews

DID-PM-AIC-AICP, for requirements for planning the AIC program, including AIC Subcontractor planning to be included in the AIC Plan.

DID-PM-AIC-ASTDL, ANZ Subcontractor Technical Data List

10.3 Development and Sustainment of Defence-Required Australian Industry Capabilities

Status: Optional

Guidance: Clause 10.3 requires the management of programs that implement new or enhanced DRAICs. The clause is optional and not required if DRAICs are not included in the Contract. Not including DRAICs does not exclude other AIAs from the Contract.

Clause 10.3.1, General

Clause 10.3.1 requires the Contractor to acknowledge the importance of DRAICs to the Commonwealth. Even though DRAICs are generally external to the Defence organisation, their importance originates from being related to a SICP or industry as an element of the FIC. Refer to the Key Concepts section for further explanation.

Consistent with ASDEFCON principles, the Commonwealth defines 'what' is required by specifying a DRAIC, the Contractor delivers a DRAIC Plan (DRAICP) to describe 'how' the DRAICs will be implemented, the Commonwealth Approves the DRAICP, and the Contractor works in accordance with the Approved DRAICP. Implementing a DRAIC can be a project in itself, so in some cases it makes sense to have separate DRAICP for each DRAIC, which can be identified in the CDRL. Alternatively, planning for DRAICs may be included in, and implemented in accordance with, the Approved AIC Plan.

DID-PM-AIC-DRAICP specifies the requirements for a DRAICP, including the need to further specify a DRAIC, plans for assurance (including integration with the V&V program), and requirements for Acceptance (consistent with any DRAIC Acceptance milestone(s) in Attachment C).

SOW clause 10.3.1 provides a generic set of clauses, acknowledging the importance and requiring the Contractor to plan for the implementation or enhancement of DRAICs, as applicable. The clause may be amended to be more specific to the DRAIC or DRAICs described in Attachment F.

The planning requirement in clause 10.3.1 should also be amended if required, either for DRAIC planning to be entirely within the AIC Plan, by removing references to the DRAICP, or by identifying which DRAICs require a separate DRAICP (which can also be achieved via the CDRL). As per the note to drafters, a complex or significant DRAIC, which is essentially considered a project in itself, would justify the need for its own DRAICP – it may also have its own project team.

Clause 10.3.2, DRAIC Development, Implementation and Acceptance

The first clause under clause 10.3.2 describes, in simple form, a 'project program outline' for implementing a DRAIC. Subsequent clauses describe the contract management requirements and interactions with the Commonwealth to implement the 'program', including:

- progress reporting;
- DRAIC Acceptance; and
- the conduct of a DRAIC Readiness Review (DRAICRR).

Reporting for the progress of DRAIC implementation is included within the CSR as part of the AIA report. Related Issues and risks are also reported via their respective registers.

DRAICs may be applicable to the acquisition and Accepted under the Contract (eg, for a new manufacturing capability) or implemented as part of the Support System and accepted under a subsequent support contract (eg, a maintenance capability), in which case DRAIC Elements (but not a whole DRAIC) can be Accepted under the Contract. This clause describes the Acceptance of DRAICs under this Contract

The Acceptance of a DRAIC is facilitated by a DRAICRR, which is a Mandated System Review. A DRAICRR is similar in concept to a System Acceptance Audit and MSR-CHECKLIST-DRAICRR (included in SOW Annex D) lists the baseline entry criteria, review items and exit criteria for the DRAICRR.

In a contract where there is no DRAIC to be Accepted under the Contract, only DRAICs applicable to the Support System and accepted under a Contract (Support), this clause could be amended to suit. This may include redrafting the clause regarding Acceptance, to refer to the Acceptance of DRAIC Elements as part of Accepting the Support System, and by removing references to the DRAICRR. In most other cases, clause 10.3.2 will not need tailoring.

Clause 10.3.3, DRAIC Operations, Sustainment and Ongoing Assurance

Once established via a DRAIC, an Industry Capability will need to be sustained to ensure that the capability is not eroded or lost. Clause 10.3.3 requires the Contractor and applicable AIC Subcontractors to sustain each DRAIC to ensure that it remains capable for use, as and when required, and to provide the Commonwealth with assurances that the capability remains effective.

The clause considers the life of the DRAIC and whether it is sustained until the end of the Contract (ie, Final Acceptance) or transitioned to the Contract (Support). For a manufacturing capability that will be used by other projects, another timeframe may be appropriate. Such an example will require co-ordination outside the boundaries of the Contract, which may involve the Contract Governance Framework and/or planned funding arrangements across the two or more applicable contracts.

Clause 10.3.3.1 requires the Contractor, and applicable AIC Subcontractors, to make use of those DRAICs that have or will be Accepted under the Contract, including in preference to any other means of undertaking those activities. Clause 10.3.3.2 then requires the Contractor, and applicable AIC Subcontractors, to sustain all DRAICs within their organisations and applicable to the Contract (including, if applicable, parts of DRAICs that are yet to be Accepted). The scope for sustainment activity applies to those DRAICs referred to in clause 10.3.3.1 and any parts of DRAICs that may be transferred to a Contract (Support) for acceptance under that contract. Clause 10.3.3.3 explains what is intended by sustaining a DRAIC in these circumstances.

For any DRAICs established under the Contract by other Subcontractors (ie, external to the Contractor and AIC Subcontractor organisations), clause 10.3.3.4 requires the Contractor to ensure that on-going assurance activities are conducted to confirm their on-going viability. In contrast to the Contractor and AIC Subcontractors, where their AIC Plans and reporting will include sustainment activities, the Contract would monitor the on-going viability of these DRAICs as part of the extended supply chain.

Drafter's Action: Drafters are to include clause 10.3 if one or more DRAICs are included in Attachment F. If not required, clauses under heading clause 10.3 can be deleted and the heading annotated as 'Not used'.

If the only DRAICs are to be Accepted under this Contract, then the clause could be reduced to remove references to DRAICs transferred to and accepted under a Contract (Support). Likewise, if the only DRAICs will be those that will be accepted under a subsequent Contract (Support), explicit reference to DRAICs Accepted under this Contract could be removed. Note that, while this may simplify an individual contract, the clause would continue to function with or without the change.

Drafters should determine if separate DRAICPs will be required for individual DRAICs, one DRAICP for all DRAICs, or rolling-up planning into AIC Plan, and then review and update the CDRL accordingly. If appropriate, the DRAICP clauses under 10.3.1 may be amended, or a note included if required to explain the number of DRAICPs needed for the different DRAICs.

Drafters should ensure that specifications of DRAICs in Attachment F are suitable for use with the SOW clauses for development, implementation and Acceptance under clause 10.3.2, and sustainment and assurance activities under clause 10.3.3.

Drafters should review the V&V requirements in SOW clause 7 for consistency with clauses 10.3.2 and 10.3.3, as applicable, particularly for Acceptance and Support System V&V such as V&V of a new maintenance capability delivered as a DRAIC.

Drafters should review MSR-CHECKLIST-DRAICRR and update it as required; for example, if DRAICs are managed via the AIC Plan instead of DRAICPs.

When drafting linked acquisition and support contracts, drafters should also ensure that appropriate clauses within the Contract (Support) will facilitate the on-going sustainment applicable Industry Capabilities created by DRAICs Accepted under this Contractor transferred to the Contract (Support) for acceptance under that contract.

Related Clauses: COC clause 6.8, Acceptance

Attachment C, Delivery Schedule, for DRAIC-related Milestones.

Attachment F, Australian Industry Capability, which identifies and specifies the DRAIC(s) applicable to the Contract.

Annex A to Attachment I, Approved Subcontractor Deed

SOW clauses 10.1 and 10.2 for planning and implementing the overall AIC program.

SOW clause 10.4 for monitoring DRAICs as capabilities within the supply chain.

DID-PM-AIC-DRAICP, Defence-Required Australian Industry Capability Plan

MSR-CHECKLIST-DRAICRR, to define requirements for each DRAICRR.

Annex G to Attachment A to the COT, Australian Industry Capability, which requires tenderers to submit information for the implementation of each proposed DRAIC.

10.4 Supply Chain Management

Status: Core

Guidance: Each design and development contract has a level activity that creates opportunities for Australian Entities to become part of the Contractor's supply chain. Clause 10.4 provides the Commonwealth with visibility of and, if applicable, involvement in the Contractor's tendering and subcontract formation activities. This enables the AIC objectives and Defence's ability to "maximise opportunities for Australian Industry participation"⁹ through the Contractor's activities, whenever it represents value for money and makes sense to do so.

Clause 10.4 is core but includes a number of optional clauses that extend the Commonwealth's oversight and involvement in the Contractor's supply chain.

⁹ Defence Policy for Industry Participation 2018, Chapter 3.
Australian Industry Capability Guide for ASDEFCON

The contracts that benefit the most from clause 10.4 are those where the nature and value of design and development activity will provide a broad range of opportunities for Australian Industry participation. In general, the greater the amount of the Materiel System that remains to be designed and developed, or selected from off-the-shelf components, the more opportunities there should be for Australian Industry.

Inclusion of this clause in the SOW requires the Commonwealth project team to have adequate resources to monitor the Contractor's supply chain management activities. In addition, the Commonwealth must be able to meet its obligations, in a timely manner, to work with the Contractor during those market engagement activities that lead to new Subcontracts.

Clause 10.4.1, General

The AIC Plan is to describe management of the Contractor's supply chain, including the subcontracting activities of AIC Subcontractors, to present opportunities for competitive participants in Australia Industry. If the Contract has scope for significant subcontracting activity, in terms of the number and scope of potential subcontracts, a standalone Supply Chain Management Plan (SCMP) may be more beneficial than just the AIC Plan. If, under clause 10.4.2, the options B, D, E and/or G are included, then the SCMP should also be included.

Including Option A requires the Contractor to develop a standalone SCMP in accordance with the CDRL and DID-PM-AIC-SCMP. This is a detailed plan for engaging the marketplace and establishing Subcontracts with Australian Entities. If an SCMP is not required, and Option A is not included, supply chain management is addressed in the AIC Plan. Drafters need to determine whether or not a SCMP is required, and update the related clauses accordingly.

Clause 10.4.2, Procurement Activities Leading to Subcontract – Requirements for AIC

Clause 10.4.2 addresses the Contractor's procurement activities when engaging with the market to establish new Subcontracts.

Note to be added on changes to inflight procurements.

Clause 10.4.2 starts with an acknowledgement of the procurement activities covered by this clause. The second clause has a number of subclauses that support the achievement of AIC Objectives, starting with some core requirements and followed by a number of optional clauses, some of which are inter-related, as explained below.

Option B allows for the Commonwealth to add Sovereignty-related Industry Capability requirements into Subcontract tender documents. Such requirements should be based on those scoped within the Approved SCMP (from Option A). In addition to requirements identified in the Approved SCMP, the Commonwealth can provide additional input, to in accordance with clause 10.4.2.3 (Option D). In execution of the Contract, any additional Sovereignty-related requirements should be in the context of adding detail to the existing Contract scope or, as per the Option D clauses, incorporated via a CCP (eg, if requiring change to Attachment F).

Option C is to be included if Attachment F includes sustainment-related DRAICs (ie, those DRAICs that come into being during the in-service phase). If the draft Contract will not include sustainment-related DRAICs, this option should be removed.

Option D, in clauses 10.4.2.3 to 10.4.2.5, is included under the same conditions as Option B. The clauses allow the Commonwealth to add AIC and Sovereignty-related requirements into the strategies and tender documents for Subcontracts. Commonwealth resources need to be closely co-ordinated with the Contractor when scoping and setting strategies for new Subcontracts, so that Commonwealth input can be provided in a timely manner and allowing for, if required, a CCP when the Contract scope is affected. Option D requires Option A, for a SCMP. Option D can also be enhanced by the inclusion of Option E.

Option E includes the requirement for the Contractor to develop a Materiel Procurement Strategy (MPS), in accordance with the CDRL and DID-PM-AIC-MPS, for each Subcontract procurement considered operationally significant or critical to achieving Sovereignty. The MPS allows for additional input into, and Approval by

the Commonwealth of, strategies for an 'approach to market' for Subcontracts, and their tender requirements. Including Option E requires that the Commonwealth have appropriate resources available when required. Without Option E, less detailed strategies will continue to be included within the SCMP.

Option F is inter-related with the optional AIC initiatives program. Refer to the guidance for clause 10.5 regarding inclusion of the AIC Initiatives Program. If an AIC Initiatives Program is not included in the SOW, then Option F is to be deleted. Note that SOW clause 10.5 can be included without Option F, for other AIC Initiatives.

Option G requires the Contractor to deliver a Materiel Procurement Business Case (MPBC), in accordance with the CDRL and DID-PM-AIC-MPBC, to justify selection of a proposed Subcontractor. The clauses allow the Commonwealth to review the MPBC and, if applicable, raise an objection when a proposed Subcontractor is not an Australian Entity. Option G requires the Commonwealth to have the resources available to review the MPBC and respond in a timely manner, noting that the signing of the Subcontract is waiting for Commonwealth agreement and any delay may have a broader impact on schedule.

If the Commonwealth objects to the selection of a proposed Subcontractor, and instead directs the use of an Australian Entity, the Commonwealth may need to assume responsibility for any risks to cost, schedule and system design / Capability relating to the selection of that Australian Entity. In this case, a CCP may be required to document changes in Contract Price, schedule (eg, for effected Milestones), and the responsibility for achieving specified requirements related to the Supplies from that Australian Entity. Refer to SOW clause 4.1.2 in regards to design responsibility.

Option G requires the inclusion of Option B (for a SCMP) and is generally included with Option E (for the MPS). However, Option G can be included without Option E, in which case the clauses should be amended to remove reference to an MPS.

10.4.3, Supply Chain Assurance

Clause 10.4.3 requires the Contractor monitor the supply chain and ensure the on-going availability of goods and services from the supply chain. Monitoring and assurance of the supply chain includes all AIAs, in addition to the on-going assurance of DRAICs under clause 10.3.3. The Contractor needs to keep the Commonwealth informed regarding the health of the supply chain and arrange for extraordinary meetings if necessary to discuss and resolve any significant issues or risks.

Drafter's Action: Drafters need to amend clause 10.4.1 to include the applicable management plan, either a standalone SCMP or the AIC Plan. The SCMP would normally be included if numerous options under clause 10.4.2 are included, as described above.

For clause 10.4.2, drafters need to consider and determine the applicable optional clauses to be included in the SOW, considering the guidance above and the inter-relationships between various clauses.

Clause 10.4.3 should be reviewed but, in general, can be included in the RFT without amendment.

Drafters will also need to review and amend the CDRL as required, and include the applicable DIDs for those clauses included in the SOW.

Related Clauses: SOW clause 4.1.2, Design Authority

SOW clauses 10.1 and 10.2 for planning and implementing the overall AIC program.

SOW clause 10.3, DRAICs

SOW clause 10.5, AIC Initiatives Program

DID-PM-AIC-AICP, Australian Industry Capability Plan

DID-PM-AIC-SCMP, Supply Chain Management Plan

DID-PM-AIC-MPS, Materiel Procurement Strategy

DID-PM-AIC-MPBC, Materiel Procurement Business Case

10.5 AIC Initiatives Program

Status: Optional

Guidance: An AIC Initiatives Program has the aim of identifying opportunities (ie, Australian Industry Opportunities, or AIOs) and pursue AIC Objectives to increase the scope of work being performed by Australian Industry. The increase in scope can be compared to the work allocation that was the basis for calculating the ACE. Clause 10.5 is optional and would be included on larger scale, longer duration contracts that offer potential opportunities to transfer work from overseas to Australian Industry, if the required capabilities can be developed locally.

The successful tenderer's response to TDR G-4, Opportunities to Enhance AIC, may have identified opportunities that were not adopted at ED because they required further investigation – these may be an initial source of AIOs. Other AIOs may be identified during design and development activities, prior to the Support System Detailed Design Review (SSDDR). This is when 'purchase existing versus design and build' decisions are made, with most decisions made between SRR and DDR.

Clause 10.5 requires the Contractor to seek AIOs both directly and through AIC Subcontractors. AIOs may also be identified by the Commonwealth. Once an AIO has been identified and a preliminary assessment is made, the Contractor and Commonwealth collaborate to determine the extent of further analysis required to fully understand the benefits and risks of the AIO. This may result in the need for the Contractor to develop a MPBC, depending on the complexity of the AIO (eg, if it requires significant new equipment, skills transfer, new facilities, access to IP licenses, etc, and the cost and schedule for possible implementation).

DID-PM-AIC-MPBC, defines (in this instance) the business case required to present the evaluation of the AIO, the advantages, disadvantages and risks, and a recommendation. If recommended in the MPBC, and agreed by the Commonwealth, the AIO is Approved, but a CCP will also be required. The CCP will need to include, as applicable, the Payment Schedule (Attachment B), the Delivery Schedule (Attachment C), Prescribed ACE Percentages for subsequent ACE Measurement Points, and other details relevant to the change (eg, if a new Approved Subcontractor is to be identified).

Drafter's Action: Drafters need to determine if the AIC Opportunities Program will be included in the Contract. If the program is not required, the clauses below the heading clause 10.5 may be deleted and the heading annotated with 'Not used'.

If the program is to be included, drafters should review clause 10.5 but, in most cases, it can be included in the draft SOW without amendment.

Related Clauses: TDR G-4, Opportunities to Enhance AIC

COC clause 11.1, Change to the Contract

SOW clauses 10.1 and 10.2 for planning and implementing the overall AIC program.

SOW clauses 10.4, Supply Chain Management (see Option F)

DID-PM-AIC-AICP, Australian Industry Capability Plan

DID-PM-AIC-MPBC, Materiel Procurement Business Case

10.6 Research and Development

Status: Optional

Guidance: The Research and Development (R&D) clause aims to sponsor and then integrate the outcomes of R&D activities through the design and development activities for the Materiel System, and/or establish an R&D capability that will enhance the Materiel System through life, where that R&D activity is part of the AIC program.

Clause 10.6 is optional and will not be required if there will be no R&D Program required for, or sponsored by, the Contract. If no R&D program is identified, the clause may still be retained for tender purposes, and if successful tenderer does not

propose an R&D activity that the Commonwealth wishes to include in the Contract, it can be deleted prior to ED.

Note that if a locally-based R&D activity has no direct benefit for the Materiel System and AIC, in some cases the activity may still be performed as a trade study under SOW clause 2.7, instead of clause 10.6.

Clause 10.6.1 describes the objectives for the R&D program. This clause highlights the link between the R&D activity and seeking tangible benefits for Defence through the design, development and/or through life support of the Materiel System. An important part of this linkage is to identify why the R&D program is beneficial to AIC.

The objectives clause is generic, written for any R&D program in the expectation that the Contractor will propose the R&D activities. If the Commonwealth requires a specific R&D activity (eg, an activity that may be sponsored through a number of related contracts), the clause can be amended to refer to that activity, including a reference to a document that outlines the objectives and scope of that R&D activity.

Clause 10.6.2 defines the management requirements for the R&D program, including planning, reporting, and the activities needed to continue R&D and/or to incorporate the results of the R&D program into the Materiel System.

Acknowledging that not every R&D program will achieve a 'technological breakthrough' on schedule, this clause is written to integrate the benefits from the R&D program into the Materiel System, when it is feasible to do so. However, if it is clear that an R&D activity will not achieve benefits in time (during the Contract or for system updates during follow-on support), then the activity may be discontinued so that efforts can be focussed elsewhere. Accordingly, the R&D program requires planning, the identification and assessment of R&D opportunities, and monitoring, reporting, and direction of R&D activities.

Planning for an R&D program is defined in the R&D Management Plan (R&DMP) prepared in accordance with the CDRL and DID-PM-AIC-R&DMP. If applicable, a separate R&D Implementation Plan can be prepared for each R&D activity, and delivered separately by modifying the CDRL. Requirements for an R&D Implementation Plan are identified within DID-PM-AIC-R&DMP.

The process for identifying and assessing R&D opportunities are outlined in SOW clause 10.6.2, and detailed in the R&DMP. The SOW also describes the Commonwealth's responsibility to review and Approve potential R&D opportunities, and the requirement, when applicable, to prepare a CCP to incorporate R&D outcomes into the Contract.

The progress of R&D activities needs to be reported to the Commonwealth at key points, when decisions for incorporation into the Mission System design or on-going funding are needed. The scope of these reports are defined by the Contractor within the R&DMP. Status reports for the R&D program are included within the CSR.

Drafter's Action: If an R&D program will not be included in the Contract, the clauses below the heading clause 10.6 may be deleted and the heading annotated with 'Not used'.

If a decision has not been made regarding R&D, the clause may be retained pending R&D activities proposed by the successful tenderer, as described above. In this case, a note to tenderers should also be added to the top of clause, identifying that the R&D clause would be included subject to a successful tenderer's proposal in regards to R&D activities.

When an R&D program is included in the Contract, drafters should update the objectives clause. If the Commonwealth has predetermined requirements for an R&D activity, the objectives should be amended to include these requirements.

Drafters should update the CDRL if separate R&D Implementation Plans will be required.

Related Clauses: TDR G-5, Research and Development

SOW clause 2.7, Commonwealth-directed Trade Studies

SOW clauses 10.1 and 10.2 for planning and implementing the overall AIC program.

DID-PM-AIC-R&DMP, details requirements for the R&D Management Plan

DID-PM-STAT-CSR details requirement for the CSR, including a status report for R&D activities.

CHAPTER 3: ASDEFCON (COMPLEX MATERIEL) VOLUME 2

TO BE ISSUED

CHAPTER 4: ASDEFCON (SUPPORT)

TO BE ISSUED