



Australian Government
Department of Defence

ASDEFCON – INSURANCE CASE STUDIES

CASE STUDY #11

CONTRACT FOR THE PROVISION OF WAREHOUSING SERVICES

NOTES TO READER

This case study has been prepared to assist drafters in the use of the ASDEFCON insurance clauses. This case study is to be used by drafters in conjunction with all other applicable guidance, policies and procedures for procurements including the ASDEFCON Insurance Handbook.

This case study is intended to provide guidance to drafters in respect of what insurances may be required from a contractor. The content of this document is a case study only and is not intended to be prescriptive. Certain contracts, even those with similar facts to that of the fictional contract below may warrant different insurance treatment. Appropriate advice should be sought in relation to any contract involving significant risks to be insured.

If drafters have any questions or comments regarding this case study or the use of the ASDEFCON insurance clauses, please contact the ACIP Management Team at ACIP.ManagementTeam@defence.gov.au.

FICTIONAL CONTRACT

The contract is for the provision of warehousing services by the contractor in Australia. The contractor will store Commonwealth property (being supplies and spares) in a warehouse that is owned and operated by the contractor. Under the terms of the contract, the contractor will be responsible for the loss of or damage to Commonwealth property whilst it is in the contractor's care, custody or control. Transits of Commonwealth property to and from the warehouse are at the risk of the Commonwealth.

WHAT INSURANCES SHOULD BE REQUIRED?

Based on the fictional facts and circumstances outlined above, the following insurances will be required:

- (a) **Workers' compensation insurance** should be required. As the contract is being performed wholly in Australia, drafters do not need to select the alternative workers compensation clause that is only to be used where workers engaged by the contractor will be performing work outside of Australia.
- (b) **Motor vehicle insurance** should be required. The contractor may use registered and unregistered plant and vehicles in the performance of the contract, such as a forklift.

The use of unregistered plant and vehicles (such as, possibly, a forklift) can be insured either through a public liability policy or a motor vehicle liability policy. The ASDEFCON motor vehicle clause requires the contractor to have motor vehicle liability insurance covering, among other things, liability risks arising from the use of unregistered vehicles unless this risk is insured under another policy required by the contract. It is acceptable for the contractor to alternatively insure this risk under its public liability policy.

- (c) **Public liability insurance** should be required. As discussed in paragraphs 15 to 29 of Part C of the ASDEFCON Insurance Handbook, public liability insurance provides cover to the insured for its liability for:

- (i) loss of, damage to, or loss of use of tangible property; and
- (ii) bodily injury, disease, illness or death of any person (other than an employee of the insured),

suffered by third parties (which would include the Commonwealth) as a result of the operations or activities of the insured.

The public and products liability policy should have a limit sufficient to cover the maximum probable liability of the contractor to the Commonwealth and others (i.e. the public) arising out of the contractor's activities and the contractor's use of its products.

- (d) **Warehouseman's legal liability insurance** should be required. A public liability policy or property policy is unlikely to provide cover for damage to property in its care, custody or control stored in a warehouse. Cover for this risk is more appropriately covered in a specialist warehouse legal liability insurance. The policy should have a limit sufficient to cover the full reinstatement or replacement value of the Commonwealth property in the care, custody or control of the contractor. It should be noted that the risk of unexplained inventory shortages or loss due to vermin, shrinkage etc are not insurable risks.

The ASDEFCON insurance clauses do not have a template clause for warehouseman's legal liability insurance. Drafters should contact the ACIP Management Team for assistance.

- (e) **Industrial Special Risks (ISR) insurance** is likely to be required for the warehouse. ISR insurance is the name attributed to a package policy which combines both a property policy and a business interruption policy. As discussed in paragraph 41(b) of Part C of the ASDEFCON Insurance Handbook, ISR insurance is relevant where the loss of or damage of the contractor's own property has the potential to significantly adversely affect the contractor's ability to perform the contract to the Commonwealth.

Business interruption loss cover has a limit of indemnity that is based on the insured's increased costs of working (eg in this example, the leasing of a replacement warehouse) and loss of profit over the number of weeks insured. Drafters must therefore stipulate the

number of weeks for which cover is required. Determining the appropriate number of weeks for a contract will depend upon the unique risk profile of that contract. Business interruption insurance is commonly arranged for a period of between 26 and 104 weeks.

For the property component of cover, the contractor should be required to insure its property, plant and equipment that is material to its ability to perform its obligations under the contract.

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