



Australian Government
Department of Defence

ASDEFCON – INSURANCE CASE STUDIES

CASE STUDY #4

ACQUISITION OF GOODS – UNIFORMS AND SHOES

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 manufacture and supply in Australia of uniforms and shoes. The contractor will be responsible for delivery of the supplies to Defence premises. Risk in the supplies passes to the Commonwealth upon delivery of the supplies.

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 wholly performed 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) **Transit insurance** should be required to the extent that a particular transit is at the risk of the contractor. As discussed in paragraphs 47 to 51 of Part C of the ASDEFCON Insurance Handbook, transit insurance is a first party loss policy which covers property of the insured (or property for which the insured is responsible to insure) which is lost or damaged during transit.

As the contractor will be responsible for delivering the supplies to Defence, the contractor will be required to insure the supplies whilst in transit from the factory/warehouse to Defence's premises. If the contractor will be delivering the supplies to Defence in multiple deliveries where the value of the supplies being delivered in each individual delivery is low, it may be commercially acceptable not to require transit insurance as the risk of each transit is low and can be acceptably self-insured.

- (c) **Motor vehicle insurance** should be required. The contractor will use motor vehicles in the performance of the contract to deliver the supplies.
- (d) **Products liability insurance** should be required. As discussed in paragraphs 15 to 29 of Part C of the ASDEFCON Insurance Handbook, products 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 products manufactured, supplied, installed, repaired or distributed by the insured after the product has left the custody of the insured.

The products liability policy should have a limit sufficient to cover the maximum probable aggregate liability of the contractor to the Commonwealth and third parties (i.e. the public) arising out of a defect in the products (including for product replacement). Subject to the Liability Risk Assessment, there is unlikely to be any substantial risk of liabilities being owed to third parties in this fictional scenario.

The contractor should be required to maintain products liability insurance for a period after completion of the contract. This is because a defect in the supplies may not be discovered during the contract period and the contractor's liability to compensate the Commonwealth for any loss or injury suffered in respect of such defect may not crystallize until after the contract period (noting that the contract will be complete once all the deliveries have been made and the supplies may not be used immediately). For example, a defect could be discovered in the supplies and loss or injury suffered a year after the contract period ended. The period for which the products liability cover should be maintained will usually depend on the likely life of the goods in question.

Other relevant issues: If some insurances are required to be maintained for a period after the end of the contract, the insurance clauses should survive the termination or expiry of the contract.

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