



**Australian Government**

**Department of Defence**

# **ASDEFCON** **(Strategic Materiel)** **HANDBOOK**

**Volume 1**

Incorporating Guidance to:

Conditions of Tender

Draft Conditions of Contract





**Australian Government**  
**Department of Defence**

**FOREWORD**

The ASDEFCON (Strategic Materiel) Handbook is a companion to the ASDEFCON (Strategic Materiel) template and provides guidance to Defence drafters on the use of the ASDEFCON (Strategic Materiel) template.

The Handbook is intended to assist drafters in preparing Requests For Tender (RFTs) that are suitable for the project's requirements, and in the process facilitate a more efficient tender and contract process that reduces costs to both Defence and to Industry.

Drafters should note that the Handbook is to be used in conjunction with specialist advice from Defence contracts officers and other subject matter experts as indicated throughout the Handbook. Drafters of RFTs should also make reference to the policy documents referenced in the Handbook and seek specialist advice to gain a full appreciation of the subject matter.

Annex A to the section titled "General Information on How to Use the Handbook" provides central points of contact for subject matter experts who are available to provide advice to drafters on an as required basis.

The information contained in the Handbook is of a general and summary nature only. Users of this Handbook should note the disclaimer that follows this Foreword.

The Handbook will be updated as changes are made to ASDEFCON (Strategic Materiel). Amendments will be considered by the Configuration Management Board (CMB) for Contracting templates, in conjunction with each proposed amendment to ASDEFCON (Strategic Materiel). The change control process is presented in the section titled "General Information" in the ASDEFCON (Strategic Materiel) template.

We are pleased to release the ASDEFCON (Strategic Materiel) Handbook in support of your contracting needs.

A handwritten signature in black ink, appearing to read 'John FitzGerald', written in a cursive style.

John FitzGerald  
Director-General Contracting Policy and Operations  
Defence Materiel Organisation

A handwritten signature in black ink, appearing to read 'Dianne Clarke', written in a cursive style.

Dianne Clarke  
Director-General Materiel Renewal  
Defence Materiel Organisation

**DISCLAIMER:**

*The ASDEFCON (Strategic Materiel) Handbook has been prepared for the guidance of ASDEFCON (Strategic Materiel) RFT drafters only. Nothing in this Handbook should be construed as a representation:*

- a. as to the future conduct of the Commonwealth in particular tender processes or contract negotiations; or*
- b. as to the circumstances in which the Commonwealth will or will not exercise rights under a contract based on the ASDEFCON (Strategic Materiel) template.*

*The Handbook should not be relied upon as a substitute for legal, contracting policy or technical advice.*

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## COVERING LETTER

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core. The option must be included where the RFT will contain classified material.
<u>Purpose:</u>	To invite a company to submit a tender in response to the RFT issued by the Commonwealth. To notify the company of additional information about the project including the proposed schedule for the project.
<u>Policy:</u>	Nil
<u>Guidance:</u>	The aim of the covering letter is to provide companies with background information about the project, including the proposed project schedule, and invite companies to submit a tender for the requirement detailed in the RFT.

### RELIANCE ON INFORMATION INCLUDED IN THE COVERING LETTER

The covering letter does not form part of the RFT. Therefore, in accordance with clause 2.4.2.a. of the conditions of tender, a tenderer should not rely on the information provided in the covering letter when preparing its tender. Notwithstanding this, drafters should ensure that the information included in the covering letter is accurate and not misleading as the Commonwealth may still be subject to a claim based upon estoppel or misrepresentation where misleading information is included in the covering letter. To afford additional protection to the Commonwealth, the covering letter contains an express statement that the proposed project schedule included in the covering letter is subject to change at any time and should not be relied upon by tenderers.

### LIST OF CLAUSES THAT DEVIATE FROM ASDEFCON (STRATEGIC MATERIEL)

The covering letter notifies tenderers that the RFT has been prepared utilising the Australian Defence Contracting for Strategic Material acquisition template. To enable tenderers to easily identify clauses that have been included or amended, a list of clauses that deviate from *ASDEFCON (Strategic Materiel)* are included at Attachment A to the covering letter.

### INFORMATION ON THE COSTS OF TENDERING

The covering letter also requests tenderers to provide details of the costs associated with tendering against the RFT by completing the Cost of Tendering form at Attachment B. To ensure that Commonwealth officers involved with the RFT do not have access to the cost of tendering information provided by tenderers, completed forms should be returned to the Director Industry Analysis in the Industry Division of the Defence Materiel Organisation.

Drafter's Action: Prior to release of the RFT, drafters must insert the project office address, tenderer's address, RFT Number, a brief description of the Supplies, background information on the project including phase information and the proposed project schedule. Where the RFT will contain classified material, drafters must also include the optional paragraph and insert a list of the classified documents and their classification levels.

Related clauses: Clause 1.4 of the conditions of tender informs tenderers of the Contact Officer for all enquiries in relation to the RFT.

Clause 1.9 of the conditions of tender advises tenderers of the Tender Closing Time and the tender lodgment procedures applicable to tenders submitted in response to the RFT.

Clause 1.10 of the conditions of tender advises tenderers of the source documents that provide guidance on, and the process that applies to, the preparation and transmission of tenders containing classified material.

Clause 2.5.2.b obtains an acknowledgment from tenderers that they have not relied on any warranty or representation made by or on behalf of the Commonwealth except as expressly provided for in the RFT.

Further Reading: Nil



## ATTACHMENT A - MATRIX OF CHANGES

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To notify tenderers of clauses that deviate from <i>ASDEFCON (Strategic Materiel)</i> .
<u>Policy:</u>	Nil
<u>Guidance:</u>	The covering letter notifies tenderers that the RFT has been prepared utilising the Australian Defence Contracting for Strategic Materiel template. To enable tenderers to easily identify clauses that have been included or amended, a list of clauses that deviate from <i>ASDEFCON (Strategic Materiel)</i> are included at Attachment A.

### DETAILS TO BE INCLUDED IN THE MATRIX OF CHANGES

Drafters must insert the following details in the matrix of changes and submit the matrix of changes with the RFT to the Project Director or liability delegate for review:

- a. the amended or new clause number;
- b. a list of other clauses in the RFT affected by the amended or new clause; and
- c. specific details of the amended or new clause including the impact of the amended or new clause, the reason for the change, and the impact of the change on other related provisions in the RFT.

Where the reasons for, or impact of, the change are commercially sensitive to the Commonwealth, the matrix of changes should be modified prior to release of the RFT. The matrix of changes released with the RFT should contain as much information as possible to enable tenderers to understand the reasons for and impact of the change without notifying tenderers of information that is commercially sensitive to the Commonwealth.

The Project Director or liability delegate is also responsible for ensuring that the completed Matrix of Changes is provided to CPO Branch staff, either directly to the CPO desk officer who is assisting the RFT development or to CPO Branch through the Contracting Policy and Operations Branch Help Desk (see below). Where *ASDEFCON (Strategic Materiel)* is used the Project Director or liability delegate is also responsible for preparing a summary of any significant differences between the final negotiated contract and the RFT as released, including details of the main areas of concern raised during negotiations. Collectively this information will provide feedback on the use of *ASDEFCON* templates and ensure that the suite is subject to continuous improvement and that it reflects 'best practice'.

### SUBMISSION OF DOCUMENT CHANGE PROPOSALS

Where a drafter believes that a clause in *ASDEFCON (Strategic Materiel)* is inappropriate or doesn't meet the requirements of the majority of projects, drafters may propose a change to *ASDEFCON (Strategic Materiel)* by submitting a Document Change Proposal which is available at the Contracting page of the Defence website at <http://www.defence.gov.au/dmo>. Document Change Proposals should be submitted to the Contracting Policy and Operations Branch Help Desk by e-mail to [contracting@defence.gov.au](mailto:contracting@defence.gov.au). Tenderers may also propose a change to *ASDEFCON (Strategic Materiel)* by submitting a Document Change Proposal.

<u>Drafter's Action:</u>	Drafters must complete the matrix of changes prior to release of the RFT.
<u>Related clauses:</u>	Nil
<u>Further Reading:</u>	Nil



## **ATTACHMENT B - COST OF TENDERING**

- Sponsor:** Contracting Policy & Operations
- Status:** Core
- Purpose:** To provide the format for provision of information on the costs associated with tendering against the RFT.
- Policy:** *Commonwealth Procurement Guidelines and Best Practice Guidance*  
*Defence Procurement Policy Manual (DPPM) - Section 3 Chapter 1*
- Guidance:** To enable the Commonwealth to monitor the costs associated with tendering against RFTs, the covering letter requests tenderers to provide information on the costs of tendering in the format required by Attachment B. Requested information includes:
- a. the name and A.C.N. of the company (optional);
  - b. the name and number of the RFT;
  - c. estimated costs of tendering rounded to nearest \$10K; and
  - d. any comments on the costs of tendering.

### **CONFIDENTIALITY OF INFORMATION PROVIDED**

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Tenderers should mark the completed forms Commercial-in-Confidence and as mentioned above are not required to include their name or other identification details. To ensure that Commonwealth officers involved with the RFT do not have access to the cost of tendering information provided by tenderers, completed forms should be returned to the Director Industry Analysis in the Industry Division of the Defence Materiel Organisation. All information received will be treated as Commercial-in-Confidence Information and will be protected accordingly.

### **USE OF INFORMATION COLLECTED**

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The information collected from tenderers will be analysed by staff in the Directorate Industry Analysis to determine how Defence procurement and tendering practices can be streamlined or amended to reduce the costs of tendering for Defence industry. It is important to remember, however, that Defence must comply with the *Commonwealth Procurement Guidelines and Best Practice Guidance*.

- Drafter's Action:** Nil
- Related clauses:** Clause 2.4.2c of the conditions of tender notifies tenderers that the Commonwealth is not responsible for any cost or expenses incurred by tenderers in complying with the requirements of the RFT.
- Further Reading:** Nil



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## 1. GENERAL INFORMATION AND TENDER LODGMENT

### 1.1. Interpretation of Terms

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To specify how terms contained in the RFT will be interpreted.

Policy: *DPPM – Section 2, Chapter 2.1*

Guidance: In accordance with clause 1.1 of the conditions of tender, the RFT will be interpreted in the same manner as in the draft Contract and terms used in the RFT will be given the same meaning as in the draft Contract. Drafters should therefore refer to the definitions contained in the Glossary at Attachment M to the draft conditions of contract and the interpretation provisions contained in clause 1.2 of the draft conditions of contract.

#### INCLUSION OF ADDITIONAL CLAUSES IN THE RFT

Where drafters have added additional clauses in the RFT to cover project specific requirements and words within those additional clauses require definition, the relevant definition should be inserted in the Glossary at Attachment M prior to release of the RFT. If the term is used only for a particular clause of the conditions of tender, draft conditions of contract or draft Statement of Work, the term should be defined in the clause itself and a reference made to the definition in the Glossary.

Drafters must ensure that any definitions included do not conflict with Commonwealth policy or other definitions in the RFT. The Defence Language site, accessible through the Defence Materiel Organisation Knowledge System (DMOKS), provides a consolidated list of common terms and acronyms as used within Defence. Further, drafters should avoid defining new terms when an existing definition will suffice. All definitions must be checked to ensure they can be objectively understood and are not circular. Further guidance on definitions is provided in relation to the Glossary at Attachment M.

#### GENERAL INTERPRETATION PRINCIPLES

Further guidance on general interpretation principles that would be applied by a court interpreting the RFT are contained in the guidance on Attachment M and clause 1.2 of the draft conditions of contract.

Drafter's Action: Nil

Related clauses: Clause 1.2 of the draft conditions of contract sets out the basic principles by which the draft Contract will be interpreted.

The Glossary at Attachment M to the draft conditions of contract will contain the meanings of all words, abbreviations and acronyms used in the RFT and subsequently the agreed meanings for the Contract.

Further Reading: Nil

**1.2. Inconsistency**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To specify the precedence of provisions in the event that there is inconsistency between parts of the RFT.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Where any conflict or discrepancy occurs between two provisions of the RFT, the provision in the higher ranked document will take precedence.

**ORDER OF PRECEDENCE**

Under clause 1.2, the parts of the RFT have been listed in order of their importance in explaining how the tender process will be conducted:

- a. the conditions of tender have the highest precedence as they detail the tendering process that will be followed;
- b. the Tender Data Requirements List (TDRL) at Attachment A to the conditions of tender and the Annexes to the TDRL have the next highest precedence as they detail the information required from tenderers; and
- c. the draft Contract (in accordance with clause 1.5 of the draft conditions of contract) is next in the order of precedence as it details the legal rights and obligations which are intended to apply to the successful tenderer in performing the work.

It is important to note that the draft Contract referred to at clause 1.2.1c. includes the Glossary, the draft Statement of Work (Attachment A to the draft conditions of contract) and the other Attachments to the draft conditions of contract. For precedence purposes, any inconsistency within these elements of the draft Contract is resolved in accordance with clause 1.5 of the draft conditions of contract (see the guidance on clause 1.5 of the draft conditions of contract). At all times during the tender process, however, the documents referred to in clauses 1.2.1a. and b. would take precedence over any element of the draft Contract in the event of any inconsistency.

Clause 1.2 does not assist interpretation where there is inconsistency between provisions contained within a document or group of documents accorded the same precedence. A conflict of this nature will be resolved through interpretation of the RFT as a whole. Therefore, it is important to ensure that there is no conflict or discrepancy internally within a document as well as in the RFT as a whole. The examples below illustrate how clause 1.2 will be applied to resolve an inconsistency that is found in the RFT.

**Example A**

Clause 2.4 of the conditions of tender is inconsistent with Annex H to the TDRL – clause 2.4 will take precedence.

**Example B**

Clause 1.3 of the conditions of tender is inconsistent with clause 1.5 of the conditions of tender – precedence will be resolved through interpretation of the RFT as a whole.

**Example C**

Annex C to the TDRL is inconsistent with clause 5.1 of the draft conditions of contract – Annex C to the TDRL will take precedence.

**Example D**

Clause 5.1 of the draft conditions of contract is inconsistent with clause 3.15 of the draft Statement of Work - clause 5.1 will take precedence in accordance with clause 1.5 of the draft conditions of contract.

### AVOIDANCE OF INCONSISTENCY

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The order of precedence of documents in clause 1.2 (and the related order of precedence within the draft Contract set out at clause 1.5 of the draft conditions of contract) is designed to protect the Commonwealth in the event of any inconsistency, however, the order of precedence will not always provide the outcome desired by the Commonwealth or tenderers. Prior to release of a RFT, drafters must therefore read the RFT in its entirety to ensure that no conflict or discrepancy exists between the provisions of the various documents that make up the RFT.

Drafter's Action: Nil

Related clauses: Clause 1.5 of the draft conditions of contract details the precedence that will apply to documents making up any resultant contract.

Further Reading: Nil

**1.3. Amendment of RFT**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To inform tenderers of the Commonwealth's right to amend the RFT or terminate the tender process.
<b><u>Policy:</u></b>	<i>DPPM – Section 2, Chapter 2.1 and Section 5, Chapter 5.4</i>
<b><u>Guidance:</u></b>	This clause entitles the Commonwealth to: <ol style="list-style-type: none"> <li>a. amend a RFT by giving tenderers timely written notice of the amendment;</li> <li>b. seek amended tenders where it amends a RFT after the submission of tenders; and</li> <li>c. terminate the tender process at any time.</li> </ol>

**IMPLICATIONS OF THE HUGHES CASE AND PROCESS CONTRACTS**

Reservation by the Commonwealth of the above rights allows the Commonwealth greater flexibility during the tendering process. This flexibility will be especially important in the event that the Commonwealth is found to have entered into a tender process contract with each of the tenderers, as was the case in *Hughes Aircraft v Airservices Australia* (1997) 1 ALR 1 (Hughes case) (see also *Cubic Transportation Systems v New South Wales* (2002) NSWSC 656 (Cubic Transportation case)). Clauses 2.4.2d and 3.3.6 of the conditions of tender make it clear to tenderers that the Commonwealth does not intend the conditions of tender to give rise to a process contract. However, as a court will look to the substance of the conditions of tender rather than its form, a mere statement of intention will not necessarily be sufficient to protect the Commonwealth.

If it is found that a tender process contract exists, the Commonwealth will be obliged to conduct the tender process in accordance with the conditions detailed in the conditions of tender and any implied terms of the process contract. In the Hughes case, the court found that there will always be an implied term that the Commonwealth must deal fairly with tenderers.

Even if a process contract is found not to exist, the Commonwealth may be subject to other obligations to accord procedural fairness in its dealings with tenderers. These obligations arise in administrative law and were discussed in *MBA Land Holdings Pty Ltd v Gungahlin Development Authority and Others* (2000) ACTFC 89 (The Gungahlin Development Authority case).

The inclusion of clause 1.3 therefore ensures that the Commonwealth retains a right to unilaterally amend a RFT or terminate the tender process at any stage even where a tender process contract exists, subject to the Commonwealth's obligation to deal fairly with tenderers.

To ensure that tenderers are treated fairly, the Commonwealth should:

- a. provide timely written notification to all tenderers of any amendments to the RFT;
- b. ensure that each tenderer receives notification of an amendment to the RFT within a similar time period to other tenderers;
- c. provide all tenderers with sufficient time to revise their tenders where an amendment is made; and
- d. notify all tenderers in writing of any decision to terminate the tender process as soon as possible after the decision is made.

## TERMINATION OF THE TENDER PROCESS

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Although clause 1.3.3 entitles the Commonwealth to terminate the tender process at any time, advice should always be obtained from Contracting Policy and Operations Branch prior to any action being taken to terminate a tender process. Where the Commonwealth terminates a tender process in accordance with this clause and has otherwise dealt with tenderers in accordance with principles of fairness and the conditions of tender it is unlikely that the Commonwealth will be under an obligation to compensate any tenderer. Notwithstanding, tender processes should be terminated only in exceptional circumstances. Where a claim for compensation is received from a tenderer, advice should be sought from Contracting Policy and Operations Branch before any payment is considered.

Drafter's Action: Nil

Related clauses: Clause 2.4 of the conditions of tender notifies tenderers that they should not rely on any statement as varying the terms of the RFT, unless the RFT is amended in accordance with clause 1.3 of the conditions of tender.

Further Reading: Nil

**1.4. Contact Officer for RFT Enquiries**

**Sponsor:** Contracting Policy & Operations

**Status:** Core

**Purpose:** To inform tenderers of the Contact Officer for all enquiries in relation to the RFT.

**Policy:** *Commonwealth Procurement Guidelines and Best Practice Guidance*  
*DPPM – Section 5, Chapter 5.4*

**Guidance:** Under the *Commonwealth Procurement Guidelines and Best Practice Guidance* a central principle of government procurement is the need to conduct procurement ethically. To ensure that all tenderers are treated equally, information provided to recipients of the RFT must be consistent and equally available to all tenderers. It is therefore important to establish one person as the point of contact for the RFT.

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**RESPONSIBILITIES OF THE CONTACT OFFICER**


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Clause 1.4.1 requires all tenderers to provide questions in writing to the nominated Contact Officer. The clause also makes it clear that tenderers understand that the Commonwealth may circulate any questions received from tenderers and the answer by the Commonwealth, to all tenderers. The Contact Officer should:

- a. inform all tenderers of each question received and the Commonwealth's answer to the question, unless the question relates to a commercial or otherwise confidential aspect of a tenderer's tender; and
- b. not disclose the source of any question except where it is unavoidable i.e. in a tender process involving only two tenderers.

Written records of all enquiries and responses should be kept to ensure an audit trail is maintained. Where a tenderer's question results in an amendment to the RFT, that amendment should be issued promptly to all tenderers in accordance with clause 1.3 of the conditions of tender.

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**CONTACT OFFICER DETAILS TO BE INCLUDED IN CLAUSE 1.4**


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Drafters must insert the details of the Commonwealth's Contact Officer prior to release of the RFT. Details to be inserted include:

- a. the name and position of the Contact Officer;
- b. the telephone and facsimile number of the Contact Officer;
- c. the address of the Contact Officer; and
- d. where considered appropriate, the email address of the Contact Officer.

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**ACCEPTANCE OF ENQUIRIES BY EMAIL**


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Where drafters wish to include the Contact Officer's email address in clause 1.4, it is important that consideration is given to the security risks associated with electronic transmission of information relating to the RFT. Where the Contact Officer's email address is included in clause 1.4, tenderers should be informed of the security risks associated with electronic transmission of information and advised that any enquiries of a commercial-in-confidence nature or containing sensitive information should not be sent via email. The Contact Officer should always ensure that paper records of email enquiries and email responses to enquiries are kept to maintain an audit trail.

**Drafter's Action:** Drafters must insert the name and contact details, including address, phone and fax number, of the Contact Officer prior to release of the RFT. Drafters may also include the email address of the Contact Officer.

**Related clauses:** Clause 1.3 of the conditions of tender sets out the procedure for amending the RFT.

Clause 2.4 of the conditions of tender notifies tenderers that they should not rely on any statement as varying the terms of the RFT, unless the RFT is amended in accordance with clause 1.3 of the conditions of tender.

Further Reading: Nil

## 1.5. Industry Briefing

- Sponsor:** Contracting Policy & Operations and Defence Security Authority
- Status:** Optional. This clause should be used where an industry briefing is planned. Where the briefing will cover classified material the option at clause 1.5.2 must also be included.
- Purpose:** To inform tenderers that an industry briefing will be held and to request specific details from tenderers wishing to attend.
- Policy:** *DPPM – Section 5, Chapter 5.4*
- Guidance:** Industry briefings provide an opportunity for tenderers to be briefed on aspects of Defence's tendering and contracting requirements for a RFT and to obtain answers to general questions regarding the draft Statement of Work. The number of representatives from each prospective tenderer that may attend an industry briefing is specified in clause 1.5.1. In determining the number of representatives, consideration should be given to the number of prospective tenderers likely to attend the industry briefing and the size limitations of the proposed venue. Prospective tenderers must provide their name and location and the full name of each of their representatives to the Contact Officer in writing by the time specified in clause 1.5.1.

### CLASSIFIED INDUSTRY BRIEFINGS

Where security classified information will be discussed at an industry briefing, drafters must include clause 1.5.2 in the RFT. All representatives of prospective tenderers must possess a personal security clearance at the required security level to be entitled to attend the industry briefing. Clause 1.5.2 requires tenderers to submit details of each representative's nationality, date and place of birth, current security clearance held and the Department (Australian or foreign) which issued the security clearance. Prior to the classified industry briefing, the security clearances of all representatives must be confirmed with the Defence Security Authority to ensure that each clearance is still current. Sufficient time should be allowed between the nominations closing date and the date of the industry briefing to enable the Defence Security Authority to confirm each security clearance.

### IMPACTS OF STATEMENTS MADE AT AN INDUSTRY BRIEFING ON THE RFT

Clause 1.5.3 notifies tenderers that the purpose of the industry briefing is to provide background information only and that, unless confirmed by the Commonwealth in writing, statements made at the briefing should not be relied upon to amend or add to the RFT. Industry briefings should not be used to disseminate information that all tenderers need to know in order to submit tenders.

Clause 1.5.3 seeks to provide the Commonwealth with protection where statements made at the industry briefing are not supported by the RFT. The legal doctrines of estoppel and misrepresentation may still apply, however, and Commonwealth officers should ensure that statements made at the industry briefing are accurate, truthful and consistent with the RFT. In order to minimise the possibility of a successful claim based on estoppel or misrepresentation, presentations and any other documentation to be provided at the industry briefing should be reviewed and approved by Contracting Policy and Operations Branch staff.

### ATTENDANCE AT THE INDUSTRY BRIEFING

It is important to note that attendance at an industry briefing is not a prerequisite for tendering. Under no circumstances should a tender be excluded from consideration because the tenderer did not attend an industry briefing.

- Drafter's Action:** Prior to release of the RFT where this clause is considered necessary, drafters must insert the number of tenderer's representatives that may attend the industry briefing, the time, date and venue for the industry briefing and the closing time and date for nominations. Where classified material will be discussed at the industry



briefing, drafters must include clause 1.5.2 and insert the security clearance classification level.

Related clauses: Clause 1.3 of the conditions of tender sets out the procedure for amending the RFT.

Clause 1.4 of the conditions of tender specifies the Contact Officer to whom nominations must be forwarded in writing.

Clause 2.4 of the conditions of tender notifies tenderers that they should not rely on any statement as varying the terms of the RFT, unless the RFT is amended in accordance with clause 1.3 of the conditions of tender.

Further Reading: Nil

**1.6. Part, Joint and Alternative Tenders**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core. Option A should be selected where alternative tenders will be considered. Option B should be selected where alternative tenders will not be considered.
<u>Purpose:</u>	To notify tenderers of the acceptability of part, joint and alternative tenders.
<u>Policy:</u>	Nil
<u>Guidance:</u>	The Commonwealth prefers to enter into a single contract with one legal entity for performance of the entire requirement.

**CONSIDERATION OF ALTERNATIVE TENDERS**

An alternative tender is a tender that does not fully address the requirements of the draft Statement of Work but purports to meet the functional objectives. Where alternative tenders will be considered by the Commonwealth, drafters should determine how an alternative tender will be evaluated to ensure that it is treated fairly and consistently with other tenders. To be considered by the Commonwealth, an alternative tender must meet the requirements of clause 1.6.2 of the conditions of tender. If the requirement in the draft Statement of Work is stated in functional terms, Option B should be selected as the consideration of alternative tenders will be inappropriate. A tender could only be an alternative tender if it failed to meet the functional objectives.

**REASON FOR NON-ACCEPTANCE OF PART OR JOINT TENDERS**

The Commonwealth prefers to enter into contract with a single entity for the entire requirement as this ensures that one entity is legally responsible for the successful delivery of the requirement. Reflecting this preference, clause 1.6 notifies tenderers that the Commonwealth will not consider part or joint tenders. A part tender is one which addresses only a part of the requirements of the draft Contract. A joint tender is one in which two or more companies tender jointly to perform the requirements of the draft Contract. A tender submitted by a consortium or unincorporated joint venture is a joint tender. A tender submitted by an incorporated joint venture, where two or more companies incorporate a new entity that is part owned by each of them, is not a joint tender. This is because a single entity, that of the incorporated joint venture, is submitting the tender.

**ALLOWANCE OF PART OR JOINT TENDERS**

Although clause 1.6 is a core clause, in some specific circumstances it may be appropriate to allow part or joint tenders. Issues to be considered by drafters include the current industry base, the availability of the Supplies, subcontracting arrangements and the potential for limitation of the number of tenderers and the creation of shell companies.

A shell company typically has few assets. Where two substantial and experienced companies are likely to want to form a consortium to submit a tender, it may be better for the Commonwealth to encourage the two companies to submit a joint tender rather than prohibit joint tenders and create an incentive for the companies to create a shell company in order to tender.

**Example A**

Where a particular part of the Supplies required by the draft Statement of Work is highly specialised and only available from one supplier, the Commonwealth may wish to encourage the supplier to tender for that part of the requirement rather than enter into a subcontracting arrangement with another tenderer. This is because the subcontracting arrangement may prevent the supplier from acting as a Subcontractor to other tenderers and competition may be limited as other tenderers will not be able to tender against the whole requirement.

**Example B**

Where the existing industry base is such that the contract requirement can not be met by one company through entering into appropriate subcontracting arrangements, it may be appropriate to allow a consortium or unincorporated joint venture to tender. This will be particularly necessary where the requirement necessitates Supplies being provided by two large companies who do not wish to enter into a prime – Subcontractor relationship.

Prior to release of the RFT, drafters must consider the market, the required Supplies and whether the acceptance of joint tenders or part tenders may be required in the particular circumstances. Where part or joint tenders will be allowed under the RFT, appropriate changes as outlined below will be required prior to release of the RFT.

Where a joint or part tender is received in response to a RFT in contravention of clause 1.6, a decision must be made whether to evaluate the tender or exclude the tender from consideration. Issues to be considered include the requirement to treat all tenderers fairly and equally, the potential for litigation by other tenderers, the competitiveness of the joint or part tender, and the viability of other tenders. Advice should be sought from Contracting Policy and Operations Branch before any action is taken in relation to a joint or part tender that is submitted in contravention of clause 1.6.

**CHANGES REQUIRED WHERE PART OR JOINT TENDERS ARE ALLOWED**

Where clause 1.6 is amended prior to release of the RFT to allow for part tenders, mechanisms must be implemented to ensure that part tenders are evaluated fairly. Where a part tender is successful, the Commonwealth must either enter into a separate contract with the tenderer or mandate the tenderer as a Subcontractor to the Contractor. In either event, the provisions of the RFT and the resultant contract(s) will require amendment to clearly detail the applicable subcontracting arrangements and the responsibilities of the contracting parties.

Where clause 1.6 is amended prior to release of the RFT to allow for joint tenders, the provisions of the RFT must be amended to include optional clauses that enable contracting with each joint tenderer on the basis of joint and several liability. By contracting with each joint contractor on the basis of joint and several liability, where the Contract is not performed satisfactorily, the Commonwealth may take action against one of the contracting parties or several of the contracting parties. Each of the joint contractors will be liable for the entire amount of money recoverable by the Commonwealth whether the money is recoverable under the Contract or awarded by a court. This ensures that the Commonwealth can recover losses suffered from one or more of the joint contractors until the Commonwealth is fully compensated for its loss.

Prior to releasing a RFT that allows for the submission of either part or joint tenders or entering into any resultant contract based on a part or joint tender, contracting advice should be obtained from Contracting Policy and Operations Branch to ensure that the Commonwealth's legal rights are adequately protected.

**Drafter's Action:** Prior to the release of the RFT, drafters must select the appropriate alternative clause.

**Related clauses:** Nil

**Further Reading:** Nil

**1.7. Alterations, Erasures or Illegibility**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To advise tenderers that the Commonwealth may exclude from consideration tenders containing alterations or erasures that have not been initialled by the tenderer, or tenders in which prices or other information are not clearly and legibly stated.

Policy: Nil

Guidance: Tenders received in response to a RFT provide information that is evaluated by the Commonwealth to determine the tendered solution that offers the best value for money to the Commonwealth. It is therefore important that the Commonwealth can rely on the information provided. Where a tender contains uninitialled alterations or erasures or where prices or other information are not clearly and legibly stated the Commonwealth may not be able to rely upon the information provided.

Although it is arguable that an uncertainty as to what has been tendered may be resolved through seeking clarification, it is important to ensure that no incentive exists for tenderers to submit information in a way that allows the tenderer to influence the interpretation of the information after tenders have closed, when tenderers may potentially have more market information about other tenderers.

A tender will also form the basis of the resultant contract. A contract cannot be formed if there is uncertainty as to its principal elements, particularly price. It is therefore important that tenders are clear and unambiguous and capable of only one interpretation. The Commonwealth is entitled to exclude a tender from further consideration if on receipt of the tender any alteration or erasure is discovered and the tenderer has not clearly initialled the change.

Drafter's Action: Nil

Related clauses: Nil

Further Reading: Nil

**1.8. Copies of Tenders**

- Sponsor:** Contracting Policy & Operations and Directorate of Record Management Policy
- Status:** Core
- Purpose:** To advise tenderers of the number of copies of the tender and supporting documentation to be submitted, the identification marking requirements for copies and the precedence that will apply between the original and copies in the event of a discrepancy.
- Policy:** *Administrative Functions Disposal Authorities (AFDA)* (for tender records of a general administrative nature)  
*Commonwealth Archives Act 1983*  
*Defence Records Management Policy POLMAN 3, 3<sup>d</sup> Edition*  
*Defence specific Records Disposal Authorities* (for tender records relating to Defence core functions) – Currently under development by the Directorate of Record Management Policy  
*DPPM – Section 5, Chapter 5.9*
- Guidance:** Clause 1.8 requests tenderers to provide:
- a. the original and two hard copies of the tender and supporting documentation; and
  - b. two electronically stored copies of the tender and supporting documentation.
- Where there is a discrepancy between a hard copy and the original or an electronic copy and the original, the original will take precedence. Drafters may alter the number of copies required, however, consideration should always be given to the costs to tenderers of providing additional copies, the costs to Defence of printing additional copies and the burden that hard copies place on the tender lodgement and opening procedures.
- The original tender may be retained by the Commonwealth in its original condition or as a scanned or imaged copy and the original destroyed under conditions set out in *POLMAN 3, 3<sup>d</sup> Edition, sections 6.22, 6.25 – 6.35, 9.28 – 9.32* in accordance with the disposal authorities issued under the *Commonwealth Archives Act 1983*. Tender records relating to general administrative items are authorised for destruction under the *Administrative Functions Disposal Authority (AFDA) entries 1171 – 1175*, i.e. 7 years after the tender process has been completed for successful tender and 2 years after action has been completed for unsuccessful tenders or tenders that relate to a process that was not completed. Tender records relating to core Defence items, e.g. materiel procurement will be authorised for destruction under Defence specific *Records Disposal Authorities (RDAs)* being developed by the Directorate of Record Management Policy. As a guideline, destruction dates may be kept to the minimum set out in the AFDA entries depending on business need to keep records for the length of the relevant project. It should be noted that in the majority of cases Supplies procured using *ASDEFCON (Strategic Materiel)* will be considered as core Defence items.
- Drafter's Action:** Drafters must insert the format in which the electronic copies are required prior to release of the RFT.
- Related clauses:** Nil
- Further Reading:** Nil

**1.9. Lodgment of Tenders**

<b>Sponsor:</b>	Contracting Policy & Operations
<b>Status:</b>	Core
<b>Purpose:</b>	To advise tenderers of the Tender Closing Time and the tender lodgment procedures applicable to tenders received in response to the RFT.
<b>Policy:</b>	Current policy is that RFTs and other invitation documents must specify an exact time and date as the Tender Closing Time. Any tender submitted after this time will be marked as a late tender and accepted for evaluation only at the discretion of the Commonwealth.  <i>DEFGRAM Number 492/2002 – Receipt of Tenders to Russell 2, Russell 4 and Campbell Park Tender Boxes in the Canberra Region – under Safebase Bravo</i>  <i>DPPI 11/2002 – Procedures for Advertising, Opening and Recording Tenders</i>  <i>DPPM Section 5, Chapter 5.5, Annexes 5F and 5G</i>
<b>Guidance:</b>	Drafters must ensure that they clearly specify the place for tender lodgment.

**Example**

For postal deliveries:  
Defence Mail Services  
Department of Defence  
CANBERRA ACT 2600

For personal deliveries:  
Defence Mail Services  
Queanbeyan Annex 6  
14-22 Wycombe Street  
QUEANBEYAN NSW 2620

Attn: MailroomManager/Tender Officer

**SELECTION OF THE TENDER CLOSING DATE**

Drafters must also specify the tender closing date. The date selected should be a Working Day in the place where tenders are to be lodged. Careful consideration should be given to the time period that is allowed for the preparation and submission of tenders. Where tenderers will be required to submit tenders through secure means, sufficient additional time should be allowed when determining the tender closing date.

**ALTERATION OF THE TENDER CLOSING TIME**

The Tender Closing Time specified in *ASDEFCON (Strategic Materiel)* is 12:00pm. 12.00pm has been selected as it enables Commonwealth personnel sufficient time following the close of tenders to record and process tenders prior to the close of business. A tender closing time of 12.00pm also ensures that the Commonwealth will be aware of any late tenders that are received. Drafters proposing to amend the tender closing time should give due consideration to the impact that the new tender closing time will have on Commonwealth personnel involved with the receipt and opening of tenders and the ability of the Commonwealth to determine whether tenders received were submitted prior to the tender closing time.

**ACCEPTANCE OF LATE TENDERS**

Commonwealth officers involved in the tender process should ensure that they are familiar with Defence policy on tender lodgment and opening procedures. Where a tender is submitted late the Tender Lodgment Procedures and Late Tenders policy will be applied by the Commonwealth to determine whether the late tender will be considered by the Commonwealth. The reasons for admitting or not admitting a late tender should be documented in writing and all communications with that tenderer should also be recorded in writing to guard against later dispute over the actions of the Commonwealth in admitting or refusing to consider a late tender. Advice should be sought from Contracting Policy and Operations Branch prior to any decision being made to consider or not consider a late tender. The Tender

Lodgment Procedures and Late Tenders policy is contained in the *DPPM Section 5, Chapter 5.5, Annexes 5F and 5G*

Drafter's Action: Drafters must insert the date and place for submission of tenders.

Related clauses: Clause 1.12 of the conditions of tender requires tenderers to familiarise themselves with specific Commonwealth policies.

Further Reading: Nil

**1.10. Preparation and Transmission of Classified Tenders**

**Sponsor:** Defence Security Authority

**Status:** Optional. This clause should be included where tenderers may wish to submit security classified information as part of their tender.

**Purpose:** To advise tenderers of the source documents that provide guidance on, and the process that applies to, the preparation and transmission of tenders containing classified material.

**Policy:** For Australian tenderers:

*Defence Security Manual*

For overseas tenderers:

Overseas tenderers should consult applicable policy documents issued by their relevant government authorities, and the relevant bilateral security agreements.

*DPPM Section 3, Chapter 3.9*

**Guidance:** Clause 1.10 provides tenderers with details of how tenders containing security classified information should be prepared and transmitted.

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**PREPARATION AND TRANSMISSION OF CLASSIFIED TENDERS**

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Clause 1.10.1 advises tenderers that classified content in tenders should be avoided where possible. Where this is not possible, Australian tenderers are required to prepare and transmit tenders containing classified content in accordance with the appropriate Defence Security Policy. Overseas tenderers must prepare and transmit tenders containing classified content in accordance with the industrial security regulations issued in their country and use the diplomatic bag arrangements of their own country where transmission is by diplomatic bag.

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**SECURITY CLASSIFICATION GRADING DOCUMENTS**

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Clause 1.10.2 requests tenderers to classify information in their tenders in accordance with the Security Classification Grading Document at Attachment J to the draft conditions of contract. In some cases the RFT may not include a Security Classification Grading Document at the time of release, particularly where there is no Australian security classified information included in the RFT. Further advice on Security Classification Grading Documents can be obtained by contacting the Defence Security Authority.

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**SEPARATE TRANSMISSION OF CLASSIFIED PARTS OF A TENDER**

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Where only part of a tender response contains classified content, tenderers may segregate that part from the remainder of the tender for separate transmission. Tenderers should note, however, that both parts of the tender must be lodged by the Tender Closing Time. Tenderers should take care to ensure that sufficient time is allowed for transmission of tenders containing classified content, particularly where diplomatic bag arrangements must be used. Where only the unclassified part of a tender is received by the Tender Closing Time, the Tender Lodgment Procedures and Late Tenders policy will apply and the whole tender may be excluded from consideration by the Commonwealth.

**Drafter's Action:** Prior to release of the RFT, drafters should consider whether this clause is necessary.

**Related clauses:** Clause 1.9 of the conditions of tender notifies tenderers of the Tender Closing Time and the tender lodgment procedures applicable to tenders received in response to the RFT.

Attachment J to the draft conditions of contract will, if required, contain the agreed Security Classification Grading Document.

**Further Reading:** Nil



**1.11. Defence Security Clearance Requirements**

**Sponsor:** Contracting Policy & Operations and Defence Security Authority

**Status:** Core

**Purpose:** To notify tenderers of the requirement to be willing to undergo the security clearance process.

**Policy:** *DPPM Section 3, Chapter 3.9*

**Guidance:** This clause does not impose upon a tenderer a mandatory requirement to undergo the security clearance process. The successful tenderer may be required to perform work on sites with restricted access and to access classified information. In such circumstances the Commonwealth expects a tenderer to undergo the security clearance process to ensure the required safeguards on information and site security are in place.

If a tenderer indicates to the Commonwealth that it is not willing to undergo the security clearance process, the Defence Security Authority should be consulted with regards to the current security status of the tenderer and their personnel.

Unless a contrary intention appears in the tenderer's response or the tenderer communicates that the tenderer is unwilling to undergo the security clearance process, this clause reflects the Commonwealth's expectation that a tenderer will undergo the security clearance process.

**Drafter's Action:** Nil

**Related Clauses:** Clause 1.10 of the conditions of tender and clause 10.10 of the draft conditions of contract.

**Further Reading:** Nil

**1.12. Australian Government Requirements**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To notify tenderers of Commonwealth policy that applies to the RFT and the requirement placed on the Contractor by clause 11.3 of the draft conditions of contract to comply with Commonwealth policy.

Policy: See references under Guidance.

Guidance: Drafters should ensure that all Commonwealth policy that a tenderer should be aware of in submitting its tender is referenced in clause 1.12 of the conditions of tender and clause 11.3 of the draft conditions of contract prior to release of the RFT.

*ASDEFCON (Strategic Materiel)* lists the following policy documents which tenderers must familiarise themselves with at the tendering stage:

- Australian and New Zealand Supplies policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*;
- Company ScoreCard policy as detailed in the *Defence Company ScoreCard Policy Statement, July 2001*;
- Contract Gazettal policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*;
- Defence Equity and Diversity policy as detailed in the *Defence plain-english guide to Managing and Eliminating Unacceptable Behaviour in the Workplace, May 2000* and *Departmental Personnel Instruction No 1/2001*;
- Equal Opportunity for Women in the Workplace policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*;
- Freedom of Information policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*;
- Hazardous Substances policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*;
- Industrial Supplies Office policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*;
- Maximising Employment Opportunities for Aboriginal and Torres Strait Islanders policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*; and
- Ozone Depleting Substances policy as detailed in the *Defence Procurement Policy Manual, Version 4.0: 2003*.

**DISCLOSURE OBLIGATIONS FOR COMMONWEALTH CONTRACTS**

Clause 1.12.2 of the conditions of tender advises tenderers that, as a Commonwealth agency, Defence is subject to general Commonwealth legislative and administrative accountability and transparency requirements, which may include being required to make disclosures to Parliament and its Committees. Tenderers are informed that, due to these requirements, any contract formed with the Commonwealth (including specific contractual provisions and related matters) may be disclosed to Parliament and its Committees. Any requests by a tenderer for contract or other information to be kept confidential would need to be considered on a case by case basis taking into account the relevant Commonwealth legislative and administrative requirements. Further guidance on these requirements can be obtained from Contracting Policy and Operations Branch.

Drafter's Action: Nil

Related clauses: Clause 11.3 of the draft conditions of contract requires the Contractor to comply with the Commonwealth policies listed in the clause.

Further Reading: Nil



## 2. MATTERS CONCERNING TENDER RESPONSE

### 2.1. Period of Tender

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To identify the period for which a tenderer must hold its tender open for acceptance by the Commonwealth.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.5 and Annex 5I(6)</i> <i>Trade Practices Act 1974</i>
<u>Guidance:</u>	Drafters should include the Commonwealth's preferred tender validity period in clause 2.1.

#### SELECTION OF THE TENDER VALIDITY PERIOD

Drafters should ensure that a realistic tender validity period is included, taking into account such factors as the anticipated evaluation period, expected length of negotiations and the time required to obtain all of the necessary approvals to enter into a contract. Excessive validity periods may add considerably to the cost of tendering for tenderers and these costs will eventually be passed on to the Commonwealth in the Contract Price.

#### TENDER VALIDITY PERIOD INCLUDED IN THE DECLARATION BY TENDERER

Each tenderer is responsible for entering the period for which its tender will remain open for acceptance in the Declaration by Tenderer at Annex B to the TDRL. Tenderers should note the Commonwealth's preferred tender validity period in clause 2.1. A tenderer may be bound by the tender validity period indicated in its Declaration by Tenderer and therefore tenderers should give careful consideration to the time period included. Where the tender validity period offered by the tenderer is a great deal less than that indicated by the Commonwealth in clause 2.1, the Commonwealth may have to consider whether the evaluation of the tender can be completed within the offered validity period. If it cannot be completed and the tenderer is unwilling to extend the validity period the Commonwealth may consider excluding the tender from further consideration.

#### EXTENSION OF THE TENDER VALIDITY PERIOD

Once the period specified in the Declaration by Tenderer expires, the tender is no longer open for acceptance. If the Commonwealth wishes to seek an extension of the tender validity period, it should do so under clause 2.1.2 prior to expiry of the original tender validity period. A tenderer is under no obligation to agree to an extension and may allow its tender to lapse. Where the Commonwealth seeks an extension of the tender validity period, the Commonwealth should attempt to secure the extension on the same terms as the original tendered offer, or where negotiations have commenced, the negotiated offer at the time of the request.

#### ENFORCEABILITY OF THE TENDER VALIDITY PERIOD

It should be noted that since the Commonwealth and the tenderer have not entered into a process contract, the Commonwealth may not be able to enforce the tender validity period specified in the Declaration by Tenderer where the tenderer seeks to revoke its offer prior to expiry of the tender validity period. There is a possibility that the Commonwealth may have a claim under section 52 of the *Trade Practices Act 1974* for the deceptive or misleading conduct of the tendering company or that it may rely on the doctrine of estoppel to enforce the tender validity period, if it can be shown that the Commonwealth has suffered detriment due to revocation of the offer. It is, however, unlikely that the Commonwealth will want to pursue a claim on either basis in order to retain the tenderer in the tender process, as the revocation of its offer indicates a general reluctance on the part of the tenderer to enter into a contract and an ongoing relationship with the Commonwealth. Prior to any action

being taken to enforce a tender validity period advice should be sought from Contracting Policy and Operations Branch.

**Drafter's Action:** Drafters must include the period for which tenders are to remain open for acceptance prior to release of the RFT. While it is desirable that the same period be included in the Declaration by Tenderer, the tenderer may insert an alternative period.

**Related clauses:** Clause 1.9 of the conditions of tender details the Tender Closing Time applicable to tenders submitted in response to the RFT.

In Annex B to the TDRL, each tenderer is required to indicate in a Declaration by Tenderer, the period for which its tender will remain open for acceptance.

**Further Reading:** Nil

**2.2. Language of Tenders**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To advise tenderers that tender responses are to be in English and that measurements, unless otherwise specified, are to be expressed in Australian legal units of measurement.
<u>Policy:</u>	<i>National Measurement Act 1960</i>
<u>Guidance:</u>	The <i>National Measurement Act 1960</i> states that, with the exception of imported or exported supplies, contracts entered into in Australia for a measured volume, weight or other physical quantity of goods must be expressed in 'Australian legal units of measurement' otherwise the contract is void.

**USE OF ALTERNATIVE UNITS OF MEASUREMENT**

The cost for tenderers of converting all information and documentation to Australian legal units of measurement may be significant. Where it is expected that overseas tenderers are likely to respond to the RFT, it may be appropriate to specify particular areas of the RFT or types of documentation against which information submitted may be provided in the units of measurement used in the tenderer's country of origin. Prior to allowing alternative units of measurement to be used, drafters should carefully consider the effect on the ease of comparison of tenders and the useability and reliability of information provided by tenderers. Where it is considered appropriate to allow alternative units of measurement to be used, these should be specified in the relevant part of the draft Statement of Work.

Before agreeing to alternative units of measurement, drafters need to consider the operation of clause 3.1.2 of the condition of contract which requires measurements to be in Australian legal units, although the Project Authority may subsequently agree alternative units of measurement for imported supplies. However, if alternative units of measurement are specified in the Statement of Work, this could give rise to ambiguity with clause 3.1.2. This is because the Precedence of Documents clauses in the draft conditions of contract (clause 1.5) provides that the conditions of contract prevail over the Statement of Work to the extent of any inconsistency. Accordingly, to avoid doubt, clause 3.1.2 of the draft conditions of contract may need to be revised to state 'Except as otherwise set out in the Contract, measurements .....'.

**REQUIREMENT THAT TENDERS BE SUBMITTED IN ENGLISH**

Clause 2.2 notifies tenderers that any tender submitted must be written in English. Requesting that tenders are submitted in English alleviates the Commonwealth's responsibility for any errors or ambiguities that may occur during the translation of tendered information and ensures that the tenderer retains responsibility for the accuracy of the content of its tender.

<u>Drafter's Action:</u>	Nil
<u>Related clauses:</u>	Clause 3.1 of the draft conditions of contract provides that all information delivered as part of the Supplies is to be written in English and that measurements must be in accordance with the <i>National Measurement Act 1960</i> , unless agreed by the Project Authority.
<u>Further Reading:</u>	Nil

**2.3. Tender Preparation**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To outline the information that the tenderer is required to submit in response to the RFT.
<u>Policy:</u>	<i>DPPM – Section 2, Chapter 2.4</i>
<u>Guidance:</u>	Clause 2.3 notifies tenderers that: <ol style="list-style-type: none"> <li>a. any information requested in the RFT should be included in the tender response volumes detailed in the TDRL and completed in the detail and format specified in the Annexes to the TDRL; and</li> <li>b. supporting documentation may be provided and that the supporting documentation should be referred to in the relevant volume of the tender response.</li> </ol>

**INFORMATION REQUESTED FROM TENDERERS**

The information to be provided by tenderers in response to the RFT is detailed in the Annexes to the TDRL. In order to reduce the time and cost of tendering for the Commonwealth and tenderers, drafters should avoid requesting information in excess of what is necessary to evaluate tenders. Drafters should also ensure that all information necessary to evaluate tenders against the tender evaluation criteria in clause 3.3 of the conditions of tender is requested in the Annexes and that the nature and extent of the required information is clear. Ensuring that the tender requirements are clear in the RFT may reduce the need for the Commonwealth to seek clarification during the tender evaluation process which will in turn reduce the length and cost of the tender process.

It is important that any supporting documentation submitted by tenderers is referred to in the tender response volume to which the information relates.

**TENDER DELIVERABLES**

The tender deliverables and tender volume structure are defined in the TDRL at Attachment A to the conditions of tender.

The following principles should be applied to the design of the tender deliverables for a RFT:

- a. the number of deliverables should be kept to a minimum and only information that is essential to the evaluation should be requested; and
- b. to the maximum extent possible tender deliverables should map to subordinate criteria such that they are not evaluated by more than one Tender Evaluation Working Group (TEWG) (Some exceptions to this rule include the Statement of Compliance and Company Profile/Tenderer's Ability to Supply).

Not all Data Item Descriptions (DIDs) referenced by *ASDEFCON (Strategic Materiel)* in Annexes A – J are mandatory for the purposes of tendering but care needs to be taken to ensure that when responses to draft versions of DIDs are not called for as part of the RFT any consequential impacts in the RFT are considered and mitigated.

Additionally not all information contained in a DID may be required for tender evaluation - some tailoring of responses to DIDs called for at the time of tendering may be required for a RFT. Care should be taken to ensure that the contractual intent of the information required during the contracting phase is not deleted. A solution is to use the DID as-is and identify the specific clauses which require responses to at the time of tendering with guidance on the manner and depth of the response required.

Drafter's Action: Nil



Related Clauses: Clause 3.3.4 of the conditions of tender indicates that tender responses that are incomplete may be excluded from consideration.

Attachment A to the conditions of tender advises tenderers of the format required for tender responses.

The Annexes to the TDRL request information from the tenderer. If the tenderer does not comply with the requirements set out in the conditions of tender or the Annexes, the nature of the non-compliance should be detailed in the Declaration by Tenderer provided by the tenderer.

Further Reading: Nil

## 2.4. Tenderers to Inform Themselves

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To advise tenderers:

- of the obligation to obtain, read and familiarise themselves with the RFT and any documentation referenced in the RFT;
- not to rely on any oral or written representation as varying the terms of the RFT, unless the RFT is formally amended in accordance with clause 1.3 of the conditions of tender;
- that the Commonwealth will not be responsible for costs and expenses incurred by tenderers in preparing and lodging their tenders; and
- that the RFT does not create a contract between the Commonwealth and each tenderer in relation to the conduct of the tender process.

Policy: *DPPM – Section 2, Chapter 2.1*

Guidance: Clause 2.4.1 outlines the assumptions upon which each tenderer should base its tender and notifies tenderers of the types of investigations that the Commonwealth assumes each tenderer has made before lodging a tender. These provisions provide protection to the Commonwealth by ensuring that a tenderer is unable to argue that it was unaware of any particular fact that was expressly referred to in the RFT or was discoverable through reasonable enquiries.

### INCLUSION OF MATERIAL IN THE RFT

In the event a tenderer seeks to amend its tender after the Tender Closing Time, clause 2.4.1 may be relied upon by the Commonwealth to take account of circumstances which were notified to tenders through the RFT or discoverable by the tenderer through the making of reasonable enquiries. It also allows drafters to refer to all applicable Defence policy and legislation without including the documents in the RFT. It should be noted that 'reasonable enquiries' is a matter of judgment and if the material will have a significant impact on the tenderer, especially in relation to pricing, it should be expressly referred to, or included, in the RFT.

### RELIANCE ON COMMONWEALTH REPRESENTATIONS

Clause 2.4.2 places each tenderer on notice that they are unable to rely on any oral or written representations, or other amendments to the RFT that were not given or made in accordance with clause 1.3 of the conditions of tender. It provides the Commonwealth with protection against claims by a tenderer that it based its tender on Commonwealth representations rather than its own enquiries, or that it expected the Commonwealth to meet its tendering costs.

It should be noted that clause 2.4 does not provide absolute protection for the Commonwealth. If a representation or statement is made by the Commonwealth the legal doctrines of estoppel and misrepresentation may still apply. If a change is required to be made to the RFT, then the RFT should be formally amended through the process in clause 1.3 and the amendment distributed to all recipients of the RFT.

### THE HUGHES CASE AND PROCESS CONTRACTS

Clause 2.4 expresses Defence policy that it does not intend the tender process to create a contractual relationship between the Commonwealth and tenderers. However in the Hughes case, the court looked further than the express terms of the tender to the actual relationship between the parties in the tender process. Therefore a mere statement that it is not the intention of the parties to enter into contractual obligations may not be sufficient to protect the Commonwealth against the existence of a process contract and a resulting claim of breach of contract.

Drafter's Action: Nil

Related clauses: Clause 1.3 of the conditions of tender sets out the procedure that must be followed to amend a RFT.

Clause 1.5 of the conditions of tender provides for an option for the Commonwealth to conduct an industry briefing. Tenderers acknowledge in clause 1.5 that any statements made by the Commonwealth at the industry briefing which may potentially result in a change to the RFT are subject to clause 2.4 of the conditions of tender.

Clause 1.12 of the conditions of tender lists the Commonwealth policies that tenderers should familiarise themselves with.

Further Reading: Nil

**2.5. Use of Tender Documents**

**Sponsor:** Contracting Policy & Operations

**Status:** Core

**Purpose:** To notify each tenderer of how the Commonwealth may use the information submitted in its tender, including the purposes for which tender documentation may be provided to third parties. To set out the Intellectual Property rights associated with the tender documents.

**Policy:** *DPPM – Section 5, Chapter 5.6*  
*Freedom of Information Act 1982*

**Guidance:** For the purposes of tender evaluation and the preparation of any resultant contract, the Commonwealth may:

- a. use, retain and copy tendered information; and
- b. subject to obtaining a deed of confidentiality, provide the tender documentation to third parties.

Notwithstanding the Commonwealth's rights, ownership of the Intellectual Property in the information contained in the tender documents remains unchanged, i.e. the tenderer remains as the owner of the Intellectual Property. Drafters should ensure that this is appropriately reflected in any deed of confidentiality entered into between the Commonwealth and a third party.

**USE OF TENDER DOCUMENTATION BY THIRD PARTIES**

Under clause 2.5.2, tender documentation may only be supplied to third parties for the purposes of assisting the Commonwealth in tender evaluation and the preparation of any resultant contract. While the RFT expressly negates the existence of a contractual relationship with the tenderer during the tender process, it is important that the Commonwealth only discloses tender documentation to third parties in accordance with clause 2.5.2. It should be noted that in the Hughes case, the court looked closely at the purposes for which the tender information could be disclosed to third parties and found that a breach of contract had occurred as the government authority had explicitly promised tenderers to maintain "strict confidentiality" and yet had disclosed tender information for purposes other than those set out in the conditions of tender. Where the Commonwealth needs to disclose tender information to third parties for purposes other than those set out in clause 2.5.2, the Commonwealth should obtain the written consent of the tenderer prior to any disclosure being made. Promises to keep information "strictly confidential" should not be made as the analysis in the Hughes case shows this will be interpreted to be a greater obligation than one of confidentiality.

**Drafter's Action:** Nil

**Related clauses:** Annex B and Annex M to Attachment I to the draft conditions of contract provide draft Deeds that may be appropriate, with relevant tailoring, for use when the Commonwealth needs to obtain a deed of confidentiality as foreshadowed in this clause.

**Further Reading:** Nil

**2.6. Substitution of Tenderer**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To inform tenderers that upon a joint written request from the tenderer and another legal entity, the Commonwealth may allow substitution of that other legal entity for the tenderer.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Clause 2.6 allows the Commonwealth discretion to substitute a tenderer with another legal entity, during the period following the submission of a tender and prior to execution of a contract.

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**EXERCISE OF THE DISCRETION TO ALLOW FOR A SUBSTITUTION**

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The Commonwealth's discretion is contingent upon the occurrence of one of the events in clause 12.2.1a to h of the draft conditions of contract or any other event that has the effect of substantially altering the composition, business or control of the tenderer. The Commonwealth may only exercise this discretion when it has received a joint written request from, or on behalf of, the tenderer and the legal entity requesting the substitution.

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**FAILURE TO OBTAIN A SUBSTITUTION OF TENDERER**

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Clause 2.6.2 provides tenderers with notice that if the circumstances in clause 2.6.1 occur and the tenderer fails to request a substitution, or the Commonwealth does not allow the substitution, the Commonwealth may elect not to give any further consideration to the tender. Alternatively the Commonwealth may elect to consider the tender and take into account the impact of the event on the information provided in the tender. As there is a potential for tenderers to be disadvantaged by the exercise of the Commonwealth's discretion, the Commonwealth should seek to ensure that it does not unfairly advantage or disadvantage any tenderer or the entity seeking to be substituted. For this reason clause 2.6.3 specifies that the Commonwealth will evaluate a tender in its original form except that the impact of the event on the tendered information may be taken into account.

<u>Drafter's Action:</u>	Nil
<u>Related clauses:</u>	Clause 12.2.1a to h in the draft conditions of contract outlines the events that constitute Contractor default under the Contract and provide a trigger for the Commonwealth to request substitution of the tenderer.
<u>Further Reading:</u>	Nil



### **3. EVALUATION OF TENDERS**

#### **3.1. Cost Investigation of Sole Source Tenders**

Sponsor: Contracting Policy & Operations

Status: Optional. To be used where the RFT is sole source.

Purpose: To advise the tenderer that due to the RFT being sole source, the Commonwealth may cost investigate the tender and that the tenderer will be required to facilitate such a cost investigation where required by the Commonwealth.

Policy: Defence policy strongly recommends that all sole source tenders are cost investigated.

*Commonwealth Procurement Guidelines and Best Practice Guidance*

*DPPM – Section 4, Chapter 4.7*

*Financial Management and Accountability Act 1997*

Guidance: Since there is a lack of competition in a sole source tender, conducting a cost investigation of the tender is an effective way to determine whether the tendered price is reasonable and offers value for money in accordance with Commonwealth procurement policy. In an open tender process, the Commonwealth will have alternative mechanisms to satisfy itself that the tender constitutes value for money, such as comparison of tenders and tender pricing. For this reason, it is important that drafters insert clause 3.1 where the RFT is sole source.

Since the Commonwealth's right to cost investigate is a discretionary right, it is important that the Commonwealth's resources are sufficient to conduct the cost investigation during the tender validity period. The tenderer is required to facilitate the cost investigation and that cost may be factored into the tendered price.

Drafter's Action: Prior to release of a sole source RFT, drafters should insert clause 3.1.

Related clauses: Clause 10.7 of the draft conditions of contract provides the Commonwealth with the right to access the Contractor's premises and records to cost investigate Contract change proposals submitted under the Contract.

Further Reading: Nil

**3.2. Tender Presentations**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Optional. To be used if the Commonwealth requires a presentation by tenderers on their tendered proposals.
<b><u>Purpose:</u></b>	To advise tenderers that the Commonwealth may require any or all tenderers to provide a presentation on their proposals.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	In some projects, it may be of benefit to the Commonwealth for each tenderer to provide a presentation on its proposal. The presentation provides an outline of what is in the proposal and is generally made soon after tenders have closed.

**USE OF INFORMATION OBTAINED DURING THE PRESENTATION**

A presentation may also afford the Commonwealth an early opportunity to clarify aspects of a tender before detailed assessment commences, however, any clarification sought must be in accordance with clause 3.3.7 of the conditions of tender. Care must be taken to ensure tenderers are not afforded an opportunity to change their tenders through the presentation. Any new information presented which would have the effect of altering the tender submitted must not be taken into account in the evaluation of tenders.

<b><u>Drafter's Action:</u></b>	Prior to release of the RFT where this clause is necessary, drafters must insert the location for the presentation. Although it may be convenient to insert 'to be advised' where the exact location is uncertain, it is preferable to warn tenderers where the presentation is likely to be required, especially where they may have to travel from overseas.
<b><u>Related clauses:</u></b>	Clause 3.3.7 of the conditions of tender notifies tenderers that the Commonwealth may seek clarification on certain issues as well as additional information to assist evaluation of tenders.
<b><u>Further Reading:</u></b>	Nil



**3.3. Tender evaluation**

**Sponsor:** Contracting Policy & Operations and Materiel Policy & Services

**Status:** Core

**Purpose:** To advise tenderers how their tenders will be evaluated. To notify tenderers that the Commonwealth does not have to accept any tender and to set out the grounds on which the Commonwealth may exclude tenders from further consideration.

**Policy:** It is DMO policy that evaluation criteria not be ranked in the RFT. The Tender Evaluation Plan must always be consistent with the evaluation criteria set out in the RFT. Under no circumstances should new or revised evaluation criteria be used during tender evaluation.

*Commonwealth Procurement Guidelines and Best Practice Guidance*

*Crimes Act 1914*

*Defence CEI – Part 3, Instruction 1*

*DPPM – Section 5, Chapters 5.4 and 5.6*

*Financial Management and Accountability Act 1997*

*Financial Management and Accountability Regulations*

*Public Service Act 1999*

*Trade Practices Act 1974*

**Guidance:** Clause 3.3 sets out the key and subordinate tender evaluation criteria against which tenders will be evaluated.

#### EVALUATION PLANNING

A Tender Evaluation Plan (TEP) is required for each request for tender and must be approved by the delegate before the RFT can be released.

The TEP identifies the key and subordinate evaluation criteria, identifies the members of the tender evaluation board (TEB), identifies the tender evaluation working groups (TEWGs) and describes the procedures for ensuring the probity of the evaluation.

#### SOURCE EVALUATION REPORT

The Source Evaluation Report (SER) is structured in 3 volumes.

Volume 3 contains the detailed evaluation of each tender, against each of the subordinate criteria, by each TEWG. Volume 3 is often not explicitly produced if a tender evaluation tool is used that stores the evaluation data in a database.

Volume 2 contains a summary of the evaluation of each tender against each of the key and subordinate criteria. Volume 2 also contains a comparative assessment and ranking of each tender against the key and subordinate criteria. Volume 2 usually takes the form of a set of TEWG reports, which are prepared by the TEWG leaders and approved by the TEB.

Volume 1 contains a brief summary and comparative assessment of each tender against the key criteria and introduces the value for money considerations in recommending the preferred tender. The document is prepared by the TEB and is approved by the delegate.

#### EVALUATION CRITERIA

The following criteria will be sufficient for the majority of purchases using *ASDEFCON (Strategic Materiel)*, however, additional or alternative criteria may be added where appropriate. The tender deliverable items in the Annexes to the TDRL must be mapped to subordinate criteria to ensure no unnecessary tender deliverables are requested.

#### Key Criterion (a) – Tenderer's Compliance with OCD

*The extent to which the tendered solution is assessed as meeting the end user and operator needs stated in the OCD.*

This criterion is designed to assess the tendered performance against critical operational issues (COIs) such as:

- a. Human factors effectiveness - most systems will have human-system interactions that are key to providing operational effectiveness;
- b. Transition from a legacy system e.g. will there be any temporary or permanent loss or restriction in capability arising from implementing the new system?); and
- c. Key performance issues, such as the range of a radar system, the maximum speed of an aircraft, or the reliability of a system.

This criterion assumes that the COIs listed in the subordinate criteria are set out in the OCD. In the event that the COIs are not set out in the OCD but in other source documentation, this key criterion will need to be revised to refer to the source document location (included in the draft Contract) for the listed COIs.

#### Key Criterion (b) – Tenderer's Compliance with FPS

*The extent to which the tendered solution is assessed as meeting the function and performance requirements stated in the draft Statement of Work including the specifications.*

This criterion assesses the technical compliance of the tendered solution based on statements made by the tenderer in the compliance statement and an assessment of the risk in achieving the stated level of compliance.

#### Key Criterion (c) – Maturity Of Tenderer's Engineering Process

*The integrity and maturity of the tenderer's engineering processes, infrastructure and the extent to which the tendered engineering proposal is assessed as meeting the requirements of the draft Statement of Work.*

This criterion assesses the stated compliance against the systems engineering clauses in the draft Statement of Work, the adequacy of the tendered planning documents, the relevance and extent of the tenderer's experience in the technology area, and the maturity of the tenderer's processes.

#### Key Criterion (d) – Tenderer's Project Management Proposal

*The extent to which the tenderer's project management proposal is assessed as meeting the requirements of the draft Statement of Work.*

This criterion assesses the stated compliance against the project management clauses in the draft Statement of Work and the adequacy of the tendered planning documents. In addition, the credibility of the Work Breakdown Structure, schedule and proposed staffing is assessed.

This criterion includes assessment of the tendered risk management proposal, earned value management proposal and Quality Statement.

#### Key Criterion (e) – Tenderer's Past Performance

*The tenderer's past performance of contractual obligations.*

This criterion assesses the past performance of the tenderer as recorded in the endorsed Company Scorecard and information provided by referees nominated by the tenderer.

#### Key Criterion (f) – Tenderer's Compliance With Draft Conditions Of Contract

*The extent to which the tenderer is compliant with the draft conditions of contract and the assessed level of risk relating to the negotiation of a contract acceptable to the Commonwealth.*

This criterion assesses the commercial compliance of the tendered solution based on statements made by the tenderer in the compliance statement and an assessment of the risk in achieving the stated level of compliance.

#### Key Criterion (g) – Tenderer's IP Provisions

*The nature of and extent to which the tender response proposes Intellectual Property (IP) rights to the Commonwealth, and the assessed level of risk relating to the negotiation of IP provisions acceptable to the Commonwealth.*

This criterion assesses the nature and extent of the IP rights proposed by tenderers based on the compliance statement provided by each tenderer in relation to the IP provisions of the draft Contract and the information submitted in the draft IP Plan.

#### Key Criterion (h) – Tenderer's Proposed Corporate Structure

*The proposed corporate structure and the financial and corporate viability of the tenderer and Approved Subcontractors to fulfil contract obligations.*

This criterion assesses the level of risk associated with the proposed corporate structure for the performance of the Contract including the financial and corporate viability of the tenderer and proposed Approved Subcontractors. The assessment is based on the Company Profile and Schedule of Subcontractors provided by the tenderer.

#### Key Criterion (i) – Tendered Prices And Payment Schedule

*The tendered prices and pricing structure, including the proposed payment schedule.*

This criterion assesses compliance with the price and payment provisions of the draft Contract, degree of exposure to exchange rate variation and whether payment milestones reflect the risk profile of the project. In addition the life-cycle cost risks and cost drivers associated with acquiring, operating and supporting the tendered solution are assessed.

The evaluation of the tendered price will not only include an assessment of the tendered acquisition costs, but also life cycle cost factors such as support costs, operational costs and Not to Exceed (NTE) spares costs.

#### Key Criterion (j) – Satisfaction Of The All Objectives

*The extent to which the tender response satisfies the Industry Requirements, Australian Industry Involvement (All) Target and any other All objectives of the RFT.*

This criterion assesses the compliance with the All objectives as described in the tendered draft All Plan. In addition the criterion assesses the tendered compliance with the All provisions of the draft Contract based on statements made by the tenderer in the compliance statement and an assessment of the risk in achieving the stated level of compliance.

### Key Criterion (k) – Tenderer's Proposed Support System Solution

*The extent to which the tendered solution for the Support System is assessed as meeting the requirements of the draft Contract [and draft Contract(LS)].*

The reference to the 'draft Contract(LS)' should only be included if the RFT includes a draft logistic support contract.

This criterion assesses the tendered Support System solution, which includes recommendations for spares, support and test equipment, training equipment, and technical data, from the joint perspectives of compliance and risk.

### Key Criterion (l) – Maturity Of Tenderer's ILS Infrastructure

*The integrity and maturity of the tenderer's Integrated Logistics Support (ILS) infrastructure and the extent to which the tendered ILS proposal is assessed as meeting the requirements of the draft Statement of Work.*

This criterion assesses the stated compliance against the ILS clauses of the draft Statement of Work, the adequacy of the tendered ILS planning documents, the relevance and extent of the tenderer's ILS experience, the maturity of the tenderer's support and support-development processes, and the risks associated with the tenderer in the area of ILS.

This criterion not only assists with assessing the viability of the proposed solution, it also assesses the means by which a potential Contractor will manage, design and implement the proposed solution. This criterion enables the Commonwealth to effectively exercise its Corporate Governance and due diligence responsibilities by providing it with sufficient information to understand the full extent of its potential exposure in entering into an agreement for the delivery of a proposed solution based on an external agency's capabilities.

## THE EVALUATION PROCESS

Under the *ASDEFCON (Strategic Materiel)* approach, the provision of more detailed information to tenderers on the manner in which the Commonwealth will assess tender responses reinforces the need for personnel involved in tender evaluations to ensure that all tenderers are treated fairly and equitably in the conduct of the evaluation process. In specifying the evaluation criteria to be used in the tender evaluation process, the Commonwealth is under a general obligation to assess the tender responses in accordance with the criteria used at clause 3.3.2 (including any alternative or additional criteria used - see discussion below).

Accordingly, the Commonwealth should not depart from the process set out at clause 3.3.2 without taking into account its general obligations regarding fairness in the conduct of the tender process. For example, where the Commonwealth intends to depart from its stated evaluation criteria, this could involve advising tenderers of the departure, and potentially allowing them the opportunity to provide additional information in response to the new or revised criteria, or to revise their original tender responses. The Gungahlin Development Authority case demonstrated that a failure to accord procedural fairness to tenderers could, in certain circumstances, give rise to public law remedies to enable the results of a tender process to be set aside.

## INCLUSION OF ALTERNATIVE OR ADDITIONAL EVALUATION CRITERIA

In order to assess the tender against the evaluation criteria in clause 3.3.2, tenderers are required to provide the information requested in the Annexes to the TDRL. Drafters should note that any additional information required to assess the tender against the criteria in clause 3.3.2 should be included in the relevant Annex. Where alternative or additional key and subordinate criteria are included, drafters should ensure that the applicable evaluation items are accurately mapped against the key and subordinate criteria in the relevant Annex prior to release of the RFT. Drafters should also consider the impact of removing criteria on the tender evaluation process, and assess whether or not any of the information requested in the Annexes is made redundant due to the removal of the specific criteria. Drafters

should ensure that any additional or alternative evaluation criteria in clause 3.3.2 are capable of objective evaluation based on information requested in the RFT. Advice should be sought from Contracting Policy and Operations Branch in the first instance where assistance is required to formulate additional or alternative criteria that are considered necessary for a particular project.

Additional or alternative evaluation criteria should be selected with the following aims:

- a. they should map to the structure of the SER such that evaluation against key criteria can be described in the SER Volume 1 and evaluation against subordinate criteria can be described in the SER Volume 2;
- b. they should map to the tender evaluation working group (TEWG) structure such that evaluation criteria are considered by one and only one TEWG; and
- c. they should not overlap to avoid positive or negative aspects of a single tender being amplified relative to the competing tenders.

#### BASIS FOR TENDER EVALUATION

Under *Financial Management and Accountability Regulation* 13, a person must not enter into a contract under which public money becomes payable unless the proposal to spend public money has been approved under Regulation 9 or 10. Because Defence procurement will involve the expenditure of money the subject of an appropriation, Regulation 9 will usually be the relevant regulation. Regulation 9 prohibits an approver from approving a proposal to spend public money unless the approver is satisfied that the proposed expenditure is in accordance with the policies of the Commonwealth and will make efficient and effective use of public money. The *Defence Chief Executive Instructions (CEIs)* also detail the responsibilities of approvers.

The primary source of Commonwealth policy to which an approver must have regard in the context of a Defence acquisition is the *Commonwealth Procurement Guidelines and Best Practice Guidance*. The *Commonwealth Procurement Guidelines and Best Practice Guidance* provide that value for money is the essential test against which any agency must justify any procurement outcome. Best value for money should not be judged on the basis of price alone and clause 3.3.6 notifies the tenderer that the Commonwealth is not obliged to accept the lowest priced tender. The evaluation criteria against which all tenders will be assessed (set out in clause 3.3.2) must be relevant to an assessment of value for money.

*The Commonwealth Procurement Guidelines and Best Practice Guidance* also require agency staff involved with procurement to act ethically and fairly in their dealings with suppliers and potential suppliers. It is important to treat all tenderers fairly and even-handedly. For this reason the tender evaluation should be based on the criteria notified to tenderers in the RFT.

It should be noted that in accordance with Defence policy the list of criteria included in clause 3.3.2 is not exhaustive nor in any order of importance (see clause 3.3.3). As the list is not exhaustive other criteria may be taken into account when evaluating tenders. However, to ensure that tenderers are treated fairly, attempts should be made to include all relevant evaluation criteria in clause 3.3.2. Where it can be shown that a tenderer was not treated fairly (refer to the Hughes case, Cubic Transportation case and the Gungahlin Development Authority case), a tenderer may have grounds to legally challenge the tender process and seek compensation (see discussion above regarding Evaluation Criteria).

Clause 3.3.3 also provides that the Commonwealth may:

- a. consider additional information not included in the list of evaluation items; or
- b. use material tendered in response to one evaluation criterion in the evaluation of other criteria.

These rights would enable the Commonwealth, where necessary, to consider other relevant information at its disposal during the evaluation process, for example, to assess the risk attached to tendered solutions. In addition, the Commonwealth would be able to use information provided by a tenderer for a range of criteria, to the extent that it is relevant, even where the information may not have been mentioned under the subordinate criterion item in clause 3.3.2.

In exercising these rights, however, the Commonwealth would still need to comply with its obligation to treat tenderers fairly and this may require any additional information that the Commonwealth proposes to use, and which may be detrimental to a tenderer, to be provided to that tenderer for comment to ensure that procedural fairness (i.e. 'natural justice') is maintained.

#### EXCLUSION OF TENDERS FROM CONSIDERATION

Clause 3.3.4 provides the Commonwealth with the right to exclude a tender from consideration where the response is incomplete, non-compliant with essential requirements, or is clearly non-competitive. The exercise of the discretion is subjective having regard to the evaluation criteria specified in the RFT and the submitted tender response. It is important to notify tenderers of all issues that may lead to the exclusion of their tender from further consideration. An attempt by a government department to exclude a tender for failure to comply with an aspect of a tender process where the tenderer had not been informed that a failure to comply could lead to exclusion of the tender was adversely commented on by the court in the MacMillan case. Advice should be sought from Contracting Policy and Operations Branch prior to excluding a tender from consideration. The reasons for excluding a tender from consideration under clause 3.3.4 should be well documented. Drafters should note that there is no obligation on the Commonwealth to exclude a tender for any of the circumstances identified in clause 3.3.4, however, exercise of the discretion should be consistent across tenderers.

#### UNLAWFULLY OBTAINED INFORMATION AND IMPROPER ASSISTANCE

Clause 3.3.5 of the conditions of tender warns each tenderer that if it uses:

- a. the improper assistance of current or former Commonwealth employees;
- b. unlawfully obtained material; or
- c. information obtained in breach of an obligation of confidentiality to the Commonwealth,

to compile its tender, the Commonwealth may exclude the tender from further consideration.

What constitutes improper assistance will depend on the circumstances. However, assistance given which involves disclosure of information in breach of a person's duties under the *Crimes Act 1914* or *Public Service Act 1999* would clearly be improper. It should also be noted that most consultants and professional service providers to the Commonwealth enter into confidentiality agreements. Therefore information that is disclosed to a tenderer in breach of a consultant's or professional service provider's confidentiality agreement should not be included in a tender or used to compile a tender as the Commonwealth will be entitled to exclude the tender from consideration in accordance with clause 3.3.5 of the conditions of tender.

## THE HUGHES CASE AND PROCESS CONTRACTS

Clause 3.3.6 makes it clear to tenderers that the Commonwealth does not intend the conditions of tender to give rise to a process contract between the Commonwealth and each tenderer, as was found to have existed in the Hughes case. Since a court will look to substance rather than form in determining whether a process contract has been created, a mere statement that it is not the intention of the parties to enter into contractual obligations will not necessarily be sufficient to protect the Commonwealth from such a claim. However, it remains the case that Defence does not intend to create process contracts in relation to its tendering processes and clause 3.3.6 informs tenderers of this.

## CLARIFICATION OF TENDERS

Clause 3.3.7 provides the Commonwealth with the right to seek clarification from a tenderer where there is any ambiguity or uncertainty in the tender. Information should be sought only for matters requiring evaluation under the RFT process, as requests for excessive data will increase the cost of tendering. The Commonwealth's use of this additional information is limited to the assessment and interpretation of the tender and evaluating the cost and risk to the Commonwealth of accepting the tender. The Commonwealth may also visit a tenderer and its proposed Subcontractors to verify and examine facilities, capabilities and tendered Supplies, to the extent permissible by the tenderer and proposed Subcontractor. Care must be taken so that tenderers are not afforded an opportunity to amend their tenders. Any new information presented which would have the effect of altering the tender submitted must not be taken into account in the evaluation of tenders.

**Drafter's Action:** Drafters must ensure that all necessary criteria are included in clause 3.3.2.

Where the Commonwealth wishes to have the right to exclude a tender from further consideration should it be non-compliant with a particular requirement, drafters must ensure that the requirement is marked as essential in the specification in the draft Statement of Work, so as to trigger the Commonwealth's right under clause 3.3.4.

**Related clauses:** Annex B to the TDRL requires the tenderer to declare that its tender has been compiled without improper assistance or unlawfully obtained information.

**Further Reading:** Nil

### 3.4. Use of Former Defence Personnel in Tender Preparation

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To advise tenderers that they must seek Defence's approval before allowing former Defence personnel to contribute to a tender response.
<u>Policy:</u>	<p><i>Crimes Act</i></p> <p><i>Criminal Code Act</i></p> <p><i>DPPM</i> Version 4.0: 2003</p> <p><i>Defence Workplace Relations Manual (DRB 19)</i></p> <p><i>DI(G) 25-4 Notification of Post Separation Employment</i></p>
<u>Guidance:</u>	<p>The clause requires tenderers to notify Defence and seek permission before allowing a former Defence employee, who meets certain criteria, to be involved in the preparation of the tender response.</p> <p>Where a contract may be awarded to a former employee (or a contractor employing that individual), consideration should be given to that person's previous Defence employment. Potential favouritism, or unfair advantage would be reduced if that person:</p> <ol style="list-style-type: none"> <li>a. had not been employed by Defence in the last two years; and/or</li> <li>b. had not been employed by Defence in a role or capacity directly related to the task for which tenders are sought.</li> </ol> <p>Clause 3.4.a. places a specific prohibition on the tenderer from using a person who has been involved in the preparation of the Request for Tender documentation unless Defence has given its approval. Clause 3.4.b refers to a circumstance where the former Defence employee has been involved in the project to which the tender relates in the previous 12 months, and the involvement of such a person is prohibited, unless Defence has given its approval. Clause 3.4.c operates to prohibit any person employed by Defence in the immediately preceding 6 months, from being included in the preparation of the tender unless Defence has given its approval.</p> <p>Where ex-Defence staff are employed by existing or potential contractors, issues arise regarding 'inside' knowledge. The <i>Crimes Act</i> and the <i>Criminal Code Act</i> constrain former Commonwealth employees from passing on information that they obtained by virtue of their employment, and which at the time of ceasing Commonwealth employment, it was their duty not to disclose. In matters relating to Defence procurement, the use by a tenderer of any inside information which has been gained by virtue of an employee's former position with the Commonwealth, can be perceived as giving them an unfair competitive advantage over others tendering for the work.</p> <p>A distinction however should be drawn between knowledge that is obtained by the nature and environment of the tasks, and knowledge that relates directly to the trade or profession of the employee. Whilst the former knowledge is the legitimate 'property' of the government, and can therefore be protected, the latter is a matter of professional skill which cannot be constrained. Unfortunately, these two classifications of knowledge are not always easy to delineate.</p> <p>If there is evidence that a tender was developed with the inappropriate and unauthorised assistance of a former Defence employee, ADF members or service provider and, as a consequence it is believed that the tender should be excluded, the matter should be referred to the chair of the tender evaluation committee, with an explanation of the relevant evidence, reference to any applicable procedural clauses in the RFT and a recommended course of action.</p>
<u>Drafter's Action:</u>	Nil



Related Clauses: Clause 3.3.5 of the conditions of tender states that tenderers shall not use the improper assistance of employees or former employees of the Commonwealth in compiling their tenders. Under this clause the Commonwealth may not further consider a tender which has been compiled using such assistance.

Clause 10.11 of the draft conditions of contract provides guidance on the personnel policy relating to post defence separation employment and the contractual prohibition on the use of former defence personnel in performance of Defence contracts.

Further Reading: Nil

### 3.5. Offer Definition Activities

Sponsor: Contracting Policy & Operations and Materiel Policy & Services

Status: Optional

Purpose: To advise tenderers of the process that will be followed by the Commonwealth where it elects to undertake offer definition activities with 2 or more shortlisted tenderers in order to further define aspects of their tenders before the Commonwealth selects the preferred tenderer.

Policy: Where numerous tenders are expected, the minimal RFT approach should be used i.e. only information required to conduct initial shortlisting of tenderers should be requested in tender responses to reduce the costs of tendering for both Defence and industry. Where a minimal RFT approach is adopted, the offer definition clause should be included to enable the Commonwealth to seek additional information from shortlisted tenderers during offer definition activities.

The offer definition clause may also be included in full RFTs where it is expected that the plans and programs received from tenderers will require further development before they can be included in any resultant contract. The offer definition clauses should not be included in sole source RFTs.

*DPPM – Section 5, Chapter 5.6*

Guidance: The option of conducting offer definition activities affords the Commonwealth the opportunity to request tenderers to further develop and better define critical plans and programs prior to selection of the preferred tenderer and signature of any resultant contract.

In addition, when undertaken by way of a separate offer definition contract (or deed) entered into following the conclusion of the initial tender process, conduct of offer definition activities affords the Commonwealth the opportunity to further reduce risk for the proposed acquisition/through life support contract by undertaking risk reduction workshops and activities with those tenderers shortlisted under the tender process.

Accordingly, the types of offer definition activities that can be conducted will depend upon which offer definition option is selected and the activities notified to tenderers as possible offer definition activities in the RFT. Further discussion on the possible scope of offer definition activities is provided below.

Due to probity issues associated with the conduct of offer definition activities, advice must be sought from Contracting Policy and Operations Branch prior to inclusion of offer definition provisions in any RFT and prior to conducting offer definition activities with shortlisted tenderers. It is also recommended that a probity adviser be engaged prior to conducting offer definition activities.

#### USE OF OFFER DEFINITION ACTIVITIES

In most cases where the Commonwealth has elected to release a minimal RFT, tender clauses should be included to allow the Commonwealth to conduct offer definition activities with shortlisted tenderers. Offer definition activities may also be useful where the Commonwealth has released a full RFT, as offer definition will allow the Commonwealth to ensure that all critical plans and programs are agreed, prior to contract signature.

Key plans and programs that may be defined and agreed during offer definition activities include:

- a. IP Plan;
- b. All Plan;
- c. V&V Plan
- d. The Logistic Support Analysis (LSA) Guidance Conference; and
- e. ILS program plans, such as the System Safety Program, Measurement and Analysis Program, and Process Improvement Program.

Use of offer definition activities will enable the Commonwealth to better assess the extent to which shortlisted tenderers are able to meet Commonwealth requirements for the particular acquisition. Based upon this information, the Commonwealth will be able to finalise its evaluation and selection of the preferred tenderer or tenderers, prior to entering into negotiations. Offer definition has the added advantage that finalising the plans and programs during offer definition activities allows them to be included within any resultant contract without the need for further negotiation. Use of the offer definition approach may also assist the Commonwealth to achieve a common understanding with the preferred tenderer which may in turn considerably shorten any contract negotiation phase.

During offer definition activities, the Commonwealth will have a key role in providing information and facilitating access to data and interfacing systems for the shortlisted tenderers. Offer definition activities must be conducted in accordance with the probity requirements detailed below. Progress under offer definition activities should be monitored to ensure that the best return on investment is achieved.

#### SELECTION OF APPROPRIATE OPTION

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Clause 3.5 provides 2 options for the conduct of offer definition activities. Drafters may wish to include both of these options in the RFT to maintain flexibility as to their approach to conducting the activities. Drafters should seek guidance from Contracting Policy and Operations Branch staff prior to selecting the appropriate option for inclusion in the RFT.

##### Option A

Option A applies where the project intends to undertake the activities as part of the tender evaluation process and without entering into a contract in relation to the activities.

##### Option B

Option B applies where a separate offer definition contract (or deed) will govern the conduct of offer definition activities. Under Option B, the initial tender evaluation process will be finalised with the selection of the shortlisted tenderers and the process that will govern the offer definition activities and the selection of the preferred tenderer will be set out in the offer definition contract (or deed) itself.

The use of an offer definition contract will normally be appropriate where the project considers that significant risk reduction is required before selecting a contractor for the prime contract and the shortlisted tenderers should therefore be funded to undertake the offer definition activities. An example is where the Commonwealth considers that the offer definition and/or risk reduction activities should be undertaken by way of a project definition study or similar arrangement.

Even where the offer definition activities will be unfunded, the Commonwealth may decide to detail the process for undertaking the offer definition activities in a deed in order to deal with issues such as IP, confidentiality and the interaction between the Commonwealth and shortlisted tenderers.

## SELECTION OF THE OFFER DEFINITION ACTIVITIES

Generally speaking, the activities to be undertaken during offer definition activities under Option A should be detailed prior to release of the RFT. Should the Commonwealth proceed with offer definition activities, it may be possible in particular cases to include additional activities, however, this would need to be managed in accordance with probity requirements (e.g. ensuring that the additional activities did not unfairly advantage or disadvantage one or other of the shortlisted tenderers). Accordingly, drafters should identify which aspects of tenders may be subject to offer definition activities in clause 3.5 of the conditions of tender or in the offer definition contract (or deed), as appropriate, prior to release of the RFT. Advice should be sought from Contracting Policy and Operations Branch prior to requiring additional offer definition activities to be undertaken.

Similarly, if Option B is used for the offer definition phase, the offer definition activities should as far as possible be set out in the offer definition contract (or deed), as appropriate, prior to the release of the RFT. However, given that significant risk reduction activities may be undertaken under the offer definition contract, the contract should include sufficient flexibility for the Commonwealth to undertake additional and/or different activities with the respective shortlisted tenderers.

As discussed above, depending upon which offer definition clause option is selected, the scope of activities that may be undertaken during offer definition activities will vary. Where Option A is selected, each shortlisted tenderer must be requested to undertake the same offer definition activities (i.e. those detailed in the RFT prior to release). Accordingly, the offer definition activities detailed in the RFT must only address tenderer independent risks.

However, where Option B is selected, more significant risk reduction activities may be undertaken during offer definition activities, including those dealing with tenderer dependent risks and different activities may be undertaken by each shortlisted tenderer. However, the kinds of activities and risk reduction process must be notified to tenderers and agreed to under the offer definition contract (or deed).

Examples of tenderer independent and dependent risks are included in the guidance on the negotiation clause (clause 3.6 of the conditions of tender).

Drafters should note that where Option A is selected, further risk reduction, including activities dealing with tenderer dependent risks, may be addressed during the negotiation phase (e.g. through parallel negotiations). Further information on this is contained in the guidance on the negotiation clause. Contracting Policy and Operations Branch staff should be consulted to assist with the selection of appropriate offer definition activities.

## PROBITY ISSUES

Whether or not the offer definition activities are undertaken by way of a contract (or deed), or as part of the initial tender process, they will need to be undertaken in accordance with probity requirements and the requirement to conduct a fair tender process. For example, an unsuccessful shortlisted tenderer could argue that the Commonwealth unfairly assisted the preferred tenderer during the offer definition activities and did not provide the same assistance to the unsuccessful tenderer. In addition, the Commonwealth's evaluation will need to ensure that a tenderer who was not shortlisted could not subsequently argue that, had it been permitted to participate in offer definition activities, it would have been able to provide the Commonwealth with a better value for money tender than the ultimately preferred tenderer.

Whether or not a contract (or deed) is used, the Commonwealth will need to clearly advise the shortlisted tenderers about how offer definition activities are to be undertaken (e.g. information requirements, deliverables, duration etc), and the Commonwealth's role in the phase (e.g. whether this is simply to provide

information and to answer questions, or whether it is intended that the Commonwealth will actively participate in the development of the documentation by the tenderers). In the latter case, there would be an increased risk of allegations that the Commonwealth provided greater assistance to one shortlisted tenderer over another.

Where a contract (or deed) will govern the offer definition activities, the offer definition statement of work should be developed at the same time as the Statement of Work for the draft Contract. The offer definition statement of work may be updated following shortlisting of tenderers as long as this is done consistently with probity requirements (e.g. ensuring that the revised statement of work does not unfairly advantage or disadvantage one or other of the shortlisted tenderers). Assistance should be sought from Contracting Policy and Operations Branch to prepare the offer definition contract (or deed) and prior to including any additional offer definition activities.

Any proposed offer definition contract (or deed) will need to contain appropriate provisions to ensure that the Commonwealth is liable only for the activities conducted under the Contract (or deed), and that there is no obligation on the Commonwealth to enter into the prime contract with any of the shortlisted tenderers.

#### ACTIVATING THE OFFER DEFINITION ACTIVITIES

Where an offer definition option is included in a RFT, the Commonwealth will need to decide at the time of evaluation whether it is possible to shortlist to 2 or more tenderers in accordance with the evaluation criteria and whether these tenderers should undertake the offer definition activities. Offer definition activities should not be conducted with only one tenderer.

The Commonwealth can not consistently with probity requirements, require a tenderer to participate in offer definition activities where, irrespective of the outcome of the activities, the Commonwealth would not in any event rank the tenderer ahead of another tenderer based on the evaluation criteria. In other words, the Commonwealth should not require a tenderer to participate in offer definition activities simply to maintain competitive tension with another tenderer. Each of the tenderers shortlisted to participate in the offer definition activities must be considered by the Commonwealth to be capable of being selected as the preferred tenderer on the basis of the evaluation criteria set out in clause 3.3 of the conditions of tender or in the offer definition contract (or deed), as applicable, following the conclusion of the offer definition activities. If after evaluation, it is clear that only one tenderer has a chance of being selected, the offer definition activities will need to be conducted during negotiations with the tenderer prior to contract signature.

Careful consideration should be given to all communications and representations made during the offer definition process to ensure that statements do not give rise to claims against the Commonwealth based on misrepresentation or estoppel.

As noted above, it is important to ensure that during the offer definition activities, the Commonwealth treats each tenderer fairly. The Commonwealth must ensure that all shortlisted tenderers involved in offer definition activities are given access to the same information and provided with the same amount of Commonwealth assistance.

#### REVISION OF TENDERED INFORMATION

Clause 3.5 under Option A provides that shortlisted tenderers may revise their tendered pricing based on the outcomes of the offer definition activities. Revision of pricing is allowed due to the fact that the offer definition activities should enable tenderers to confirm or clarify any assumptions that they have made in their pricing in relation to the activities being defined. Offer definition may not be used by tenderers to change the fundamental basis on which their pricing has been calculated. Tenderers need to be able to demonstrate to the Commonwealth that

any revised pricing is linked to the plans, programs or other matters defined during the offer definition activities. The Commonwealth will not consider revised pricing where it considers such consideration would contravene the Commonwealth's obligations to treat all tenderers fairly.

**Drafter's Action:** Prior to release of the RFT, and depending upon whether a minimal or full RFT approach is being adopted, drafters should identify those deliverables needed to select the supplier best able to satisfy the draft Contract (using the recommendations in the Annexes to the TDRL at Attachment A to the conditions of tender).

Drafters should also select the appropriate offer definition option. Where Option A is selected drafters should detail the offer definition activities to be conducted under clause 3.5.1. Where Option B is selected, drafters should develop an offer definition contract (or deed) for inclusion in Annex J to the TDRL that details the offer definition activities to be conducted. The contract (or deed) must also detail the process that will apply for the offer definition activities.

**Related clauses:** Where Option B is selected, the offer definition contract (or deed) should be set out in Annex J to the TDRL.

**Further Reading:** Nil

### 3.6. Negotiation

Sponsor: Contracting Policy & Operations

Status: Core

Policy: Undertaking negotiations with two or more tenderers in parallel is not common practice. The Commonwealth should only consider parallel negotiations where two or more tenderers meet the requirements of the draft Contract and on the basis of the offers no tender can be assessed as representing better value for money.

*DPPM – Section 5, Chapter 5.7*

Purpose: To advise tenderers that after shortlisting, the Commonwealth may conduct negotiations with one or more shortlisted tenderers.

Guidance: Generally Defence undertakes negotiations with a single preferred tenderer, and in the event that negotiations with that tenderer are unable to be concluded satisfactorily then the Commonwealth may choose to negotiate with the next most-preferred tenderer.

In certain situations Defence may consider negotiating with more than one shortlisted tenderer. Shortlisted tenderers are those tenderers whose tenders have been evaluated and assessed as being serious contenders for the award of the proposed contract. The option to conduct parallel negotiations with more than one tenderer affords the Commonwealth the opportunity to complete the tender evaluation and contract negotiation processes simultaneously and reduce the time between release of the RFT and Contract signature.

Parallel negotiations can be used regardless of whether offer definition activities have been undertaken.

#### ISSUES ASSOCIATED WITH NEGOTIATIONS

In all negotiations, it is important that the Commonwealth informs tenderers that any communications or representations made are subject to contract. Careful consideration should be given to all communications and representations made during the negotiation process to ensure that statements do not give rise to claims against the Commonwealth based on misrepresentation or estoppel.

#### PARALLEL NEGOTIATIONS

The Commonwealth should only undertake parallel negotiations where two or more tenderers meet the requirements of the proposed contract and on the basis that no other tenders could be assessed as representing better value for money.

Parallel negotiations can improve those areas of a tender response that are less detailed or satisfactory than the Commonwealth would prefer. If, following detailed evaluation of tenders, parallel negotiations are proposed to be undertaken, the Project manager would normally write to the shortlisted tenderers advising them of the process for the conduct of the negotiations (including timeframe, negotiating teams, areas for negotiation, the process for any risk reduction workshops etc). Parallel negotiations must be undertaken consistently with probity requirements to ensure that each tenderer is treated fairly. Further guidance on probity issues is provided below.

It should be noted that the conduct of parallel negotiations are extremely demanding and can be resource intensive, especially for the Commonwealth. While the conduct of prior planning and the maintenance of configuration control of documentation are important in all negotiations, it is crucial when undertaking parallel negotiations.

## RISK REDUCTION ACTIVITIES

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Parallel negotiations may be conducted following the conduct of offer definition activities (see clause 3.5 of the conditions of tender) and can be designed to include a requirement to participate in risk reduction workshops during which data items are developed or finalised for inclusion in the Contract.

Risk reduction workshops may also afford the Commonwealth an opportunity to work with the proposed team(s) for each shortlisted tenderer to assess the competence of the team(s) and the working relationship between the Commonwealth and the team(s).

Before commencing parallel negotiations, and particularly where risk reduction workshops are intended to be conducted, the Commonwealth should hold its own risk workshop to identify and assess risks that are common to the shortlisted tenderers and risks that are unique to each of them. After this, a risk workshop can be held with each of the shortlisted tenderers to further identify risks and to reach a consensus on the outputs required from each shortlisted tenderer as part of the parallel negotiation process.

Risk reduction activities conducted during parallel negotiations may address both tenderer independent risks and tenderer dependent risks.

## TENDERER INDEPENDENT RISKS

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Tenderer independent risks are those risks that are common to all shortlisted tenderers. Example tenderer independent risks or uncertainties that tend to arise include:

- a. lack of clarity in requirements;
- b. undefined interfaces to other systems or projects;
- c. inadequate definition of GFE requirements;
- d. uncertainties associated with GFF;
- e. inability to define the complete scope of work in particular areas (e.g. Human Computer Interface development for interfacing system); and
- f. alternative offers from tenderers.

## TENDERER DEPENDENT RISKS

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Tenderer dependent risks are those risks that are particular to each shortlisted tenderer. Tenderer dependent risks may arise from any aspect of a tender including the tenderer's past experience, the tenderer's proposed solution, the tendered project personnel, the tenderer's technical, managerial or financial capability, tendered contractual non-compliances and the tenderer's proposed through life support methodology.

The following examples have been fabricated to demonstrate the principles behind the risk reduction activities.

### Example

During the risk assessment workshop for tenderer A, the major risk identified was the ability to achieve the data compression ratios predicted for a new product being developed by that tenderer and offered as a key component of the proposed technical solution. In such a case, the Commonwealth could require the tenderer to provide further supporting evidence to confirm that the ratios would be achieved.

The major risk for tenderer B was identified as the bandwidth needed to achieve the operational requirements. In this case, the Commonwealth could require the tenderer to provide further detail on actual bandwidth needs.



## PROBITY ISSUES

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As noted above, it is important to ensure that during parallel negotiations, the Commonwealth treats each tenderer fairly and that if any additional information is provided, it is provided by the Commonwealth to all tenderers. The Commonwealth must also ensure that it maintains the confidentiality of each tenderer's information. Care should be taken that the Commonwealth does not, even inadvertently, use parallel negotiations to play one tenderer off against the other. The Commonwealth can not consistent with probity requirements, require a tenderer to participate in parallel negotiations where, irrespective of the outcome of the negotiations, the Commonwealth would not in any event rank the tenderer ahead of another tenderer based on the evaluation criteria. In other words, the Commonwealth should not require a tenderer to participate in parallel negotiations simply to maintain competitive tensions with another tenderer.

Advice should be sought from Contracting Policy and Operations Branch prior to commencing parallel negotiations. It is recommended that a probity adviser be engaged where parallel negotiations with two or more shortlisted tenderers will be conducted.

Drafter's Action: Nil

Related clauses: Clause 1.3 of the conditions of tender informs tenderers of the process for amending a RFT.

Clause 3.5 of the conditions of tender advises tenderers of the process that will be followed by the Commonwealth where it elects to undertake offer definition activities with 2 or more shortlisted tenderers in order to further define aspects of their tenders before the Commonwealth selects the preferred tenderer.

Further Reading: Nil

**3.7. Debriefing of Tenderers**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To inform both unsuccessful tenderers and the successful tenderer of their right to request a written or oral debriefing after the Contract has been awarded. To outline the information the Commonwealth is entitled to disclose in the debrief.
<b><u>Policy:</u></b>	<i>Commonwealth Procurement Guidelines and Best Practice Guidance</i> <i>DPPM – Section 5, Chapter 5.7 and Section 5, Chapter 5.8</i> <i>Freedom of Information Act 1982</i>
<b><u>Guidance:</u></b>	The Commonwealth will only disclose information concerning the successful tenderer that is publicly available.

**GAZETTAL OF CONTRACT INFORMATION**

As part of the Commonwealth's obligation to ensure accountability of public money in accordance with the *Commonwealth Procurement Guidelines and Best Practice Guidance*, the value of the Contract and the name of the successful tenderer are required to be disclosed in the Government Gazette. Other than the Contract Price and the name of the successful tenderer, no information about the successful tender or the Contract is required or allowed to be revealed.

**INFORMATION PROVIDED TO A TENDERER IN RELATION TO ITS TENDER**

The extent of information that the Commonwealth will disclose to tenderers in regard to their own tender will be limited to information relating to the evaluation criteria outlined in clause 3.3.2. Drafters should be aware that if additional or alternative evaluation criteria are included in clause 3.3.2, the Commonwealth will be required to provide feedback to tenderers in their debriefing in regard to the tenderer's performance against the additional or alternative criteria.

**INFORMATION ACCESSIBLE UNDER THE FOI ACT**

It should be noted that a tenderer is also able to obtain information pursuant to the *Freedom of Information Act 1982* (FOI Act). This legislation allows the Australian community access to information in the possession of the Commonwealth Government, limited by certain exceptions including the protection of private and business affairs of other persons or organisations. In terms of tender information, section 43 of the Act exempts from disclosure documents relating to business, commercial or financial affairs of another person or organisation where this would diminish the commercial value of the information. It is therefore unlikely that a tenderer would be provided with information in excess of that pertaining to its own tender under the FOI Act.

<b><u>Drafter's Action:</u></b>	Nil
<b><u>Related clauses:</u></b>	Clause 3.3.2 of the conditions of tender sets out the tender evaluation criteria that tenderers will be debriefed against. Tenderers must contact the Contact Officer specified in clause 1.4 of the conditions of tender for a debriefing.
<b><u>Further Reading:</u></b>	Nil

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**ATTACHMENT A – TENDER DATA REQUIREMENTS LIST**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core. Response Volume 8 and certain individual Tender Data Requirements listed in the Tender Data Requirements List are optional.
<b><u>Purpose:</u></b>	To detail the format for tender responses and the tender deliverables that are required to be provided by tenderers.
<b><u>Policy:</u></b>	<i>DPPM – Section 2, Chapter 2.4</i>
<b><u>Guidance:</u></b>	The Tender Data Requirements List (TDRL) details the Tender Data Requirements and the tender response volumes in which responses against the Tender Data Requirements are to be included.

**VOLUME STRUCTURE**

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The TDRL requests tenderers to provide a tender in the following format:

- a. Volume 1 - Overview;
- b. Volume 2 - Commercial;
- c. Volume 3 - Financial;
- d. Volume 4 - Project Management;
- e. Volume 5 - Technical;
- f. Volume 6 - Australian Industry Involvement;
- g. Volume 7 - Integrated Logistics Support; and
- h. Volume 8 - Offer Definition Activities.

Volume 8 is optional and should be included where offer definition activities will be conducted under a separate contract. For further guidance refer to the guidance provided in relation to clause 3.5 of the conditions of tender.

Drafters may include additional volumes or combine volumes. However, to assist the Tender Evaluation Working Groups (TEWGs), it is preferable that the volumes align with the intended TEWG structure.

**TENDER DATA REQUIREMENTS**

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The Tender Data Requirements listed in the TDRL align with those detailed in the Annexes to the TDRL. Where optional Tender Data Requirements or additional Tender Data Requirements are included in the Annexes or where Tender Data Requirements are removed from the Annexes, it is important that drafters amend the TDRL to reflect the change.

**VERSION NUMBERS**

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Prior to release of the RFT, drafters should update the version numbers in the comments column of the TDRL for TDID-FIN-LCC-TLCCM and TDID-ILS-DEF-PSSS as these Data Item Descriptions (DIDs) will need to be amended to reflect project specific requirements prior to inclusion in the RFT.

**Drafter's Action:** Prior to release of the RFT, drafters must ensure that the Tender Data Requirements listed in the TDRL align with those detailed in the Annexes to the TDRL.

**Related Clauses:** Clause 2.3 of the conditions of tender requires tenderers to provide the information requested in the Annexes to the TDRL in the format and volume specified in the TDRL.

Annex J to the TDRL contains the offer definition contract.

**Further Reading:** Nil





**ANNEX A – SUMMARY****1. Executive Summary**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To elicit from each tenderer a summary of its tender.

Policy: Nil

Guidance: Tenderers should provide an executive summary of their tender to assist the Commonwealth in its evaluation. Tenderers should ensure that no pricing information is included in the executive summary.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

**2. Company Profile/Tenderer's Ability to Supply**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To request from tenderers a company profile to assist in tender evaluation.

Policy: The financial and corporate viability of tenderers must be considered during the tender evaluation process to assess whether the tenderer will be capable of fulfilling the contractual obligations under any resultant contract.

*DPPM – Section 3, Chapter 3.3*

Guidance: Tender Data Requirement A-2 requests each tenderer to provide information on:

- a. the tenderer's background, experience and resources relevant to the proposed contract;
- b. contracts or other commitments relevant to the tenderer's ability to meet the requirement;
- c. the tenderer, including its A.B.N., A.C.N., related companies, shareholders, place of business and place of incorporation;
- d. civil or criminal litigation likely to adversely affect the tenderer's performance of any resultant contract; and
- e. the financial viability of the company including annual statements of financial position and statements of financial performance.

**INCLUSION OF ADDITIONAL INFORMATION**

Drafters should note that the list of details included in Tender Data Requirement A-2 is not exhaustive, however, drafters should seek advice from Contracting Policy and Operations Branch prior to any additional information being requested. When reviewing the need to expand the list within Tender Data Requirement A-2, drafters should consider the usefulness of the additional information to the tender evaluation and the impact the request for additional information will have on the cost of tendering.

Drafter's Action: Nil

Related Clauses: Clause 3.3.4 of the conditions of tender entitles the Commonwealth to exclude from consideration tenders that are assessed as clearly non-competitive.

Further Reading: Nil

### 3. **Schedule of Subcontractors**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To request from each tenderer details of its proposed Approved Subcontractors.
<u>Policy:</u>	Nil
<u>Guidance:</u>	<p>Tender Data Requirement A-3 requests tenderers to provide details for Subcontractors where the work to be performed by the Subcontractor triggers any of the criteria listed in clause 10.9.3 of the draft conditions of contract. Clause 10.9.3 requires Subcontractors to be approved where:</p> <ol style="list-style-type: none"> <li>the work under the Subcontract will exceed a specified amount;</li> <li>the work under the Subcontract involves the performance of specified tasks; or</li> <li>the Subcontractor will be bringing IP to the proposed Subcontract or creating IP under the proposed Subcontract necessary to enable the Commonwealth to use and support the Supplies.</li> </ol>

#### SELECTING THE SUBCONTRACT VALUE AND SPECIFIC TASKS

When selecting the subcontract value and specific aspects of the proposed scope of work to be included in clause 10.9.3 of the draft conditions of contract, drafters should consider the criticality of the tasks that may be subcontracted to the performance of the Contract, the additional contractual obligations under the Contract that relate to Approved Subcontractors and the administrative burden on both parties of having to approve each Approved Subcontractor.

#### MANDATING SUBCONTRACTORS

It is possible for the Commonwealth to specify that a particular Subcontractor must be used by the successful tenderer. Mandating Subcontractors should be avoided unless it is absolutely necessary for the performance of the proposed contract. By mandating a particular Subcontractor, the Commonwealth will limit the commercial freedom of tenderers and the Commonwealth may not achieve value for money. In addition, the Commonwealth may be exposed to greater risk where the mandated Subcontractor fails to perform under a Subcontract as the Commonwealth may be prevented from claiming against the Contractor due to the fact that the Subcontractor was mandated by the Commonwealth.

Circumstances in which a Subcontractor may need to be mandated include:

- where a company is the only supplier for a particular item required for incorporation in the Supplies and the Commonwealth wishes to prevent the formation of exclusive teaming arrangements that limit competition at the tendering stage; or
- where the Commonwealth has entered into a previous contract with the supplier of a particular item and is contractually bound to source the item from the supplier.

Where the Commonwealth does need to mandate the use of a particular Subcontractor, advice should be sought from Contracting Policy and Operations Branch. Changes will need to be made to clause 10.9 of the draft conditions of contract and associated clauses in the draft conditions of contract to ensure that the Commonwealth is adequately protected and the Commonwealth's responsibility for the performance of the mandated Subcontractor is clearly defined.

<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	<p>Clause 10.9 of the draft conditions of contract outlines the circumstances in which Approved Subcontractors must be used by the Contractor.</p> <p>Attachment H to the draft conditions of contract will contain the agreed details relating to Approved Subcontractors.</p>
<u>Further Reading:</u>	Nil

**4. Statement of Compliance**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To elicit from each tenderer the extent to which it complies with the terms of the draft Contract included in the RFT.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Tender Data Requirement A-4 requests tenderers to state their compliance with the: <ul style="list-style-type: none"> <li>a. draft conditions of contract;</li> <li>b. Attachments to the draft conditions of contract;</li> <li>c. draft Statement of Work; and</li> <li>d. Annexes to the draft Statement of Work.</li> </ul>

The Statement of Compliance reveals any areas in which a tenderer is not willing to accept the distribution of risk proposed by the Commonwealth in the draft Contract as well as any areas in which a tenderer can not meet the technical requirements for the Supplies. The Statement of Compliance is therefore critical to the Commonwealth's evaluation of tenders.

**STATEMENT OF COMPLIANCE FORMAT**

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Tenderers must state their compliance with each clause using the terminology outlined in Tender Data Requirement A-4. Where a tenderer does not comply with a clause, the tenderer must state the extent, justification for and impact of the non-compliance. Tenderers are also required to provide full details of any alternative proposal, including an alternative clause where the non-compliance is in relation to a draft condition of contract. This will assist the Commonwealth to understand the extent of, and reasons for, the non-compliance and to determine the level of risk associated with the non-compliance.

Tenderers must include the location of any supporting compliance details that can be found in other areas of the tender in the Statement of Compliance.

**SUMMARY LIST OF NON-COMPLIANCES**

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In addition to the Statement of Compliance, each tenderer must provide a summary list of the clauses with which it does not comply. This summary list will assist the Commonwealth in its evaluation of tenders, however, it is essential that tenderers ensure that the summary list is consistent with the non-compliances detailed in the Statement of Compliance. Where the summary list and the Statement of Compliance are inconsistent, clarification will need to be sought from the tenderer in order to ensure effective and appropriate evaluation of its tender.

<b><u>Drafter's Action:</u></b>	Nil
<b><u>Related Clauses:</u></b>	Clause 2.3 of the conditions of tender notifies tenderers that information to be provided by tenderers should be included in the relevant response volume.  Tenderers must state their compliance with the conditions of tender and Annexes to the conditions of tender in their Declaration by Tenderer at Annex B to the TDRL.
<b><u>Further Reading:</u></b>	Nil

**ANNEX B – DECLARATION BY TENDERER**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To provide the format for the declaration to be submitted by each tenderer.
<u>Policy:</u>	<i>Crimes Act 1914</i> <i>Public Service Act 1999</i> <i>Trade Practices Act 1974</i>
<u>Guidance:</u>	The declaration submitted in accordance with Annex B to the TDRL is the formal acknowledgment by a tenderer that it is submitting a tender to the Commonwealth in response to the RFT.

**PURPOSE OF THE DECLARATION**

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The declaration identifies the:

- a. legal entity submitting the tender;
- b. tender validity period for the tender;
- c. tenderer's contact officer for enquiries and correspondence in relation to the submitted tender; and
- d. clauses in the conditions of tender and Annexes with which the tenderer does not comply.

The declaration also contains a statement that the tender has been compiled without any improper assistance from current or former Commonwealth employees and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to the Commonwealth.

**IDENTITY OF THE TENDERER**

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The declaration formally identifies the legal entity submitting the tender. Where there has been a shortlisting process prior to release of the RFT, drafters should ensure that the tenderer identified in the declaration is one of the companies shortlisted by the shortlisting process. Otherwise, tenderers excluded from the shortlist may have grounds for commencing legal action.

Confusion can sometimes arise where the tenderer is a part of a group of companies, all of which have similar names. It is important that officers conducting the tender evaluation carefully review the information provided in the declaration and ensure that information submitted in response to the other Annexes, in particular Annex A to the TDRL relates to the legal entity specified in the declaration.

Where a tenderer is successful, drafters must ensure, prior to Contract signature, that the company described as the Contractor is the same legal entity that submitted the successful tender. Drafters should check the information included on the front page of the Contract with the information provided by the successful tenderer in its declaration. The only circumstances in which the Contractor's details may vary from the details submitted in the declaration is where the Commonwealth has exercised its discretion under clause 2.6 of the conditions of tender to allow a substitution of tenderer. In such a case, drafters must ensure that the substituted tenderer's details are included on the front page of the Contract.

**TENDER VALIDITY PERIOD**

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By submitting a tender, the tenderer is making an offer to the Commonwealth to provide the Supplies. Each tenderer must include in its declaration the period for which its offer will remain open for acceptance by the Commonwealth. A tenderer may be bound by the time period indicated in its declaration and therefore tenderers should give careful consideration to the time period included. The

Commonwealth's preferred tender validity period must be included in clause 2.1.1 of the conditions of tender prior to release of the RFT.

#### ENFORCEABILITY OF THE TENDER VALIDITY PERIOD

It should be noted that since the Commonwealth and the tenderer have not entered into a process contract, the Commonwealth may not be able to enforce the tender validity period specified in the Declaration by Tenderer where the tenderer seeks to revoke its offer prior to expiry of the tender validity period. There is a possibility that the Commonwealth may have a claim under section 52 of the *Trade Practices Act 1974* for the deceptive or misleading conduct of the tendering company or that it may rely on the principle of estoppel to enforce the tender validity period, if it can be shown that the Commonwealth has suffered detriment due to revocation of the offer. It is, however, unlikely that the Commonwealth will want to pursue a claim on either basis in order to retain the tenderer in the tender process, as the revocation of its offer indicates a general reluctance on the part of the tenderer to enter into a contract and an ongoing relationship with the Commonwealth. Prior to any action being taken to enforce a tender validity period advice should be sought from Contracting Policy and Operations Branch.

#### CONTACT OFFICER FOR ENQUIRIES AND CORRESPONDENCE

The declaration also identifies the tenderer's contact officer for enquiries and correspondence in relation to the tender. Where the tenderer's contact officer details change during the tender validity period, the new contact details should be provided to the Commonwealth's Contact Officer identified in clause 1.4 of the conditions of tender as soon as possible following the change. This will ensure that all correspondence from the Commonwealth during the tender validity period is received by the tenderer on a timely basis.

#### COMPLIANCE WITH THE CONDITIONS OF TENDER

Tenderers must state their compliance with the conditions of tender and Annexes to the conditions of tender in their declaration. Sufficient details of any non-compliances should be provided so that the Commonwealth can assess the extent, justification for and impact of the non-compliance. Tenderers do not have to duplicate this information in the Statement of Compliance at Tender Data Requirement A-4 of Annex A to the TDRL.

#### IMPROPER ASSISTANCE

Clause 3.3.5 of the conditions of tender warns each tenderer that if it uses:

- a. the improper assistance of current or former Commonwealth employees;
- b. unlawfully obtained material; or
- c. information obtained in breach of an obligation of confidentiality to the Commonwealth,

to compile its tender, the Commonwealth may exclude the tender from further consideration. When signing the declaration, each tenderer is therefore required to certify that its tender has been compiled without the use of improper assistance from current or former Commonwealth employees and without the use of information obtained unlawfully or in breach of an obligation of confidentiality to the Commonwealth.

What constitutes improper assistance will depend on the circumstances. However, assistance given which involves disclosure of information in breach of a person's duties under the *Crimes Act 1914* or *Public Service Act 1999* would clearly be improper. It should also be noted that most consultants and professional service providers to the Commonwealth enter into confidentiality agreements. Therefore information that is disclosed to a tenderer in breach of a consultant's or professional service provider's confidentiality agreement should not be included in a tender or used to compile a tender as the Commonwealth will be entitled to

exclude the tender from consideration in accordance with clause 3.3.5 of the conditions of tender.

**Drafter's Action:** Drafters must include the RFT Number in the Declaration by Tenderer prior to release of the RFT. Drafters should not insert any information regarding the tender validity period as this should be inserted by the tenderer.

**Related Clauses:** Clause 2.1 of the conditions of tender identifies the Commonwealth's preferred period for which a tenderer must hold its tender open for acceptance by the Commonwealth.

Clause 2.6 of the conditions of tender informs tenderers of the process that applies for the substitution of a tenderer.

Clause 3.3.5 of the conditions of tender notifies tenderers that tenders compiled with the improper assistance of Commonwealth employees or the use of unlawfully obtained information or information that breaches a confidentiality agreement may be excluded from consideration by the Commonwealth.

A tenderer must state its compliance with the terms of the draft Contract in the Statement of Compliance at Tender Data Requirement A-4 of Annex A to the TDRL.

**Further Reading:** Nil





**ANNEX C – COMMERCIAL****1. Importation of Supplies and Export Approvals**

<u>Sponsor:</u>	Contracting Policy & Operations and Industry Policy and Programs
<u>Status:</u>	Core
<u>Purpose:</u>	To request from each tenderer details of items of Supplies that will be imported and details relating to required export approvals.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Tender Data Requirement C-1 requests tenderers who are proposing to import items of Supplies to provide: <ol style="list-style-type: none"> <li>a. details of the Supplies being imported;</li> <li>b. evidence that required export approvals will be granted;</li> <li>c. details of limitations or provisos that could reasonably be expected to be placed in relation to the export of the Supplies;</li> <li>d. details of other approvals required and their expected impact on the contract schedule; and</li> <li>e. details of rejected applications for goods similar to the Supplies.</li> </ol>

**EXPORT APPROVALS FROM FOREIGN GOVERNMENTS**

It is not uncommon for overseas governments to control the export of goods or technology that may have a military use. There may be administrative processes to be observed such as obtaining the approval of the overseas government before entering into a contract for the supply of the goods or technology in question. For these reasons, the Commonwealth requires some reasonable assurance that an otherwise successful tenderer will not be prevented from entering into a contract because of a failure to obtain the necessary export approvals.

Some countries may be reluctant to grant an export approval for certain types of Supplies. Tender Data Requirement C-1 requests an indication from each tenderer that required export approvals will be granted, rather than requesting evidence that the approvals have been granted. Although evidence of the actual granting of an export approval is preferred, some countries will not grant an export approval until the contract is signed. Therefore, tenderers are requested to provide details of any previously rejected application for, or prior refusal to grant, an export approval for goods similar to the Supplies. The Commonwealth will then be alerted at the time of tender evaluation to potential problems that may affect the granting of export approvals.

Where a tenderer purports to have obtained government agreement for required exports, the advice and assistance of CONDMAT London (for European suppliers) or CONDMAT Washington (for North American suppliers) should be sought if there is any doubt as to the value of such assurances.

**COMMONWEALTH ASSISTANCE TO OBTAIN EXPORT APPROVALS**

With the authority of the Commonwealth Government, the Project Authority may in some circumstances, be able to offer assistance to tenderers in securing export approvals from other governments. In addition, it should be noted that clause 3.3.3 of the draft conditions of contract requires the Project Authority, upon the request of the Contractor, to provide all assistance reasonably required to facilitate the provision of an export licence or other approval. Advice should be sought from Industry Division in the Defence Materiel Organisation to determine whether any extant government-to-government agreements provide for a waiver of, or the expediting of, overseas government authorisations or government charges.

Drafter's Action: Nil

Related Clauses: The Price Schedule in Tender Data Requirement D-1 of Annex D to the TDRL requests tenderers to specify the customs duty payable for imported items of Supplies.

Clause 3.3 of the draft conditions of contract specifies the date or Milestone by which the Contractor must obtain all necessary export licences or other approvals, details the procedure by which the Contractor must keep the Project Authority informed of its progress in obtaining the required export licences or other approvals and indicates that the Project Authority may, on request, provide assistance in obtaining the required approvals.

Clause 3.4 of the draft conditions of contract allocates responsibility for arranging customs entry and payment of customs duty to the Contractor, and provides a mechanism through which an increase or decrease in the rate of customs duty applicable to the Supplies can be recovered or reimbursed by the Commonwealth.

Further Reading: Nil

## 2. Liability

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To notify tenderers of the Commonwealth policy on liability and to seek information from each tenderer in relation to its proposed liability regime.
<u>Policy:</u>	It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk.  In accordance with the <i>Commonwealth Procurement Guidelines and Best Practice Guidance</i> , liability should be assessed according to common law principles wherever possible. If limitation of liability is necessary, then it should only be applied on a 'per event' basis, limited in scope and to a clearly defined amount. Agencies are required to undertake a risk assessment, prepare a risk management plan as appropriate and seek legal advice appropriate to the complexity of the purchase before negotiating a limitation of liability.
<u>Guidance:</u>	<i>Commonwealth Procurement Guidelines and Best Practice Guidance</i> Notwithstanding the inclusion of clause 8.5 in the draft conditions of contract, the Commonwealth retains its preference for liability on the basis of Australian common law. Where a tenderer proposes to limit its liability on an alternative basis to Australian common law, the proposal will be considered on its merits in the context of value for money considerations.

### INFORMATION REQUIRED FROM TENDERERS

Tender Data Requirement C-2 requests each tenderer to provide:

- a. details of the terms of its proposed liability regime;
- b. an explanation as to why the tenderer requires a limitation of its liability; and
- c. a cost/benefit analysis of the proposed limitation of liability.

Where a tender is submitted on the basis that, if successful, the tenderer's liability will be limited under the resultant contract, the Commonwealth will use the information sought in Tender Data Requirement C-2 to assess the risk associated with the tenderer's liability proposal and the cost to the Commonwealth of accepting that risk. The Commonwealth will consider each tenderer's liability proposal on its merits and in the context of value for money considerations.

### PREFERRED ALTERNATIVE LIABILITY REGIME

As mentioned above, the Commonwealth, in accordance with Commonwealth policy, retains a preference for liability on the basis of Australian common law. Where a tenderer proposes to limit its liability under any resultant contract, the Commonwealth prefers that liability is limited on a 'per event' basis. However, in the event the Commonwealth decides to accept a tender containing a proposal for an aggregate liability cap, clause 8.5 of the draft conditions of contract outlines the Commonwealth's preferred liability regime.

Further guidance on the Commonwealth's preferred liability regime is contained in the guidance on clause 8.5 of the draft conditions of contract.

### SELECTION OF APPROPRIATE LIABILITY CAPS

Prior to release of the RFT, drafters must insert the Commonwealth's preferred liability caps in clause 8.5 of the draft conditions of contract. A risk assessment should be undertaken to determine the amounts that are appropriate for the specific requirement. Guidance on the issues that should be considered is contained in the guidance on clause 8.5 of the draft conditions of contract.

## REQUIREMENT TO UNDERTAKE A RISK ASSESSMENT

Tenderers proposing a liability regime other than Australian common law or the Commonwealth's regime outlined in clause 8.5 of the draft conditions of contract are required to submit a cost/benefit analysis and an explanation of the need for a limitation of liability. By requiring this information it is hoped that tenderers will be encouraged to consider and adopt the most appropriate risk management strategies for each project rather than pursue a blanket company policy of transferring risk to the Commonwealth through limitation of liability. In addition, any risk assessment undertaken by the tenderer is likely to be a far more informed assessment than could be produced by the Commonwealth acting independently, as a tenderer will have a better understanding than the Commonwealth of the likely risks of its proposal. However, the submission of the tenderer's risk assessment does not remove the requirement under the *Commonwealth Procurement Guidelines and Best Practice Guidance* for departments and agencies considering a limitation of liability to undertake a risk assessment commensurate with the complexity of the purchase.

## TERMINATING THE CONTRACT IF THE LIABILITY CAPS ARE REACHED

Under clause 12.2.2 of the draft conditions of contract, the Commonwealth is entitled to terminate the contract in the event that the Contractor is liable for Commonwealth loss in relation to:

- a. one of the liability caps provided for in clause 8.5 of the draft conditions of contract to an amount equal to or greater than the amount of the liability cap; or
- b. any one or more of the liability caps provided for in clause 8.5 of the draft conditions of contract to an amount in aggregate equal to or greater than the Contract Price.

This is an important aspect of the liability regime contained in the draft conditions of contract. If the tenderer proposes small caps on the specific heads of liability, then there is a greater likelihood that the caps will be reached and the Commonwealth will be entitled to terminate or reduce the scope of the Contract.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement C-3 of Annex C to the TDRL requests tenderers to provide details of current or proposed insurance policies for the contract.

Clause 8.5 of the draft conditions of contract details the limits on the Contractor's liability in relation to specific heads of damage.

Clause 8.6 of the draft conditions of contract details the insurance policies that must be taken out and maintained by the Contractor during the Contract.

Clause 12.2.2 of the draft conditions of contract gives the Commonwealth the right to terminate or reduce the scope of the Contract in the event that the liability caps are reached.

Further Reading: Nil

**3. Insurance**

**Sponsor:** Contracting Policy & Operations

**Status:** Core

**Purpose:** To notify tenderers of potential insurance requirements for any resultant contract and to seek information from each tenderer in relation to its current or proposed insurance policies for the contract.

**Policy:** It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk.

**Guidance:** Tender Data Requirement C-3 requests tenderers to provide details of current or proposed insurance policies for any resultant contract including the:

- a. name of the insurance provider;
- b. type and terms of the insurance policy including specific exclusions; and
- c. maximum amount of cover, period of insurance and deductible amounts.

The information provided by each tenderer will be used by the Commonwealth during the tender evaluation to assess the level of risk associated with a tender and to determine the necessary insurance requirements for any resultant contract. It is also important when evaluating the insurance details provided by the tenderer that consideration is also given to the tenderers proposed liability scheme in response to Tender Data Requirement C-2 of Annex C to the TDRL.

**DETERMINING THE INSURANCE REQUIREMENTS FOR THE CONTRACT**

Except for workers compensation, the insurance requirements for the Contract will be determined based upon the specific contract requirement and the identity of the successful tenderer. Insurance policies that may be required include public liability insurance, professional indemnity insurance, insurance for the Supplies, insurance of items of GFM, GFF or other Commonwealth property, and product liability insurance. In determining the insurance requirements for the Contract, consideration should be given to the:

- a. financial stability of the Contractor and the Contractor's capacity to effectively self-insure;
- b. type and amount of any global insurance policies held by the Contractor;
- c. magnitude and likelihood of loss in relation to each specific area of risk under the Contract; and
- d. cost of obtaining insurance coverage.

In the first instance advice should be sought from Contracting Policy and Operations Branch who may in turn arrange for expert insurance advice where appropriate. Usual practice is to align the Contractor's insurance with the liability caps under the Contract where such insurance is cost effective for the Commonwealth.

Commonwealth officers should note that Defence is now covered under the Comcover scheme for loss arising for certain types of liabilities. Advice on Defence's coverage under the Comcover scheme can be obtained by contacting the Defence Insurance Office on 1800 990 900.

**Drafter's Action:** Nil

**Related Clauses:** Tender Data Requirement C-2 of Annex C to the TDRL requests each tenderer to provide details in relation to its proposed liability regime.

Clause 8.5 of the draft conditions of contract details the limit on the Contractor's liability in relation to specific heads of damage.

Clause 8.6 of the draft conditions of contract details the insurance policies that must be taken out and maintained by the Contractor during the Contract.

**Further Reading:** Nil

**4. Warranty and Latent Defects**

- Sponsor:** Contracting Policy & Operations
- Status:** Core
- Purpose:** To request from tenderers specific details in relation to the warranty and Latent Defects provisions in the draft Contract.
- Policy:** Nil
- Guidance:** Tenderers must provide the details of the warranty and Latent Defects coverage (if any) being tendered where they differ from that sought in the draft Contract. Where a tenderer is fully compliant with the terms of the draft Contract in respect of warranty and Latent Defects, the tenderer will only have to provide the price for the warranty and Latent Defect coverage in the Price Schedule requested in Tender Data Requirement D-1 of Annex D to the TDRL. The Commonwealth reserves the right to decline the tendered warranty and Latent Defects coverage and in that case to deduct the price nominated in the Price Schedule from the tendered price.
- Drafter's Action:** Nil
- Related Clauses:** Tender Data Requirement D-1 of Annex D to the TDRL requires tenderers to include the prices associated with provision of warranty and Latent Defect coverage.
- Clause 9.3 of the draft conditions of contract places an obligation on the Contractor to remedy defects in design, materials or workmanship in the Supplies for a specified period and establishes the process for carrying out remedial work.
- Clause 9.5 of the draft conditions of contract places an obligation on the Contractor to diagnose and correct Latent Defects in the Supplies for a specified period and establishes the process for carrying out remedial work.
- Further Reading:** Nil

## 5. Intellectual Property

- Sponsor:** Contracting Policy & Operations
- Status:** Core. Drafters must select from the available options based on the approach being taken to the procurement.
- Purpose:** To notify tenderers of the Commonwealth's IP requirements for the proposed contract and to elicit from tenderers an IP Plan for the proposed contract.
- Policy:** Defence needs appropriate rights to appropriate technologies at appropriate times.  
*DPPM – Section 3, Chapter 3.6*  
*Getting Smarter About Knowledge Rights - Defence Intellectual Property Policy, June 1999.*
- Guidance:** The agreed IP Plan will form the basis of Attachment G to the conditions of contract and will be a dynamic document. Changes to the IP Plan, whether initiated by the Contractor or the Commonwealth, must be agreed by the parties in accordance with the Contract change proposal process detailed in clause 10.1 of the draft conditions of contract.

### THE COMMONWEALTH'S IP REQUIREMENTS

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In order to ascertain the Commonwealth's IP requirements for the proposed contract, an IP Needs Analysis (IPNA) should be conducted. The IPNA requires the Project Authority to determine the extent to which the Commonwealth will need access to IP rights for each system component of the capability being procured. Drafters may provide details of any limitations to the IP Licence terms that are considered unacceptable to the Commonwealth in relation to the project in Tender Data Requirement C-5 prior to release of the RFT. Any such limitations should be based on the IPNA.

Guidance on conducting an IPNA can be obtained by contacting Contracting Policy and Operations Branch.

### TENDER RESPONSE REQUIREMENTS

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Tender Data Requirement C-5 requires tenderers to provide a draft IP Plan in accordance with DID-PM-IP-IPP. Different information is required depending upon whether offer definitions activities will be conducted. Where offer definition activities will be conducted only the following aspects are required:

- a. Overview and Benefits;
- b. Management and Monitoring of IP ; and
- c. IP Schedule - to various degrees depending upon limitations proposed.

**Drafter's Action:** Prior to release of the RFT, drafters may include details of any limitations to the IP Licence that are unacceptable to the Commonwealth.

**Related Clauses:** Clause 5 of the draft conditions of contract details the IP requirements for the Contract.

Attachment G to the draft conditions of contract will contain the agreed IP Plan.

Clause 3.15 of the draft Statement of Work details the IP management requirements for the Contract.

Clause 5.3.3 of the draft Statement of Work contains clauses dealing with Technical Data and escrow.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Intellectual Property (Management)*

**6. Commercial in Confidence Information**

- Sponsor:** Contracting Policy & Operations
- Status:** Core
- Purpose:** To seek information from the tenderers in relation to which parts of the draft Contract they consider to be Commercial-in-Confidence Information.
- Policy:** *DPPM – Section 3, Chapter 3.11*
- Guidance:** Tender Data Requirement C-6 requests tenderers who are proposing contract provisions they consider to be Commercial-in-Confidence Information to identify, for each clause, the reason the provision is considered to be Commercial-in-Confidence Information and provide additional justification as to why the reason applies. Defence has developed six standard reasons to classify information as Commercial in Confidence Information.
- The six standards reasons are:
- a. commercially sensitive information, disclosure of which is not in the relevant party's best interest;
  - b. details about commercially sensitive pricing information including profit margins and the underlying price basis;
  - c. details about insurance and liability regimes that are commercially sensitive;
  - d. details about intellectual property regimes that are commercially sensitive;
  - e. details about the capability/services being delivered that are commercially sensitive; and
  - f. details about contractual rights and remedies, including warranties, financial guarantees and securities and liquidated damages that are commercially sensitive.
- Information that is in the public domain, for example Total Contract Price or generic template clauses, is not Commercial-in-Confidence Information.
- Drafter's Action:** Nil
- Related Clauses:** Clause 10.4 of the draft conditions of contract outlines that Commercial-in-Confidence Information must be protected from unauthorised disclosure and Contractors must not misuse the term 'Commercial-in-Confidence'.
- Attachment N to the draft conditions of contract will list the conditions of contract and Attachments or the parts of the Attachment, that the parties agree at the Effective Date are Commercial-in-Confidence Information.
- Further Reading:** Nil



**ANNEX D – FINANCIAL****1. Price Schedule**

**Sponsor:** Contracting Policy & Operations and Materiel Finance Division

**Status:** Core

**Purpose:** To elicit the price details proposed by each tenderer.

**Policy:** *A New Tax System (Goods and Services Tax) Act 1999*  
*DPPM – Section 2, Chapter 2.2*

**Guidance:** Along with the Statement of Compliance, the Price Schedule is critical to the evaluation of tenders as it presents each tenderer's proposed price schedule for the Supplies.

**INFORMATION TO BE PROVIDED TO TENDERERS**

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Prior to release of the RFT, drafters must include a brief description of each item or service required under the proposed contract in column (b) of the Price Schedule and the item number in Contract Work Breakdown Structure numerical sequence in column (a), if known. Drafters should also include the number of items required in column (c) prior to release of the RFT.

**INFORMATION TO BE PROVIDED BY TENDERERS**

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Tenderers must complete the Price Schedule in accordance with the guidance provided. Information to be provided includes:

- a. the unit price for the item or service;
- b. the warranty premium for each item;
- c. the Latent Defect premium for each item where clause 9.5 is included in the draft conditions of contract;
- d. the customs duty payable for each imported item;
- e. the total price of each item or service;
- f. the value of Local Content in each item or service;
- g. the tendered price basis; and
- h. the applicability of GST in relation to the item or service.

**PRICING AND PRICE BASIS**

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Prices for imported items and services should be stated in foreign currency and all prices must be in Base Date dollars. The Base Date is defined in the Glossary at Attachment M to the draft conditions of contract and should be the date one month prior to the date on which tenders close. The tendered prices should include all the costs of complying with the conditions of tender and providing the Supplies required under the proposed contract. The tendered prices should include all overseas and Australian taxes and charges applicable at the Base Date, except for Australian GST.

The note to tenderers discusses the application of the *A New Tax System (Goods and Services Tax) Act 1999* to the proposed contract. To ensure a level playing field between overseas and Australian tenderers, all prices tendered are to be GST exclusive. Tenderers must, however, identify in column (k) of the Price Schedule whether GST will be applicable to each item or service.

The note to tenderers also details the Defence policy that applies to exchange rate variation. Tenderers should note that it is Defence policy that payments under any resultant contract will be made solely in Australian currency only where foreign currency amounts payable under the contract are insignificant. A determination of whether the amounts are significant will be made by Defence after receipt of

tenders. Where the resultant contract is to be payable in Australian currency only, the Contractor will be entitled to claim for fluctuations in exchange rate between the Base Date and the date for payment. Where necessary, a clause allowing for exchange rate variation will be negotiated with the successful tenderer.

**Drafter's Action:** Prior to release of the RFT, drafters should include the item number in Contract Work Breakdown Structure numerical sequence in column (a), if known, a brief description of each item or service required in column (b) and the number of items required in column (c).

**Related Clauses:** Tender Data Requirement D-2 of Annex D to the TDRL requests tenderers to provide prices for specific items.

Tender Data Requirements D-3 of Annex D to the TDRL requests tenderers to provide information in relation to exchange rate issues.

Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.4 explains how the price variation formula at Annex D to Attachment D to the draft conditions of contract is to be applied to Milestone Payments, Earned Value Payments and Cost Reimbursement Payments (where applicable).

Annex A to Attachment B to the draft conditions of contract contains the Price Schedule. Drafters must ensure that the items of Supplies referred to in the draft Statement of Work are consistent with the description included in column (b) of the Price Schedule.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Annex D to Attachment B to the draft conditions of contract will contain the agreed Price Variation formula.

**Further Reading:** Nil

**2. Items for Which Specific Prices are Required**

**Sponsor:** Contracting Policy & Operations, Materiel Finance Division, and Materiel Policy & Services

**Status:** Core. The optional line items should be included where the relevant clauses are included in the draft Contract.

**Purpose:** To elicit the price details for particular items from tenderers.

**Policy:** *DI(G) LOG 03-6 "Defence Policy on Integrated Logistic Support"*

**Guidance:** Tenderers are to include the tendered price for the specific items listed in the Specific Prices Schedule at Tender Data Requirement D-2. The Commonwealth may not require the successful tenderer to provide any or all of the items listed in the Specific Prices Schedule. In that case the relevant prices listed in the Schedule will be deducted from the tendered price.

Drafters may include additional items in the Specific Prices Schedule where the Commonwealth is unsure whether it will require the successful tenderer to provide the items under the resultant contract.

NTE prices for Spares, S&TE, and Training Equipment are elicited under Annex I to the TDRL - see the guidance relating to Annex I to the TDRL.

**Drafter's Action:** Drafters must select the appropriate options and include any additional items.

**Related Clauses:** Tender Data Requirement D-1 of Annex D to the TDRL requests each tenderer to elicit the price schedule it is proposing.

Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments.

Annex I to the TDRL addresses the requirement for NTE prices.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract.

Annex A to Attachment B to the draft conditions of contract will contain the agreed Price Schedule.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Clauses 5.3.2 and 5.3.5 of the draft Statement of Work require NTE prices to be effective.

**Further Reading:** Nil

### 3. Exchange Rate Variation

**Sponsor:** Contracting Policy & Operations and Materiel Finance Division

**Status:** Core

**Purpose:** To elicit details in relation to Exchange Rates from tenderers.

**Policy:** *DPPM – Section 2, Chapter 2.2*

**Guidance:** Tenderers must provide the following details in Tender Data Requirement D-3 of Annex D:

- a. the percentage of duty paid tendered price subject to exchange rate variation;
- b. the exchange rate upon which the tendered price is based; and
- c. the name and address of the bank or financial institution whose rates are applicable.

Tenderers should note that the information provided will only be used where the resultant contract is written in Australian dollars and the Contract Price is subject to variation for fluctuations in exchange rate.

#### POLICY ON PAYMENTS IN SOURCE CURRENCY

The note to tenderers in Tender Data Requirement D-1 of Annex D to the TDRL details the Defence policy that applies to exchange rate variation. Tenderers should note that it is Defence policy that payments under the resultant contract will be made solely in Australian currency only where foreign currency amounts payable under the contract are insignificant. A determination of whether the amounts are significant will be made by Defence after receipt of tenders.

#### EVALUATION OF TENDERS

For the purposes of evaluation, foreign currency elements of the tendered price will be calculated at the spot selling rate of exchange against the Australian dollar quoted by the Commonwealth Bank of Australia at the Base Date. Where the resultant contract is to be payable in Australian currency only, the Contractor will be entitled to claim for fluctuations in exchange rate between the Base Date and the date for payment. A clause allowing for exchange rate variation will be negotiated with the successful tenderer.

**Drafter's Action:** Nil

**Related Clauses:** Tender Data Requirement D-1 of Annex D to the TDRL details the Defence policy that applies to exchange rate variation.

Where exchange rate variation will be allowed under the resultant contract, a negotiated exchange rate variation clause will be included at clause 7.4 of the draft conditions of contract.

**Further Reading:** Nil

#### 4. Variations for Fluctuations in the Cost of Labour and Materials

Sponsor: Contracting Policy & Operations and Materiel Finance Division

Status: Optional. To be included where clause 7.4 of the draft conditions of contract is included to allow the Contractor to claim variations for fluctuations in the cost of labour and materials.

Purpose: To notify tenderers of the Commonwealth's proposed Price Variation Formula and preferred indices. To request tenderers to provide alternative indices and Price Variation Formula where the proposed formula and indices are not agreed.

Policy: It is Defence policy that contracts of up to two years duration should not allow contractors to claim compensation for variations in the cost of labour and materials. Where a contract is to extend beyond two years the Department's preference is that price variation clauses should be included to recompense the Contractor for increases in the cost of labour and materials. Failure to adopt a price variation clause in a contract which runs for more than two years may result in tenderers including a significant contingency amount to mitigate unforeseeable increases in labour and materials costs.

*DPPM – Section 2, Chapter 2.2*

Guidance: Prior to release of the RFT, drafters must determine whether the proposed contract should allow the contractor to claim for fluctuations in the cost of labour and materials so that tenders can be submitted in accordance with the selected price basis. Where it is determined that variation for fluctuations in the cost of labour and materials should be allowed for under any resultant contract, Tender Data Requirement D-4, clause 7.4 of the draft conditions of contract and Annex D to Attachment B to the draft conditions of contract should be included in the RFT.

#### SELECTION OF FIRM PRICE OR VARIABLE PRICE BASIS

While Defence policy creates the expectation that price variation clauses should be used in all contracts of over two years duration, an approach in which such clauses are not included may still be valid for low risk or commercial-off-the-shelf procurements and/or where the contract requirement is clearly defined, the cost can be estimated with a high degree of confidence and performance goals are readily identifiable.

A contract that allows for variations in the cost of labour and materials is preferable where it is likely that the Contract Price will be affected by fluctuations in the cost of these elements. This is most likely to occur in contracts of more than two years duration or where the market for labour and materials utilised in the contract requirement is volatile. In such circumstances it is appropriate for the Commonwealth to accept the risk of such fluctuation on value for money grounds, as it avoids the risk of the Contractor including a contingency in the Contract Price.

#### TENDER RESPONSE REQUIREMENTS

Tenderers must state:

- a. the acceptability of the proposed Price Variation Formula at Annex D to Attachment B to the draft conditions of contract and any proposed alterations where unacceptable; and
- b. the acceptability of the Commonwealth's preferred indices at Annex D to Attachment B to the draft conditions of contract and any alternative indices where unacceptable.

In proposing alternative indices, tenderers should take into consideration the notes provided following the Price Variation Formula at Annex D to Attachment B to the draft conditions of contract. Tenderers should also note that agreements reached as a result of workplace enterprise bargaining are not considered to be awards for the purposes of the formula set out in Annex D to Attachment B.

Drafter's Action: Nil

Related Clauses: Clause 7.4 of the draft conditions of contract explains how the price variation formula at Annex D to Attachment B to the draft conditions of contract is to be applied to Milestone Payments, Earned Value Payments and Cost Reimbursement Payments (where applicable) and outlines the process that applies to the approval and payment of price variation claims.

Annex D to Attachment B to the draft conditions of contract will contain the agreed Price Variation formula.

Further Reading: Nil

## 5. Securities

Sponsor: Contracting Policy & Operations and Materiel Finance Division

Status: Core

Purpose: To notify tenderers of the Commonwealth's preferred format for the securities and guarantees requested under the draft Contract. To request each tenderer to notify the Commonwealth of any changes that it requires and to provide details of its proposed promisor and/or guarantor.

Policy: Nil

Guidance: Tender Data Requirement D-5 requests each tenderer to state:

- a. whether a performance security or Deed of Substitution and Indemnity is proposed;
- b. the acceptability of the security deeds and any proposed alterations;
- c. the proposed promisor for the Mobilisation Payment security and performance security (where applicable); and
- d. the proposed Substituted Contractor for the Deed of Substitution and Indemnity where applicable.

### USE OF PERFORMANCE SECURITY VERSUS DEED OF SUBSTITUTION

Tenderers may elect to provide a Performance Security Deed or a Deed of Substitution and Indemnity as explained in the note to tenderers. Both the Performance Security Deed and the Deed of Substitution and Indemnity secure the proper performance of the Contract. The Performance Security Deed provides the Commonwealth with financial relief, whereas the Deed of Substitution and Indemnity entitles the Commonwealth to request that another entity be substituted as the Contractor to perform the Contract. As the performance security provides financial relief to the Commonwealth if the Contractor fails to complete or perform the Contract, the Commonwealth's preference is for a performance security.

### FORM OF THE SECURITIES AND DEED OF SUBSTITUTION AND INDEMNITY

Where tenderers propose amendments to the Mobilisation Security Deed or Performance Security Deed consideration must be given to the standard Defence financial security requirements. Prior to accepting an alternative form of security the proposed terms of the alternative security should be carefully evaluated. Standard Defence financial security requirements include:

- a. The financial guarantee must state the amount of money that is being secured and the event or events that will lead to the release of the security.
- b. The financial guarantee should not include a date for the expiry of the security. However, if a time is included it should refer to an event or an amount of time in relation to an event, i.e. receipt of notice requesting cancellation from the Commonwealth or payment of the whole security. This allows for any change in the schedule.
- c. The financial guarantee should be unconditional and not impose restrictions on the Commonwealth's ability to access the guarantee.
- d. The financial guarantee should not contain a clause requiring the Commonwealth to notify the Contractor before exercising its rights under the security. A clause of this nature affords the Contractor the opportunity to seek legal remedies to prevent the Commonwealth from exercising its rights under the guarantee.

Advice should be sought from Contracting Policy and Operations Branch prior to any proposed changes to the Mobilisation Security Deed or Performance Security Deed being agreed.

Tenderers may also propose amendments to the Deed of Substitution and Indemnity. It is important to consider the terms of the proposed alternative Deed of Substitution and Indemnity. Advice should be sought from Contracting Policy and Operations Branch prior to any proposed changes to the Deed of Substitution and Indemnity being agreed.

#### ACCEPTABILITY OF THE PROPOSED PROMISOR FOR FINANCIAL SECURITIES

It is also important that the Project Authority ensures that where the tenderer is proposing a promisor, that the tenderer's proposed promisor is acceptable. Promisors will usually be a bank or financial institution. Issues to be considered in determining the acceptability of a bank or financial institution include the financial viability of the bank or financial institution, the accessibility of funds and the enforceability of the security in the applicable jurisdiction.

The Commonwealth has a preference for an Australian bank or financial institution, however, a foreign Authorised Deposit Taking Institution (ADI) authorised to carry on the business of banking in Australia may be accepted. The Australian Prudential Regulation Authority website ([www.apra.gov.au](http://www.apra.gov.au)) provides a list of all approved ADIs. The risks associated with accepting a foreign bank as a guarantor include the availability of assets held in Australia and the potential problems with enforcing the guarantee in an overseas jurisdiction. Due consideration must therefore be given to the location and nature of the financial institution guaranteeing the security and the Commonwealth must be satisfied that the financial institution is a viable entity capable of providing the funds where required.

#### ACCEPTABILITY OF THE PROPOSED SUBSTITUTED CONTRACTOR FOR THE DEED OF SUBSTITUTION AND INDEMNITY

It is also important that the Project Authority ensures that where the tenderer is proposing a Substituted Contractor, that the tenderer's proposed Substituted Contractor is acceptable. The Substituted Contractor is usually the Contractor's parent company but may be another entity where acceptable to the Project Authority. Under the Deed the Substituted Contractor agrees to perform the Contract in the place of the Contractor in the event that the Commonwealth is entitled to terminate the Contract for default. Therefore the viability of the company proposed as the Substituted Contractor under the Deed of Substitution and Indemnity and its capacity to perform the proposed contract upon substitution must be fully evaluated to ensure that the Commonwealth is adequately protected.

Drafter's Action: Nil

Related Clauses: Clause 7.5 of the draft conditions of contract details the financial security requirements for the Mobilisation Payment and the Commonwealth's rights to exercise the Mobilisation Payment security.

Clause 7.6 of the draft conditions of contract requires the Contractor to provide a financial security to secure its performance of the Contract and details the Commonwealth's right to exercise the security.

Clause 7.7 of the draft conditions of contract reserves to the Commonwealth certain rights in the event that the Contractor fails to provide the securities required by clauses 7.5 and 7.6 or where the Commonwealth exercises its rights under the securities.

Clause 7.8 of the draft conditions of contract requires the Contractor to provide a Deed of Substitution and Indemnity to secure its performance of the Contract and details the Commonwealth's right to issue a notice of substitution.

Annex J to Attachment I to the draft conditions of contract will, if required, contain the agreed Mobilisation Security Deed.

Annex K to Attachment I to the draft conditions of contract will, if required, contain the agreed Performance Security Deed.



Annex L to Attachment I to the draft conditions of contract will, if required, contain the agreed Deed of Substitution and Indemnity.

Further Reading: Nil

## 6. Agency Arrangements

- Sponsor:** Contracting Policy & Operations
- Status:** Core
- Purpose:** To notify tenderers of the Commonwealth policy on agency arrangements. To request information from each tenderer on any agency arrangements relevant to the proposed contract that the tenderer has entered into (or contemplates entering into) with an organisation in Australia.
- Policy:** Commonwealth policy is to deal directly with the principal in any contractual arrangement rather than have an agent interposed. This policy applies not only to representatives and marketing agencies that may become involved in the original bid process but also to subsidiary companies. This policy ensures that:
- a. the Commonwealth has a direct legal relationship with the company best able to be responsible for the work performed; and
  - b. the price structure of the Contract excludes the funding of any intermediary which does not add value to the work performed.
- A New Tax System (Goods and Services Tax) Act 1999*
- Guidance:** Tender Data Requirement D-6 requests each tenderer to provide details of any agency arrangement, details of the agent, including its name, address, A.C.N. and A.B.N. and details of any payments in respect of the agency arrangement that are included in the tendered price. Drafters should be aware that tenderers are often reluctant to provide detailed information in relation to agency arrangements. Therefore the information requested in Tender Data Requirement D-6 is the minimum required by the Commonwealth. In relation to payments in respect of the agency arrangement, it is important to note that tenderers need not reveal the amount of the payments being made to the agent only that the tendered price does include costs associated with the agency arrangement.

### AGENCY ARRANGEMENTS AND SUBCONTRACTS

Drafters should not confuse an agency arrangement with a subcontracting arrangement. Under an agency arrangement, firm X (the agent) represents firm Y (the principal). The agent acts in the name of the principal and those acts legally bind the principal, unless the principal is entitled in law to deny the obligation. Under a subcontracting arrangement firm X (the Contractor) subcontracts firm Y (the Subcontractor) to perform work for firm X to satisfy its obligations under a contract. Firm Y may not act in firm X's name nor legally bind firm X. The subcontracting relationship is governed by the terms of the Subcontract. Firm X remains responsible for the work performed by the Subcontractor.

### ACCEPTABILITY OF AGENCY ARRANGEMENTS

As Commonwealth policy states that the Commonwealth should deal directly with the principal in any contractual arrangement rather than have an agent interposed, careful consideration should be given by tenderers to teaming arrangements. There may be a situation in which an Australian subsidiary of an overseas company does add value to the contracting process. While this may justify some agency costs in a contract, the Commonwealth prefers to contract with the legal entity best able to manage the risks imposed on it under the contract i.e. the principal, who is in fact performing the contract. This precludes dealing with an agent unless the agent is fully authorised to contract in the name of, and with the full corporate backing of, the principal.

Clause 7.16 of the draft conditions of contract provides a mechanism by which the Contractor can notify the Project Authority of the identity of a resident agent appointed to account for GST on behalf of the Contractor in accordance with Division 57 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). Where a tenderer intends to appoint a resident agent, tenderers should provide the details of the proposed resident agent in their response to Tender Data

Requirement D-6. Tenderers should note, however, that Commonwealth policy on agency arrangements will be taken into account when evaluating tenders that propose a resident agent.

Drafter's Action: Nil

Related Clauses: Clause 7.16 of the draft conditions of contract identifies the resident agent appointed by an overseas Contractor to account for GST in accordance with Division 57 of the GST Act.

Further Reading: Nil

**7. Further Quantities and Optional Extras**

**Sponsor:** Contracting Policy & Operations and Materiel Policy & Services

**Status:** Optional. To be included where clause 1.7 of the draft conditions of contract is included to provide the Commonwealth with an option to purchase additional quantities of Supplies and/or optional extras.

**Purpose:** To elicit details from tenderers in relation to an option for further quantities and/or optional extras.

**Policy:** Nil

**Guidance:** It is important to note that this request for information on additional quantities of Supplies and/or optional extras does not bind the Commonwealth. However, where it is clear that additional quantities will not be required, Tender Data Requirement D-7, clause 1.7 of the draft conditions of contract and Annex E to Attachment B to the draft conditions of contract should not be included in the RFT.

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**INFORMATION TO BE PROVIDED TO TENDERERS**


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Prior to release of the RFT, drafters must include a brief description of the additional quantities of Supplies and/or optional extras that the Commonwealth may require, the quantity required and the proposed delivery points in Annex E to Attachment B to the draft conditions of contract.

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**INFORMATION TO BE PROVIDED BY TENDERERS**


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Each tenderer must state whether it is prepared to supply further quantities of the Supplies and/or optional extras. Where a tenderer is prepared to supply further quantities of Supplies and/or optional extras it must provide the same information required in the Price Schedule in Tender Data Requirement D-1 of Annex D to the TDRL in a separate schedule for the further quantities and optional extras. Information to be provided includes:

- a. the unit price for the item or service;
- b. the warranty premium for each item;
- c. the Latent Defect premium for each item where clause 9.5 is included in the draft conditions of contract;
- d. the customs duty payable for each imported item;
- e. the total price of each item or service;
- f. the value of Local Content;
- g. the tendered price basis; and
- h. the applicability of GST in relation to the item or service.

Tenderers are also required to specify any additional or varied terms that will apply to any further quantities or optional extras.

**Drafter's Action:** Nil

**Related Clauses:** Clause 1.7 of the draft conditions of contract obtains an offer from the Contractor to supply additional quantities of Supplies and/or optional extras and specifies the terms that will apply if the Contractor's offer is accepted by the Commonwealth.

Annex E to Attachment B to the draft conditions of contract will, if required, contain the agreed Price Schedule for the additional quantities or Supplies and/or the optional extras and any additional or varied terms that will apply to these items.

**Further Reading:** Nil

**8. Schedule of Payments**

- Sponsor:** Contracting Policy & Operations and Materiel Finance Division
- Status:** Core. The options should be included where the Earned Value Payment and/or the Schedule Compression Milestone approaches are to be included within the RFT.
- Purpose:** To notify tenderers of the Commonwealth's preferred payment regime and to request a schedule of payments from each tenderer.
- Policy:** The Commonwealth has a preference for payment on delivery. Where payment on delivery is not appropriate, the Commonwealth prefers to pay by Milestone Payments only, with a Mobilisation Payment where required. The Commonwealth will, however, in most strategic materiel acquisitions agree to pay the Contractor by a combination of Milestone and Earned Value Payments. Where payment by earned value will be considered by the Commonwealth, the preferred ratio of Milestone Payments to Earned Value Payments is 50:50.
- In addition to Milestone Payments and Earned Value Payments, the Commonwealth may allow the Contractor to be paid Cost Reimbursement Payments where aspects of the Contract are high risk and/or developmental. Usually the Commonwealth will not agree to a contract where Cost Reimbursement Payments exceed more than 25% of the Contract Price.
- DPPM – Section 3, Chapter 3.4*
- Guidance:** Tenderers should note that, although the Commonwealth has a preference for payment on delivery, in most cases the Commonwealth will accept an alternative payment regime comprising Milestone Payments, Earned Value Payments and a Mobilisation Payment.

**INFORMATION TO BE PROVIDED TO TENDERERS**

Drafters should, wherever possible, include the Commonwealth's preferred Milestone Dates and Milestone Payments in Annex B to Attachment B to the draft conditions of contract and Attachment C to the draft conditions of contract prior to release of the RFT. Milestone Payments should generally be expressed as a percentage of the Contract Price. In selecting appropriate Milestone Dates and Milestone Payments consideration should be given to the:

- a. operational necessity of the Supplies;
- b. Commonwealth's proposed schedule for transition of the Supplies into service;
- c. effect of the proposed payments on the cash flow of the Contractor; and
- d. need to limit the amount of unsecured Commonwealth funds paid to the Contractor.

Drafters should also, wherever possible, include the Commonwealth's preferred Stop Payment and Schedule Compression Milestones (if applicable) in Annex B to Attachment B prior to release of the RFT. Stop Payment Milestones should represent significant Milestones under the Contract such as initial design approval, first flight, Acceptance of first ship, Acceptance of important items of Supplies under the Contract such as simulators, and achievement of flight or seaworthiness certification. Depending upon the length and complexity of the proposed contract, there should be between 3 and 10 Stop Payment Milestones.

Drafters must also determine whether Earned Value Payments will be made under any resultant contract.

**INCLUSION OF THE EARNED VALUE PAYMENT OPTION**

Payment by a combination of Earned Value Payments and Milestone Payments enables the Commonwealth to pay the Contractor progressively for work performed and enables the Contractor to better maintain a predominantly neutral cash-flow. Earned Value Payments should therefore be included in most strategic

procurements where full CSCS requirements are applied to the Contract. Payment on an earned value basis will normally be inappropriate where sufficient resources to verify Earned Value Payments under the proposed contract are not available.

#### INFORMATION TO BE PROVIDED BY TENDERERS

Tender Data Requirement D-8 requests each tenderer to provide its proposed schedule of payments, which may include a Mobilisation Payment, Milestone Payments and where applicable Earned Value Payments. Tenderers must detail the amount, purpose and date of any proposed Mobilisation Payment, the amount and date of the proposed Milestone Payments and the proposed Stop Payment and, if applicable, Schedule Compression, Milestones. Where Earned Value Payments will be allowed under the resultant contract, tenderers must specify the proposed ratio of Earned Value Payments to Milestone Payments.

Tender Data Requirement D-8 also requests each tenderer to outline the relationship between the tenderer's proposed payment regime and the tenderer's anticipated work progress and cash flow under the Contract. This allows tenderers the opportunity to explain their preferred business practice to the Commonwealth. In the event amendments to the proposed Schedule of Payments need to be negotiated, the Commonwealth will have a better understanding of the tenderer's business imperatives.

#### EVALUATION OF THE TENDERER'S PROPOSED MOBILISATION PAYMENT

It is important that any proposal for a Mobilisation Payment is given careful consideration to ensure that the Mobilisation Payment is required by the Contractor and can be justified as follows. Mobilisation Payments are unlikely to be required for commercial-off-the-shelf acquisitions or procurements off a well-established production line where only minor modifications to the Supplies are required. Payment of a Mobilisation Payment will be appropriate where the Contractor or its Subcontractors will experience significant non-recurring ramp up costs including the cost of procuring plant, machinery, materials and facilities for use in the production of the Supplies. The cost of money associated with the required ramp up costs should be considered when determining the need for and amount of any Mobilisation Payment. The effect of the initial ramp up costs for Subcontractors is also important particularly where Small to Medium Enterprises are involved.

Mobilisation Payments will usually be between 5 and 15% of the Contract Price, however, in determining the appropriate amount for the Mobilisation Payment consideration should be given to the entire payment regime. Where the Contractor will be paid by Earned Value Payments in addition to Milestone Payments, the Contractor will be able to progressively claim a percentage of the cost of the upfront materials and labour required by the Contractor and therefore a Mobilisation Payment may not be required or the amount required may be less. The Contractor may also be able to claim some of its initial costs through strategically placed Milestones allowing for payment following Progress Certification.

#### EVALUATION OF PROPOSED EARNED VALUE/ MILESTONE PAYMENT RATIO

Tenderers may propose a different ratio between Milestone Payments and Earned Value Payments than the preferred 50/50 ratio. Careful consideration should be given to any proposed ratio. The percentage of the Contract Price to be paid as Earned Value Payments should be between 50% and 70%, depending upon the level of risk associated with the proposed contract. Higher risk contracts will tend towards 50%, while lower risk contracts will tend toward 70%. This is because as the level of risk increases more Milestones will be required to enable the Commonwealth to effectively assess Contractor progress and to allow completed Supplies to vest in the Commonwealth preventing the Commonwealth from being an unsecured creditor. Careful consideration should also be given to the proposed number, timing and value of the Milestones under any resultant contract to ensure that the Contractor's cash flow does not become too cash negative or positive.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement D-10 of Annex D to the TDRL requests tenderers to propose the high risk and/or developmental aspects of the Contract that should be subject to cost reimbursement, the maximum amount payable as Cost Reimbursement Payments, the Schedule of Rates for labour costs, and the percentage profit for direct materials.

Clause 7.2 of the draft conditions of contract details the process that applies to Milestone Payments under the Contract.

Clause 7.3 of the draft conditions of contract details the process that applies to Earned Value Payments under the Contract, including acceptable Earned Value Techniques (EVTs) and the applicable Earned Value Payment formula.

Clause 7.5 of the draft conditions of contract details the amortisation process applicable to the Mobilisation Payment, the financial security requirements for the Mobilisation Payment and the Commonwealth's rights to exercise the Mobilisation Payment security.

Clause 7.9 of the draft conditions of contract details the process that applies to Cost Reimbursement Payments under the Contract.

Clause 7.11 of the draft conditions of contract notifies the Contractor that the Commonwealth may elect to withhold payments under the Contract where the Contractor fails to achieve a Stop Payment and, where applicable, to state that the Commonwealth may take specified action in the event that a Schedule Compression Milestone is not achieved.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule.

Further Reading: Nil

## 9. Life Cycle Cost Model

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** The purpose in requesting a Tender Life Cycle Cost (LCC) Model (TLCCM) is to enable the Commonwealth to assess the total cost of ownership and associated LCC risks and drivers for each tenderer's proposed solutions for the Mission System and Support System.

**Policy:** *DI(G) LOG 03-4 "Defence Policy on Life Cycle Costing Analysis"*  
*DPPM – Section 5, Chapter 5.6*

**Guidance:** In general, the purpose for requesting LCC data at the time of tendering is not to determine a bottom-line LCC for comparative purposes. The wide disparity of LCC data across tenderers, particularly with respect to the availability and maturity of data, makes this outcome highly problematic. Nevertheless, LCC analysis as part of a tender response is important because it provides for:

- a. improved budget planning;
- b. the identification of technical risk factors, especially those related to the design and logistics engineering abilities and planned approaches by tenderers;
- c. the improved identification of cost drivers and cost, supportability and performance risks associated with proffered systems;
- d. the improved identification and understanding of the cost-effectiveness of possible cost, performance and technical trade-offs; and
- e. support to contract negotiations by facilitating the analysis of the full financial implications of capital equipment options.

The TLCCM is provided through a specific Tender Data Item Deliverable, TDID-FIN-LCC-TLCCM. To overcome the data difficulties mentioned above, drafters should specify the default parameters and project-specific definitions associated with the utilisation of the specified LCC software tool (identified in the TDID as CASA 2000.x). Drafters should also ensure that, for those situations where Total Contractor Support is being considered for the Support System solution, the tailoring of the TDID still enables the aforementioned objectives to be met. Annex A to TDID-FIN-LCC-TLCCM will need to be developed by the project office prior to issue of the RFT.

The covering section of the TLCCM DID requires each tenderer to document the LCC model that it has developed. Additionally, the TLCCM DID requests each tenderer to describe any LCC analysis activities that have been conducted, including details of any LCC drivers that have been identified. Finally, this DID requests the tenderer to describe any proposed alternatives for either the Mission System or Support System (or both) that either address the identified LCC drivers or reduce LCC. Tenderers are requested to present these alternatives as Tenderer Initiated Options (TIOs). These TIOs would be discussed either during any offer definition activities or during contract negotiations, with the agreed options incorporated into any resultant Contract.

LCC data will need to be shared with the PM, SE and ILS tender-evaluation teams to enable this data to be incorporated into the risk assessments for each of these areas.

**Drafter's Action:** Prior to the release of the RFT, Annex A to TDID-FIN-LCC-TLCCM will need to be developed by the project office.

Prior to release of the RFT, the requisite LCC software tool, including the version of the tool, will need to be incorporated into the TLCCM TDID.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 3.11 of the draft Statement of Work defines the LCC requirements for the Contract.



Further Reading: See also – *TLS Manual Volume 6 – Life Cycle Costing Analysis*  
See also – *Philosophy Annex A, Lifecycle Thread – Life Cycle Cost (LCC)*

**10. Cost Reimbursement**

- Sponsor:** Contracting Policy & Operations and Materiel Finance Division
- Status:** Optional. To be included where clause 7.9 of the draft conditions of contract is included to allow for payment by Cost Reimbursement Payments under the Contract.
- Purpose:** To notify tenderers of the aspects of the proposed contract for which a cost reimbursement price basis is proposed and to request tenderers to propose additional cost reimbursement elements and provide relevant details.
- Policy:** In addition to Milestone Payments and Earned Value Payments, the Commonwealth may allow the Contractor to be paid Cost Reimbursement Payments where aspects of the Contract are high risk and/or developmental. Usually the Commonwealth will not agree to a contract where Cost Reimbursement Payments exceed more than 25% of the Contract Price.
- Guidance:** The cost reimbursement provisions in clause 7.9 of the draft conditions of contract are designed to benefit both the Contractor and the Commonwealth where the Contract includes high risk and/or developmental elements.

**REASONS FOR USE OF COST REIMBURSEMENT PAYMENTS**

In a firm or variable price Contract, the Contractor, to protect its profit margin, may include considerable contingency to cover the risks associated with the high risk and developmental aspects of the Statement of Work. The Commonwealth will then be obliged to pay the price agreed, including the inherent contingency, whether the contingency was in fact required by the Contractor in performing the work. Conversely, where the contingency is insufficient to cover the costs incurred by the Contractor in performing the work under a firm or variable price arrangement, the Contractor must bear the loss.

By reimbursing the Contractor for the costs incurred in providing the high risk or developmental aspects of the Contract, the Commonwealth will only pay the actual cost incurred by the Contractor in performing the work and the risk to the Contractor will be significantly reduced. However, it is important that cost reimbursement be used only where the work to be performed is truly of a high risk nature.

The risk to the Commonwealth of cost reimbursement is that it is paying for the work performed and not necessarily any particular outcome. To minimise this risk, the Contract clauses allow for review points and for the Commonwealth to elect not to continue with the work.

**INFORMATION TO BE PROVIDED TO TENDERERS**

To enable tenderers to tender appropriately, drafters should include a detailed description of the elements of the Contract that are proposed for performance on a cost reimbursement basis. Each proposed cost reimbursement element of the Contract and the associated Cost Reimbursement Supplies should be detailed in separate Annexes of the draft Statement of Work prior to release of the RFT.

**INFORMATION TO BE PROVIDED BY TENDERERS**

Tender Data Requirement D-10 requests tenderers to provide:

- a. details of any additional high risk and/or developmental elements of the contract proposed for cost reimbursement;
- b. the proposed maximum amount payable under any resultant contract as Cost Reimbursement Payments;
- c. the proposed Schedule of Rates for labour costs; and
- d. the proposed percentage margin that applies to procurement of direct materials and Subcontractors.

Tenderers should note that the Cost Reimbursement Payments under any resultant contract should not exceed more than 25% of the Contract Price.

**Drafter's Action:** Prior to the release of the RFT, drafters must include in the note to tenderers a reference to the Annex or Annexes of the draft Statement of Work that detail proposed Cost Reimbursement Supplies.

**Related Clauses:** Clause 7.9 of the draft conditions of contract details the process that applies to Cost Reimbursement Payments under the Contract and the process for reviewing progress in relation to Cost Reimbursement Supplies.

Annex A to Attachment B to the draft conditions of contract will contain the agreed Price Schedule, including, if required, the maximum amount of Cost Reimbursement Payments.

Annex F to Attachment B to the draft conditions of contract will, if required, contain the agreed Schedule of Rates.

Annex H to Attachment B to the draft conditions of contract will, if required, contain the agreed Cost Reimbursement arrangements, including the percentage payable as profit.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule, including, if required, the date for delivery of Cost Reimbursement Supplies.

Separate Annexes of the draft Statement of Work should detail the proposed cost reimbursement elements of the Contract and the associated Cost Reimbursement Supplies.

**Further Reading:** Nil

**11. Incentive Payments**

- Sponsor:** Contracting Policy & Operations and Materiel Finance Division
- Status:** Optional. To be included where clause 7.13 of the draft conditions of contract is included to allow for payment of Incentive Payments under the Contract.
- Purpose:** To notify tenderers of the proposed Incentive Payment regime and to request tenderers to provide details in relation to the Incentive Payment provisions.
- Policy:** In accordance with the *Financial Management and Accountability Act 1997*, the Commonwealth may only pay the Contractor Incentive Payments for superior performance of the Contract.
- Guidance:** Clause 7.13 of the draft conditions of contract entitles the Contractor to claim Incentive Payments in addition to the Contract Price for superior performance of any resultant contract.

**REQUIREMENT FOR SUPERIOR PERFORMANCE OF THE CONTRACT**

As Incentive Payments are paid to the Contractor in addition to the Contract Price, to be in accordance with the *Financial Management and Accountability Act 1997*, the Incentive Payment must be for superior performance of the Contract where the superior performance is of benefit to the Commonwealth. This is because the liability approver in approving a proposal to spend public money must have regard to the *Commonwealth Procurement Guidelines and Best Practice Guidance* and ensure that additional payments represent value for money. The Contractor's performance under any resultant contract will be measured in accordance with the assessment periods, weightings and key performance indicators included in Annex I to Attachment B to the draft conditions of contract.

**SELECTION OF KEY PERFORMANCE INDICATORS AND WEIGHTINGS**

Drafters must include guidance on the key performance indicators for the proposed contract in Annex I to Attachment B prior to release of the RFT. Drafters may elect to include only the categories of proposed key performance indicators or detail the specific assessment periods, weightings and key performance indicators proposed by the Commonwealth. In most cases drafters will only be able to include the categories of key performance indicators in Annex I to Attachment B. This is because the areas of the proposed contract for which superior performance will be of benefit to the Commonwealth will depend upon each tenderer's proposal. Possible categories of key performance indicators include:

- a. cost/price where the Contract includes the cost reimbursement option;
- b. schedule;
- c. quality;
- d. contract relationship including relationship between Defence, the Contract, Subcontractors and third parties;
- e. innovation under the Contract;
- f. All;
- g. IP; and
- h. government procurement policies including policy on Occupational Health and Safety, the environment, employment of Aboriginal and Torres Strait Islanders, equity and diversity and security.

Where an election is made to include specific key performance indicators, weightings and assessment periods in the RFT, drafters must ensure that tenderers are not provided with an opportunity to develop their tenders, particularly their proposed schedule, to ensure achievement of the proposed key performance indicators by under-tendering. This will be particularly important in a tendering environment where there is little or no competition.

Where specific key performance indicators, assessment periods and weightings are included prior to release of the RFT it is essential that drafters ensure that the key performance indicators are objective, measurable and clearly stated. In selecting appropriate weightings for the key performance indicators in each assessment period, it should be noted that the weighting for each key performance indicator may vary depending upon the work being conducted in the assessment period and the importance of the key performance indicator at the relevant stage of the Contract.

Drafter's Action: Nil

Related Clauses: Clause 7.13 of the draft conditions of contract details the process that applies to Incentive Payments under the Contract.

Annex I to Attachment B to the draft conditions of contract will, if required, contain the agreed assessment periods, weightings and key performance indicators.

Further Reading: Nil



**ANNEX E – PROJECT MANAGEMENT****1. Past Performance**

Sponsor: Industry Policy

Status: Core

Purpose: To request from tenderers information about their performance and their Approved Subcontractor's performance of recent and current contracts.

Policy: *Defence Company ScoreCard Policy Statement*  
*DPPM – Section 3, Chapter 3.8*

*Guidance for Reviewing the Performance of Nominated Reference Sites*

Guidance: Although most major companies can offer successful projects to prove their past performance, the most important thing to look for is the past performance of the team members who will be actually performing the work on this contract.

The note to tenderers at Tender Data Requirement E-1 notifies tenderers that during the tender evaluation the Commonwealth may use:

- a. the information requested by clause 1.1 and 1.2;
- b. information contained in a Company ScoreCard relating to a tenderer or a proposed Approved Subcontractor; and
- c. additional supporting information relating to a tenderer's past performance,

to assess a tenderer's ability to perform the proposed contract.

Further guidance on Company ScoreCards and evaluation of tenderers in relation to past performance is contained in the "*Defence Company ScoreCard Policy Statement*". Both this document and the "*Guidance for Reviewing the Performance of Nominated Reference Sites*" is available on the Company ScoreCard internet website [www.defence.gov.au/dmo/id/cscard/csc\\_home.cfm](http://www.defence.gov.au/dmo/id/cscard/csc_home.cfm).

Tender Data Requirement E-1 requests tenderers to provide a summary list of up to 10 recent or current contracts which may be a combination of Australian Defence contracts for which the tenderer has a Company ScoreCard and contracts from Reference Sites. In accordance with clause 1.2, the contracts listed should be the tenderer's highest value contracts.

Where a tenderer lists contracts from Reference Sites, details of the Nominated Reference Sites should be included in the summary list. A Reference Site is an entity external to the tenderer who can provide feedback on the tenderer's performance of a recently performed contract. Further guidance on Reference Sites can be found in "*Guidance for Reviewing the Performance of Nominated Reference Sites*".

Tenderers should note that clause 1.3 requests tenderers who have Company ScoreCards held by Defence to provide the Commonwealth with strategies through which the tenderer will implement performance improvements for the proposed contract and the company's performance overall to address any marginal or unsatisfactory ratings in their Company ScoreCard. Clause 1.5 places a similar requirement on tenderers in relation to proposed Approved Subcontractors. It is important to note, however, that this requirement applies only to the extent that a tenderer is aware of any marginal or unsatisfactory ratings contained in a proposed Approved Subcontractor's Company ScoreCard.

Tenderers should also note that they may provide additional information on their past performance or the past performance of a proposed Approved Subcontractor in accordance with clause 1.6. The Commonwealth may consider any additional information provided by a tenderer at its sole discretion.

Drafter's Action: Nil

Related Clauses: Clause 3.3.2(e) of the conditions of tender specifies that the tenderer's past performance shall be an evaluation criterion.

Clause 3.9.3 of the draft Statement of Work places an obligation on the Contractor and the Commonwealth to discuss the performance of the Contract in relation to each relevant Company ScoreCard at Contract Performance Reviews.

Further Reading: Nil



## 2. Draft Contract Work Breakdown Structure (CWBS) and CWBS Dictionary

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To request tenderers to provide a draft Contract Work Breakdown Structure (CWBS) and CWBS Dictionary.

Policy: Nil

Guidance: One of the major reasons for requiring detailed visibility of the CWBS is to ensure that the tenderer has a sound understanding of the technical control aspects of project management. By examining the CWBS and the subcontracting arrangements, it should be possible to see clear responsibility for the delivery of subsystems or products throughout the product structure of the CWBS. There should be no shared responsibility. See guidance on CWBS in the Statement of Work section of this Handbook.

*MIL-HDBK-881* is a US DOD guide for the development and use of Work Breakdown Structures (WBS) in Defence acquisition projects and associated contracts. The handbook offers uniformity in definition and consistency of approach for developing the WBS. The benefit of uniformity in the generation of WBSs and their application to management practices will be realised in improved communication throughout the acquisition process. Project Authorities and their Contractors should observe the guidance contained in *MIL-HDBK-881* to ensure that the CWBS is soundly based.

Clause 2.1 of Tender Data Requirement E-2 requests tenderers to provide a draft CWBS. This clause also presents the summary WBS to level 2 for an Electronic/Automated Software System. As stated in the Note to Drafters, if the system being acquired is not Electronic/Automated Software System, then drafters should change the summary WBS, as required, based on the type of system and the guidance for the type of system in *MIL-HDBK-881*. Drafters should avoid specifying the summary WBS below level 2 because going below this level starts to define a particular solution or implementation and, therefore, encroaches upon the Contractor's design domain. Inappropriate levels of detail in a summary WBS can:

- a. artificially constrain the tenderer's design and, therefore, its tendered offer by implying a particular solution or approach is preferred; and
- b. cause inappropriate subcontractual arrangements to be implemented because the summary WBS defines particular subsystems or elements of systems.

Clause 2.2 of Tender Data Requirement E-2 provides guidance as to the level of detail that should be provided by each tenderer. This guidance recognises the importance of the CWBS and CWBS Dictionary in defining the scope of the tenderer's proposed implementation of the Contract. Commonwealth project offices should note that no particular level for the draft CWBS has been specified because of the likely differences in approach between the tenderers in developing the CWBS. Instead, clause 2.2 requires particular details of the tenderer's program to be provided, with this approach aiming to obtain consistent information across the tender responses.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the CWBS and CWBS Dictionary within this phase to ensure that sound versions of these documents are placed on Contract. Given the inter-relationships between the CWBS, the technical program, the Contract Master Schedule (CMS), the Earned Value Management System (EVMS), the Australian Industry Involvement (All) program, and the payment schedule, it is imperative that a sound CWBS be included within the Contract.

If offer definition activities are not programmed, Commonwealth project office staff should discuss the CWBS during contract negotiations to either:

- a. finalise the CWBS prior to Contract award to ensure that a sound CWBS is placed on Contract; or
- b. ensure that the CWBS delivered under the resultant Contract is sound.

Generally, by the time a CWBS is delivered under a Contract, the Contractor has opened most of the control accounts and associated work packages and changes to the CWBS after the Effective Date can be difficult to achieve. As such, likely changes to the draft CWBS and CWBS Dictionary need to be discussed before Contract signature.

Users of *ASDEFCON (Strategic Materiel)* should note that the CWBS and CWBS Dictionary will be examined as part of the Integrated Baseline Review (IBR), which normally occurs around four months after the Effective Date. Given this timing and the reasons outlined above, it is prudent to address any major changes or issues with the CWBS pre-Contract.

**Drafter's Action:** Prior to release of the RFT, drafters may need to amend the WBS elements listed in this Tender Data Requirement and drafters must include a summary WBS in the draft Statement of Work as part of Tender Data Requirement E-2 of Annex E to the TDRL.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment and/or Schedule Compression Milestones.

Clause 4 of the draft conditions of contract contains the contractual requirements associated with the All Program.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract.

Attachment B to the draft conditions of contract will contain the agreed Price Schedule and the Schedule of Payments.

The draft Statement of Work details the technical program requirements for the project.

Clause 3.2.3 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of a CMS.

Clause 3.2.4 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of a CWBS and CWBS Dictionary.

Clause 3.2.5 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of an EVMS.

Clause 3.14 of the draft Statement of Work contains the work-related requirements associated with the All Program.

**Further Reading:** See also – *MIL-HDBK-881 – Work Breakdown Structure*

See also – *IBR Team Handbook*

### 3. Draft Contract Master Schedule

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To request tenderers to provide a draft Contract Master Schedule (CMS), which identifies each tenderer's time-based sequence of activities, as defined in the CWBS.

Policy: Nil

Guidance: In the past, the Commonwealth has produced unrealistic schedules and then sought compliance from tenderers to meet this schedule. The tenderer knows that non-compliance may cause elimination and, therefore, responds as being compliant, knowing full well that the schedule is unrealistic. This is a no-win situation and is to be avoided at all costs. If a schedule is to be mandated, then it should only be proposed after detailed consultation with industry.

Clause 3.1 of Tender Data Requirement E-3 requires each tenderer to provide a draft CMS in accordance with the Contract DID for the CMS, DID-PM-DEF-CMS. Drafters should note that this DID requires the CMS to be capable of displaying the separate functional elements of the schedule (i.e. project management, design, production, installation, integration, testing and trialing, Integrated Logistics Support (ILS), etc). The CMS is also required to include Subcontractor schedules. These approaches have been adopted to make it easier for Commonwealth project office staff to review and analyse the CMS.

The draft CMS and the draft CWBS are the two key deliverables for understanding each tenderer's planned scope of work under a Contract and the plan for undertaking this scope of work. To adequately assess schedule risk, a reasonably detailed draft CMS is required, and drafters should note that the level of detail specified in clause 3.2 is exactly aligned with the level of detail specified for the draft CWBS.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the CMS within this phase to ensure that a sound CMS is placed on Contract. Given the inter-relationships between the CMS, the overall program, the CWBS, the Earned Value Management System (EVMS), the Australian Industry Involvement (AII) program, and the payment schedule, it is imperative that a sound CMS be placed on Contract.

If offer definition activities are not programmed, Commonwealth project office staff should discuss the CMS during contract negotiations to either:

- a. finalise the CMS prior to Contract award to ensure that a sound CMS is placed on Contract; or
- b. ensure that the CMS delivered under the resultant Contract is sound.

Generally, by the time a CMS is delivered under a contract, the Contractor has opened up most of the control accounts and associated work packages (both of which are included in the CMS), and changes to the CMS after the Effective Date can be difficult to achieve. As such, likely changes to the draft CMS need to be discussed before Contract signature.

Users of *ASDEFCON (Strategic Materiel)* should note that the CMS will be examined as part of the Integrated Baseline Review (IBR), which normally occurs around four months after the Effective Date. Given this timing and the reasons outlined above, it is prudent to address any major changes or issues with the CMS pre-Contract.

Drafter's Action: Nil

Related Clauses: Clause 3.5 of the conditions of tender describes the offer definition process.

Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone

dates, the amount of each proposed Milestone Payment and any proposed Stop Payment and/or Schedule Compression Milestones.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract.

Attachment B to the Contract will contain the agreed Price Schedule and the Schedule of Payments.

Clause 3.2.3 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of a CMS.

Clause 3.2.4 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of a CWBS and CWBS Dictionary.

Clause 3.2.5 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of an EVMS.

Further Reading: See also – *IBR Team Handbook*

#### 4. Key Persons

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To request tenderers to provide details of Key Staff Positions and the numbers of staff available to meet the person specifications associated with each Key Staff Position.

Policy: Nil

Guidance: The Commonwealth needs assurance that the successful tenderer can fill the Key Staff Positions with Key Persons in the required timescale. Nothing will usually affect the outcome of the project more than the skills and experience of the project team working on the project.

Clause 4.1 of Tender Data Requirement E-4 requires each tenderer to identify the Key Staff Positions for the proposed Contract based on the tenderer's proposed activities and the perceived risks. This approach has been adopted because, while there may be some common Key Staff Positions across tenderers (e.g. Project Manager, Systems Engineering Manager and Software Development Manager), other Key Staff Positions will be specific to a particular tenderer. For example, a part of one tenderer's proposed solution might be off-the-shelf, while the equivalent part from another tenderer might require significant development. As such, drafters should not identify Key Staff Positions in the RFT and should allow tenderers to identify those positions that they regard as Key Staff Positions.

The availability of Key Persons to fill the Key Staff Positions should be a significant element in the risk assessment for each tenderer, as should each tenderer's ability to recognise those elements of its proposal that warrant the identification of Key Staff Positions. There are obvious linkages here with each tenderer's risk assessment for its proposal.

Given the significance of Key Persons to the success of the project, this subject should be included for further discussions in any programmed offer definition activities or during contract negotiations. The aim of these discussions is to ensure that the resultant Contractor has a project team capable of meeting the requirements of the Contract within budget and schedule and within acceptable levels of risk. These discussions may require the Commonwealth to express dissatisfaction with the position specifications or the proposed Key Persons, and to negotiate with the Contractor until appropriate Key Persons are obtained.

Drafter's Action: Nil

Related Clauses: Clause 3.5 of the conditions of tender describes the offer definition process.

Tender Data Requirement E-8 of Annex E to the TDRL requires each tenderer to provide a risk assessment associated with its tender response.

Clause 3.4 of the draft Statement of Work imposes a contractual obligation on the Contractor to identify, and update as required, the position/person specifications for Key Staff Positions in accordance with the Approved Project Management Plan (PMP). Clause 3.4 also obliges the Contractor to advise the Commonwealth of the impending loss of an identified Key Person and details the management actions that the Contractor must take in such an event.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Key Personnel Management*.

## 5. Draft Project Management Plan

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To request tenderers to provide a draft Project Management Plan (PMP)

Policy: Nil

Guidance: A draft PMP is required to provide visibility into how the tenderer proposes to manage the project. This plan should not be a 'marketing' document, but should reflect exactly how the project will be managed. This document can be used to identify high-risk subcontracting arrangements as well as many other factors.

Tender Data Requirement E-5 requires each tenderer to provide a draft PMP in accordance with the Contract DID for the PMP, DID-PM-MGT-PMP. The PMP provides an overview of the different project processes and how they fit together to form a totally integrated management system for the project. As an analogy, it is like the key map at the front of a street directory. It should provide an overview and show how all of the detailed processes (maps) fit together. Given its role as the "key map", a PMP should be sought with every RFT.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the PMP within this phase to ensure that an Approved PMP is placed on Contract. Given the role of the PMP as the overarching plan for the Contract, it is imperative that a sound PMP be placed on Contract.

If offer definition activities are not programmed, Commonwealth project office staff should discuss any shortfalls with the PMP during contract negotiations to either:

- a. finalise the PMP prior to Contract award to ensure that a sound PMP is placed on Contract; or
- b. ensure that the PMP delivered under the resultant Contract is sound.

Under this last approach, the Contractor will commence activities from the Effective Date before an Approved PMP is obtained. As such, proposed areas of change in the draft PMP need to be discussed before Contract award. If the Commonwealth project office does not plan to obtain a Contract-ready PMP prior to Contract, then the Contract Data Requirements List (CDRL) will need to be amended to specify a delivery time for the PMP after the Effective Date.

Drafter's Action: Nil

Related Clauses: Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes

Clause 3.2.2 of the draft Statement of Work imposes a contractual obligation on the Contractor to submit a PMP for Approval by the Project Authority and obliges the Contractor to manage the project in accordance with the Approved PMP.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Project Planning*

**6. Measurement & Analysis**

**Sponsor:** Materiel Policy & Services

**Status:** Core . The option should be included where offer definition activities are to be undertaken.

**Purpose:** To inform and advise tenderers of the intention to incorporate a measurement and analysis program within the Contract.

**Policy:** Nil

**Guidance:** Previous attempts at applying measurement have generally been forced into contracts or have required “metrics” to be delivered. This has often led to information being delivered but little relevance or action taken. Measurement addressing the information needs is designed to provide the acquirer and suppliers and developers with quantitative data from which information can be derived and used in order to monitor and assess progress, detect adverse trends early and thereby make better decisions, jointly where required. The approach is collaborative and is targeted at issues of concern to the parties. It aims to provide visibility and insight into areas that are difficult to accurately understand in any other way. This is particularly applicable to software intensive projects.

Tenderers are informed that where offer definition activities are undertaken tenderers will be required to support a workshop, prior to contract signature, to define and agree to the measurement program. Regardless of whether this option is taken up, tenderers are asked to respond with their willingness to participate in the measurement program and to provide details of how they would implement such a program on the project, together with their experience in implementing similar programs elsewhere.

**Drafter's Action:** Nil

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.  
Refer to Statement of Work Section 3.2.7 Measurement and Analysis.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Measurement and Analysis*

## 7. Earned Value Management System

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To elicit details from tenderers in relation to their Earned Value Management System (EVMS).

**Policy:** Defence policy is to require an EVMS complying with *DEF(AUST) 5655* on all Contracts and Subcontracts worth over \$200 million, regardless of the nature of work being performed. Furthermore, an EVMS complying with *DEF(AUST) 5655* will also be required on Contracts and Subcontracts worth over \$60 million that involve a significant developmental component and/or a high level of risk.

An EVMS complying with *DEF(AUST) 5658* will be required on all contracts worth between \$20 million and \$60 million, which involve a significant developmental component, or between \$20 million and \$200 million for all other projects.

*DEF(AUST) 5655, "Australian Cost/Schedule Control Systems Criteria; Standard"*

*DEF(AUST) 5657, "Australian Cost Schedule Control Systems Criteria; Implementation Guide" (ACSIG)*

*DEF(AUST) 5658, "Cost Schedule Status Reporting (CSSR) Specification and Implementation Guide; Standard"*

*DPPM – Section 3, Chapter 3.4*

**Guidance:** Tender Data Requirement E-7 requests each tenderer to provide:

- a. a declaration that its existing system complies with the EVMS requirements of the draft Contract; or
- b. a list of shortcomings in its existing system and details of proposed corrective actions.

A tenderer must also state its agreement to an assessment by the Commonwealth of the tenderer's EVMS. Where a tenderer has a validated EVMS, the tenderer may cite the relevant memorandum of understanding in lieu of providing the information requested by clause 7.1.

Under any resultant contract, the Contractor will be required to have a validated EVMS in accordance with clause 3.2.5 of the Statement of Work whether or not payment by Earned Value Payments is allowable under the terms of the Contract.

To achieve validation of its EVMS, the Contractor must only meet the validation criteria of the *DEF(AUST)* standard required by the Contract. Drafters must select the appropriate *DEF(AUST)* standard based upon the expected value of the Contract and the nature of the work under the Contract.

**Drafter's Action:** Nil

**Related Clauses:** Tender Data Requirement E-2 of Annex E to the TDRL establishes the requirement for each tenderer to submit a draft CWBS and CWBS Dictionary.

Tender Data Requirement E-3 of Annex E to the TDRL establishes the requirement for each tenderer to submit a draft CMS.

Clause 7.3 of the draft conditions of contract sets out the requirements associated with Earned Value Payments.

Clause 3.2.3 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of a CMS.

Clause 3.2.4 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of a CWBS and CWBS Dictionary.

Clause 3.2.5 of the draft Statement of Work sets out the requirement for the establishment, use and maintenance of an EVMS that meets the validation criteria of either *DEF(AUST) 5655* or *DEF(AUST) 5658*.

**Further Reading:** See also – *IBR Team Handbook*



**8. Risk Assessment and Strategy**

**Sponsor:** Contracting Policy & Operations and Materiel Policy & Services

**Status:** Core

**Purpose:** To request tenderers to provide a detailed risk assessment for the proposed Contract.

**Policy:** It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk.

*DPPM – Section 3, Chapter 3.2*

**Guidance:** Any tenderer who fails to identify risks probably does not understand the project. Expert advice should be sought for various risk areas. Systems that are built from Commercial-Off-The-Shelf (COTS) are put forward as low risk projects; however, although there is little risk in the COTS component there is a high cost and risk associated with the integration of the COTS products to produce the system.

The risk assessment provided by tenderers in response to Tender Data Requirement E-8 should identify the risks associated with the tendered solution, categorise those risks according to likelihood and consequence, and indicate how and by whom each risk will be managed (i.e. acceptance, transfer or reduction).

The risk assessment provided by each tenderer will be used by the Commonwealth during the tender evaluation to:

- a. assist with assessing whether or not the tenderer adequately understands the requirement;
- b. assess the level of risk associated with the tendered solution;
- c. determine an appropriate risk share for any resultant contract; and
- d. determine whether any additional contractual requirements are necessary to protect the Commonwealth.

**Drafter's Action:** Nil

**Related Clauses:** Tender Data Requirement C-2 of Annex C to the TDRL notifies tenderers of the Commonwealth policy on liability and seeks information from tenderers in relation to their proposed liability regime.

**Further Reading:** Nil

## 9. Quality Statement

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To elicit from tenderers information on their quality organisation, quality systems and control of Subcontractors. This information is required in order to establish a level of confidence in the tenderer's capacity to meet the quality requirements of the proposed contract.

Policy: AS/NZS ISO 9001:1994  
AS/NZS ISO 9002:1994  
*DI(G) LOG 02-1 "Defence Policy on Quality Assurance"*  
*DPPM – Section 3, Chapter 3.5*  
ISO 9001:2000

Guidance: The application of a formal and documented quality system to work performed under a contract assists the Contractor in meeting the quality requirements of the Contract. This also gives the Commonwealth a measure of assurance that adequate quality management practices are in place. Without such a quality system, management of quality can be unstructured and quality issues can sometimes be sacrificed in the interests of cost and schedule.

### PREVIOUS TENDER REQUIREMENTS

Previous Defence Quality Assurance practice was to seek from the tenderer an Outline Quality Plan which was to act as a forerunner to the contract deliverable Quality Plan. The Outline Quality Plan was intended to provide an outline of the tenderer's proposed Quality System and how it would be applied to the specific requirements of the proposed contract. In practice, this was seldom successfully achieved and tenderers usually provided generic Quality Plans which provided no details of tailoring to meet specific requirements.

### QUALITY SYSTEM STANDARD REQUIRED FOR THE PROPOSED CONTRACT

The note to tenderers details the quality system requirements for the proposed contract and notifies tenderers that the Commonwealth may assess a tenderer's quality system as part of the tender evaluation process. In accordance with clause 8 of the draft Statement of Work, the Contractor will be required to be Certified to quality system standard *AS/NZS ISO 9001:1994*, *AS/NZS ISO 9002:1994* or *AS/NZS ISO 9001:2000* (as applicable). Where software and firmware design and/or development is required the Contractor's quality system will also be required to be structured to control software development.

### INFORMATION REQUESTED IN THE QUALITY STATEMENT

The Quality Statement is intended to provide the Commonwealth with a specific suite of information for evaluation. This information is focused on the tenderer's quality capabilities whilst not being burdensome for the tenderer to produce. The Quality Statement seeks a response from the tenderer in four specific areas, namely:

- a. Maturity of the Organisational Quality Management System;
- b. Certificates and Approvals;
- c. Scope of Quality Management System (QMS) in relation to the scope of the proposed work; and
- d. Quality Management of Subcontractors.

## ADDRESSING THE QUALITY PLAN PRE-CONTRACT

If offer definition activities are programmed, Commonwealth project office staff should include the development of the Quality Plan (QP) within this phase to ensure that an Approved QP is placed on Contract. If critical or significant Contract work (e.g. design, development or integration) is likely to be undertaken prior to, or immediately after, Contract signature, inclusion of the QP within the scope of the offer definition activities should be considered essential.

If offer definition activities are not programmed, Commonwealth project office staff should discuss the QP during contract negotiations to either:

- a. finalise the QP prior to Contract award to ensure that a sound QP is placed on Contract; or
- b. ensure that the QP delivered under the resultant Contract is sound.

Drafter's Action: Nil

If the Commonwealth project office does not plan to obtain a Contract-ready QP prior to Contract, then the Contract Data Requirements List (CDRL) will need to be amended to specify a delivery time for the QP after the Effective Date.

Related Clauses: Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes

Clause 8.1.1 of the draft Statement of Work requires the insertion of the specific details of the quality system standard and any appropriate Software standards and guidelines prior to Contract signature. The appropriate standards and guidelines will be derived from the successful tenderer's response to this Quality Statement and any appropriate issues resolved at Contract negotiation.

Clause 8.1.2 of the draft Statement of Work sets out the procedure for agreement of the Quality Plan and any subsequent amendments to the Quality Plan.

Clause 8.1.3 of the draft Statement of Work specifies the mechanism for establishing corrective actions on quality system, process and product non-conformances identified by the Commonwealth.

Clause 8.1.4 of the draft Statement of Work specifies the mechanism for seeking Project Authority approval of non-conforming Supplies, materials or work.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Quality Assurance*

**10. Hazardous Substances and Ozone Depleting Substances**

- Sponsor:** Contracting Policy & Operations and Defence Safety Management Agency
- Status:** Core
- Purpose:** To request tenderers to provide details of any Hazardous Substances or Ozone Depleting Substances that the tenderer is proposing to include in the Supplies.
- Policy:** Defence Safety Management Agency website at <http://dsma.dcb.defence.gov.au>  
*Defence Safety Manual Volume 1 Part 1 Chapter 8*  
*DPPM - Annexes 3F and 3G*  
 National Occupational Health and Safety Commission website at <http://www.nohsc.gov.au>  
*Ozone Protection Act 1989*
- Guidance:** The Commonwealth has a legislative obligation as an employer to take all reasonably practicable steps to protect the health and safety of its employees, Contractors and their staff and other persons at or near Defence workplaces. Commonwealth policy also requires Defence to protect the environment wherever possible. Therefore Defence policy states that Supplies should be free from Ozone Depleting Substances and Hazardous Substances to the maximum extent possible.

**INFORMATION TO BE PROVIDED TO TENDERERS**

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Drafters must select between options in clause 2.5 of the draft Statement of Work for both Ozone Depleting Substances and Hazardous Substances. One option prohibits the use of Ozone Depleting Substances and Hazardous Substances in the Supplies. The other option allows the Contractor to include Ozone Depleting Substances and Hazardous Substances authorised by the Project Authority in the Supplies. In this case drafters should include details of any Hazardous Substances or Ozone Depleting Substances (as applicable) that are authorised for inclusion in the Supplies prior to release of the RFT.

**INFORMATION TO BE PROVIDED BY TENDERERS**

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Tender Data Requirement E-10 requests tenderers to indicate whether they are proposing to include any Hazardous Substances or Ozone Depleting Substances in the Supplies. Where tenderers are proposing to include Hazardous Substances or Ozone Depleting Substances in the Supplies, tenderers must also detail what substances are being proposed and how the substances will be managed. Tenderers should note clause 2.5 of the draft Statement of Work and any Hazardous Substances or Ozone Depleting Substances authorised for use by the Commonwealth in the RFT.

**Drafter's Action:** Nil

**Related Clauses:** Clause 11.4 of the draft conditions of contract places an obligation on the Contractor to provide Supplies that do not render the Commonwealth in breach of its Occupational Health and Safety obligations.

Clause 2.5 of the draft Statement of Work references the annexes that detail the Ozone Depleting Substances and Hazardous Substances that may be included in the Supplies.

Annexes within the draft Statement of Work list approved Hazardous or Ozone Depleting Substances.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Safety*

**11. Facility Clearance Requirement**

**Sponsor:** Defence Security Authority

**Status:** Optional. To be included where the Contractor will require access to, or will be producing, classified material during the performance of the Contract. The option within this Tender Data Requirement should be included where Communications Security material is necessary.

**Purpose:** To obtain details of the type and level of facility clearances held by the tenderer and proposed Subcontractors.

**Policy:** *Defence Security Policy*

*DPPM – Section 3, Chapter 3.9 and Annex 3C*

**Guidance:** Tender Data Requirement E-11 requests each tenderer to provide details of premises proposed in its tender for the storage of classified material. Each tenderer is also requested to state whether it holds the security clearance required by the proposed contract and, where the required clearance is not held, to advise of its willingness to undergo the procedures for obtaining the clearance required.

**UNWILLINGNESS TO UNDERGO THE SECURITY PROCESS**

Most tenderers, who do not possess the security clearance required in the draft conditions of contract will indicate a willingness to undergo the process for obtaining the required facility security clearance. If, however, a tenderer indicates that it is not willing to undergo such a process, the Commonwealth will have to consider carefully whether refusal makes it impossible for the tenderer to undertake the work and thus warrants the exclusion of the tenderer's proposal from further consideration by the Commonwealth. Further advice on Defence security issues can be obtained by contacting the Defence Security Authority. A list of contact details for Defence Industrial Security Advisers and Defence Security Authority Central staff is located within Annex 3C of the *DPPM*.

**Drafter's Action:** Nil

**Related Clauses:** Clause 10.10 of the draft conditions of contract details the security requirements of the Contract and the security classification of work to be performed under the Contract.

Clause 3.16 of the draft Statement of Work requires the Contractor to undertake the work required to comply with clause 10.10 of the draft conditions of contract.

**Further Reading:** Nil

**12. Government Furnished Material (GFM)**

**Sponsor:** Contracting Policy & Operations and Materiel Policy & Services

**Status:** Optional. To be used when the Commonwealth proposes or mandates GFM for inclusion in, or use during the production of, the Supplies and/or where the Commonwealth is prepared to allow tenderers to request GFM. A choice between the options included within the Tender Data Requirement needs to be made based upon whether the Commonwealth is proposing and/or mandating GFM and whether tenderers may propose additional GFM.

**Purpose:** To inform tenderers of GFM that is being mandated or proposed by the Commonwealth for use by the Contractor in relation to the Contract and to allow tenderers to elect to use the proposed GFM and/or request that additional GFM be provided.

**Policy:** The preferred Departmental position is to minimise the provision of GFM to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under a contract without GFM. Additionally, there may be benefits to the Commonwealth in providing GFM (e.g. through standardisation), which are sufficient to offset the increased risk.

*DI(G) LOG 07-4, "Provision of Material to Contractors"*

**Guidance:** GFM is any equipment, information or data provided to a contractor by the Commonwealth to assist in the performance of a contract. There are three types of GFM:

- a. Commonwealth Mandated GFM;
- b. Commonwealth proposed GFM; and
- c. tenderer proposed GFM.

Tender Data Requirement E-12 should be included where the Commonwealth is mandating or proposing GFM and/or where the tenderer may propose GFM.

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**LIABILITY FOR GFM**


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Clause 3.6 of the draft conditions of contract sets out the risk allocation between the Commonwealth and the Contractor relating to the provision of GFM. Apart from GFI, which the Contractor uses at its own risk, the Commonwealth will be responsible for defects in GFM, unless those defects were caused by the Contractor's or its Subcontractor's negligence, default or unlawful act, in which case the Contractor is responsible. However it should be noted that, where the Contractor has care, custody and control of GFM, it may be difficult to prove that the GFM was damaged by the Contractor's default or unlawful or negligent act or omission. For these reasons it is the preferred Departmental position to minimise the provision of GFM.

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**COMMONWEALTH MANDATED GFM**


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The Commonwealth warrants the fitness for purpose of Commonwealth Mandated GFM under clause 3.6.4 of the draft conditions of contract. Therefore, careful consideration should be given to the Contract requirement before mandating GFM for use by the Contractor. It may be appropriate for GFM to be offered as Commonwealth Mandated GFM where:

- a. the Commonwealth mandates that the Contractor incorporate equipment provided by the Commonwealth into the Supplies; or
- b. data is required for the performance of the Contract that can only be provided to the Contractor by the Commonwealth and which can not be independently verified by the Contractor.

It should be noted that, as the Commonwealth does not warrant the suitability of GFI, GFI can never be Commonwealth Mandated GFM.

Since mandating GFM can limit a tenderer's response to the RFT, the Commonwealth should take care when mandating GFM under the Contract. Where the Commonwealth receives a tender that is non-compliant with the Commonwealth's Mandated GFM requirements, but provides a satisfactory solution to the Commonwealth's capability requirements and represents value for money, the Commonwealth has discretion as to whether to exclude the tender from further consideration. If the tender is ultimately successful despite being non-compliant with the Commonwealth's Mandated GFM requirements, and other tenders have been received that meet the Commonwealth's Mandated GFM requirements, those unsuccessful tenderers may have cause for complaint and/or possibly legal action against the Commonwealth. The Commonwealth should therefore only mandate GFM where it is certain that a satisfactory solution cannot be achieved without the use of that particular GFM.

#### COMMONWEALTH PROPOSED GFM

The Commonwealth may also propose GFM in the RFT for use by the Contractor in the performance of the Contract. It is important to note that the Contractor is under no obligation to elect to use the proposed GFM and the Commonwealth may elect not to provide the proposed GFM under the resultant contract during tender evaluation. Therefore tenderers are requested in Tender Data Requirement D-2 of Annex D to the TDRL to detail the additional cost to be included in the Contract Price where Commonwealth proposed GFM requested by the tenderer will not be provided under the resultant contract.

#### TENDERER PROPOSED GFM

Requests from tenderers for the Commonwealth to supply GFM should be evaluated carefully to determine the potential risk to the Commonwealth of providing the material and the value for money to be gained from any such proposal. The evaluation should also take into account the opportunity cost of allowing the Contractor to use Commonwealth material. An opportunity cost is the cost to the Commonwealth of losing the opportunity to use the GFM itself. This may not only be an issue if the Commonwealth could employ the GFM elsewhere but also if the Commonwealth could dispose of the GFM if it were not for the tenderer's request. Consideration should also be given to the need, if GFM is to be provided, for the Commonwealth to ensure the GFM is fully operational and remains so, as the Commonwealth accepts liability for defects in GFM under the Contract except where the Contractor can be shown to have caused the defect.

It is important to note that the Commonwealth is under no obligation to provide GFM requested by the successful tenderer. Therefore tenderers are requested in Tender Data Requirement D-2 of Annex D to the TDRL to detail the additional cost to be included in the Contract Price where tenderer proposed GFM will not be provided under the resultant contract.

**Drafter's Action:** Prior to release of the RFT, drafters must select the appropriate options in Tender Data Requirement E-12.

**Related Clauses:** Clauses 3.5 to 3.7 of the draft conditions of contract contain the GFM provisions relating to provision, management, liability, ownership and restrictions.

Clause 3.13 of the draft Statement of Work contains the management and work-related GFM provisions.

Annex A to Attachment E to the draft conditions of contract will contain the agreed list of GFM that is to be provided under the Contract, including the quantity, date required, location, time period for inspection and intended purpose of the GFM.

**Further Reading:** Nil

**13. Government Furnished Facilities (GFF)**

**Sponsor:** Infrastructure Division and Materiel Policy & Services

**Status:** Optional. To be used when the Commonwealth proposes or mandates GFF for use during the production of the Supplies and/or where the Commonwealth is prepared to allow tenderers to request GFF. A choice between the options included within the Tender Data Requirement needs to be made based upon whether the Commonwealth is proposing and/or mandating GFF and whether tenderers may propose additional GFF.

**Purpose:** To inform tenderers of GFF that is being mandated or proposed by the Commonwealth for use by the Contractor in relation to the Contract and to allow tenderers to elect to use the proposed GFF and/or request that additional GFF be provided.

**Policy:** The preferred Departmental position is to minimise the provision of GFF to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under a contract without GFF. Additionally, it may be beneficial for strategic reasons for contractors to occupy GFF.

*DI(G) ADMIN 35-1 "Procedures for the Use of Defence Estate Assets by Non-Defence Organisations or Individuals including Commercial Contractors"*

**Guidance:** GFF is any facility provided to a contractor by the Commonwealth to assist in the performance of a contract. There are three types of GFF:

- a. Commonwealth mandated GFF;
- b. Commonwealth proposed GFF; and
- c. tenderer proposed GFF.

Tender Data Requirement E-13 of the conditions of tender should be included where the Commonwealth is mandating or proposing GFF and/or where the tenderer may propose GFF. Drafters must select the appropriate options in Tender Data Requirement E-13 dependent upon whether the Commonwealth is proposing and/or mandating GFF and whether tenderers may propose additional GFF.

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**GFF LICENCE**

The GFF Licence to be included as Annex D to Attachment I to the draft conditions of contract details the Commonwealth's and the Contractor's liabilities and responsibilities in relation to GFF provided under the Contract.

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**MANDATING GFF**

Mandating GFF can limit a tenderer's response to the RFT. As such, the Commonwealth should take care when mandating GFF under a contract. Where the Commonwealth receives a tender that is non-compliant with the Commonwealth's mandated GFF requirements, but provides a satisfactory solution to the Commonwealth's capability requirements and represents value for money, the Commonwealth has discretion as to whether to exclude the tender from further consideration. If the tender is ultimately successful despite being non-compliant with the Commonwealth's mandated GFF requirements, and other tenders have been received that meet the Commonwealth's mandated GFF requirements, those unsuccessful tenderers may have cause for complaint and/or possibly legal action against the Commonwealth. The Commonwealth should therefore only mandate GFF where it is certain that a satisfactory solution cannot be achieved without the use of that particular GFF.

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**COMMONWEALTH PROPOSED GFF**

The Commonwealth may also propose GFF in the RFT for use by the Contractor in the performance of the Contract. It is important to note that the Contractor is under no obligation to elect to use the proposed GFF and the Commonwealth may elect not to provide the proposed GFF under the resultant contract during tender evaluation. Therefore tenderers are requested in Tender Data Requirement D-2 of



Annex D to the TDRL to detail the additional cost to be included in the Contract Price where Commonwealth proposed GFF requested by the tenderer will not be provided under the resultant contract.

#### TENDERER PROPOSED GFF

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Requests from tenderers for the Commonwealth to supply GFF should be evaluated carefully to determine the potential risk to the Commonwealth of providing the material and the value for money to be gained from any such proposal. The evaluation should also take into account the opportunity cost of allowing the Contractor to use the Commonwealth facility. An opportunity cost is the cost to the Commonwealth of losing the opportunity to use the GFF itself. This may not only be an issue if the Commonwealth could use the GFF for another purpose but also if the Commonwealth could dispose of the GFF if it were not for the tenderer's request. Consideration should also be given to the need, if GFF is to be provided, for the Commonwealth to ensure the GFF meets the Contractor's requirements.

It is important to note that the Commonwealth is under no obligation to provide GFF requested by the successful tenderer. Therefore tenderers are requested in Tender Data Requirement D-2 of Annex D to the TDRL to detail the additional cost to be included in the Contract Price where tenderer proposed GFF will not be provided under the resultant contract.

Drafter's Action: Prior to release of the RFT, drafters must select the appropriate options in Tender Data Requirement E-13.

Related Clauses: Clause 3.8 of the draft conditions of contract and Annex B to Attachment E to the draft conditions of contract contain the GFF provisions for the Contract.

Annex B to Attachment E to the draft conditions of contract will contain the agreed list of GFF that is to be provided under the Contract, including the date required, location, time period for inspection and intended purpose of the GFF.

Annex D to Attachment I to the draft conditions of contract will contain the agreed GFF licence.

Further Reading: Nil



**ANNEX F – TECHNICAL AND OPERATIONAL DESCRIPTION****1. Operational Description**

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To provide the Commonwealth with an understanding of the Contractor's proposed solution in terms of its ability to meet key operational needs, as identified in the OCD.

Policy: Nil

Guidance: This section is intended to address the capability that will be delivered to the user from an operational perspective. Based on the OCD for the system, there are a number of Critical Operational Issues (COIs) that are significant in defining the capability delivered to the user. This section is intended to request information that allows the Commonwealth to directly or indirectly assess the merits of each tenderer's proposal in terms of the COIs.

The tenderer's response will include compliance against the Function and Performance Specification (FPS), captured in the compliance statement in Tender Data Requirement A-4 of Annex A of the TDRL. This section is not intended to replicate information that can be simply derived from the compliance statement and, hence, those COIs that can be assessed in this way need not appear here. The elements in this operational description section can have several uses as part of the evaluation. These uses, which should be reflected in the key and subordinate evaluation criteria as appropriate for the particular RFT, include:

- a. ensuring the tenderer has an adequate interpretation of the operational context when claiming compliance;
- b. assessing the consequent operational utility of the particular combination of features of the tenderer's proposed solution; and
- c. gaining objective evidence to substantiate a tenderer's compliance by exercising a model of the system and evaluating the results.

The first of these uses can generally be addressed through a tenderer's description of the operation of their system solution (i.e. a draft operator's manual or elaboration of scenarios). The second of these may be addressed by a similar scenario-based description, but may also include a quantitative assessment in terms of aggregated performance statements or performance models. Since the FPS should reflect a derivation of the user needs, the tenderer's compliance against it should answer most of the simple numerically focussed measures of effectiveness. The latter use could address a set of realistic trial situations, or use real data (with associated imperfections and statistical variation) to test the breadth of the tenderer's solution.

Note that all tenderers may have fully compliant solutions; these operationally-driven attributes should seek to uncover the effectiveness and efficiency of the tenderer's proposal to achieve the operational goals and provide further discriminators.

Drafter's Action: Prior to release of the RFT, drafters must insert the relevant key discriminators. The drafter needs to take great care in formulating these discriminators and they should:

- a. relate to the COIs identified in the OCD;
- b. focus on operationally significant issues;
- c. provide discrimination between tenderers' offers; and
- d. not simply replicate the parameters in the FPS, but provide and address aggregated measures representing a more holistic view of system performance.

Areas that should be considered include operational effectiveness, human-machine interfaces, survivability, robustness, “maximum loading” or “extreme” conditions and the combinations of parameters that are at the limits of offered performance.

Related Clauses: This section is intended to be complementary to part 2 of this Annex which addresses implementation details and Annex G which addresses the tenderer's proposed processes for development.

Further Reading: See also – *Capability Definition Documents Guide*

See also – *Philosophy Annex A, Lifecycle Thread – Design Solution*

## 2. Technical Description

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To provide the Commonwealth with an understanding of the tenderer's proposed solution in terms of its proposed implementation details.

Policy: Nil

Guidance: The tenderer's response will include compliance against the Function and Performance Specification (FPS), captured in the compliance statement in Tender Data Requirement A-4 of Annex A to the TDRL. This section should provide a suitably detailed level of design information about the tenderer's proposed solution. This will allow the Commonwealth to understand the technology risks of the solution, and to independently assess the claims of compliance made by the tenderer.

### ACCESS TO THE RADIOFREQUENCY SPECTRUM

Australian Legislation, Regulations, and the need to co-exist with civilian infrastructure limit access to the radio frequency spectrum by Defence systems. This access is regulated by the government through the Australian Communications Authority in conjunction with the Directorate of Spectrum and Communications Regulation (DSCR), which operates within the Office of the Chief Information Officer and which manages the Defence use of, and access to, this spectrum. Any procured equipment, systems, sub-system, Configuration Item (CI), or end product that does not conform to either the regulations or to the requirement to co-exist with civil infrastructure will have "operational restrictions" placed on it. The requirement for tenderers to submit detailed information on the proposed systems will allow Defence to ensure compliance with legislation and the ability for the system to meet its envisaged capability.

Drafter's Action: Prior to release of the RFT, drafters must develop this section as needed for the particular project and should include documentation to provide information on such elements as:

- a. product breakdown structure and identification of system components, including hardware and software down to CI level;
- b. description of the interaction between components;
- c. level of development for each component;
- d. maturity of interfaces;
- e. description of how the key system functionality is met (including areas such as human factors engineering and human-machine interface);
- f. description of key design drivers and key design decisions; and
- g. identification of the tenderer's perceived technical risk areas and their approach to mitigating risk in each area.

Specific key areas of the design may also require requests for information to assess risk (e.g. proposed security architecture and proposed access to the RF spectrum).

As a minimum, this section should request:

- a. product breakdown structure and identification of system components, including hardware and software down to CI level;
- b. level of development for each component;
- c. description of how the key system functionality is met (including areas such as human factors engineering and human-machine interface);

- d. the tenderer's assessment of technical risk areas and its strategies for managing them; and
- e. detail regarding areas of a proposed design that the Commonwealth considers to be cost, schedule or risk drivers.

As stated in the Note to drafters, consideration should be given to the inclusion of an additional evaluation criterion that specifies that preference may be given to systems that operate wholly within those parts of the RF spectrum designated in the current edition of the 'Australian Radiofrequency Spectrum Plan' as being designated for Defence purposes. Care needs to be taken when including this additional criterion, however, to ensure that the overall solution is not compromised because tenderers have been overly influenced by the stated preference. Guidance should be sought from the Directorate of Spectrum and Communications Regulation before including this preference in the conditions of tender.

Related Clauses: This section is intended to be complementary to part 1 of this Annex (Annex F, Part 1 – Operational Description), which addresses operational performance and Annex G which addresses the tenderer's proposed processes for development.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Design Solution*

### 3. System Evolution and Growth

**Sponsor:** Materiel Policy & Services

**Status:** Optional. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

**Purpose:** The intent is to assess the tenderer's proposed management strategies for system evolution, growth and obsolescence.

**Policy:** Nil

**Guidance:** This section should be included where the Mission System or significant elements of the Support System are likely to be subject to significant change over their life or these systems use elements of COTS that have a short market life.

The intent is to assess the tenderer's proposed management strategies for system evolution, growth and obsolescence through the draft Growth Plan (GP). The GP shall also provide input into the LCC risk assessment.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the GP within this phase to ensure that a sound GP and development strategy is placed on Contract, and all of the implications of the GP are captured in the Contract.

If no offer definition activities are intended, the GP and associated implications may be finalised during negotiations or soon after the Contract Effective Date, but before any substantial development work is undertaken. If the Commonwealth project office does not plan to obtain a Contract-ready GP prior to Contract, then the Contract Data Requirements List (CDRL) will need to be amended to specify a delivery time for the GP after the Effective Date.

The drafter should confirm that the FPS and OCD identify the areas of future growth for both the Mission System and the Support System. If needed for clarity, these growth areas could be reiterated in this section.

**Drafter's Action:** Nil

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes.

Statement of Work Section 4.6.1, Growth, Evolution and Obsolescence Program.

Annex C to the draft Statement of Work contains the CDRL.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Technology Insertion*





**ANNEX G – TECHNICAL/ENGINEERING****1. Draft Systems Engineering Management Plan**

**Sponsor:** Materiel Policy & Services

**Status:** Core. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

**Purpose:** To assess the tenderer's system engineering development strategy for the project and its associated risks through the approach, plans and procedures documented in the draft Systems Engineering Management Plan (SEMP).

**Policy:** Nil

**Guidance:** The draft SEMP describes the tenderer's plans and procedures for the management of a fully integrated engineering program in accordance with the draft Contract.

The SEMP is used by the Contractor to provide the primary direction and guidance to the technical team responsible for the conduct of the scope of work.

The Commonwealth uses the SEMP as a benchmark against which the Contractor performance and changes in risk can be evaluated. The engineering aspects of the Statement of Work have been aligned with EIA-632. The SEMP is expected to capture the tenderer's proposed tailoring of EIA-632 as applicable for the Contract and the tenderer's internal procedures. The SEMP should also capture the tenderer's unique development aspects applicable to its solution for the Mission System and Support System. In order to adequately assess development risk, a reasonably detailed draft SEMP is required.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the SEMP within this phase to ensure that a sound SEMP and development strategy is placed on Contract.

If no offer definition activities are intended, the SEMP may be finalised during negotiations or soon after the Contract Effective Date, but before any substantial development work is undertaken.

If the Commonwealth project office plans to obtain a Contract-ready SEMP prior to Contract, then the Contract Data Requirements List (CDRL) needs to be amended to reflect this approach.

**Drafter's Action:** When offer definition activities may be undertaken, a clause needs to be added that indicates the tenderer's willingness to finalise the SEMP in consultation with the Commonwealth to allow it to be included in any resultant contract.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes.

Statement of Work 4.1.1 Engineering Organisation and Plan.

Annex C to the draft Statement of Work contains the CDRL.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Engineering Management*

See also – *Philosophy, Section 10 – Systems Engineering*

## 2. Draft Technical Documentation Tree

**Sponsor:** Materiel Policy & Services

**Status:** Core. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

**Purpose:** To confirm the adequacy of the tenderer's proposed technical documentation structure.

**Policy:** Nil

**Guidance:** The technical documentation tree should identify a hierarchy of specifications and design documentation, which reflects the hierarchy of the tenderer's proposed system design products. This documentation is subsequently to be delivered under the Contract.

As this defines the only lower level design documentation that is requested, the content of the TDT is key in assessing the adequacy of the tenderer's response and in particular, the visibility to the Commonwealth of the tenderer's design.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the TDT within this phase to ensure that a sound TDT and design documentation strategy is captured on Contract.

If no offer definition activities are intended, the TDT may be finalised during negotiations or soon after the Effective Date, but should be based on the tendered draft TDT.

If the Commonwealth project office plans to obtain a Contract-ready TDT prior to Contract, then the Contract Data Requirements List (CDRL) needs to be amended to reflect this approach

**Drafter's Action:** Prior to release of the RFT, drafters should amend this Tender Data Requirement and clause 4.5.1 of the draft Statement of Work if there are any particular project-specific elements that the Commonwealth would expect to see in the design documentation. These elements may include constraints on the format of the documentation (though this should be done with care as the intent is to use tenderer-proposed documentation standards wherever possible), particular areas of design that may be expected in the TDT but otherwise may not be included (such as the hierarchy of design documentation for support facilities) and the expected level and detail of the documentation. Any tailoring should be read in conjunction with the existing requirements of DID-ENG-SOL-DOCTREE (which, in itself, should not need tailoring).

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes.

Statement of Work 4.5.1 Technical Documentation Tree.

Annex C to the draft Statement of Work contains the CDRL.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Design Documentation*

### 3. Draft Verification and Validation Plan

Sponsor: Materiel Policy & Services

Status: Core. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

Purpose: To assess the tenderer's Verification and Validation (V&V) strategy for the project and its associated risks through the approach, plans and procedures documented in the draft Verification and Validation Plan (V&VP).

Policy: Nil

Guidance: The draft V&VP is expected to capture the tenderer's proposed V&V strategy including those aspects mandated by the Commonwealth in the draft Contract as well as the tenderer's internal V&V associated with its proposed suppliers and Subcontractors.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the V&VP within this phase to ensure that a sound V&V strategy is captured on Contract.

If no offer definition activities are intended, the V&VP may be finalised during negotiations or soon after the Effective Date.

If the Commonwealth project office plans to obtain a Contract-ready V&VP prior to Contract, then the Contract Data Requirements List (CDRL) needs to be amended to reflect this approach.

Drafter's Action: When offer definition activities may be undertaken, a clause needs to be added that indicates the tenderer's willingness to finalise the V&VP in consultation with the Commonwealth to allow it to be included in any resultant contract.

Related Clauses: Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes.

Statement of Work 7.1.2 Verification and Validation Plan.

Annex C to the draft Statement of Work contains the CDRL.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Verification and Validation*

See also – *Philosophy, Section 13 – Verification and Validation*

#### 4. Draft Regulatory Plans

**Sponsor:** Materiel Policy & Services

**Status:** Optional. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

**Purpose:** To confirm the capabilities of the tenderer to meet the appropriate Defence regulatory frameworks as part of its tendered offer.

**Policy:** *AAP 7001.053, Technical Airworthiness Management Manual (TAMM)*  
*ABR 5454 Volume 1, RAN Regulatory Framework and Certification Manual—Surface Ships (Interim)*  
*DI(G)LOG 08-15, Regulation of technical integrity of Australian Defence Force materiel*  
*Technical Regulation of Army Materiel Manual (TRAMM)*

**Guidance:** Depending on the project, information or draft regulatory plans may need to be requested. They should only be requested if it is justified by the potential risk to the Commonwealth or to clarify the scope of project activities. This may include, for example, an Authorised Engineering Organisation submission, Certification Basis Description (CBD) or Type Certification Plan (TCP). Where possible, the tenderer should only be asked to provide a necessary subset of the contract document.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the regulatory plans within this phase to ensure that sound plans are placed on Contract.

If no offer definition activities are intended, the regulatory plans may be finalised during negotiations or soon after the Effective Date.

If the Commonwealth project office plans to obtain Contract-ready regulatory plans prior to Contract, then the Contract Data Requirements List (CDRL) needs to be amended to reflect this approach.

**Drafter's Action:** Prior to release of the RFT, drafters need to tailor this Tender Data Requirement to meet the regulatory requirements applicable to the project, as defined in the draft Statement of Work.

When offer definition activities may be undertaken, a clause needs to be added that indicates the tenderer's willingness to finalise the draft regulatory plans in consultation with the Commonwealth to allow them to be included in any resultant contract.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes.

Statement of Work 4.1.3 Authorised Engineering Organisation.

Annex C to the draft Statement of Work contains the CDRL.

**Further Reading:** See also— *Philosophy Annex A, Lifecycle Thread— Airworthiness Regulatory Requirements*

## 5. Draft Specialty Plans

**Sponsor:** Materiel Policy & Services

**Status:** Optional. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

**Purpose:** To confirm that the tenderer's proposed specialty engineering activities will enable them to meet the requirements of the draft Contract.

**Policy:** Nil

**Guidance:** Depending on the project, specialty engineering management plans may need to be requested. They should only be requested if it is justified by the potential risk to the Commonwealth or to clarify the scope of project activities. These plans may include drafts of such plans as the System Safety Program Plan (SSPP), Human Engineering Program Plan (HEPP) or Integrated Reliability, Maintainability and Testability Plan (IRMTP). Where possible, the tenderer should only be asked to provide a necessary subset of the contract document.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the specialty plans within this phase to ensure that sound plans are placed on Contract.

If no offer definition activities are intended, the specialty plans may be finalised during negotiations or soon after the Effective Date.

If the Commonwealth project office plans to obtain Contract-ready specialty plans prior to Contract, then the Contract Data Requirements List (CDRL) needs to be amended to reflect this approach.

**Drafter's Action:** Prior to release of the RFT, drafters must tailor this Tender Data Requirement to provide visibility of the approach and risks in each specialty area applicable to the project, as defined in the draft Statement of Work.

When offer definition activities may be undertaken, a clause needs to be added that indicates the tenderer's willingness to finalise the draft specialty plans in consultation with the Commonwealth to allow them to be included in any resultant contract.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes

Statement of Work 4.6.1 Growth, Evolution and Obsolescence Program (addressed by Tender Data Requirement F-3 of Annex F to the TDRL)

Statement of Work 4.6.2, Integrated Reliability, Maintainability and Testability Engineering Program (Integrated Reliability, Maintainability and Testability Plan)

Statement of Work 4.6.3 Logistics Engineering (addressed by Integrated Support Plan, Tender Data Requirement I-2 of Annex I to the TDR)

Statement of Work 4.6.4 Human Engineering (Human Engineering Program Plan)

Statement of Work 4.6.5 Electromagnetic Environmental Effects (tailored to program)

Statement of Work 4.6.6 Safety (System Safety Program Plan)

Statement of Work 4.6.7 System Security (tailored to program)

Statement of Work 4.6.8 Aircraft Type Certification (tailored to program)

Annex C to the draft Statement of Work contains the CDRL.

**Further Reading:** Nil

## 6. Draft Software Management Plan

**Sponsor:** Materiel Policy & Services

**Status:** Core. A choice must be made between the options included within this Tender Data Requirement based on whether offer definition activities are to be undertaken.

**Purpose:** To confirm that the software engineering capabilities of the tenderer will enable them to meet the requirements of the draft Contract.

**Policy:** Nil

**Guidance:** The software engineering aspects of the Statement of Work have been aligned with *ISO 12207: Software Life Cycle Process*. This standard contains processes, activities, and tasks that are to be applied during the acquisition of a system that contains software, a stand-alone software product, and software service and during the supply, development, operation, and maintenance of software products. The inclusion of processes for software acquisition and supply make it highly applicable to DMO. Rather than prescribing process, the standard identifies the key components of the processes to be applied.

The standard is intended to be tailored and this can occur at several levels. The SMP is expected to capture the tenderer's proposed tailoring of *ISO 12207* including the integration of software safety standards, as applicable for the Contract and the tenderer's internal procedures. It should be expected that tenderers will respond citing national adaptations of the ISO standard such as *IEEE 12207*.

While the standard includes some guidance on tailoring, specific training in the standard is recommended to perform or understand detailed tailoring. Contact the Director of Software Engineering, Materiel Policy and Services Branch for details of training courses or advice on tailoring *ISO 12207*.

If offer definition activities are programmed, Commonwealth project office staff should include the further development of the SMP within this phase to ensure that a sound plan is placed on Contract. When the Commonwealth intends to shortlist to two or more tenderers who will participate in offer definition activities, the template defines a smaller required subset of the SMP in the tenderer's response.

If no offer definition activities are intended, the SMP may be finalised during negotiations or soon after the Effective Date.

If the Commonwealth project office plans to obtain a Contract-ready SMP prior to Contract, then the Contract Data Requirements List (CDRL) needs to be amended to reflect this approach.

**Drafter's Action:** When offer definition activities may be undertaken, a clause needs to be added that indicates the tenderer's willingness to finalise the SMP in consultation with the Commonwealth to allow it to be included in any resultant contract.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes.

Statement of Work 4.4.2, Software Development.

Annex C to the draft Statement of Work contains the CDRL.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Software Management*

**7. Software List**

Sponsor: Materiel Policy & Services

Status: Core for software-intensive systems

Purpose: To understand the size and scope of the software development activities to be undertaken and to allow the Commonwealth to assess the risks associated with software development for the Contract

Policy: Nil

Guidance: Tenderers are to provide a draft Software List in accordance with DID-ENG-SW-SWLIST.

Drafter's Action: Nil

Related Clauses: Statement of Work 4.4.2, Software Development.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Software Management*

**8. Systems and Software Experience**

Sponsor: Materiel Policy & Services

Status: Core for software-intensive systems

Purpose: To allow the Commonwealth to understand the tenderer's experience in relevant development areas in order to assess the risk associated with the draft Contract.

Policy: Nil

Guidance: Tenderers are to provide details of three reference projects, where possible, of similar domain, size and complexity to this project.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Software Management*



**9. Systems and Software Process Capability**

**Sponsor:** Materiel Policy & Services

**Status:** Core for software-intensive systems. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

**Purpose:** To assess the tenderer's system and software engineering process capability compared with the target capability profile identified for the project and to identify differences in capability to be addressed by a process improvement program.

**Policy:** Nil

**Guidance:** Tenderers are to provide details of previous process assessments and process improvement activities to provide an indication of their process awareness and recognition of the importance of process in improving the predictability of outcomes. This information may negate the need for an additional process capability appraisal to identify process related risk. Required improvements are described and incorporated into the Contract through a Project Process Improvement Plan.

**Drafter's Action:** When offer definition activities will be undertaken, a clause needs to be added that indicates the tenderer's willingness to undertake a capability assessment in order to identify areas in the tenderer's systems and software engineering processes that represent a significant risk to the project. As a consequence of this assessment, a Process Improvement Plan that addresses the identified areas of risk will form part of the Contract requirement.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.  
Statement of Work 4.1.7, Process Improvement

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Software Management*

**10. System Safety Program**

**Sponsor:** Materiel Policy & Services

**Status:** Core. The option within this Tender Data Requirement should be included where offer definition activities are to be undertaken.

**Purpose:** To assess the tenderer's integration of safety management into its system and software engineering development capability.

**Policy:** *ABR 6303, Navy Safety Manual*  
*Defence Safety Manual (SAFETYMAN)*

**Guidance:** All systems are considered safety critical until proven otherwise. Even where a system is considered to have little or no safety critical attributes, it is still important to maintain a limited System Safety Program. For example, a System Safety Program may be established to ensure regular review of the Preliminary Hazard List, system requirements and/or design for potential safety impacts (such as Occupation Health and Safety, operation or maintenance) throughout the system's life of type. During the acquisition phase this will include, as a minimum, revisiting the system safety criticality at Mandated System Reviews.

**Drafter's Action:** When offer definition activities will be undertaken, a clause needs to be added that indicates the tenderer's willingness to define, scope and agree a System Safety Program which once approved will be included as a contract requirement.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Tender Data Requirement G-5 of Annex G to the TDRL

Statement of Work 4.6.6 Safety

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Safety*

See also – *Philosophy Annex A, Lifecycle Thread – Safety Engineering*

**ANNEX H – AUSTRALIAN INDUSTRY INVOLVEMENT**

**Sponsor:** Industry Policy and Materiel Policy & Services

**Status:** Core. A choice must be made between the options contained within the Tender Data Requirement based on whether offer definition activities are to be undertaken.

**Purpose:** To notify tenderers of the All and Industry Capability Network (ICN) policy requirements for the Contract in accordance with the requirements specified in Annex H to the TDRL.

To request tenderers to provide an All Plan and to show evidence of consultation with ICN where 100% Australia New Zealand content is not used..

**Policy:** *All Manual*  
*Industry Capability Network at <http://www.icn.org.au>*

**Guidance:** Attachment F to the draft conditions of contract details the Industry Requirements for the proposed contract and specifies the target minimum level of All required for the proposed contract. (A 'Target Level' is an expectation of All determined in consultation with the Commonwealth project office to provide guidance to tenderers). Tenderers must provide an All Plan that addresses the Industry Requirements. The All Plan agreed with the successful tenderer will be included in Attachment F to the conditions of contract prior to Contract signature.

Where the value of the tender is greater than \$5 million and the supplier is not proposing 100% Australia New Zealand content, the tenderer is required to show evidence that they have consulted with the Industry Capability Network and an Australian supplier is not available or does not represent value for money.

**INDUSTRY REQUIREMENTS AND MINIMUM LEVEL OF ALL**

Drafters must include the endorsed Industry Requirements for the proposed contract and the Target or minimum level of All required for the proposed contract, including preferred levels of Local Content and Strategic Industry Development Activities (SIDAs), in Attachment F prior to release of the RFT.

The Industry Requirements inserted in Attachment F should be determined by Industry Capability staff, working closely with the Commonwealth project office and Industry Policy staff. The target level of All should be determined in conjunction with the project office. The project office will have developed a Work Breakdown Structure (WBS) as well as an intimate knowledge of the likely nature of work required to be undertaken by ANZ industry. Industry Capability staff should analyse the information and then determine an appropriate level of All (Local Content and SIDAs). The levels for each element of All will depend on the nature of the project.

<p><b>Example</b></p> <p>Where there are ..... the levels might be expressed as:</p> <p>The All Target, or minimum .....of All is:</p> <p>-----100%</p> <p>Within the minimum required.....levels of Local Content and SIDA are:</p> <p>a. Local Content.....75%</p> <p>b. Strategic Industry Development Activities</p> <p style="padding-left: 40px;">Exports &amp; Domestic Sales.....15%</p> <p style="padding-left: 40px;">Research &amp; Development.....10%</p> <p>Exports envisaged may be systems design and R&amp;D that contribute to satisfying Industry Requirements.</p>
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## INFORMATION REQUIRED IN THE TENDERED AII PLAN

Similarly to the other annexes attached to the TDRL, the annex differentiates between:

- a. situations where the Commonwealth intends to shortlist to one preferred tenderer; or
- b. situations where the Commonwealth intends to shortlist to one or more tenderers who will participate in offer definition activities.

In the former situation, a full All Plan is required to be submitted, whereas in the latter situation, only a subset of the All Plan is required. In both situations, the DID for the All Plan (DID-PM-AII-AIIP), which forms part of *ADEFCON (Strategic Materiel)* is to be utilised. Additionally, both situations require the Industry Requirements and the All target to be addressed.

The DID for the All Plan includes the following sections:

- a. Overview and Benefits;
- b. Management of the All Plan;
- c. Monitoring All Achievement;
- d. Industry Requirements;
- e. Australian Industry Involvement Schedule;
- f. Australian Industry Involvement Activity Description Sheets;
- g. Strategic Industry Development Activity Description Sheets;
- h. All Target Summary;
- i. Overseas and ANZ Subcontractor Overview; and
- j. Commitment to Australian Industry.

The purpose of the Australian Industry Involvement Schedule at Appendix 1 to the All Plan DID is to provide All details on all line items in the WBS. The purpose of the All Activity Description Sheet at Appendix 2 is to provide further detailed information on all line items in the WBS. The purpose of the SIDA Activity Description Sheet at Appendix 3 is to provide detailed information on all the SIDAs to be undertaken. The All Reports (DID-PM-AII-AIIPR) to be provided under any resultant contract in accordance with clause 3.14 of the draft Statement of Work will record achievement against the agreed All Schedule in conjunction with the Activity Description Sheets.

The purpose of the Overseas and ANZ Company Overview at Appendix 4 to the All Plan DID is to provide detailed information of all Subcontractors, including SMEs, with proposed contracts worth greater than A\$250,000. Defence uses this information to create profiles on Subcontractors and to assess risk to the Commonwealth in the project under past performance guidelines. The information is also sought to monitor the nature and level of Australian industry's involvement in the project.

The purpose of the Schedule of Commitment of Australian Industry at Appendix 5 to the All Plan DID is to provide detailed information of the company's commitment to Australian Industry. Where tenderers provide information on their involvement in the Defence Industry Involvement Recognition Scheme (DIIREC), tenderers should ensure that letters of recognition from the All Authority (AIIA).

Drafters should note that the *All Manual* can be found under "Publications" in the Industry Resources section of the DMO website (<http://www.defence.gov.au/dmo>).

**Drafter's Action:** Nil

**Related Clauses:** Clause 4 of the draft conditions of contract places an obligation on the Contractor to implement the agreed All Plan at Attachment F and to achieve the stated levels

of Local Content and Strategic Industry Development Activities. Clause 4 also details the liquidated damages that may be claimed by the Commonwealth for failure to achieve the Industry Requirements in the All Plan by the specified Milestone or by Final Acceptance. Note: The amount of liquidated damages for each Industry Requirement is to be calculated and provided in the tendering documentation prior to release of the RFT.

Attachment F to the draft conditions of contract will contain the agreed All Plan.

Clause 3.14 of the draft Statement of Work places a contractual obligation on the Contractor to conduct the All Program in accordance with the All Plan and to further develop, deliver and update the All Plan in accordance with the CDRL. Clause 3.14 also requires any changes to the All Plan to be processed via CCP action and places a contractual obligation on the Contractor to maintain records and All progress reports.

Further Reading: Nil



**ANNEX I – INTEGRATED LOGISTICS SUPPORT****1. Support System Description**

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** The purpose of the information being solicited under this section is to allow the Commonwealth to assess the extent to which the tendered solution for the Support System meets the requirements of the RFT.

**Policy:** *DPPM – Section 5, Chapter 5.6*

**Guidance:** The main focus in the assessment of the tenderer's proposed solution for the Support System is to assess the suitability, risks, and level of maturity associated with the proposal. Each tenderer is required to provide a description of its proposed Support System solution in accordance with a specific Tender DID, namely TDID-ILS-DEF-PSSS.

This data item is supported by sections of other associated Contract DIDs, namely:

- a. the tenderer's proposed Recommended Spares Provisioning List (RSPL);
- b. the proposed Support and Test Equipment Provisioning List (S&TEPL);
- c. the proposed Training Equipment List (which is a defined subset of the Training Equipment and Materials List (TEML) but only focussing on training equipment); and
- d. the proposed Technical Data List (TDL).

There are multiple reasons for requiring each tenderer to provide a description of its proposed Support System solution at the time of tendering, as follows:

- a. the response will provide an indication of each tenderer's understanding of the requirements conveyed in the RFT;
- b. each tenderer's response will provide information on how well the tenderer's proposed Support System solution will provide the requisite support for the Mission System as well as the risks associated with the provision of this support;
- c. the response will provide insight into the level of maturity of the proposed solution and the developmental effort and concomitant risks associated with bringing the solution into being. This insight will provide valuable input into determining the validity of the tenderer's plans (e.g. ISP) for the development of the Support System;
- d. the description of the proposed Support System solution will provide input for reviewing each tenderer's Tender Life Cycle Cost Model (TLCCM), particularly with respect to understanding the concepts and assumptions underpinning the model; or
- e. the response will provide input for assessing the achievability and sustainability of each tenderer's Australian Industry Involvement (AII) proposal.

The rationale for requesting proposed lists of spares and equipment at the time of tendering is twofold, as follows:

- a. these lists assist with understanding the maturity and risks associated with each tenderer's proposed Support System solution; or
- b. perhaps more importantly, the inclusion of these lists recognises that the final lists of Spares, S&TE and Training Equipment are not able to be known at the time of tendering and, therefore, the overall prices for these items are unable to be included in the Contract price. Under *ASDEFCON (Strategic Materiel)*, each of the elements of Spares, S&TE and Training

Equipment are covered by separate Not-To-Exceed (NTE) prices, which each tenderer provides in response to Tender Data Requirement D-2 of Annex D to the TDRL. These lists, therefore, provide a contractual framework for managing three significant cost elements under the resultant Contract. Each of these lists provide unit prices for each of the items in the list, which should be incorporated into the final Contract, with accompanying contractual clauses to ensure that the prices will still stand at the time that procurement action for specific items on the lists occurs. (Drafters are advised to seek advice from Contracting Policy and Operations Branch in developing these clauses.) The NTE prices bound the Commonwealth's exposure at the time of tendering, and enable budgeting for the three separate elements to occur. When the final lists of Spares, S&TE and Training Equipment are determined under the Contract, these lists and the actual prices associated with these lists would be placed on Contract through CCP action, with the Contract Price adjusted accordingly. Of note, the actual prices would not be able to exceed the NTE prices and appropriate contractual clauses would need to be developed to provide for the management of these NTE prices.

**Drafter's Action:** Prior to release of the RFT, drafters must liaise with Contracting Policy and Operations Branch staff to develop the contractual framework for managing the NTE prices and the individual prices associated with each list. Additionally, this Tender Data Requirement may require further development to meet the requirements of the specific project.

**Related Clauses:** Tender Data Requirement D-2 of Annex D to the TDRL requires each tenderer to provide NTE prices for Spares, S&TE and Training Equipment.

Tender Data Requirement D-9 of Annex D to the TDRL requires each tenderer to provide a Tender Life Cycle Cost Model (TLCCM).

Annex H to the TDRL requires each tenderer to describe its All proposal.

Tender Data Requirement I-2 of Annex I to the TDRL requires each tenderer to submit draft versions of the ILS Program plans.

Clauses 5.3.2 and 5.3.5 of the draft Statement of Work require NTE prices to be effective.

**Further Reading:** See also – *Philosophy, Section 6 – Technical Thread*

See also – *Philosophy, Section 11 – Integrated Logistics Support*



## 2. ILS Program Plans

**Sponsor:** Materiel Policy & Services

**Status:** Core. The option should be included where offer definition activities are to be undertaken.

**Purpose:** The purpose of the information being solicited under this section is to enable the Commonwealth to evaluate the management processes, infrastructure and methods that the tenderer proposes to use to establish, design and implement the proposed Support System solution.

**Policy:** *DPPM – Section 5, Chapter 5.6*

**Guidance:** The solicitation of draft plans not only assists with assessing the proposed solution, but also assesses the means by which a potential Contractor will manage, design and implement the proposed solution. This assessment enables the Commonwealth to effectively exercise its corporate governance responsibilities by understanding the full extent of its potential exposure in entering into an agreement for the delivery of a proposed solution based on an external agency's capabilities.

The draft plans to be delivered, as identified in this section, are the minimal set of plans that are required to provide a reasonable level of assessment. In some cases, when the acquisition strategy and the assessed risks warrant it, other plans in addition to those identified may need to be obtained. In the case where additional plans are required, a judicious approach should be used to ensure that only the information required is requested. All additional information required in other plans should be traceable to specified tender evaluation criteria; if not, they may fail to add any value in the tender-evaluation process and will provide an unnecessary cost to industry in tendering.

The plans listed in Table 4 will need to be tailored depending on whether or not offer definition activities will be undertaken. The Table column labelled 'Applicability' contains guidance for drafters as to when each of the plans should be requested. The key used in this column is:

- a. N=1 means request this plan when there will be no offer definition activities and tender evaluations will result in a single preferred tenderer; and
- b. N=2 means request this plan when there will be offer definition activities, normally involving at least two short-listed tenderers.

Those DIDs that have an applicability only when there will be no offer definition activities (N=1) may also be requested when there will be offer definition activities, if the risk in that area of the project warrants receiving the relevant data item at the time of tender. The requirement for these data items at the time of tender is a project-specific decision.

The intention behind Table 4 is that, when offer definition activities are proposed to be undertaken, the remaining plans not requested within the RFT would be developed during the offer definition activities. Plans should be developed during the offer definition activities to a suitable level that supports the decision on the final down-selection to one preferred tenderer, and enables immediate implementation of those plans following contract signature. The Project Authority should tailor the selection of plans required in Tender Data Requirement I-2 with these factors in mind. Further guidance on offer definition activities is provided in relation to clause 3.5 of the conditions of tender and in the Philosophy volume of the handbook.

The Integrated Support Plan (ISP) is the primary plan for defining the management processes, infrastructure and methods that the tenderer proposes to utilise. All other ILS plans are subordinate to the ISP hence, the ISP should not be tailored out of this list if the Project Authority were to choose to tailor this list independently of the Applicability column. Additionally, drafters are advised not to tailor the DID for the ISP because of the significance of this plan in the ILS program.

Furthermore, the scope of the ISP is inextricably linked with the effort required to implement the proposed Support System solution; hence, the two sets of tender requirements are complementary to each other. Drafters should note that, even when the proposed Support System solution involves Total Contractor Support, an ISP should still be obtained to ensure that each tenderer has a sound plan for the development of the Support System.

Drafters should also be aware of the cross-linkages between the ISP and other plans/documents because access to these other plans/documents will be required to fully assess the ILS program. These other plans/documents include:

- a. the Verification and Validation Plan (V&VP), which addresses the V&V of the Support System and Support System Components (noting that this plan is explicitly listed under the ILS evaluation criteria);
- b. the Systems Engineering Management Plan (SEMP), which addresses such aspects as the supportability characteristics of the Mission System and requirements analysis;
- c. the Contract Master Schedule (CMS), which includes the ILS schedule for the program (and is called up through the ISP);
- d. the Tender Life Cycle Cost Model (TLCCM), which includes modelling of the Support System and, therefore, provides insight into supportability and other ILS-related risks;
- e. the Australian Industry Involvement (All) Plan, which will provide a view of the Support System from a different perspective; and
- f. the Intellectual Property (IP) Plan, which will provide insight into whether or not the proposed IP arrangements are consistent with the proposed Support System.

If the Commonwealth project office does not plan to obtain Contract-ready ILS plans prior to Contract, then the Contract Data Requirements List (CDRL) will need to be amended to specify delivery times for these plans after the Effective Date.

**Drafter's Action:** Prior to release of the RFT, drafters will need to make a determination with respect to which ILS plans the project office requires at the time of the initial tender response.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Tender Data Requirement I-1 of Annex I to the TDRL requires each tenderer to submit a description of its proposed Support System solution.

Other Tender Data Requirements require each tenderer to submit a number of plans/documents that provide insight into the ILS program.

Clause 2.4 of the draft Statement of Work describes the process for draft Data Items included as Contract Annexes.

Clause 3.11.1 of the draft Statement of Work details the requirement for a LCC Management Plan (LCCMP).

Clause 3.11.2 of the draft Statement of Work details the requirement for a Contractor Transition Plan (CTXP).

Clause 5.1.2 of the draft Statement of Work details the requirement for ILS program plans.

Annex C to the draft Statement of Work contains the CDRL.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – ILS/LSA Management*

**3. Statement of Relevant Experience**

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To obtain information to enable the Commonwealth to assess the risks due to the tenderer's level of experience in conducting programs of similar size and complexity.

**Policy:** *DPPM – Section 5, Chapter 5.6*

**Guidance:** The purpose of soliciting the specified information is twofold. Firstly, the information will provide the Commonwealth with information as to whether or not the Contractor has experience in conducting ILS programs. Secondly, where a Contractor has a knowledge of logistics and ILS, the information should inform the Commonwealth as to the relevance of this experience for the current project being undertaken (specialist domain knowledge may be required). The level of experience needs to be mapped against the planned scope of ILS activities, as documented in the ILS program plans.

Any claims of relevant experience need to be capable of being validated via a third party; hence, the rationale for including requirements for the tenderer to provide contact information for other clients.

**Drafter's Action:** Nil.

**Related Clauses:** Tender Data Requirement I-2 of Annex I to the TDRL requires each tenderer to submit draft versions of the ILS Program plans.

**Further Reading:** Nil



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**NAMES OF THE CONTRACTING PARTIES AND THE RECITALS**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To provide information about the Contract, the parties to the Contract and the purpose of the Contract.
<u>Policy:</u>	<i>DPPM – Section 2, Chapter 2.1</i>
<u>Guidance:</u>	The inclusion of the information on the front page of the Contract is critical to ensure that a legally binding contract is formed between the parties and that the Contractor is adequately identified.

**INFORMATION IDENTIFIED ON THE FRONT PAGE OF THE CONTRACT**

The front page of the Contract identifies:

- a. the parties who by their signature are agreeing to be bound by the terms set out in the Contract;
- b. for taxation purposes, the Australian Business Number (A.B.N.) of the Contractor and the Commonwealth; and
- c. the purpose of the Contract.

**RECITALS**

Paragraphs A, B and C are the recitals for the Contract. Drafters should note that recitals do not have any legal effect and merely 'set the scene' for the Contract. Drafters should therefore ensure that any provisions that are intended to have legal effect are included as a term of the Contract and not as a recital. Recital A provides a brief description of the Commonwealth's requirement. Recitals B and C describe how two of the essential elements of contract, offer and acceptance have occurred between the parties.

**IDENTIFICATION OF THE CONTRACTOR**

The Contractor is identified by the information provided on the front page of the Contract and drafters should therefore ensure that the details included are correct and sufficient to identify the legal entity entering the Contract. Confusion can sometimes arise where the successful tenderer is part of a group of companies, all of which have similar names. To assist in identification of the Contractor, drafters must ensure that the Contractor's A.C.N. or A.R.B.N., as applicable, is included on the front page of the Contract. It will also be necessary to quote the Contractor's A.B.N., where one exists, for GST purposes.

In addition, drafters must ensure, prior to Contract signature, that the company described as the Contractor is the same legal entity that submitted the successful tender. Drafters should check the information included on the front page of the Contract with the information provided by the successful tenderer in response to the Declaration by Tenderer at Annex B of the TDRL. The only circumstances in which the Contractor's details may vary from the details submitted in the tender is where the Commonwealth has exercised its discretion under clause 2.6 of the conditions of tender to allow a substitution of tenderer. In such a case, drafters must ensure that the substituted tenderer's details are included on the front page of the Contract.

Drafter's Action: Prior to Contract signature, drafters must include the following details:

- a. the name of the Contractor, its A.C.N., A.R.B.N and A.B.N. as applicable and the address of its registered office; and
- b. a brief description of the contracted requirement in recital A.

The Execution Page contains provision to include the date on which the contract was signed. The Execution page is the final page of the draft conditions of

contract. It is a good practice for both parties to initial each page of the Contract, so that there is no confusion over which pages of the Contract are the originals as at the Effective Date.

Related Clauses: Clause 2.6 of the conditions of tender details the process by which the Commonwealth may accept a substituted tender.

Annex B to the TDRL contains the Declaration by Tenderer to be submitted by each tenderer with its tender.

The execution page of the Contract contains the witnessed signatures of the parties to the Contract and the date on which the Contract was signed.

Further Reading: Nil

**1. CONTRACT FRAMEWORK****1.1 Definitions**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To define the meaning of words contained in the Contract by reference to the Glossary at Attachment M to the draft conditions of contract.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Clause 1.1 refers to the Glossary at Attachment M. Unless the contrary intention appears, all words, abbreviations and acronyms in the Contract will have the meaning given to them by the Glossary. The Glossary also contains definitions of Work Breakdown Structure (WBS) elements and a list of documents referred to in the Contract.

**GENERAL INTERPRETATION PRINCIPLES**

Guidance on general interpretation principles that would be applied by a court interpreting the Contract is contained in the guidance on Attachment M and clause 1.2 of the draft conditions of contract.

<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	Clause 1.1 of the conditions of tender states that the RFT will be interpreted in the same manner and its terms will have the same meaning as in the draft Contract.  Clause 1.2 of the draft conditions of contract sets out the basic principles by which the Contract will be interpreted.  The Glossary at Attachment M to the draft conditions of contract contains the meanings of all words, abbreviations and acronyms used in the RFT and Contract.
<u>Further Reading:</u>	Nil

## 1.2 Interpretation

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To set out the basic principles by which the Contract should be interpreted.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Drafters should note this clause carefully to understand its effect on the interpretation of headings, words, references etc. that are included in the Contract.

### INTERPRETATION OF THE RFT

Drafters should also remember that clause 1.1 of the conditions of tender states that the RFT will be interpreted in the same manner and its terms will have the same meaning as in the draft Contract. Therefore the interpretation principles set out in clause 1.2 will also apply to the conditions of tender, including the TDRL and Annexes to the TDRL.

### HEADINGS

Clause 1.2 states that headings do not form part of the Contract and are included for reference purposes only. Drafters must therefore ensure that any words that are intended to have legal effect are included in the terms of the Contract and not in the headings.

### REFERENCES TO LEGISLATION AND OTHER DOCUMENTS

Drafters should also note the different interpretation principles that apply to legislation referenced in the Contract and to specifications, publications, Commonwealth policy and other documents referenced in the Contract. Clause 1.2 states that a reference in the Contract to any legislation is to be interpreted as a reference to an Act of the Commonwealth, State or Territory of Australia, including subordinate legislation, as amended from time to time. In contrast, clause 1.2 states that a reference to any specification, publication, Commonwealth policy or other document is to be interpreted as a reference to the version of that specification, publication, or Commonwealth policy or document that is in effect on the Effective Date. A reference to a specification, publication or other document will only be interpreted as a reference to the current version where agreed in writing by the parties. The most appropriate place to include such an agreement is in the Contract itself.

#### Example

The Contractor shall comply with the requirements and procedures of the *Defence Procurement Policy Manual*, as amended from time to time.

Drafters should note that the selection of the Effective Date as the applicable reference date for specifications, publications, Commonwealth policy and other documents represents a compromise in the position of both parties. Tenderers often state a preference for the applicable reference date to be the Base Date so that they tender on the basis of the version of the specification, publication, Commonwealth policy or document that will apply during the Contract. The Commonwealth on the other hand would prefer the most current version of the specification, publication, Commonwealth policy or document to always apply. When considering whether to require the Contractor to comply with the latest version of a specification, publication, Commonwealth policy or document, drafters should weigh up the importance of the documentation to the performance of the Contract against the cost of requiring tenderers to submit their tenders without certainty as to the applicable documentation.

## OTHER DRAFTING AIDS

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Clause 1.2.1 also includes other usual interpretative provisions such as that a reference to the singular includes the plural, a reference to person includes a body corporate, and a reference to a clause includes a reference to subclauses of that clause.

Drafters should consider the interpretative provisions in clause 1.2.1 where existing clauses are amended or project-specific clauses are included in the Contract to avoid unnecessary duplication when revising or drafting the clauses. For example, clause 1.2.1j ensures that the word 'includes' when used in any form will not be a word of limitation. This makes clear that, when using 'includes' in a clause, drafters do not need to add further words such as 'without limitation' to indicate that the use of 'includes' is not intended to limit the scope of the list or group of issues being dealt with in the particular clause.

Similarly, clause 1.2.1k provides that a reference to a party is to be taken as a reference to a number of related persons. Accordingly, references to the Commonwealth and the Contractor are taken to include their administrators, successors or any person to whom they might assign or novate rights or obligations under the Contract. This avoids any doubt as to whether the Contract can be enforced against those persons and avoids the need to amend the Contract in circumstances where, for example, the Contractor assigns or novates rights or obligations or is placed into administration.

Drafter's Action: Nil

Related Clauses: Clause 1.1 of the conditions of tender states that the RFT will be interpreted in the same manner and its terms will have the same meaning as in the draft Contract.

Clause 1.1 of the draft conditions of contract defines the meaning of words contained in the Contract by reference to the Glossary at Attachment M to the draft conditions of contract.

Further Reading: Nil

**1.3 Commencement of Operation**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To indicate when the Contract comes into effect.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Clause 1.3 states that the Contract will come into effect on the Effective Date. The Effective Date represents the date from which the obligations and responsibilities of the parties under the Contract commence.

**DEFINITION OF EFFECTIVE DATE**

The Effective Date is defined as the date on which the Contract is signed, or if signed on different days, on the date of the last signature. This will ensure that both parties are aware of the Effective Date for the Contract.

**REQUESTS FOR AN ALTERNATIVE EFFECTIVE DATE**

In some circumstances, the successful tenderer may request that the Contract comes into effect on a day earlier or later than the date the parties sign the Contract. Where a request of this nature is received, careful consideration should be given to the reasons behind the request. Reasons may include that the successful tenderer has commenced work in anticipation of receiving the Contract. Advice should be sought from Contracting Policy and Operations Branch where a request of this nature is received and where the proposal is agreed, the definition of Effective Date must be amended.

Drafter's Action: Nil

Related clauses: Nil

Further Reading: Nil

**1.4 Entire Agreement**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To limit the parties' agreement to the Contract and ensure that any representations, communications, agreements, statements or understandings not incorporated into the Contract do not form part of the Contract.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.7</i> <i>Trade Practices Act 1974</i>
<u>Guidance:</u>	Clause 1.4 states that the agreement between the parties will be limited to what is expressly included in the Contract. It aims to protect both parties from any perceived agreements contained in: <ul style="list-style-type: none"> <li>a. conversations between representatives of the parties; or</li> <li>b. external documentation (including other agreements) not incorporated into the Contract.</li> </ul>

**INCLUSION OF AGREEMENTS OR STATEMENTS IN THE CONTRACT**

Representations, communications, agreements, statements or understandings, whether made prior to or after Contract signature, will not form part of the Contract unless they are expressly incorporated. It is therefore important that drafters ensure that all relevant material is included in the Contract. In particular, where it is desired that material in the successful tender becomes a part of the Contract, such material must be included in the contractual documentation prior to Contract signature.

It is important to note, however, that clause 1.4 does not afford absolute protection to either the Commonwealth or the Contractor. The doctrines of estoppel and misrepresentation may still apply. In the case of representations made by the Contractor, section 52 of the *Trade Practices Act 1974* may allow a claim for misleading or deceptive conduct. Commonwealth officers should ensure that statements they make during RFT preparation, tender evaluation, contract negotiations and after signature of the Contract cannot be interpreted by a court to be intended to have legal effect unless they are to be included in the Contract. All discussions with tenderers and the Contractor should be caveated so that it is clear that the discussions are subject to a formal agreement being reached.

<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	Clause 10.1 of the draft conditions of contract states that the Contract may only be varied in accordance with the Contract change proposal process detailed in clause 10.1 of the draft conditions of contract.
<u>Further Reading:</u>	Nil

**1.5 Precedence of Documents**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To establish the precedence of provisions in the event that there is inconsistency between the various documents that collectively make up the Contract.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Where any conflict or discrepancy occurs between two provisions of the Contract, the provision in the higher ranked document will take precedence.

**ORDER OF PRECEDENCE**

Under clause 1.5 the various documents making up the Contract have been listed in order of their importance in explaining the rights and obligations of the parties under the Contract:

- a. the conditions of contract and the Glossary are the highest ranked in the order of precedence as they detail the legal rights and obligations of the parties and define the terms used in relation to those rights and obligations;
- b. the Statement of Work and its Annexes are next in the order of precedence as they set out in detail the work to be performed by the Contractor and the required functionality to result from that work;
- c. the Attachments to the Contract other than the Statement of Work and the Glossary are ranked second last in the order of precedence as they provide further information concerning the matters contained in the conditions of contract; and
- d. documents incorporated by express reference as part of the Contract are the lowest ranked in the order of precedence as these documents are usually generic rather than drafted specifically for the project.

It is important to note that any inconsistency between elements of the RFT will be resolved in accordance with the order of precedence set out at clause 1.2 of the conditions of tender (see guidance on clause 1.2 of the conditions of tender).

It is important that drafters note that clause 1.5 does not assist interpretation where there is inconsistency within a document or group of documents accorded the same precedence. A conflict of this nature will be resolved through interpretation of the Contract as a whole. Therefore, it is important to ensure that there is no conflict or discrepancy internally within a document as well as in the Contract as a whole. The examples below illustrate how clause 1.5 will be applied to resolve an inconsistency that is found in the Contract.

**Example A**

Clause 5.1 of the conditions of contract is inconsistent with clause 2.8 of the Statement of Work - clause 5.1 of the conditions of contract will take precedence.

**Example B**

Clause 3.10 of the conditions of contract is inconsistent with Attachment H - clause 3.10 of the conditions of contract will take precedence.

**Example C**

Clause 5.1 of the conditions of contract is inconsistent with clause 5.10 of the conditions of contract - precedence will be resolved through interpretation of the Contract as a whole.

**Example D**

Annex A of the Statement of Work is inconsistent with Attachment J - Annex A of the Statement of Work will take precedence.



Example E

Attachment J is inconsistent with Attachment I - precedence will be resolved through interpretation of the Contract as a whole.

Example F

Attachment I is inconsistent with the *All Manual* which is expressly incorporated as part of the Contract - Attachment I will take precedence.

AVOIDANCE OF INCONSISTENCY

The order of precedence in clause 1.5 (and the related RFT order of precedence clause set out at clause 1.2 of the conditions of tender) is designed to protect the Commonwealth in the event of any inconsistency, however, the precedence of the documents will not always provide the outcome desired by the Commonwealth. Drafters should therefore read the Contract in its entirety, prior to Contract signature, to ensure that no conflict or discrepancy exists between the provisions of the various documents that make up the Contract.

PROJECT SPECIFIC REVISIONS

Revisions or additions to the order of precedence may be considered to address project-specific issues. Before any such amendment is made advice should be sought from Contracting Policy and Operations Branch.

Drafter's Action: Nil

Related Clauses: Clause 1.2 of the conditions of tender describes the precedence that will apply to documents forming part of the RFT.

Further Reading: Nil

**1.6 Contracted Requirement**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To summarise the work to be performed by the Contractor in return for payment by the Commonwealth of the Contract Price.

Policy: *DPPM – Section 2, Chapter 2.1*

Guidance: In order for a contract to be formed in law certain essential elements of contract must exist. To establish that the essential element of consideration has been met, clause 1.6 describes the consideration payable by the Commonwealth in return for performance of work under the Contract by the Contractor.

Drafter's Action: Nil

Related clauses: Nil

Further Reading: Nil

## 1.7 Option for Further Quantities and Optional Extras

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Optional. To be used where the Commonwealth requires an option to acquire additional quantities of Supplies and/or other goods and services not included in the Supplies.
<u>Purpose:</u>	To obtain from the Contractor an offer to supply additional quantities of Supplies and/or optional extras and to specify the terms that will apply if the Contractor's offer is accepted by the Commonwealth.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Under this clause, the Contractor grants the Commonwealth an option to procure additional quantities of Supplies and/or optional extras.

### PERIOD OF THE OFFER

This option constitutes an offer from the Contractor to the Commonwealth. The Contractor is bound to keep the offer open for acceptance by the Commonwealth for the period specified in clause 1.7.1. The Commonwealth is under no legal obligation to accept the offer but may elect to do so at any time within the period specified in clause 1.7.1. The Commonwealth may elect to procure:

- a. additional quantities of Supplies and one or more items of optional extras;
- b. additional quantities of Supplies but no optional extras; or
- c. one or more items of optional extras but no additional quantities of Supplies.

If the Commonwealth does not elect to exercise the option under clause 1.7 within the period specified in clause 1.7.1, the Contractor's offer will lapse.

### APPLICABLE TERMS

Where the Commonwealth elects to exercise the option in clause 1.7.1, the terms of the Contract, including those detailed at Annex E to Attachment B to the conditions of contract, will apply to the additional quantities of Supplies and/or optional extras acquired by the Commonwealth. Annex E to Attachment B will contain the negotiated Schedule of Further Quantities and Optional Extras including any additional or varied terms to the Contract. Careful consideration should be given to the terms included in Annex E to Attachment B. Drafters must ensure that the terms are clear, especially where the terms vary the standard terms of the Contract.

### ACCEPTING THE OFFER

The procedure through which the Commonwealth can exercise the option to procure additional quantities of Supplies and/or optional extras is detailed in clause 1.7.2. To exercise the option, the Commonwealth must notify the Contractor in writing, within the period set out in 1.7.1, of the quantity and type of additional Supplies and/or optional extras that it wishes to purchase. Within 30 days of receipt of the Commonwealth's notification, the Contractor must submit a Contract change proposal in accordance with clause 10.1 of the conditions of contract. The Contract change proposal received from the Contractor must be reviewed and approved by the Project Authority in accordance with clause 10.1 of the conditions of contract.

It is important to note that the Contract change proposal required by clause 1.7.2 need not be provided or approved within the period specified in clause 1.7.1. As long as the Project Authority notifies the Contractor in writing of the additional Supplies and/or optional extras that the Commonwealth wishes to purchase within the period specified in clause 1.7.1, the Contractor's offer will be accepted by the Commonwealth and a legally binding contract will be formed. However, a Contract change proposal reflecting the accepted offer should be approved by the Project Authority and signed by both parties to effect a formal change to the Contract to document the contractual undertaking.

Drafter's Action: Prior to Contract signature, drafters should insert the date or Milestone by which the option has to be exercised by the Commonwealth.

Related Clauses: Tender Data Requirement D-7 of Annex D to the TDRL requests tenderers to provide full details of the additional quantities of Supplies and/or optional extras that they are willing to provide in the format of the Price Schedule. Tender Data Requirement D-7 also requests tenderers to state the time period during which the Commonwealth can exercise the option.

Annex E to Attachment B to the draft conditions of contract will, if required, contain the agreed Schedule of Further Quantities and Optional Extras, including any additional or varied terms.

Further Reading: Nil

## 2. ROLES AND RESPONSIBILITIES

### 2.1 Project Authority

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To explain the role of the Project Authority in relation to the Contract and to set out the extent of the Project Authority's powers under the Contract.
<u>Policy:</u>	<i>DPPI 9/2002 - Providing Purchasing Authority and Financial Delegations to Contractors</i>  <i>DPPM – Section 5, Chapter 5.9</i>  <i>DRB 47 Manual of Financial Delegations</i>
<u>Guidance:</u>	Clause 2.1 outlines the role of the Project Authority, including its responsibilities and authority in relation to the Contract. The Project Authority, or an Authorised Person to whom the Project Authority has delegated its functions, is responsible for administering the Contract on behalf of the Commonwealth and will be the primary point of contact within Defence for the Contractor.

#### APPOINTMENT, DELEGATION AND AMENDMENT OF DETAILS

Under clause 2.1.1 the Project Authority is responsible for administering the Contract on behalf of the Commonwealth. The Project Authority for the Contract is detailed in the Glossary at Attachment M to the conditions of contract. As the Project Authority is the primary point of contact, the details of the Project Authority should be kept up-to-date. All changes must be made through the Contract variation process detailed in clause 10.1 of the conditions of contract. To avoid the need to make constant changes, the definition of 'Project Authority' included in the Glossary should only detail the position title of the Project Authority.

Clause 2.1.3 provides that the Project Authority may delegate its functions, or authorise its functions to be carried out on its behalf. The Commonwealth is required to advise the Contractor in writing of the persons who are delegated functions or authorised to carry out functions on behalf of the Project Authority (referred to in clause 2.1.3 as 'Authorised Persons') from time to time, and the scope of their delegation and authorisation. It is therefore essential that the scope of any delegation or authorisation to be issued by the Project Authority is carefully considered and defined prior to proceeding.

It is vital, from a contract management perspective, that the Commonwealth meets its obligations under this clause to ensure that there is no ambiguity in relation to the authority of persons involved in giving directions to the Contractor, and to minimise the risk of the Contractor relying on unauthorised representations from Commonwealth or non-Commonwealth officers regarding the conduct of work under the Contract (see discussion below). This is particularly the case where a contractor or consultant engaged under another Defence contract is given authority to issue directions to the Contractor.

It is therefore essential that the scope of any delegation or authorisation to be issued by the Project Authority is carefully considered and defined prior to notifying the Contractor of the authorisation or delegation. Where the proposed Authorised Person is a non-Commonwealth officer e.g. a contractor or consultant, the policy contained in *DPPI 9/2002 Providing Purchasing Authority and Financial Delegations to Contractors* should be referenced.

It should also be noted that where the Commonwealth proposes to appoint a non-Commonwealth officer as the Project Authority, clause 2.1.2 requires the Commonwealth to obtain the written consent of the Contractor prior to the appointment being made. The Contractor's consent may not be unreasonably withheld. A Contractor would, however, be justified in withholding its consent where the Commonwealth was seeking to appoint one of the Contractor's competitors as

the Project Authority because of the inherent conflict of interest involved in allowing a company's competitor to have Project Authority type powers over the company.

#### COMPLIANCE WITH DIRECTIONS OF THE PROJECT AUTHORITY

Clause 2.1.4 places an obligation on the Contractor to comply with the reasonable directions of:

- a. the Project Authority where they are made within the scope of administration of the Contract; and
- b. an Authorised Person where they are made within the scope of their delegation or authorisation.

Clause 2.1.5 provides that, if given orally, a direction must be confirmed in writing by the Project Authority or Authorised Person within 14 days. Clause 2.1.5 also notifies the Contractor that the Project Authority and Authorised Persons do not have the authority to waive any provision of the Contract, or to release the Contractor from its obligations under the Contract except in accordance with the Contract variation process detailed in clause 10.1 of the conditions of contract or the non-conforming Supplies approval process detailed in clause 8.4 of the Statement of Work.

Clause 2.1.6 further provides that unless authorised by the Contract or a direction given under clause 2.1.5, any work performed or cost incurred by the Contractor in response to a communication from the Project Authority or an Authorised Person is at the Contractor's sole risk. It is important to note, however, that in some circumstances the legal doctrines of estoppel or misrepresentation may apply and it may be reasonable for the Contractor to rely on a representation made by the Project Authority even though it contravenes clause 2.1.5.

Drafter's Action: Nil

Related Clauses: Clause 1.4 of the conditions of tender provides details of the contact officer for the tendering process. In most cases this will be the same person as the Project Authority.

Clause 2.2 of the draft conditions of contract provides details of the Contractor's representative for the Contract and clause 2.3 of the draft conditions of contract details how communication required under the Contract can be made between the parties.

Further Reading: Nil

**2.2 Contractor's Representative**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To require the Contractor to nominate the Contractor's representative for the Contract on or before the Effective Date.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	<p>Clause 2.2 seeks to establish a single point of contact within the Contractor's organisation through whom all correspondence can be routed. The Contractor's representative should be the person with authority to control the work being performed, to obtain any necessary information about the project and to direct the Contractor's operations in respect of the Contract. Generally, the Contractor's representative should be the Project Manager for the Contractor.</p> <p>It should be noted that any communication passed by the Commonwealth to the Contractor's representative will be deemed under clause 2.2 to have been delivered to the Contractor. Therefore it is essential that the Project Authority is notified of any change in the details of the Contractor's representative as soon as possible after the change occurs.</p>
<b><u>Drafter's Action:</u></b>	Nil
<b><u>Related clauses:</u></b>	Clause 2.1 of the draft conditions of contract explains the role of the Project Authority and clause 2.3 of the draft conditions of contract details how communication required under the Contract can be made between the parties.
<b><u>Further Reading:</u></b>	Nil

**2.3 Notices**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To provide a process by which communication required under the Contract can be made between the parties.
<b><u>Policy:</u></b>	<i>DPPM – Section 4, Chapter 4.6</i>
<b><u>Guidance:</u></b>	Clause 2.3 states how communication can be made under the Contract.

**COMMUNICATION UNDER THE CONTRACT**

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Clause 2.3.1 details the postal addresses and fax numbers for the Project Authority and Contractor's representative. A communication made in relation to the Contract will only be effective if it is in writing, signed and delivered to the respective party at the address or facsimile number specified in clause 2.3.1. Therefore it is essential that the details in clause 2.3.1 are kept up-to-date. All changes must be made through the Contract variation process detailed in clause 10.1 of the conditions of contract.

Clause 2.3.2 deems when various forms of communication will be taken to have been delivered. A communication sent through the post is deemed to be delivered to the recipient in 3 Working Days if sent within Australia and in 8 Working Days if sent by airmail from one country to another. A communication sent by facsimile is deemed to have been delivered at the time recorded by the transmitting facsimile machine unless the sender is otherwise notified within 1 Working Day of the notice being sent.

**COMMUNICATION BY E-MAIL**

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It is important to note that to be effective, a communication under the Contract must be in writing and signed by the party sending the notice. E-mail is therefore not addressed in this clause due to the complex technical issues associated with electronic signatures. Where it is considered appropriate to allow communications to be made by e-mail, procedures must be adopted to address the requirement for signature authentication and clause 2.3 must be amended to include the e-mail address and deemed delivery time for e-mails. Advice on electronic signatures and signature authentication should be sought from the Directorate of Electronic Business Strategies prior to including any provision allowing for communication by e-mail in the Contract.

<b><u>Drafter's Action:</u></b>	Prior to release of the RFT drafters must insert the postal address and fax number of the Project Authority. Prior to Contract signature, drafters must insert the postal address and fax number of the Contractor's representative.
<b><u>Related Clauses:</u></b>	Clauses 2.1 and 2.2 of the draft conditions of contract detail the role of the Project Authority and the Contractor's representative in the administration of the Contract.
<b><u>Further Reading:</u></b>	Nil



### 3. PRODUCTION OF THE SUPPLIES

#### 3.1 Language and Measurement

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To specify that all information delivered as part of the Supplies is to be written in English and that Australian units of measurement should be used unless otherwise agreed by the Project Authority.

Policy: *National Measurement Act 1960*

Guidance: Clause 3.1 describes the language and measurements that must be used for information and Supplies delivered under the Contract.

#### INFORMATION TO BE DELIVERED IN ENGLISH

Clause 3.1 places a contractual obligation on the Contractor to provide information delivered as part of the Supplies in English and to ensure that any translation of information into English is free from ambiguity.

#### NATIONAL MEASUREMENT ACT 1960

The *National Measurement Act 1960* stipulates that, other than for imported or exported supplies, contracts entered into in Australia for a measured volume, weight or other physical quantity of goods must be expressed in Australian legal units of measurement where the price has been calculated by reference to that measure, otherwise the Contract entered into is void.

#### Example

A contract entered into for the supply of x pints of petrol at a price of y cents per pint would be void as litres are the Australian legal unit of measurement.

Reflecting the *National Measurement Act 1960*, clause 3.1.2 requires measurements of physical quantity to be in Australian legal units as prescribed under the *National Measurement Act 1960* or, if Supplies are imported, units of measurement as agreed by the Project Authority.

#### USE OF ALTERNATIVE MEASUREMENTS FOR IMPORTED SUPPLIES

Where Supplies are being imported, in many cases it will be appropriate to agree that alternative units of measurement may be used for documentation relating to the imported items of Supplies. Issues to be considered include the reliability and useability of the Supplies where alternative units of measurement are used and the cost to the Commonwealth of requiring that Australian units of measurement are used. Where it is determined that alternative units of measurement are appropriate, the alternative units of measurement and the items of Supplies for which they may be used should be clearly identified in the Statement of Work. If alternative units of measurement are specified in the Statement of Work, this could give rise to ambiguity with the current wording of clause 3.1.2. This is because the Precedence of Documents clause (clause 1.5 of the conditions of contract) provides that the conditions of contract prevail over the Statement of Work to the extent of any inconsistency. Accordingly, to avoid doubt, clause 3.1.2 of the draft conditions of contract may need to be revised to state 'Except as otherwise set out in the Contract, measurements ...'.

Drafter's Action: Nil

Related Clauses: Clause 2.2 of the conditions of tender states that tender responses are to be in English and that measurements, unless otherwise specified, are to be expressed in Australian legal units of measurement.

Further Reading: Nil

### 3.2 Design, Development and Production

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To establish the broad standard to which the Supplies will be designed and to place responsibility on the Contractor for compatibility with existing equipment.
<u>Policy:</u>	<i>Aerospace Systems Division QMS Procedure 3-2-1-4</i> <i>DI(N) LOG 47-3 "Technical Regulation of Navy Materiel"</i> <i>DI(N) TECH 9-1 "Design Approval of RAN Systems and Equipment"</i>
<u>Guidance:</u>	Clause 3.2 specifies the design standard for the Contract and the compatibility requirements for the Supplies.

#### DESIGN STANDARD FOR THE CONTRACT

Clause 3.2.1 refers to the degree of skill and care with which the Contractor is required to design the Supplies under the Contract. Where a specific design standard is not specified in the Contract, the Contractor must apply industry best practice relevant to the Supplies. Drafters should include the design standard for the Contract in the Statement of Work wherever possible as the industry best practice relevant to the Supplies may be uncertain and require judicial determination.

#### COMPATIBILITY OF THE SUPPLIES

Clause 3.2.2 places an obligation on the Contractor to design, develop and produce the Supplies so that they are compatible with and do not restrict the performance of existing equipment. Existing equipment is defined as equipment specified or referred to in the Contract or equipment used by the Commonwealth that the Contractor knows or reasonably ought to know will be used with the Supplies. The definition of "existing equipment" incorporates a reasonable knowledge test, however, the breadth of coverage that will be given to clause 3.2.2 by a court is unknown. Wherever possible, and as far as is practical to do so, drafters should therefore include in the Statement of Work details of all existing equipment with which the Supplies must be compatible to ensure that the Commonwealth's intended use of the Supplies is not limited.

#### REQUIREMENT FOR ADDITIONAL DESIGN AND DEVELOPMENT CLAUSES

Clause 3.2 will generally not sufficiently cover all the design and development issues associated with the performance of the Contract and as such clauses suitable to the specific project requirements should be included in the draft conditions of contract and Statement of Work as appropriate.

Where contracts will involve:

- a. the design of equipment that has a technical or functional interface with ADF aircraft; or
- b. the procurement of RAAF technical equipment without any interfaces with ADF aircraft,

drafters should refer to the *Aerospace Systems Division QMS Procedure 3-2-1-4* which contains guidance on draft Data Item Descriptions and draft clauses to be included in the draft conditions of contract and draft Statement of Work.

For contracts that will involve the procurement of Navy equipment, drafters should refer to *DI(N) TECH 9-1 "Design Approval of RAN Systems and Equipment"* and *DI(N) LOG 47-3 "Technical Regulation of Navy Materiel"*.

<u>Drafter's Action:</u>	Prior to release of the RFT, drafters should consider whether any project specific design and development clauses should be included in the draft Statement of Work and draft conditions of contract.
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**Related Clauses:** Clause 2.1 of the draft Statement of Work requires the Contractor to perform all activities necessary to manage, design, develop, construct, integrate, test, deliver, install and commission the Supplies to the Commonwealth in accordance with the Contract. The draft Statement of Work contains many clauses that impact on the design, development and production of the Supplies including:

- a. clause 2.5 - Ozone Depleting Substances and Hazardous Substances;
- b. clause 4.2 - System Definition;
- c. clause 4.3 - System Design;
- d. clause 4.4 - System Implementation;
- e. clause 4.5 - System Analysis, Design and Development;
- f. clause 4.6 - Specialty Engineering; and
- g. clause 8 - Quality Management Program.

**Further Reading:** Nil

### 3.3 Export Approvals

<u>Sponsor:</u>	Contracting Policy & Operations and Industry Policy and Programs
<u>Status:</u>	Core
<u>Purpose:</u>	To specify the date or Milestone by which the Contractor must obtain all necessary export licences or other approvals and to detail the procedure by which the Contractor must keep the Project Authority informed of its progress in obtaining the required export licences or other approvals.
<u>Policy:</u>	Nil
<u>Guidance:</u>	In most cases, due to the laws of the country of manufacture, it is not possible to obtain all export licences or other approvals prior to Contract signature. Clause 3.3 aims to protect the Commonwealth's interests in such cases by requiring the Contractor to obtain the necessary export licences or other approvals by a specified time or Milestone.

#### CONTRACTOR TO NOTIFY THE COMMONWEALTH

Under clause 3.3.2 the Contractor is obliged to notify the Commonwealth in writing within 10 days of the following things happening:

- a. the application for;
- b. the Contractor becoming aware of the grant of;
- c. the Contractor becoming aware of the refusal or revocation of; or
- d. the Contractor becoming aware of any qualification of,

an export licence or other approval.

Accordingly, the Contractor is required to keep the Commonwealth informed not only that it has applied for an export licence or other approval, but also when the Contractor becomes aware that it has been granted or refused, or that it has subsequently been revoked.

The wording of clause 3.3.2 recognises that it may take some time after the grant or refusal of a licence or approval for the Contractor to become aware of the event. For this reason the Contractor's obligation to notify the Commonwealth within 10 days is activated on the Contractor becoming aware of the occurrence of the event and not on the point in time at which the event actually occurs. Otherwise, the Contractor could potentially be in breach of contract without being aware of it.

#### PROJECT AUTHORITY ASSISTANCE

The Project Authority may, in some circumstance, be able to offer assistance to the Contractor in securing export approvals from other governments. Clause 3.3.3 requires the Project Authority, upon the request of the Contractor, to provide all assistance reasonably required to facilitate the provision of an export licence or other approval. Where assistance is requested by a Contractor, advice on the nature and extent of assistance that can be provided by the Commonwealth should be sought from the International Materiel Branch in the Industry Division of the Defence Materiel Organisation.

#### TERMINATION FOR DEFAULT OR FRUSTRATION

Where the Contractor is unable to obtain the necessary export licences or other approvals required under the Contract, it must be determined whether the failure to obtain the export licence or other approval is due to an act or omission of the Contractor or is outside the Contractor's reasonable control. Clause 12.2.1i of the conditions of contract provides the Commonwealth with the right to terminate the Contract for default unless the failure to obtain the export licence was outside the Contractor's reasonable control. Where the failure is determined to be outside the Contractor's reasonable control the doctrine of frustration may apply. Advice should be sought from Contracting Policy and Operations Branch prior to terminating the Contract either in accordance with clause 12.2.1i or the doctrine of frustration. In

most cases it will not be appropriate to use clause 12.3 of the conditions of contract to terminate the Contract for convenience where the Contract is frustrated or the Contractor is in default.

**Drafter's Action:** Prior to Contract signature, drafters must insert the date or Milestone by which the Contractor must obtain all required export licences or other approvals.

**Related Clauses:** Tender Data Requirement C-1 of Annex C of the TDRL requests tenderers to provide information on Supplies that are being imported and evidence that the tenderer will be granted an export approval for the imported items if the tenderer is awarded any resultant contract.

Clause 12.2.1i of the draft conditions of contract provides the Commonwealth with the right to terminate the Contract for default where the Contractor fails to obtain or ceases to hold an export licence or other approval required to enable it to comply with its obligations under the Contract except where the failure or cessation was outside of the Contractor's reasonable control.

**Further Reading:** Nil

### 3.4 Imported Supplies and Customs Entry

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To allocate responsibility for arranging customs entry and payment of customs duty to the Contractor, and to provide a mechanism through which an increase or decrease in the rate of customs duty applicable to the Supplies can be recovered or reimbursed by the Commonwealth.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Clause 3.4 imposes an obligation on the Contractor to arrange for customs entry and the payment of applicable customs duty. The amount of customs duty payable by the Contractor will be included in the Contract Price. The amount of customs duty payable will be determined by reference to the rate of customs duty applicable at the Base Date.

#### ALTERATION OF THE RATE OF CUSTOMS DUTY

Where the rate of customs duty applicable to an item of Supplies is altered between the Base Date and the date of entry of the item, clause 3.4.2 provides a mechanism by which:

- a. the Contractor may claim a reimbursement of the amount of any increase in the rate of customs duty; and
- b. the Commonwealth may recover the amount of any decrease in the rate of customs duty as a debt recoverable under clause 12.4 of the conditions of contract.

#### CONTRACTOR BREACH OF AUSTRALIAN CUSTOMS LEGISLATION

Clause 3.4.3 is included to cover the situation where the Contractor has breached Australian Customs legislation. Clause 3.4.3 makes it clear that the Commonwealth will not be liable to reimburse the Contractor for any fines or penalties imposed on the Contractor as a result of the Contractor failing to comply with Australian Customs legislation.

#### DELAY IN THE ENTRY OF SUPPLIES

Where the entry of Supplies through Australian Customs is delayed, clause 6.2 of the conditions of contract will apply to determine whether the Contractor is entitled to claim a postponement of the date for delivery of the Supplies and/or a Milestone Date. The Contractor will not be entitled to claim postponement costs under clause 6.3 of the conditions of contract. This is due to the fact that "Commonwealth" is defined for the Contract as the Commonwealth represented by the Department of Defence and therefore actions of the Australian Customs Service will not be actions of the Commonwealth as required by clause 6.3 of the conditions of contract.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement C-1 of Annex C of the TDRL requests tenderers to provide information on Supplies that are being imported. Tenderers are requested to include the amount of customs duty payable for each item of Supplies in the Price Schedule in Annex D of the TDRL.

Clauses 6.2 and 6.3 of the draft conditions of contract detail when the Contractor is entitled to claim a postponement of the date for delivery of the Supplies and/or a Milestone Date and to recover postponement costs.

Annex A to Attachment B to the draft conditions of contract will contain the agreed amount of customs duty payable.

Further Reading: Nil

### 3.5 Provision and Management of GFM

Sponsor: Contracting Policy & Operations

Status: Optional. To be used when GFM is to be supplied to the Contractor. Clauses 3.5 to 3.7 of the draft conditions of contract and clause 3.13 of the draft Statement of Work are optional but interdependent and must be inserted, amended or omitted as a package.

Purpose: To impose on the Commonwealth an obligation to provide GFM to the Contractor and to impose an obligation on the Contractor to manage GFM in accordance with clauses 3.5, 3.6 and 3.7 of the conditions of contract and clause 3.13 of the Statement of Work.

Policy: The preferred Departmental position is to minimise the provision of GFM to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under a contract without GFM.

*DI(G) LOG 07-4 "Provision of Material to Contractors"*

Guidance: GFM is any equipment, information or data listed in Annex A to Attachment E to the conditions of contract that is provided to the Contractor by the Commonwealth to assist in the performance of the Contract.

#### PROVISION OF GFM

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Clause 3.5 places a general obligation on the Commonwealth to provide GFM to the Contractor in accordance with clauses 3.5, 3.6 and 3.7 of the conditions of contract and 3.13 of the Statement of Work. Of these provisions, clause 3.13.1 of the Statement of Work deals with the delivery of GFM by the Commonwealth.

#### MANAGEMENT OF GFM

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Clause 3.5 places a general obligation on the Contractor to manage GFM provided by the Commonwealth in accordance with clauses 3.5, 3.6 and 3.7 of the conditions of contract and 3.13 of the Statement of Work. Of these provisions, clause 3.13.1 of the Statement of Work deals with the receipt of GFM by the Contractor, clause 3.13.2 of the Statement of Work deals with use of GFM by the Contractor and clause 3.13.3 of the Statement of Work deals with care of GFM.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement E-12 of Annex E of the TDRL, requests tenderers to provide details of the GFM that they require to perform the Contract, including the quantity, date required, location and intended purpose. Tenderers must also identify in Tender Data Requirement D-2 of Annex D to the TDRL the additional cost to be added to the tendered price should any GFM not be made available.

Clauses 3.6 and 3.7 of the draft conditions of contract and clause 3.13 of the draft Statement of Work contain more detailed GFM provisions.

Annex A to Attachment E to the draft conditions of contract will contain the agreed details on all GFM to be provided under the Contract including the quantity, date required, location, time period for inspection and intended purpose of the GFM.

Further Reading: Nil

### 3.6 Liability for GFM

Sponsor: Contracting Policy & Operations

Status: Optional. To be used when GFM is to be supplied to the Contractor. Clauses 3.5 to 3.7 of the draft conditions of contract and clause 3.13 of the draft Statement of Work are optional but interdependent and must be inserted, amended or omitted as a package. The optional clause 3.6.4 must be included where there is Commonwealth Mandated GFM, and optional clauses 3.6.8 through 3.6.11 must be included if GFI or GFD is to be provided.

Purpose: To allocate liability for GFM between the Commonwealth and the Contractor.

Policy: The preferred Departmental position is to minimise the provision of GFM to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under a contract without GFM.

*DI(G) LOG 07-4 "Provision of Material to Contractors"*

Guidance: Clause 3.6.1 places an obligation on the Contractor to inform the Project Authority in writing within 7 days of it becoming aware that any GFM in its care is lost, destroyed, damaged, defective or deficient.

#### LIABILITY FOR FAILURE TO DELIVER OR PROVIDE ACCESS TO GFM

Clause 3.6.2 addresses the Commonwealth's liability where the Commonwealth fails to deliver or provide the Contractor with access to GFM at the places and times stated in Annex A to Attachment E to the conditions of contract as required by clause 3.13.1 of the Statement of Work. Where the Commonwealth fails to deliver or provide access to GFM as required by the Contract, the Contractor will be entitled to claim a postponement of the date for delivery of Supplies and/or a Milestone Date and to recover postponement costs in accordance with clauses 6.2 and 6.3 of the conditions of contract unless the failure to deliver or provide access was caused by a default or an unlawful or negligent act or omission of the Contractor, its officers, employees, agents or Subcontractors. It is therefore important to ensure that the GFM can be supplied by the Commonwealth at the time and place specified in Annex A to Attachment E. The process for submission and consideration of any such claims is set out in clauses 6.2 and 6.3 of the conditions of contract.

#### LIABILITY FOR LOST, DESTROYED, DAMAGED OR DEFECTIVE GFM

Clauses 3.6.3 and 3.6.5 address the parties' liability for lost, destroyed, damaged, defective or deficient GFM. Under clauses 3.6.3 and 3.6.5, the Commonwealth will be liable for the loss or destruction of, damage to or defects or deficiencies in GFM except to the extent that the loss, destruction, damage, defectiveness or deficiency was caused by a default or an unlawful or negligent act or omission of the Contractor, its officers, employees, agents or Subcontractors. It should be noted that where the Contractor has care, custody and control of GFM it may be quite difficult to prove that GFM was damaged by the Contractor's default or unlawful or negligent act.

#### COMMONWEALTH MANDATED GFM

In addition to the Commonwealth's liability under clauses 3.6.2 and 3.6.3, in clause 3.6.4 the Commonwealth warrants that Commonwealth Mandated GFM will be fit for the purposes for which the GFM has been mandated under the Contract. As the Commonwealth warrants the fitness for purpose of Commonwealth Mandated GFM, careful consideration should be given to the Contract requirement before mandating GFM for use by the Contractor. It may be appropriate for GFM to be classed as Commonwealth Mandated GFM where:

- a. the Commonwealth mandates that the Contractor incorporate equipment provided by the Commonwealth into the Supplies; or



- b. data is required for the performance of the Contract that can only be provided to the Contractor by the Commonwealth and which can not be independently verified by the Contractor.

It should be noted that as the Commonwealth does not warrant the suitability of GFI, GFI can never be Commonwealth Mandated GFM.

The warranty provided by the Commonwealth in the optional clause 3.6.4 will not apply where the GFM is not fit for purpose as a result of:

- a. the Contractor's failure to properly inspect and test the GFM as required by the Contract;
- b. the Contractor's misuse of the GFM;
- c. a failure caused by a modification or integration action of the Contractor;  
or
- d. any other failure within the Contractor's control.

The above restrictions are placed on the Commonwealth's warranty to ensure that the Commonwealth is not liable where an action by the Contractor renders GFM that was fit for purpose on delivery, no longer fit for purpose.

#### REPAIR OF DAMAGED, DEFECTIVE OR DEFICIENT GFM

The powers provided by clause 3.6.6 allow the Project Authority greater flexibility to rectify inadequate GFM in the most cost effective and least time-consuming manner.

Where GFM in the care of the Contractor is damaged, defective or deficient, under clause 3.6.6 the Project Authority may in writing require the Contractor to transport, dispose of or repair the GFM. Where the Contractor is liable under clause 3.6.5, the Contractor will bear the cost of any work performed. In all other cases, the work will be performed at the cost of the Commonwealth. In either case, the parties shall agree the cost of the work prior to it being undertaken by the Contractor. This is important because, if the Contractor is liable under clause 3.6.5, the parties need to agree whether the value of this work will discharge or partially discharge the Contractor's liability. By contrast, if the Commonwealth is liable for the cost of the work, the Commonwealth will want to know how much it is going to cost and also satisfy itself that using the Contractor to do the work is the most cost effective option.

#### Example

Where a piece of GFE has a minor defect which can easily be fixed by the Contractor, the most cost effective and time efficient solution would probably be to require the Contractor to remedy the defect, subject to the parties agreeing on the cost of the work. Requesting that the GFE be returned to the Commonwealth, having the defect rectified by a third party and then returning the GFE to the Contractor would probably be more time consuming and less cost effective.

#### IMPACT OF GFM ON PRODUCTION AND FUNCTIONALITY OF SUPPLIES

Clause 3.6.7 places the responsibility for ensuring that GFM does not adversely impact on the production, delivery or functionality of the Supplies on the Contractor. This clause aims to ensure that, where GFM is supplied in accordance with the Contract, the Commonwealth is not liable for the Contractor's use of the GFM. This clause has to be read along with the Commonwealth's warranty of Commonwealth Mandated GFM in clause 3.6.4, however, clause 3.6.7 will still apply where the Contractor uses Commonwealth Mandated GFM contrary to the purposes detailed in Annex A to Attachment E.

#### GFI AND GFD

Clauses 3.6.8 to 3.6.11 outline specific limitations that apply to GFI and GFD. Clauses 3.6.8 and 3.6.9 notify the Contractor that the Commonwealth does not

warrant the suitability of GFI and as such the Contractor uses the GFI at its own risk. In contrast, clauses 3.6.10 and 3.6.11 notify the Contractor that the Commonwealth warrants that GFD will be fit for its intended purpose as specified in Annex A to Attachment E.

Careful consideration should therefore be given to whether documentation provided under the Contract should be classified as GFI or GFD. As noted previously, as the Commonwealth does not warrant the suitability of GFI, GFI can never be Commonwealth Mandated GFM. Therefore documentation should be classified as GFD where it is required for the performance of the Contract, it can only be provided to the Contractor by the Commonwealth and it can not be independently verified by the Contractor.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement E-12 of Annex E to the TDRL requests tenderers to provide details of the GFM that they require to perform the Contract, including the quantity, date required, location and intended purpose. Tenderers must also identify in Tender Data Requirement D-2 of Annex D to the TDRL the additional cost to be added to the tendered price should any GFM not be made available.

Clauses 3.5 and 3.7 of the draft conditions of contract and clause 3.13 of the draft Statement of Work contain additional GFM provisions.

Annex A to Attachment E to the draft conditions of contract will contain the agreed detail on all GFM to be provided under the Contract including the quantity, date required, location, time period for inspection and intended purpose of the GFM.

Further Reading: Nil

### 3.7 GFM Ownership and Restrictions

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Optional. To be used when GFM is to be supplied to the Contractor. Clauses 3.5 to 3.7 of the draft conditions of contract and clause 3.13 of the draft Statement of Work are optional but interdependent and must be inserted, amended or omitted as a package. The optional clause 3.7.2b (5) must be included where GFI or GFD is to be provided.
<u>Purpose:</u>	To notify the Contractor that GFM remains the property of the Commonwealth and to outline the restrictions on the Contractor's use of GFM.
<u>Policy:</u>	The preferred Departmental position is to minimise the provision of GFM to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under a contract without GFM. <i>DI(G) LOG 07-4 "Provision of Material to Contractors"</i>
<u>Guidance:</u>	GFM is any equipment, information or data listed in Annex A to Attachment E to the conditions of contract that is provided to the Contractor by the Commonwealth to assist in the performance of the Contract.

#### OWNERSHIP OF GFM

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Clause 3.7.1 notifies the Contractor that GFM remains the property of the Commonwealth and places an obligation on the Contractor to preserve any identification marks on the GFM. Even where GFM is incorporated into Supplies which have not vested in the Commonwealth, ownership of the GFM still remains vested in the Commonwealth, unless the GFM is consumable and has been consumed.

#### RESTRICTIONS ON USE OF GFM

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Clause 3.7.2 places restrictions on the Contractor's use of the GFM. Under clause 3.7.2 the Contractor can not without the Project Authority's prior written consent:

- a. use GFM other than for the purposes of the Contract;
- b. modify GFM;
- c. transfer possession or control of GFM;
- d. move GFM from the original delivery location;
- e. communicate GFI or GFD to another party (if applicable); or
- f. create a lien, charge, mortgage or encumbrance over GFM.

It is therefore important to ensure that where the performance of the Contract requires that GFM be moved from the original delivery location, transferred or communicated to a third party, or modified, that the Project Authority's prior written approval is given in sufficient time to prevent delay in the performance of the Contract. Where the tendered solution requires any of the above, the most appropriate form of prior written approval would be the inclusion of a provision in the Contract to allow for one of the actions listed above to be undertaken by the Contractor.

Where a request for the Project Authority's approval is made by the Contractor under clause 3.7.2, the Project Authority should grant its consent or notify the Contractor of its refusal within a reasonable time period. The Project Authority's approval should also not be unreasonably withheld. If the Contractor is delayed in its performance of the Contract by the Project Authority's failure to grant written approval, then the Contractor may be entitled to claim a postponement of delivery of the Supplies and/or a Milestone Date and to recover postponement costs in accordance with clauses 6.2 and 6.3 of the conditions of contract.

## INTELLECTUAL PROPERTY IN GFM

Clause 3.7.3 is included to protect the Intellectual Property rights of third parties. Clause 3.7.3 places an obligation on the Project Authority to notify the Contractor of any Intellectual Property rights applicable to the GFM. Clause 3.7.3 also places an obligation on the Contractor not to act contrary to the existence of those rights. In every case the contract under which the Commonwealth originally acquired the equipment, material or data being provided as GFM should be checked to determine what Intellectual Property rights the Commonwealth has in respect of the intended GFM.

Where the Commonwealth is providing GFM to the Contractor which is subject to third party Intellectual Property rights, it is important to ensure that the Commonwealth's Intellectual Property licence permits it to provide the equipment, data or information to the Contractor for the performance of the Contract. In no circumstances should GFM that is subject to Intellectual Property rights be provided to a Contractor where the Commonwealth does not have the required licensing rights or where the licensing rights of the Commonwealth are unknown. Where the Commonwealth does provide GFM for use by the Contractor contrary to the Intellectual Property rights of a third party, in most cases the Commonwealth will be liable to the third party Intellectual Property owner for breach of the Intellectual Property licence. In addition the Contractor may be sued by the third party Intellectual Property owner for infringing the owner's Intellectual Property, in which case the Contractor may be able to recover any loss it suffers as a result, from the Commonwealth.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement E-12 of Annex E to the TDRL requests tenderers to provide details of the GFM that they require to perform the Contract, including the quantity, date required, location and intended purpose. Tenderers must also identify in Tender Data Requirement D-2 of Annex D to the TDRL the additional cost to be added to the tendered price should any GFM not be made available.

Clauses 3.5 and 3.6 of the draft conditions of contract and clause 3.13 of the draft Statement of Work contain additional GFM provisions.

Clauses 6.2 and 6.3 of the draft conditions of contract detail when the Contractor is entitled to claim a postponement of the date for delivery of the Supplies and/or a Milestone Date and to recover postponement costs.

Annex A to Attachment E to the draft conditions of contract will contain the agreed detail on all GFM to be provided under the Contract including the quantity, date required, location, time period for inspection and intended purpose of the GFM.

Further Reading: Nil

### 3.8 Government Furnished Facilities

Sponsor: Infrastructure Division

Status: Optional. To be used when GFF is to be made available to the Contractor.

Purpose: To place a contractual obligation on the Commonwealth to grant the Contractor a licence to use GFF for the performance of the Contract in the form of the deed at Annex D to Attachment I to the conditions of contract.

Policy: The preferred Departmental position is to minimise the provision of GFF to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under a contract without GFF.

*DI(G) ADMIN 35-1 "Procedures for the Use of Defence Estate Assets by Non-Defence Organisations or Individuals including Commercial Contractors"*

Guidance: Clause 3.8 places an obligation on the Commonwealth to grant the Contractor a non-exclusive licence to occupy and use the GFF in the form of the deed at Annex D to Attachment I. Head Infrastructure Division will determine what facilities can be offered and the basis on which they are offered. The recommendation of the organisation establishing the main contract will be considered when determining availability of GFF.

#### MODIFICATION OF GFF LICENCE

The standard GFF licence may require modification to meet the overall objectives of the Contract. The licence should not be modified without obtaining advice from Infrastructure Division.

#### COMMERCIAL RENT

GFF may be either mandated by the Commonwealth or proposed by the Commonwealth or Contractor. Where the GFF is mandated by the Commonwealth, the Contractor will be required to pay a one-off fee of \$1.00 to enter into the licence. This is a token that ensures the requirement for consideration to support the licence is met, while recognising that the Contractor is not using the facilities by choice. Where the GFF is proposed by the Commonwealth or Contractor, the Contractor will be required to pay a commercial rent as consideration for the licence where the Contractor elects to use the GFF as part of its performance of the Contract. The rental rates for the GFF will be paid under the GFF licence, however, the Commonwealth will be required to reimburse the Contractor for the cost of the licence as part of the Contract Price. The reimbursement amount should be specified in the Price Schedule at Annex A to Attachment B to the conditions of contract.

#### FAILURE TO PROVIDE ACCESS TO GFF

Where the Commonwealth fails to provide access to GFF as required by the Contract, the Contractor will be entitled to claim a postponement of the date for delivery of Supplies and/or a Milestone Date and to recover postponement costs unless the failure to provide access was caused by a default or an unlawful or negligent act or omission of the Contractor, its officers, employees, agents or Subcontractors. It is therefore important to ensure that all GFF can be supplied by the Commonwealth at the time specified in Annex B to Attachment E to the conditions of contract

Drafter's Action: Nil

Related Clauses: Tender Data Requirement E-13 of Annex E to the TDRL requests tenderers to provide details of the GFF that they require to perform the Contract, including the date required, any assumptions made on the use of the GFF and any other relevant requirements or arrangements. In addition, tenderers must provide details of the proposed use of the GFF and any other requirements that tenderers require relevant to the use of the GFF. Where the Commonwealth proposes GFF, the commercial rent applicable for that GFF must be included in Tender Data Requirement E-13. Tenderers must also identify in Tender Data Requirement D-2

of Annex D to the TDRL the additional cost to be added to the tendered price should any GFF not be made available.

Clauses 3.5 to 3.7 of the draft conditions of contract contain GFM provisions.

Clauses 6.2 and 6.3 of the draft conditions of contract detail when the Contractor is entitled to claim a postponement of the date for delivery of the Supplies and/or a Milestone Date and to recover postponement costs.

Annex B to Attachment E to the draft conditions of contract will, if required, contain the agreed details on all GFF to be provided under the Contract including the date required, time period for inspection and intended purpose of the GFF.

Annex D to Attachment I to the draft conditions of contract will, if required, contain the agreed GFF Licence.

Further Reading: Nil

## 4. AUSTRALIAN INDUSTRY INVOLVEMENT

### 4.1 Australian Industry Involvement

Sponsor: Industry Policy

Status: Core

Purpose: To place a contractual obligation on the Contractor to deliver an Australian Industry Involvement (All) program that meets the requirements and objectives detailed in the Contract and to achieve the stated levels of Local Content and Strategic Industry Development Activities in accordance with the Contract. The clause also details the liquidated damages that may be claimed by the Commonwealth where the Contractor fails to achieve the Industry Requirements in the All Plan by Final Acceptance or the nominated Milestone.

Policy: *Accounts Receivable and Debt Management Procedures Manual*  
*All Manual*  
*A New Tax System (Goods and Services Tax) Act 1999*  
*Defence CEIs Part 6 Instruction 2 and 3*  
*DPPM – Section 3, Chapter 3.12*  
*Financial Management and Accountability Act 1997*

Guidance: Clause 4.1, the All Plan at Attachment F to the conditions of contract and clause 3.14 of the Statement of Work detail the All requirements for the Contract.

#### ALL OBJECTIVES

Clause 4.1.1 details the objectives of the Department of Defence's All program. It should be noted that the clause does not place a contractual obligation on the Contractor or the Commonwealth but merely obtains from the parties an acknowledgment of the objectives of the All program. The stated objectives may however be used by a court to help interpret the intended meaning of the subsequent All provisions. As a result, and due to the fact that clause 4.1.1 reflects current All policy, any changes to the clause should be carefully considered and cleared by the relevant All adviser.

#### IMPACT ON ACCEPTANCE AND LIABILITY FOR ANZ SUPPLIES

Clause 4.1.3 obtains an acknowledgment from the Contractor that the completion of the All program by the Contractor does not relieve the Contractor from responsibility for completion of the Supplies or from liability for defects in Supplies provided by Australian and New Zealand industry. Clause 4.1.3 also obtains an acknowledgment from the Contractor that Acceptance of the Supplies does not relieve the Contractor from meeting its obligations under the All Plan at Attachment F.

#### CLAIMING LIQUIDATED DAMAGES

If the Contractor fails to achieve the Industry Requirements in the All Plan by the nominated Milestone or by Final Acceptance the Contractor will be in breach of Contract and the Commonwealth will be entitled to recover damages for that breach. To provide certainty and avoid the costs associated with litigation, the parties may through a liquidated damages clause agree on the amount of damages to be recovered in the event of a failure by the Contractor to achieve the Industry Requirements.

Clauses 4.1.6 entitles the Commonwealth to claim liquidated damages where the Contractor fails to achieve the Industry Requirements in the All Plan and the failure is not due to circumstances beyond the reasonable control of the Contractor nor circumstances reasonably foreseeable at the Effective Date. The amount of liquidated damages that may be claimed for specific Industry Requirements must be:

- a. detailed in the RFT prior to release; and
- b. specified in Attachment D to the draft conditions of contract prior to Contract signature.

#### LIQUIDATED DAMAGES BECOME A DEBT DUE ONLY UPON ELECTION

Once liquidated damages are triggered under a contract they are considered to be an amount owing to the Commonwealth (i.e. 'a debt due to the Commonwealth') for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act). This means that Defence will be required to pursue recovery of such amounts, unless they are waived by the Finance Minister under section 34 of the FMA Act.

To ensure that liquidated damages specified in Attachment D will not become a debt due to the Commonwealth immediately upon the Contractor failing to achieve the relevant Industry Requirement, the following statement has been included in clause 4.1.6 "*No amount shall be owing to the Commonwealth until the Commonwealth elects, in accordance with clause 4.1.7, to recover any such liquidated damages*". The inclusion of this statement ensures that the liquidated damages specified in Attachment D will only become a debt due to the Commonwealth at the time the Commonwealth makes an election to claim the liquidated damages. By granting the Commonwealth an election to claim liquidated damages or another agreed form of compensation, clause 4.1.7 also allows the Commonwealth and Defence industry greater flexibility in the collection and management of liquidated damages.

#### TIME PERIOD TO MAKE THE ELECTION

It should be noted that the Commonwealth must make an election under clause 4.1.7 prior to Final Acceptance. Where the Commonwealth fails to make an election by Final Acceptance, the Commonwealth will no longer be entitled to claim liquidated damages or alternative compensation in accordance with clause 4.1 but may still be entitled to claim damages at law where it has suffered loss as a result of the breach of Contract.

#### ELECTING TO CLAIM ALTERNATIVE FORMS OF COMPENSATION

In accordance with clause 4.1.7, the Commonwealth may elect to claim an alternative form of compensation to the equivalent value of the liquidated damages specified at Attachment D. The Commonwealth may also elect to claim a combination of liquidated damages and alternative forms of compensation to the equivalent value of the liquidated damages specified in Attachment D. It should be noted, however, that both parties must agree to the alternative form of compensation. The Commonwealth can not compel the Contractor to provide alternative compensation or dictate its form.

When seeking to agree with the Contractor on any form of alternative compensation, care should be taken to ensure that the Commonwealth does not take any action or make any statement that could endanger the Commonwealth's right to subsequently claim liquidated damages in the event that no agreement can be reached. Where the Commonwealth and the Contractor cannot agree to an alternative form of compensation, the Commonwealth will be entitled to claim the liquidated damages specified at Attachment D as Final Acceptance has not occurred. Where Final Acceptance is close to taking place, it may be in the best interests of the Commonwealth to elect to claim the liquidated damages specified in Attachment D rather than risk losing the right to claim any compensation for the Contractor's breach of Contract.

#### REACHING AGREEMENT ON ALTERNATIVE COMPENSATION

Careful consideration should be given to the form of any alternative compensation prior to an agreement being reached with the Contractor. Issues to be considered include:

- a. estimating the value of the compensation;



- b. the usefulness of the compensation to the Commonwealth;
- c. costs associated with the compensation that would be borne by the Commonwealth (e.g. storage, maintenance, fuel, training etc);
- d. whether the compensation is within the scope of the Contract;
- e. whether the compensation will be provided under the current Contract or another contract;
- f. what delivery dates, functional/performance requirements, warranties, liquidated damages etc should be agreed with the Contractor and included in the relevant contract; and
- g. whether electing to claim the liquidated damages specified in Attachment D would better compensate the Commonwealth for the loss it has suffered as a result of the Contractor's breach of Contract.

Where the Commonwealth elects to claim compensation in lieu of liquidated damages, clause 4.1.8 places an obligation on the Contractor to prepare a Contract change proposal to affect a change to the Contract and any other contract between the Commonwealth and the Contractor which may be affected. Clause 4.1.8 also states that where the compensation is to be provided in the form of goods or services, the goods or services will be incorporated into the Supplies under the relevant contract. This clause ensures that the standard warranty and other relevant contractual provisions will apply unless expressly varied.

#### WAIVING OR WRITING OFF DEBTS

The Commonwealth may, in accordance with *Part 6 Instructions 2 and 3* of the *Defence CEIs*, decide to write-off or waive debts (including liquidated damages owed to the Commonwealth). Further guidance on the write-off and waiver of debts is contained in the guidance on clause 12.4 of the draft conditions of contract. It is important to remember, however, that liquidated damages will not become a debt due to the Commonwealth until the Commonwealth makes an election under clause 4.1.7 to recover the liquidated damages.

#### DECISION MAKING AUTHORITY

All decisions relating to the recovery, trade-off, allocation, waiver or write-off of liquidated damages must be referred to Branch Head level or higher. *DRB 47* lists the delegates who are entitled to write-off liquidated damages in accordance with *Part 6 Instruction 2* of the *Defence CEIs*. All requests for the waiver of liquidated damages must be referred to the Minister for Finance through the Assistant Secretary Personnel Service Delivery in Corporate Services and Infrastructure Group in accordance with *Part 6 Instruction 3* of the *Defence CEIs*.

#### ENFORCEABILITY OF LIQUIDATED DAMAGES

To be enforceable against the Contractor in law, the liquidated damages amount must represent a genuine pre-estimate of the loss likely to be suffered by the Commonwealth as a result of the failure by the Contractor to achieve the Industry Requirement. The calculation of the amount of liquidated damages is therefore critical to enforce clause 4.1.6. The amount will be regarded as a genuine pre-estimate if it is shown to have been calculated on the basis of the likely loss to be suffered, even if the actual loss suffered does not equal the pre-estimate. Drafters must ensure that, having calculated the amount of liquidated damages, the method of calculation is retained. This evidence will be required should the Contractor ever attempt to claim that the liquidated damages do not represent a genuine pre-estimate of loss.

Because the Commonwealth is not a company which trades with a view to profit, it can sometimes be difficult to identify the loss suffered by the Commonwealth. To lessen the chances of an argument over whether the Commonwealth suffered loss, clauses 4.1.4 and 4.1.5 have been included to establish the Contractor's

agreement that the Commonwealth will suffer loss and damage should the Industry Requirements in the All Plan not be met.

#### GST IMPLICATIONS

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The amount of liquidated damages included in Attachment D must include a component for GST. Further guidance on GST and the application of the *A New Tax System (Goods and Services Tax) Act 1999* to liquidated damages is contained in the guidance on clause 7.14 of the draft conditions of contract.

#### LIABILITY CAP FOR LIQUIDATED DAMAGES

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Drafters should also note that tenderers often seek to cap their liability in relation to liquidated damages by setting a cap on the amount of liquidated damages that are payable under the Contract. It should be noted that although the Commonwealth has a preference for assessing the Contractor's liability on the basis of common law, the limitation of liability clause at clause 8.5 of the draft conditions of contract proposes to cap liquidated damages under the Contract to an aggregate amount.

The amount of the cap must be included prior to release of the RFT. The cap will usually be expressed as a percentage of the Contract Price. Issues to be considered when determining an appropriate cap include:

- a. the likelihood of the Contractor failing to meet the required Contract schedule or All Industry Requirements;
- b. the genuine pre-estimate of loss that the Commonwealth will suffer where particular Milestones or Industry Requirements are not achieved; and
- c. the impact of the cap on the tendered price.

A tenderer may propose an alternative liability cap in its tender. Careful evaluation of any alternative proposal is required to ascertain whether the concession in the form of the cap on liability reduces the value of the liquidated damages clause to the extent that the Commonwealth would do better to exclude clause 7.14 of the draft conditions of contract and rely on its general contractual rights to sue for breach of the Contract and recover damages.

Drafter's Action: Nil

Related Clauses: Annex H to the TDRL requests tenderers to provide their All proposal for the proposed Contract.

Clause 7.14 of the draft conditions of contract sets out the parties' agreement on the amount of damages to be paid by the Contractor in the event that the Contractor fails to achieve specific Milestones on time.

Clause 8.5 of the draft conditions of contract proposes a cap for liquidated damages under the Contract.

Attachment D to the draft conditions of contract will contain the agreed amount of liquidated damages recoverable against each Industry Requirement. These amounts should be GST inclusive.

Attachment F to the draft conditions of contract will contain the agreed All Plan.

Further Reading: Nil

**5. INTELLECTUAL PROPERTY****5.1 Intellectual Property Management**

**Sponsor:** Contracting Policy & Operations

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to comply with the Intellectual Property (IP) management requirements set out in clause 3.15 of the Statement of Work.

**Policy:** *DPPM – Section 3, Chapter 3.6*  
*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003*

**Guidance:** Clause 5.1 requires the Contractor to comply with clause 3.15 of the Statement of Work which deals with the management of IP. In particular, clause 3.15 of the Statement of Work requires the Contractor to conduct the IP program in accordance with the Approved IP Plan, and to keep IP records and deliver IP progress reports in accordance with the relevant Contract Data Requirements List (CDRL) requirement.

**Drafter's Action:** Nil

**Related Clauses:** Attachment G to the draft conditions of contract will contain the agreed IP Plan.  
Clause 3.15 of the draft Statement of Work sets out the IP management requirements for the Contract.

**Further Reading:** Nil

## 5.2 Background IP and Third Party IP - Ownership

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To acknowledge that the Contract does not affect the ownership of either Background or Third Party IP.
<u>Policy:</u>	<p>IP arrangements should reflect the critical role of Australian industry in building national Defence capability. Wherever possible, Defence supports Intellectual Property arrangements that reflect the critical role of Australian industry in building national Defence capability and assists Australian industry to exploit Intellectual Property to the benefit of the national Defence capability.</p> <p><i>DPPM – Section 3, Chapter 3.6</i></p> <p><i>Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.</i></p>
<u>Guidance:</u>	Clause 5.2.1 states that nothing in the Contract affects ownership of Background or Third Party IP.
<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	<p>Clause 5.3 of the draft conditions of contract details the ownership and licensing arrangements for Foreground IP and the licensing arrangements for Background and Third Party IP.</p> <p>Clause 3.15 of the draft Statement of Work sets out the IP management requirements for the Contract.</p>
<u>Further Reading:</u>	Nil

### 5.3 Intellectual Property - Ownership and Licensing

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To detail the ownership and licensing arrangements for Foreground IP and the licensing arrangements for Background and Third Party IP, including the default position if ownership of Foreground IP is not reflected in the IP Plan.

Policy: Defence needs appropriate rights to appropriate technologies at appropriate times, and Defence acknowledges that ownership is only one way of securing such rights. Wherever possible Defence supports Intellectual Property arrangements that reflect the critical role of Australian industry in building national Defence capability and assists Australian industry to exploit Intellectual Property to the benefit of national Defence capability.

*DPPM – Section 3, Chapter 3.6*

*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.*

Guidance: Clause 5.3 details the IP ownership and licensing arrangements for the Contract in relation to Contractor, Subcontractor and Third Party owned IP.

#### OPTIONS FOR OWNERSHIP AND LICENSING OF IP

Clause 5.3 provides for 2 options in relation to the ownership of Foreground IP. Option A provides for the Commonwealth to own Foreground IP, which it may decide to do for strategic reasons. Option B provides for the situation where the Commonwealth may decide for strategic reasons not to own all Foreground IP. Under both options, the IP arrangements are subject to any limitations set out in the Approved IP Plan. Accordingly, this places the onus on the Contractor to fully set out in the IP Plan and agree with the Commonwealth what limitations, if any, apply in relation to the standard IP arrangements as set out in clause 5.3. Any variations of the proposed IP ownership and licensing arrangements should as far as possible be set out in the IP Plan rather than through a revision of clause 5.3.

Under Option A, subject to any limitations in the IP Plan, the basic position is that ownership of all Foreground IP vests in the Commonwealth, the Contractor Licences the Commonwealth to exercise Background IP for Defence Purposes, and the Contractor ensures that the Commonwealth obtains a licence to exercise Third Party IP on best available commercial terms. These IP arrangements reflect the nature of the *ASDEFCON (Strategic Materiel)* contract, i.e. that it is intended to be used for software intensive contracts, including contracts for the acquisition of capabilities that have a significant software component. It is expected that Option A will be used particularly in software development projects where the development is being paid for by the Commonwealth (i.e. as opposed to developing existing Background IP owned by the Contractor). In these circumstances, the Commonwealth may wish to own the Foreground IP, particularly if the IP is then required to integrate the software into various Defence platforms or across Defence systems. The broad nature of the Licence to exercise Background IP for Defence Purposes also reflects the expectation that the Commonwealth would want to be able to use the software development for a range of Defence capabilities and would not want to pay twice for the same IP.

Under Option B, ownership of Foreground IP vests in the party set out in the IP Plan, although if Foreground IP is created that is not set out in the IP Plan, then ownership of the IP will vest in the Commonwealth. This provides an incentive for the Contractor to ensure that all Foreground IP to be created under the Contract is properly identified and dealt with in the IP Plan. The purpose of this is to avoid future disputes in relation to ownership of particular Foreground IP.

## LICENSING ARRANGEMENT

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The definition of 'Licence' is set out in the Glossary at Attachment M to the conditions of contract. The Licence required to be granted in relation to Background IP (and Foreground IP under Option B) is a royalty free, irrevocable, worldwide, perpetual and non-exclusive licence, including the right to sublicense. Again, it is important that if there are any restrictions on the scope of the Licence, these should be set out in the IP Plan, and not given effect to by changing the definition of 'Licence'. The definition of 'Licence' should not be revised without first seeking advice from Contracting Policy and Operations Branch.

## LICENCES FROM APPROVED SUBCONTRACTORS

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Approved Subcontractors are listed in Attachment H to the conditions of contract. Clause 10.9 of the conditions of contract sets out the circumstances in which Subcontractors must be Approved. Normally, if Subcontractors will bring IP to the Contract or create IP that is necessary for the Commonwealth to properly use and support the Supplies, then they should be Approved Subcontractors.

Clause 5.3 requires the Contractor under either Option A or Option B to ensure that, before Approved Subcontractors commence work in relation to the Supplies (or within 28 days after Effective Date, whichever is later), the agreed IP arrangements are flowed down to the Subcontractor. Again, these requirements are subject to any limitations set out in the IP Plan. Under Option A, the Contractor must ensure that ownership of Foreground IP created by the Approved Subcontractor vests in the Commonwealth, and that the Commonwealth is granted a Licence in respect of the Approved Subcontractor's Background IP on the same terms as the Contractor's Licence to the Commonwealth. Under Option B, the Contractor must ensure that the Approved Subcontractor grants the Commonwealth a Licence of both the Foreground and Background IP, again on the same terms as the Contractor's Licence to the Commonwealth.

To give effect to these requirements, both Options A and B require the Contractor to obtain from the Approved Subcontractor, a signed deed in the form of the Approved Subcontractor IP Deed in Annex A to Attachment I to the draft conditions of contract licensing the relevant IP to the Commonwealth, and provide that signed deed to the Commonwealth.

## MINIMUM IP RIGHTS

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Under both Option A or B, clause 5.3 requires an acknowledgment from the Contractor that the IP rights granted to the Commonwealth under clause 5.3 allow the Commonwealth to exercise the Background and Foreground IP to do certain things, regardless of any limitations set out in the IP Plan. As a minimum, the Commonwealth is able to exercise the IP to:

- a. properly use and support the Supplies throughout their Life of Type as envisaged by the Contract;
- b. complete the Supplies if the Contract is terminated; and
- c. remedy defects or omissions as permitted by the Acceptance and warranty provisions of the Contract.

Thus the Commonwealth obtains a basic level of IP rights, sufficient to enable normal use and support of the Supplies, regardless of whether they have been included in the IP Plan. The key concept under clause 5.3 is the Commonwealth's requirement to be able to 'properly use and support the Supplies throughout their Life of Type as envisaged by the Contract'. These terms are not defined in the Glossary other than 'Life of Type' (which is effectively the agreed service life of the Supplies). Accordingly, 'use and support' are to be given their normal, ordinary meanings in the context of the Contract. In this regard, the terms will be given meaning by reference to the Statement of Work and the Operational Concept Document or 'OCD' (Annex B to the Statement of Work) which will set out the intended purposes for which the Supplies are required and the Support System to

be put in place to support the Supplies. It is therefore essential that the Statement of Work and OCD fully set out the proposed uses of the Supplies and how the Commonwealth intends to support that use. The Commonwealth's 'use and support' of the Supplies is limited to the scenarios detailed in these documents.

Where the Commonwealth terminates the Contract other than for convenience under clause 12.3 of the conditions of contract, clause 5.3 provides for the Contractor to acknowledge that the Commonwealth's IP rights permit the Commonwealth to complete the Supplies.

Similarly, the Contractor acknowledges that the Commonwealth's IP rights permit the Commonwealth to remedy any defects or omissions in the Supplies. This right has been included to ensure that the Commonwealth will have the required IP rights to rectify defects and omissions in the Supplies where it elects to do so in accordance with its rights under clauses 6.4, 6.5, 9.3 or 9.5 of the conditions of contract.

#### COMMERCIALISATION AND SUB-LICENSING TO THIRD PARTIES

Clause 5.3 (under both options) confirms that the IP rights granted to the Commonwealth do not permit the Commonwealth to commercialise the licensed IP, although the clause also expressly states that the Commonwealth is able to sub-licence the IP to a third party for the purposes of providing goods and services to the Commonwealth for Defence purposes.

#### CONTRACTOR WARRANTY IN RELATION TO IP RIGHTS

Clause 5.3 (under both options) also requires the Contractor to warrant that the only IP embodied in the Supplies in relation to which the Commonwealth has not been granted IP Licence (as defined in the draft Contract) is Third Party IP or as otherwise set out in the IP Plan. This warranty is necessary so that the Commonwealth can take action against the Contractor if it discovers that IP exists in respect of the Supplies in relation to which it was not aware and does not have the necessary rights to exercise.

#### GRANTING OF A LICENCE FOR COMMONWEALTH OWNED FOREGROUND IP

Clause 5.3 also allows the Commonwealth to grant a licence to the Contractor or an Approved Subcontractor to exercise Commonwealth owned Foreground IP. The licence will be in a form agreed by the parties. Advice should be sought from Contracting Policy and Operations Branch before granting a licence of Commonwealth owned IP.

**Drafter's Action:** Prior to release of the RFT, drafters must select one of the two options.

**Related Clauses:** Tender Data Requirement C-5 of Annex C to the TDRL notifies tenderers of the requirement to provide an IP Plan in accordance with the relevant Data Item Description (DID).

Clause 6.4.5 of the draft conditions of contract entitles the Commonwealth to have remedial work performed at the expense of the Contractor to rectify minor defects and omissions in the Supplies where the Contractor fails to do so as required by clause 6.4.4.

Clause 6.5.5 of the draft conditions of contract entitles the Commonwealth to have remedial work performed at the expense of the Contractor to rectify minor defects and omissions in the Supplies where the Contractor fails to do so as required by clause 6.5.4.

Clause 9.3.5 of the draft conditions of contract entitles the Commonwealth to perform or have performed remedial work at the Contractor's expense where the Contractor fails to remedy the defects in the Supplies within the period allowed.

Clause 9.5.3 of the draft conditions of contract entitles the Commonwealth to perform or have performed remedial work at the Contractor's expense where the Contractor fails to remedy a Latent Defect in the Supplies within the period allowed.

Clause 10.9 of the draft conditions of contract sets out the circumstances in which Subcontractors must be Approved.

Attachment G to the draft conditions of contract will contain the agreed IP Plan.

Attachment H to the draft conditions of contract will contain the agreed list of Approved Subcontractors.

Annex A to Attachment I to the draft conditions of contract will contain the agreed Approved Subcontractor IP Deed.

Clause 3.15 of the draft Statement of Work sets out the IP management requirements for the Contract.

Further Reading: Nil



## 5.4 Technical Data

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To outline the requirements related to Technical Data.

Policy: Defence may require rights to access and use technologies, including the relevant Technical Data, rights to sublicense for specified purposes, rights to control access to technology, and rights to related Technical Data owned by others.

*DPPM – Section 3, Chapter 3.6*

*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.*

Guidance: Clause 5.4 places a contractual obligation upon the Contractor to comply with the Statement of Work, and to deliver to the Project Authority before the nominated date all other Technical Data considered necessary by the Commonwealth to enable it to exercise its IP rights. Clause 5.4.3 makes it clear that the Commonwealth is able to provide Technical Data to a third party for the purpose of the Commonwealth exercising its IP rights.

### COMPLIANCE WITH THE STATEMENT OF WORK

There are a number of clauses in the Statement of Work that identify how Supplies are to be delivered. Contractors must comply with all of these requirements in delivering Technical Data. For example, Clause 2 of the Statement of Work provides requirements for the delivery of Data Items and Annex C to the Statement of Work Contract Data Requirements List further clarifies these requirements.

Clause 5.3.3 of the Statement of Work deals specifically with the implementation of Technical Data Requirements, including delivering data in accordance with the Technical Data Plan (TDP), providing Software Updates and Software Design Data, maintaining a Data Accession List (DAL), updating and developing a Technical Data List (TDL) and Publications Tree, and the option of including escrow arrangements. Drafters requiring further guidance should refer to the guidance provided in relation to clause 5.3.3 of the Statement of Work.

### DELIVERING OTHER TECHNICAL DATA

Clause 5.4.2 also obliges the Contractor to deliver, before the date specified in the clause (or by Final Acceptance), additional Technical Data considered necessary by the Commonwealth to fully exercise its IP rights under the Contract. This clause ensures that the Contractor is under an obligation to provide Technical Data to the Commonwealth within the Contract Price, e.g. where for whatever reason it has not been identified in the TDL for delivery to the Commonwealth even though the data is necessary to enable the Commonwealth to exercise its IP rights. The Technical Data may not have even been listed on the DAL. Even if the information is included in the DAL, clause 5.4.2 can potentially be used by the Commonwealth to require delivery of the Technical Data within the Contract Price rather than having to pay the reasonable costs under clause 5.3.3.2 of the Statement of Work. Accordingly, the onus is on the Contractor to ensure that the TDL fully sets out all the Technical Data the Commonwealth needs to exercise its rights under the Contract.

### OTHER CIRCUMSTANCES IN WHICH TECHNICAL DATA MUST BE PROVIDED

Where the Commonwealth terminates the Contract for default under clause 12.2 of the conditions of contract, clause 12.2.3d of the conditions of contract requires the Contractor to provide the Commonwealth with Technical Data produced prior to the date of termination, within 30 days after receipt of the notice of termination or other period agreed by the parties.

Drafter's Action: Prior to release of the RFT, drafters must nominate in clause 5.4.2 the date by which the Contractor is to provide all other Technical Data considered necessary

by the Commonwealth to exercise its rights under the Contract (e.g. the date could be at least 1 month before Final Acceptance).

Related Clauses: Tender Data Requirement C-5 of Annex C to the TDRL notifies tenderers of the requirement to provide an IP Plan in accordance with the relevant Data Item Description (DID).

Clause 5 of the draft conditions of contract contains the Intellectual Property clauses for the Contract. In particular, clause 5.3 of the draft conditions of contract details the entity that will own Foreground IP and the Intellectual Property licence rights of the Commonwealth.

Clause 12.2.3d of the draft conditions of contract sets out the Commonwealth's rights in relation to Technical Data where the Commonwealth terminates the Contract for default of the Contractor.

Attachment G to the draft conditions of contract will contain the agreed IP Plan.

Clause 3.15 of the draft Statement of Work sets out the IP management requirements for the Contract.

Clause 5.3.3 of the draft Statement of Work details additional Technical Data requirements.

Technical Data requirements under the proposed Contract including Technical Data to be placed in the TDL and DAL will be in accordance with the Approved Technical Data Plan (TDP).

Further Reading: Nil

## 5.5 Intellectual Property - Registration and Protection

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: This clause permits the Commonwealth to register worldwide any Foreground IP in which it has ownership. It also imposes a contractual obligation on the Contractor to provide information or access to information that will enable the Commonwealth to register that Foreground IP.

Policy: Defence Intellectual Property management should be clear, consistent and traceable. To successfully manage Intellectual Property Defence needs to record and register Intellectual Property. To record and register Intellectual Property Defence may need to access surrounding information that resides with contractors.

*DPPM – Section 3, Chapter 3.6*

*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.*

Guidance: Clause 5.5.1 grants the Commonwealth exclusive rights to apply for and register Commonwealth owned Foreground IP.

### OBLIGATIONS IMPOSED ON THE CONTRACTOR

Clause 5.5.2 places a contractual obligation on the Contractor to:

- a. permit the Commonwealth (including its patent attorney, other relevant advisers and persons acting for or on behalf of the Commonwealth) to have access to the work and records of the Contractor in order to determine the steps necessary to register or protect Foreground IP;
- b. provide all information to assist in the registration of Foreground IP and to assist in litigation; and
- c. refrain from divulging information which might be Commercial-in-Confidence or which might burden registration or exploitation of Foreground IP.

Clause 5.5.3 requires the Contractor to make contractual arrangements with Approved Subcontractors which contain similar obligations.

Drafter's Action: Nil

Related Clauses: Clause 5 of the draft conditions of contract contains the Intellectual Property clauses for the Contract. In particular, clause 5.3 of the draft conditions of contract details the entity that will own Foreground IP and the Intellectual Property licence rights of the Commonwealth.

Further Reading: Nil

**5.6 Contractor IP - Release to Third Parties by the Commonwealth**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To impose an obligation on the Commonwealth to obtain a deed of confidentiality prior to release of Contractor or Approved Subcontractor owned Intellectual Property to third parties.
<b><u>Policy:</u></b>	<p>Defence can build national Defence capability by helping to develop sustainable Australian industry.</p> <p>For industry, Intellectual Property is an economic asset that gives a short-term competitive edge that may be the keystone of the business. Industry is especially sensitive to loss of its competitive edge through disclosure of its Intellectual Property to competitors.</p> <p>While it may be at times necessary for Defence to release Contractor owned Intellectual Property, Defence will only do so after undertaking steps to ensure the security of that Intellectual Property.</p> <p><i>DPPM – Section 3, Chapter 3.6</i></p> <p><i>Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.</i></p>
<b><u>Guidance:</u></b>	Clause 5.6.1 requires the Commonwealth to obtain a deed of confidentiality in the form of the IP Deed of Confidentiality at Annex B to Attachment I to the conditions of contract from any third parties to whom it intends to release Contractor or Approved Subcontractor IP. This is a precautionary measure to protect the Contractor's or Approved Subcontractor's Intellectual Property from unauthorised disclosure.
<b><u>Drafters Action</u></b>	Nil
<b><u>Related Clauses:</u></b>	<p>Clause 5 of the draft conditions of contract contains the Intellectual Property clauses for the Contract.</p> <p>Annex B to Attachment I to the draft conditions of contract will contain the agreed IP Deeds of Confidentiality.</p>
<b><u>Further Reading:</u></b>	Nil

## 5.7 Additional Intellectual Property

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To provide the Commonwealth with a contractual right to acquire additional Intellectual Property or Technical Data either from the Contractor, an Approved Subcontractor or a third party during the Contract period, the contract period under any Through Life Support contract or other agreed period.
<u>Policy:</u>	<p>Defence will target its Intellectual Property needs and options early in the acquisition process and manage them throughout the life of a capability. Intellectual Property arrangements should reflect the critical role of Australian industry in building national Defence capability.</p> <p>In recognition of the importance of Intellectual Property to industry Defence has undertaken to target the Intellectual Property it requires, thus preventing a circumstance whereby Defence has extensive Intellectual Property that it does not require and that industry may be able to exploit to support national Defence capability. However, a consequence of such a targeted approach is that Defence may require Additional IP not foreseen at the time of Contract signature. In these circumstances Defence will seek to acquire the Additional IP from industry on 'no less favourable' or 'best available terms'.</p> <p><i>DPPM – Section 3, Chapter 3.6</i></p> <p><i>Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.</i></p>
<u>Guidance:</u>	A potential effect of Defence's targeted approach to Intellectual Property acquisition is that the Commonwealth may require 'Additional IP' that was not foreseen at the time of Contract signature and was not included in the IP Plan.

### OBLIGATION ON THE CONTRACTOR TO PROVIDE ADDITIONAL IP

Clause 5.7.1 contains an acknowledgment by the Contractor that the Commonwealth relies on its good faith and expertise in performing its obligations under the Contract. This provides a context for the operation of the 'Additional IP' clause, i.e. that the Contractor should do its best to provide IP on the best available terms.

Clause 5.7.2 enables the Commonwealth to request Intellectual Property or Technical Data (or both) from the Contractor in writing during the Contract period, the contract period of the Through Life Support contract (i.e. Contract (LS)) or, if there is no Contract (LS), the period stated in the Contract, where any Intellectual Property or Technical Data (or both) is required in addition to that already provided under clause 5 of the conditions of contract. It should be noted that the Commonwealth will have the right to request Additional IP even where it doesn't enter into a Through Life Support contract with the Contractor or another entity. In such a case the period in which the Commonwealth may request the Additional IP will be mutually agreed with the Contractor prior to Contract signature. The period should probably be between 3-5 years following Final Acceptance depending upon the nature of the Supplies.

Clause 5.7.3 states that within 30 days of the request or within a timeframe agreed with the Project Authority, the Contractor is obliged to:

- a. offer a licence to the Additional IP on terms no less favourable than the terms of the Contract where the Additional IP is owned by the Contractor;
- b. exercise its rights under an Approved Subcontractor IP Deed to obtain an offer from the Approved Subcontractor to provide Additional IP to the Commonwealth on terms no less favourable than the terms of the Approved Subcontract or on the best available commercial terms, whichever is more favourable; and

- c. obtain an offer from a person (other than the Contractor or an Approved Subcontractor) to provide Additional IP to the Commonwealth on the best available terms.

#### ACCEPTANCE OF THE OFFER BY THE COMMONWEALTH

The Commonwealth is under no obligation to accept the offers obtained by the Contractor and must determine whether each offer represents value for money. Clause 5.7.4 imposes a contractual obligation on the Contractor to permit the Project Authority access to its premises, records and accounts in order to verify an offer submitted under this clause. Similar access rights to the premises, records and accounts of Approved Subcontractors are provided to the Commonwealth under the Approved Subcontractor IP Deed.

#### DIRECT NEGOTIATION WITH THE APPROVED SUBCONTRACTOR

It should also be noted that the Approved Subcontractor IP Deed provides the Commonwealth with the right to negotiate directly with Approved Subcontractors to obtain Additional IP on terms no less favourable than the Approved Subcontract or the best available commercial terms, whichever is more favourable. This right may need to be exercised where:

- a. the relationship between the Contractor and the Approved Subcontractor at the time of the request for the Additional IP is poor;
- b. the Additional IP is particularly sensitive and the Approved Subcontractor is keen to protect its commercial interests; or
- c. the Commonwealth is in a stronger bargaining position than the Contractor and may receive more favourable commercial terms.

**Drafter's Action:** Prior to release of the RFT, drafters must insert the period during which the Commonwealth wishes to have the right to request additional IP.

**Related Clauses:** Tender Data Requirement C-5 of Annex C to the TDRL notifies tenderers of the requirement to provide an IP Plan in accordance with the relevant Data Item Description (DID).

Clause 5 of the draft conditions of contract contains the Intellectual Property clauses for the Contract. In particular clause 5.3 details the entity that will own Foreground IP and the IP licence rights of the Commonwealth.

Attachment G to the draft conditions of contract will contain the agreed IP Plan.

Annex A to Attachment I to the draft conditions of contract will contain the agreed Approved Subcontractor IP Deed.

**Further Reading:** Nil

## 5.8 Sunrise Licensing

**Sponsor:** Contracting Policy & Operations

**Status:** Optional. To be included where Sunrise Licensing is considered appropriate.

**Purpose:** To allow for a licence or sub-licence of Intellectual Property to come into effect on a specified date.

**Policy:** Defence will help promote sustainable Australian industry by cooperatively exploiting Intellectual Property. In recognition of Intellectual Property as an economic asset of industry, and in return for appropriate benefits, Defence may offer 'Sunrise clauses' to assist industry to retain the economic benefit of Intellectual Property.

*DPPM – Section 3, Chapter 3.6*

*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.*

**Guidance:** Clause 5.8 is only to be used for appropriate benefits for Defence. Sunrise clauses should only be used where Intellectual Property is commercially sensitive at the time of Contract signature and the owner of the Intellectual Property wishes to protect its commercial interests. Over a period of time the Intellectual Property is likely to lose its commercial value and the Sunrise Date selected should reflect the point in time where the Intellectual Property is no longer commercially sensitive.

### LICENCE GRANTED TO COMMONWEALTH AT THE SUNRISE DATE

Sunrise clauses may be used in two ways:

- a. to ensure the licence granted to the Commonwealth under clause 5.3 of the conditions of contract will not operate until an applicable Sunrise Date occurs; or
- b. to ensure a part of the licence (e.g. the right to sub-licence) granted to the Commonwealth under clause 5.3 of the conditions of contract will not operate until an applicable Sunrise Date occurs.

Clause 5.8.1 provides that where the IP Plan specifies a Sunrise Date for particular IP, the Commonwealth's licence, or part of the licence, does not commence until the Sunrise Date occurs. A 'Sunrise Date' is defined in clause 5.8.1 as the day set out in the IP Plan on which the Commonwealth's licence, or part of the licence, commences.

### PLACING THE TECHNICAL DATA IN ESCROW

In most cases where clause 5.8 is used, the Technical Data relating to the Intellectual Property that is subject to the Sunrise Date should be placed in escrow to ensure that the Commonwealth will be able to gain access to the Technical Data when an applicable Sunrise Date occurs.

**Drafter's Action** Nil

**Related Clauses:** Tender Data Requirement C-5 of Annex C to the TDRL notifies tenderers of the requirement to provide an IP Plan in accordance with the relevant Data Item Description (DID).

Clause 5 of the draft conditions of contract contains the Intellectual Property clauses for the Contract. In particular, clause 5.3 of the draft conditions of contract details the entity that will own Foreground IP and the Intellectual Property licence rights of the Commonwealth and clause 5.4 details the Technical Data to be provided under the Contract.

Attachment G to the draft conditions of contract will contain the agreed IP Plan.

**Further Reading:** Nil

**5.9 Right of First Offer**

- Sponsor:** Contracting Policy & Operations
- Status:** Optional - In Handbook only. The "Right Of First Offer" clause is to be inserted by drafters during Contract negotiations only when the Contractor is not being awarded the initial support contract and only in return for appropriate benefits for Defence.
- Purpose:** To provide a Right Of First Offer to the Contractor or an Approved Subcontractor to meet the Commonwealth's future requirements to support or maintain the Supplies where the requirements involve the use of IP licensed to the Commonwealth under clause 5 of the conditions of contract.
- Policy:** Defence may offer industry more certainty of involvement in subsequent work.  
*DPPM – Section 3, Chapter 3.6*  
*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.*
- Guidance:** Where it is considered appropriate to offer the Contractor or an Approved Subcontractor the Right Of First Offer, the following clause should be inserted in its entirety:

**5.9 Right Of First Offer**

- 5.9.1 In this clause 5.9:
- a. "Right Of First Offer" means an invitation to offer to meet Supplies Maintenance Requirements in accordance with this clause 5.9; and
  - b. "Supplies Maintenance Requirements" means the Commonwealth's future requirement to use the IP licensed to the Commonwealth under clause 5 to support or maintain the Supplies.
- 5.9.2 The Commonwealth may give a Right Of First Offer to the Contractor or an Approved Subcontractor as applicable, in accordance with the IP Plan, for Supplies Maintenance Requirements. The Right Of First Offer shall specify the date by which the Contractor's offer must be submitted.
- 5.9.3 The Commonwealth may reject the Contractor's offer in response to a Right Of First Offer if the Contractor does not:
- a. prove its ability to meet the requirements of each Supplies Maintenance Requirement;
  - b. demonstrate that its offer to meet each Supplies Maintenance Requirement will fulfil the Commonwealth's procurement policy requirements (including value for money); and
  - c. agree to terms and conditions that are acceptable to the Commonwealth for the procurement that is the subject of each Supplies Maintenance Requirement.
- 5.9.4 The Commonwealth shall not seek offers in respect of the Supplies Maintenance Requirements from other suppliers unless:
- a. it has rejected the Contractor's offer in accordance with clause 5.9.3; or
  - b. the Contractor has failed to submit an offer by the date specified in the Right Of First Offer.
- 5.9.5 In order to verify that an offer submitted by the Contractor meets the requirements of clause 5.9.3, the Contractor shall permit the Project Authority or any person authorised by the Project Authority access to its premises, and access to any of its records or accounts solely for the purpose of this clause 5.9.



- 5.9.6 The Commonwealth makes no promise or representation that any Supplies Maintenance Requirement will exist or be the subject of any contract.
- 5.9.7 Nothing in the Contract obliges the Commonwealth to comply with this clause 5.9 when acting through any department, agency or authority other than the Department of Defence.

#### RIGHT OF FIRST OFFER PROVIDED BY THE COMMONWEALTH

Clause 5.9.1a defines 'Right Of First Offer' as an invitation to offer to meet 'Supplies Maintenance Requirements' in accordance with clause 5.9. Clause 5.9.1b defines 'Supplies Maintenance Requirements' as the Commonwealth's future requirements to use the Intellectual Property licensed to the Commonwealth under clause 5 of the conditions of contract to support or maintain the Supplies.

Clause 5.9.2 permits the Commonwealth to give a Right Of First Offer to the Contractor or Approved Subcontractor as applicable, in accordance with the IP Plan, for Supplies Maintenance Requirements. The Right Of First Offer will specify the date by which the Contractor's offer must be submitted.

#### ACCEPTANCE OF AN OFFER SUBMITTED UNDER CLAUSE 5.9

Clause 5.9.3 specifies the requirements the Contractor must meet before a Right Of First Offer can be accepted by the Commonwealth. The Contractor must be able to:

- a. prove its ability to meet the requirements of each Supplies Maintenance Requirement;
- b. demonstrate that its offer to meet each Supplies Maintenance Requirement will fulfil the Commonwealth's procurement policy requirements (especially in terms of value for money); and
- c. agree to terms that are acceptable to the Commonwealth for the procurement that is the subject of each Supplies Maintenance Requirement.

Under clause 5.9.4 the Commonwealth shall not seek offers in respect of the Supplies Maintenance Requirements from other suppliers unless the Contractor's offer has been rejected in accordance with clause 5.9.3, or the Contractor has failed to submit an offer by the date specified in the Right Of First Offer.

Clause 5.9.5 enables the Commonwealth to verify that the offer submitted by the Contractor meets the requirements of clause 5.9.3. Under clause 5.9.5, the Project Authority or any person authorised by the Project Authority is entitled to access the Contractor's premises, records or accounts for the sole purpose of clause 5.9.

#### OBLIGATION TO PROVIDE SUPPLIES MAINTENANCE REQUIREMENTS

Clause 5.9.6 states that the Commonwealth is not under any promise or representation that any Supplies Maintenance Requirement will exist or be the subject of any contract.

Clause 5.9.7 states that, with the exception of Defence, the Commonwealth is under no obligation to comply with clause 5.9 when acting through any department, agency or authority.

**Drafter's Action:** During Contract negotiations, drafters may consider proposing clause 5.9 where the Contractor is not being awarded the initial support contract and a Right Of First Offer will provide appropriate benefits for Defence.

**Related Clauses:** Nil

**Further Reading:** Nil



## 6. DELIVERY, ACCEPTANCE AND OWNERSHIP

### 6.1 Delivery

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core. The optional clause 6.1.2.c should be included where the Schedule Compression Milestone clause at clause 7.11.2 of the draft conditions of contract is included.
<u>Purpose:</u>	To indicate when, where and on what basis the Supplies are to be delivered by the Contractor. The clause also advises the Contractor of the Commonwealth rights and remedies if Milestones under the Contract are not achieved by the relevant Milestone Date.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	It is important to note that delivery differs from Acceptance under the Contract. Delivery refers to the physical movement of the Supplies into the Commonwealth's custody. Acceptance refers to the procedure by which the Commonwealth determines that the Supplies fulfil the requirements of the Contract.

#### FAILURE TO DELIVER SUPPLIES IN ACCORDANCE WITH THE CONTRACT

Clause 6.1.1 places a contractual obligation on the Contractor to deliver Supplies in accordance with the Contract, including the Delivery Schedule at Attachment C to the conditions of contract and clause 2.2 of the Statement of Work. Any failure by the Contractor to deliver Supplies on the delivery dates and to the delivery points specified in Attachment C will place the Contractor in breach of the Contract. It should be noted, however, that the Contractor may be entitled to claim a postponement of the date for delivery of Supplies in accordance with clause 6.2 of the conditions of contract where the Contractor's performance under the Contract has been delayed by circumstances outside the Contractor's reasonable control. Failure by the Contractor to meet the packaging and marking requirements detailed in clause 2.2 of the Statement of Work will also place the Contractor in breach of Contract (see guidance on clause 2.2 of the draft Statement of Work).

Clause 6.1.2 notifies the Contractor, that where the Contractor fails to meet a Milestone by the relevant Milestone Date, the Commonwealth may exercise various rights and remedies under the Contract including liquidated damages, withholding future payments where a Stop Payment Milestone is not achieved and/or terminating the Contract where a Schedule Compression Milestone is not achieved. It should be noted that this list of rights and remedies is not exhaustive and the Commonwealth may have additional contractual or legal remedies open to it where the Contractor fails to achieve a Milestone by the required date.

#### SELECTION OF DELIVERY DATE

It is important to note that under clause 6.5 of the conditions of contract the Project Authority is allowed 21 days from the date of delivery to Accept or reject the Supplies. As such where Supplies will be Accepted as part of a Milestone, the delivery date for Supplies must be at least 21 days prior to the Milestone Date listed in Attachment C. Drafters must therefore ensure that the delivery dates proposed by the successful tenderer are appropriate.

#### RISK OF LOSS OR DAMAGE TO THE SUPPLIES

It is also important to note that under clause 6.7 of the conditions of contract, risk of loss or damage to the Supplies will pass to the Commonwealth when the Contractor has delivered the Supplies to the Commonwealth in accordance with the Delivery Schedule at Attachment C. Drafters should give careful consideration to the delivery locations for Supplies to ensure that the Project Authority can:

- a. effectively Acceptance test the Supplies in the delivery location within the 21 days allowed under clause 6.5 of the contract; and

- b. implement appropriate risk management strategies given that the risk of loss or damage to the Supplies passes to the Commonwealth on delivery.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement E-3 of Annex E to the TDRL requires tenders to provide delivery information.

Clause 6.2 of the draft conditions of contract details when the Contractor is entitled to claim a postponement of the date for delivery of the Supplies.

Clause 6.5 of the draft conditions of contract details the Acceptance process for the Supplies.

Under clause 6.7 of the draft conditions of contract, risk of loss or damage to the Supplies passes to the Commonwealth on delivery of the Supplies in accordance with Attachment C to the draft conditions of contract.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule.

Further Reading: Nil

**6.2 Postponement**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To impose an obligation on the Contractor to inform the Project Authority in writing of any delay under the Contract and to require the Contractor to mitigate its losses due to delay. To indicate in what circumstances the Contractor may claim a postponement of the date for delivery of the Supplies and/or a Milestone Date and to set out the procedure for such a claim.

Policy: Nil

Guidance: Clause 6.2.1 imposes a contractual obligation on the Contractor to prevent and minimise delay and to mitigate its losses due to delay and clauses 6.2.2 and 6.2.3 detail the procedure for notifying the Project Authority of any delay.

**NOTIFICATION OF DELAYS UNDER THE CONTRACT**

The Contractor must advise the Project Authority in writing of the cause and nature of any delay within 7 days of the Contractor becoming aware of the delay. Within a further 14 days the Contractor must advise the Project Authority in writing of the steps the Contractor intends to take to contain the delay, the anticipated duration of the delay and whether the Contractor will be claiming postponement of a date for delivery and/or a Milestone Date. Where the Contractor fails to notify the Project Authority within the time periods specified in clauses 6.2.2 and 6.2.3, the Contractor will be in breach of Contract and may no longer be entitled to a postponement. Where the Contractor fails to comply with clause 6.2, advice should be sought from Contracting Policy and Operations Branch prior to any action being taken by the Project Authority.

**CIRCUMSTANCES IN WHICH POSTPONEMENT MAY BE CLAIMED**

Clause 6.2.4 details the circumstances in which the Contractor may claim a postponement of the date for delivery of Supplies and/or a Milestone Date and details the procedure for claiming the postponement. To be entitled to claim a postponement of the date for delivery of Supplies and/or a Milestone Date the Contractor must have been delayed by an event beyond its or its Subcontractor's reasonable control which is not provided for elsewhere in the Contract and could not have been reasonably contemplated by the Contractor. The Contractor must also:

- a. submit a Contract change proposal within 21 days of providing the notice under clause 6.2.3 requesting a postponement of the date for delivery of Supplies or the Milestone Date;
- b. demonstrate that with regard to the Contract Price and other relevant circumstances, the Contract can not be performed to meet the delivery date or Milestone Date;
- c. have taken all reasonable steps to minimise the delay and mitigate its losses; and
- d. support the claim with substantiating documentation.

**DELAYS THAT AFFECT MORE THAN ONE DELIVERY OR MILESTONE DATE**

Where the delay affects more than one delivery date or Milestone Date clause 6.2.5 requires the Contractor to submit with its Contract change proposal a revised Delivery Schedule and Schedule of Payments, as appropriate. It is very important to ensure that all affected delivery and Milestone Dates are contained in the Contract change proposal and postponed appropriately in relation to the delay. Where the effect of a delay is not appropriately taken into account and reflected in the Contract, time under the Contract could be set at large and the Commonwealth's right to terminate the Contract could be adversely affected.

Further advice on this issue should be obtained from Contracting Policy and Operations Branch prior to a postponement claim being granted under clause 6.2.

#### DELAYS THAT AFFECT KEY PERFORMANCE INDICATORS

It is also important to note that schedule based key performance indicators may be affected by the granting of postponement claims in accordance with clause 6.2 of the conditions of contract. Where the Contractor successfully claims a postponement of the date for delivery of Supplies and/or a Milestone Date a key performance indicator relating to the Milestone Date will also be affected. Contract change proposals submitted by the Contractor in accordance with clause 6.2 should take into account the effect that the postponement will have on the key performance indicators under the Contract and propose a change to Annex I to Attachment B to the conditions of contract as appropriate. Further guidance on this issue can be obtained by referring to the guidance provided for clause 7.13 of the draft conditions of contract or by contacting Contracting Policy and Operations Branch.

#### CHALLENGING POSTPONEMENT CLAIMS

As clause 6.2.1 imposes a contractual obligation on the Contractor to prevent and minimise delay and to mitigate its losses due to delay, the Commonwealth may challenge claims for a postponement of the date for delivery of Supplies and/or a Milestone Date where the Contractor could have absorbed the delay in its schedule or rescheduled so that the delay did not impact upon the delivery or Milestone Date. However, it is important to note that any rescheduling must be reasonable having regard to the Contract Price and any other relevant circumstances. Clause 6.2.1 also allows the Commonwealth to challenge a claim for postponement costs resulting from a delay caused by an act or omission of the Commonwealth where the Contractor fails to minimise the delay and mitigate its losses.

#### REJECTION OF POSTPONEMENT CLAIMS

The Project Authority must evaluate any Contract change proposal provided by the Contractor in accordance with clause 10.1 of the conditions of contract. It is important to note that the Project Authority should only reject a claim for a postponement of the date for delivery of Supplies and/or a Milestone Date where the Contractor cannot establish the requirements of clause 6.2 or where the Contractor does not comply with the process and timeframes specified in clause 6.2. Where the Project Authority rejects the Contract change proposal, the Contractor is entitled to dispute the Project Authority's decision by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

Drafter's Action: Nil

Related Clauses: Clause 6.1 of the draft conditions of contract places a contractual obligation on the Contractor to deliver Supplies in accordance the Contract including the Delivery Schedule at Attachment C to the conditions of contract and clause 2.2 of the draft Statement of Work.

Clause 6.3 of the draft conditions of contract specifies the circumstances in which the Contractor is entitled to claim postponement costs.

Annex I to Attachment B to the draft conditions of contract will contain the agreed details concerning Incentive Payments and key performance indicators.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule, including the delivery dates for Supplies and the Milestone Dates for the Contract.

Further Reading: Nil

### 6.3 Postponement Costs

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To allow the Contractor in specific circumstances to claim postponement costs to reflect 'unavoidable additional costs' imposed on the Contractor as a result of a delay caused by an act or omission of the Commonwealth.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Under clause 6.3, the Contractor is only entitled to claim postponement costs for delays which are caused by an act or omission of the Commonwealth in relation to the Contract. Where a delay is caused by an event that is not due to an act or omission of the Commonwealth in relation to the Contract then the Contractor will not be entitled to postponement costs but may be entitled to a postponement of the delivery and/or Milestone Date.

#### CIRCUMSTANCES IN WHICH POSTPONEMENT COSTS MAY BE CLAIMED

To be entitled to claim postponement costs under clause 6.3, the Contractor must:

- a. obtain a postponement of the date for delivery of Supplies and/or a Milestone Date under clause 6.2 of the conditions of contract;
- b. demonstrate that the delay was caused by an act or omission of the Commonwealth in relation to the Contract;
- c. notify the Project Authority in writing of the quantum of the postponement costs immediately following the determination of the costs but no later than 6 months from the granting of the relevant postponement claim; and
- d. support the claim with substantiating documentation.

Where the Contractor fails to notify the Project Authority within the time period specified in clause 6.3.1, the Contractor may no longer be entitled to claim postponement costs. Where the Contractor fails to comply with clause 6.3, advice should be sought from Contracting Policy and Operations Branch prior to any action being taken by the Project Authority.

#### REJECTION OF CLAIMS FOR POSTPONEMENT COSTS

Within 30 days of receipt of a claim for postponement costs, the Project Authority must grant the claim and notify the Contractor of the amount of postponement costs awarded or reject the claim and notify the Contractor of the reasons for the rejection. It is important to note that the Project Authority should only reject a claim for postponement costs where the Contractor can not establish the requirements of clause 6.3 or where the Contractor does not comply with the process and timeframes specified in clause 6.3. The Contractor is entitled to dispute the decision of the Project Authority by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

#### ACTS OR OMISSIONS OF THE COMMONWEALTH

The Contractor is only entitled to claim postponement costs for delays that are caused by an act or omission of the Commonwealth in relation to the Contract. It is important to note that the "Commonwealth" is defined for the Contract as the Commonwealth represented by the Department of Defence and therefore actions of other government departments and agencies will not be actions of the Commonwealth as required by clause 6.3.

Example A

The Commonwealth has promised to provide electronic equipment for incorporation into the Supplies, as GFM, to the Contractor. The company providing the electronic equipment to the Commonwealth is late in delivering the equipment. The Commonwealth therefore fails to provide the electronic equipment to the Contractor by the date specified in the Contract. The Contractor will be entitled to claim postponement costs because the delay results from an act or omission of the Commonwealth.

Example B

The Contractor has a facility in which it is manufacturing the Supplies to be delivered under the Contract. The facility is hit by a cyclone and significant delays are experienced by the Contractor. The Contractor will not be able to claim postponement costs from the Commonwealth but would be entitled to claim a postponement in accordance with clause 6.2 of the conditions of contract.

Example C

The Contractor is required to import items of Supplies under the Contract. Due to a failure by officers of the Australian Customs Service, the passing of the Supplies through customs is delayed. Even though the Contractor is not responsible for the delay, the Contractor will not be able to claim postponement costs as the Australian Customs Service is not the "Commonwealth" as defined on the front page of the Contract. The Contractor would be entitled to claim a postponement in accordance with clause 6.2 of the conditions of contract and could take separate action against the Australian Customs Service to recover its losses due to the delay.

Drafter's Action: Nil

Related Clauses: Clause 6.2 of the draft conditions of contract details the circumstances in which the Contractor may claim a postponement of the date for delivery of the Supplies and/or a Milestone Date.

Further Reading: Nil



## 6.4 Progress Certification

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Optional. To be included where progressive achievement of Milestones will be certified by Progress Certification prior to Supplies being Accepted.
<u>Purpose:</u>	To detail the conditions under which Supplies will be Progress Certified and the procedure that will apply to Progress Certification.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	Progress Certification provides a mechanism by which the Project Authority can provide feedback to the Contractor on progress of a particular Milestone, make payment to the Contractor and vest Supplies in the Commonwealth without such feedback, payment or ownership being construed as Acceptance of the Supplies.

### REQUIREMENTS FOR PROGRESS CERTIFICATION

The Schedule of Payments at Annex B to Attachment B to the conditions of contract lists all the Milestones that are subject to Progress Certification and includes the corresponding payment amount. To achieve Progress Certification the Contractor must achieve the Milestone in accordance with the requirements detailed in Annexes B and C to Attachment B and complete and present a signed Progress Certificate to the Project Authority. It is important to note that in accordance with clause 6.4.3 Progress Certification does not constitute Acceptance of the Supplies nor does it bind the Commonwealth to any later Acceptance of the Supplies. This makes it clear that Progress Certification in relation to particular Supplies does not limit the Project Authority's right to later reject those Supplies when they are offered for Acceptance.

Clause 6.4.2 specifies that the Project Authority has 14 days to determine whether the Contractor has achieved the Milestone and advise the Contractor accordingly. Clause 6.4.4 makes it clear that the Project Authority may still issue Progress Certification despite the existence of minor omissions or defects in the Supplies, however, the Contractor must remedy any minor omissions or defects within 14 days of issue of the Progress Certificate. Where the Contractor fails to do so, clause 6.4.5 entitles the Commonwealth to have remedial work performed at the expense of the Contractor. Clause 6.4.5 makes it clear that such remedial work does not affect the Contractor's warranties and other obligations under clause 9 of the conditions of contract (e.g. to produce Supplies that conform to the requirements of the Contract).

Where the Contractor fails to achieve the Milestone, clause 6.4.2 places an obligation on the Project Authority to advise the Contractor in writing of the reasons for the failure. To ensure that the Milestone is achieved and Progress Certification can occur as quickly as possible, the Contractor must advise the Project Authority of its proposed course of action to achieve the Milestone and the Project Authority must either reject the proposal or instruct the Contractor to complete the proposed course of action. The timeframes and process to be followed are detailed in clauses 6.4.6 to 6.4.8. The Contractor is entitled to dispute the Project Authority's decision to not grant the Contractor Progress Certification by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

### SELECTION OF PROGRESS CERTIFICATION MILESTONES

Payment against Milestones that are subject to Progress Certification assist the Contractor in maintaining a neutral cashflow. However, careful consideration should be given to the selection of Milestones under the Contract. Under clause 6.7.1a of the conditions of contract ownership of Supplies forming part of a Milestone passes to the Commonwealth upon payment of the relevant Milestone. Progress Certification Milestones can therefore be selected so that Supplies or partially completed Supplies forming part of an Earned Value Payment are included in a Progress Certification Milestone. Ownership of those Supplies will then pass to the Commonwealth on payment of the Milestone Payment and prior to

actual Acceptance of the Supplies. This will ensure that public funds are protected and will lessen the risk of the Commonwealth being an unsecured creditor in the event of default by the Contractor.

#### LIQUIDATED DAMAGES FOR PROGRESS CERTIFICATION MILESTONES

It should also be noted that where the Contractor fails to achieve a Milestone included in Attachment D to the conditions of contract by the date specified, the Commonwealth will be entitled to claim the liquidated damages specified in Attachment D. As Milestones subject to Progress Certification are designed to provide feedback and allow for payment of the Contractor and vesting of ownership of Supplies in the Commonwealth prior to Acceptance of the Supplies, it is less likely that the Commonwealth will suffer loss where a Progress Certification Milestone rather than an Acceptance Milestone is not achieved as scheduled. Where it is considered appropriate to claim liquidated damages for failure to achieve a Progress Certification Milestone careful consideration should be given to the calculation of the liquidated damages as to be enforceable they must represent a genuine pre-estimate of the Commonwealth's loss. Further guidance on the liquidated damages provisions at clause 7.14 of the draft conditions of contract is set out later in this Handbook.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment or Schedule Compression Milestones.

Clause 6.5 of the draft conditions of contract details the conditions under which Supplies will be Accepted and the procedure that will apply to Acceptance.

Clause 6.6 of the draft conditions of contract details the conditions under which Final Acceptance will be granted and the procedure that will apply to Final Acceptance.

Clause 6.7 of the draft conditions of contract details when ownership of Supplies passes to the Commonwealth.

Clause 7.2 of the draft conditions of contract details the process under which Milestone Payments will be paid.

Clause 7.14 of the draft conditions of contract notifies the Contractor that the Commonwealth will be entitled to claim liquidated damages where the Contractor delays achievement of a Milestone beyond the date specified in Attachment D to the draft conditions of contract.

Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments and Milestone Entry/Exit Criteria and will detail the mechanisms that will signify the achievement of each Milestone and entitle a Contractor to payment. The agreed Schedule of Payments will list all the Milestones that are subject to Progress Certification and include the amount of any payment that will be made upon the achievement of Progress Certification.

Annex E to Attachment I to the draft conditions of contract will, if required, contain the agreed Progress Certificate.

Further Reading: Nil

**6.5 Acceptance**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To detail the conditions under which Supplies will be Accepted and the procedure that will apply to Acceptance.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	Acceptance provides a mechanism by which the Project Authority can notify the Contractor that the Supplies offered for Acceptance meet the requirements of the Contract.

**REQUIREMENTS FOR ACCEPTANCE OF SUPPLIES**

Clause 6.5.1 places an obligation on the Contractor to deliver Supplies to the Commonwealth for Acceptance at the delivery points and dates detailed in the Delivery Schedule at Attachment C to the conditions of contract. To obtain Acceptance of Supplies, the Contractor must complete and present a signed Supplies Acceptance Certificate to the Project Authority and provide supporting evidence that the Supplies meet the requirements of the Contract, including confirmation of successful completion of any Verification and Validation activities or Acceptance testing required by the Contract.

The Schedule of Payments at Annex B to Attachment B to the conditions of contract lists all the Milestones that are subject to Acceptance and includes the amount of any payment that will be made upon the achievement of Acceptance. It is important to note that all Supplies need not be included in an Acceptance Milestone, however, all Supplies must be listed in the Delivery Schedule at Attachment C. In accordance with clause 6.1 of the conditions of contract, the Contractor must deliver Supplies to the Commonwealth for Acceptance at the delivery dates and points detailed in Attachment C. The delivery dates contained in Attachment C must be at least 21 days prior to the Milestone Dates included in Attachment C as clause 6.5.3 allows the Project Authority 21 days from delivery to Accept or reject the Supplies.

Clause 6.5.3 specifies that the Project Authority has 21 days to determine whether the Contractor has achieved the Milestone and advise the Contractor accordingly. Clause 6.5.4 makes it clear that the Project Authority may still Accept Supplies despite the existence of minor omissions or defects in the Supplies, however, the Contractor must remedy any minor omissions or defects within the time period specified in clause 6.5.4. Where the Contractor fails to do so, clause 6.5.5 entitles the Commonwealth to have remedial work performed at the expense of the Contractor. Clause 6.5.5 makes it clear that such remedial work does not affect the Contractor's warranties and other obligations under clause 9 of the conditions of contract (e.g. to remedy other defects during the Warranty Period).

Where the Contractor fails to achieve the Milestone, clause 6.5.3 places an obligation on the Project Authority to advise the Contractor in writing of the reasons for the failure and the extent of the non-conformance. To ensure that the Milestone is achieved and Acceptance of the Supplies can occur as quickly as possible, the Contractor must advise the Project Authority of its proposed course of action to achieve the Milestone and the Project Authority must either reject the proposal or instruct the Contractor to complete the proposed course of action. The timeframes and process to be followed are detailed in clauses 6.5.6 to 6.5.8. Under clause 6.5.9, where Supplies are rejected, the Project Authority may require the Contractor to retake possession of the Supplies. The Contractor is entitled to dispute the Project Authority's decision to not Accept the Supplies by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

**SELECTION OF ACCEPTANCE MILESTONES**

Careful consideration should be given to the selection of Milestones and delivery dates under the Contract. Under clause 6.7.1a of the conditions of contract

ownership of Supplies forming part of a Milestone passes to the Commonwealth upon payment of the relevant Milestone. Under clause 6.7.1b of the conditions of contract ownership of Supplies that are not included in a Milestone nominated for Progress Certification or Acceptance passes to the Commonwealth upon payment of the next Milestone Payment that is achieved after Acceptance of the Supplies. Supplies partially paid for as part of an Earned Value Payment may therefore be delivered separately for Acceptance or included in a Progress Certification or Acceptance Milestone.

#### REPASSING OF OWNERSHIP IN REJECTED SUPPLIES

Clause 6.7.3 entitles the Commonwealth to elect to repossess ownership of Supplies to the Contractor where Supplies that have vested in the Commonwealth following payment for a Progress Certification Milestone are subsequently rejected when submitted for Acceptance. The election should be made at the time of notifying the Contractor of the rejection of Supplies or as soon as possible after that. Unreasonable delay in notification of an election to repossess ownership may result in the Commonwealth losing the right to do so. However, advice should be sought from Contracting Policy and Operations Branch prior to ownership of Supplies being repossessed to the Contractor pursuant to this clause.

#### LIQUIDATED DAMAGES AND ACCEPTANCE MILESTONES

It should also be noted that where the Contractor fails to achieve a Milestone included in Attachment D to the conditions of contract by the date specified, the Commonwealth will be entitled to claim the liquidated damages specified in Attachment D. As the Commonwealth often commences use of Supplies following Acceptance and the vesting of ownership of the Supplies in the Commonwealth, the Commonwealth will in many circumstances suffer loss where an Acceptance Milestone is not achieved as scheduled. Where it is considered appropriate to claim liquidated damages for failure to achieve an Acceptance Milestone careful consideration should be given to the calculation of the liquidated damages as to be enforceable they must represent a genuine pre-estimate of the Commonwealth's loss. Further guidance on the liquidated damages provisions at clause 7.14 of the draft conditions of contract is set out later in this Handbook.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment or Schedule Compression Milestones.

Clause 6.4 of the draft conditions of contract details the conditions under which Progress Certification will be provided by the Commonwealth and the procedure that will apply to Progress Certification.

Clause 6.6 of the draft conditions of contract details the conditions under which Final Acceptance will be granted and the procedure that will apply to Final Acceptance.

Clause 6.7 of the draft conditions of contract details when ownership of Supplies passes to the Commonwealth.

Clause 7.2 of the draft conditions of contract details the process under which Milestone Payments will be paid.

Clause 7.14 of the draft conditions of contract notifies the Contractor that the Commonwealth will be entitled to claim liquidated damages where the Contractor delays achievement of a Milestone beyond the date specified in Attachment D to the draft conditions of contract.

Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments and Milestone Entry/Exit Criteria and will detail the mechanisms that will signify the achievement of each Milestone and entitle a Contractor to payment. The agreed Schedule of Payments will list all the Milestones that are subject to

Acceptance and include the amount of any payment that will be made upon the Acceptance of the Supplies.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule, including the delivery points and dates for delivery of the Supplies.

Annex F to Attachment I to the draft conditions of contract will contain the agreed Supplies Acceptance Certificate.

Further Reading: Nil

## 6.6 Final Acceptance

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To detail the conditions under which Final Acceptance will be granted and the procedure that will apply to Final Acceptance.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	Final Acceptance provides a mechanism by which the Commonwealth can notify the Contractor that it has fulfilled all of its obligations under the Contract and make the final payment to the Contractor. Final Acceptance also provides the Commonwealth with a mechanism by which it can withhold the final payment due to the Contractor until all of the Contractor's obligations under the Contract have been fulfilled, and the Supplies function and integrated as required by the Contract.

### THE FINAL ACCEPTANCE MILESTONE PAYMENT

The payment that will be made on achievement of Final Acceptance will be detailed in the Schedule of Payments at Annex B to Attachment B to the conditions of contract. Careful consideration should be given to the amount of the payment. The payment should be between 5-15% of the Contract Price depending upon the complexity of the requirement and the level of risk associated with the procurement.

### REQUIREMENTS FOR FINAL ACCEPTANCE

To be granted Final Acceptance, the Contractor must:

- a. have achieved all previous Milestones and Acceptance of all Supplies in accordance with clause 6.5 of the conditions of contract;
- b. demonstrate that the Supplies function and have been integrated as required by the Contract;
- c. demonstrate that it has fulfilled its obligations under the Contract, except to the extent that the obligations expressly, or by implication, survive the Final Acceptance Milestone;
- d. complete and present a signed Final Acceptance Certificate; and
- e. provide supporting evidence including confirmation of successful completion of Final Acceptance testing required by the Contract.

Clause 6.6.2 specifies that the Project Authority has 21 days to advise the Contractor in writing of whether it has achieved Final Acceptance. Where the Contractor fails to achieve Final Acceptance, the Project Authority must advise the Contractor in writing of the reason for the failure. Clauses 6.6.3 to 6.6.5 set out the process and timeframes under which the Contractor must advise the Project Authority of its proposed remedy and the Project Authority must reject the proposal or instruct the Contractor to complete the proposed course of action. Under clause 6.6.6, where Final Acceptance is rejected, the Project Authority may require the Contractor to retake possession of Supplies. The Contractor is entitled to dispute the Project Authority's decision to not grant the Contractor Final Acceptance by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

### OPTIONS WHERE FINAL ACCEPTANCE IS NOT ACHIEVED

It should be noted that where the Contractor fails to achieve Final Acceptance the Commonwealth is not entitled to reject the previously Accepted Supplies. The Final Acceptance Milestone may be included in Attachment D to the conditions of contract so that the Commonwealth will be entitled to claim liquidated damages where Final Acceptance is not achieved as scheduled. Careful consideration should be given to the amount of liquidated damages that are included in Attachment D. To be enforceable liquidated damages must represent a genuine

pre-estimate of the Commonwealth's loss. Further guidance on the liquidated damages provisions at clause 7.14 of the draft conditions of contract is set out later in this Handbook.

In addition to claiming liquidated damages or where liquidated damages are considered inappropriate, the Commonwealth should ensure that it does not waive its right to terminate the Contract for default and ensure that the Contractor delivers the Supplies within an appropriate time frame. Where a Contractor fails to achieve Final Acceptance, the Commonwealth may be able to terminate the contract for default under clause 12.2.1m of the Contract or at common law. Prior to terminating the Contract advice should be sought from Contracting Policy and Operations Branch to ensure that the Commonwealth has the legal right to terminate.

#### INCLUSION OF ADDITIONAL REMEDIES

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The payment attached to the Final Acceptance Milestone should be a sufficient incentive for the Contractor to complete the Contract. However, where the Contract involves an extensive amount of integration of Supplies to create a functioning system or the timeframe for in-service use of the Supplies is critical, it may be advisable to review the protection for the Commonwealth under the Contract. It may be necessary to include additional terms in the Contract to protect the Commonwealth where the Contractor fails to achieve Final Acceptance. These additional terms may include the ability to repass ownership in previously Accepted Supplies or the ability to terminate the Contract and recover previous Milestone Payments. As this will impact upon a number of core clauses in the Contract, advice should be sought from Contracting Policy and Operations Branch before redrafting the Contract in this manner.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment and Schedule Compression Milestones.

Clause 6.4 of the draft conditions of contract details the conditions under which Progress Certification will be provided by the Commonwealth and the procedure that will apply to Progress Certification.

Clause 6.5 of the draft conditions of contract details the conditions under which Supplies will be Accepted and the procedure that will apply to Acceptance.

Clause 7.2 of the draft conditions of contract details the process under which Milestone Payments will be paid.

Clause 7.14 of the draft conditions of contract notifies the Contractor that the Commonwealth will be entitled to claim liquidated damages where the Contractor delays achievement of a Milestone beyond the date specified in Attachment D.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments and will list the Milestone that is subject to Final Acceptance and include the amount of the payment that will be made upon Final Acceptance.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule, including the delivery points and dates for delivery of Supplies.

Annex G to Attachment I to the draft conditions of contract will contain the agreed Final Acceptance Certificate.

Further Reading: Nil

**6.7 Ownership and Risk**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core. The optional clause 6.7.3 should be included where the Progress Certification clause at clause 6.4 of the draft conditions of contract is included.
<u>Purpose:</u>	To advise when ownership of the Supplies passes from the Contractor to the Commonwealth and to advise when the risk of loss or damage to the Supplies is transferred between the parties.
<u>Policy:</u>	It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk. <i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	Clause 6.7 aims to protect the Commonwealth by passing ownership to the Commonwealth, at the earliest opportunity, of Supplies that have been paid for by the Commonwealth while allocating the risk of loss or damage to the Supplies to the party in the best position to manage the risk.

**OWNERSHIP**

Under clause 6.7.1a ownership of Supplies forming part of a Milestone passes to the Commonwealth upon payment of the relevant Milestone. Under clause 6.7.1b ownership of Supplies that are not included in a Milestone nominated for Progress Certification or Acceptance passes to the Commonwealth upon payment of the next Milestone Payment that is achieved after Acceptance of the Supplies.

Example A:

Item A is included in a Milestone subject to Progress Certification. Item A will vest in the Commonwealth on payment of the relevant Milestone Payment.

Example B

Item B is not included in a Milestone but is Accepted in accordance with clause 6.5 of the conditions of contract. Item B will vest in the Commonwealth on payment of the next Milestone Payment paid under the Contract.

Example C

Item C is included in a Milestone subject to Acceptance. Item C will vest in the Commonwealth on payment of the relevant Milestone Payment.

Careful consideration should be given to the selection of Milestones and delivery dates under the Contract. Supplies forming part of an Earned Value Payment may be delivered separately for Acceptance or included in a Progress Certification or Acceptance Milestone. Where Supplies forming part of an Earned Value Payment are included in a Progress Certification Milestone, the ownership of those Supplies will pass to the Commonwealth on payment of the Milestone Payment and prior to actual Acceptance of the Supplies. This will lessen the risk of the Commonwealth being an unsecured creditor in the event of default by the Contractor.

Example

The Contractor makes several claims for Earned Value Payments under clause 7.3 of the conditions of contract in relation to work being undertaken to produce Items Y and Z. The Project Authority pays the Contractor the Earned Value Payments.

Item Y is included in a Milestone subject to Progress Certification. The Milestone is scheduled for achievement on 21 November 2002. The Project Authority signs the Progress Certificate certifying achievement of the Milestone on 9 December 2002. The Contractor submits a claim for payment in accordance with clause 7.2 of the conditions of contract on 11 December 2002. The Contractor is paid the amount of the Milestone Payment on 9 January 2003 and the ownership of the Supplies forming part of the Milestone, including Item Y, passes to the Commonwealth on 9 January 2003.



Item Z is not included in a Milestone subject to Progress Certification or Acceptance. In accordance with Attachment C the Contractor delivers Item Z to the Commonwealth on 1 January 2003. The Project Authority Accepts Item Z in accordance with clause 6.5 of the conditions of contract and signs the Supplies Acceptance Certificate on 20 January 2003.

The next Milestone under the Contract is an Acceptance Milestone on 5 March 2003. The Contractor fails to achieve the Milestone as scheduled. The Project Authority eventually signs the Supplies Acceptance Certificate certifying achievement of the Milestone on 30 June 2003. No other Milestones are achieved by the Contractor between 20 January and 30 June. The Contractor submits a claim for payment in accordance with clause 7.2 of the conditions of contract for the Milestone on 1 July 2003. The Contractor is paid the amount of the Milestone Payment detailed in Attachment C for the Milestone on 31 July 2003 and ownership of the Supplies forming part of the Milestone and Item Z passes to the Commonwealth on 31 July 2003.

#### REPASSING OF OWNERSHIP IN THE SUPPLIES

Under clause 6.7.3 where Supplies that have vested in the Commonwealth following payment for a Progress Certification Milestone are subsequently rejected when submitted for Acceptance, the Project Authority may elect to repossess ownership of the Supplies to the Contractor. The election should be made at the time of notifying the Contractor of the rejection of Supplies or as soon as possible after that. Unreasonable delay in notification of an election to repossess ownership may result in the Commonwealth losing the right to do so.

As ownership of Supplies provides the Commonwealth with a tangible asset in return for payments made under the Contract, careful consideration should be given to the Commonwealth's interests and the risks associated with being an unsecured creditor prior to ownership of Supplies being repossessed to the Contractor. Advice should be sought from Contracting Policy and Operations Branch prior to the Project Authority exercising its rights under this clause.

#### TITLE TO THE SUPPLIES

It is also important to note that in accordance with clause 6.7.2 any item of Supplies that passes to the Commonwealth must be free of any registered or unregistered charge, lien, mortgage or other encumbrance. To ensure that the Commonwealth is able to determine that it is receiving good title to Supplies, clause 7.2 of the conditions of contract requires the Contractor, when submitting a claim for a Milestone Payment, to provide the Project Authority with documentation establishing that the Contractor is able to pass title to the Supplies to the Commonwealth on payment of the Milestone.

#### RISK

Clause 6.7 also aims to allocate the risk of loss of or damage to the Supplies to the more appropriate party under the Contract. As the Commonwealth is not in a position to minimise the risk of loss and damage to the Supplies until the Supplies are in the Commonwealth's possession, under clause 6.7.4, the risk of loss of or damage to the Supplies resides with the Contractor until the Supplies are delivered to the Commonwealth in accordance with the Delivery Schedule at Attachment C to the conditions of contract. Where Supplies are not delivered to the Commonwealth in accordance with the Delivery Schedule at Attachment C, the risk of loss or damage to the Supplies will remain with the Contractor.

If the Contractor wishes to deliver Supplies for Acceptance at an earlier date than listed in the Delivery Schedule at Attachment C, the Contractor must submit a Contract change proposal altering the date for delivery of the Supplies. If the Contractor fails to do this risk will reside with the Contractor until the later date detailed in the Delivery Schedule.

Under clause 6.7.5, where the Project Authority rejects Supplies as not conforming to the requirements of the Contract, or the Contractor retakes possession of the Supplies after delivery to the Commonwealth, the risk of loss of, or damage to the Supplies will revert to the Contractor on repossession or 7 days after the issue of a notice under clause 6.5.9 of the conditions of contract, whichever is the earlier. Under clause 6.5.9 of the conditions of contract, the Project Authority may require the Contractor to retake possession of rejected Supplies within 7 days of being told to retake possession. Clause 6.7.5 operates to ensure that the latest that the risk of loss of, or damage to, the Supplies will transfer to the Contractor is at the end of the 7 day period. Therefore if the Contractor delays repossessing the Supplies, the Contractor will nevertheless bear the risk of loss or damage. If the Contractor repossesses the Supplies before the end of the 7-day period, risk will transfer when the repossession occurs.

Example A

The Delivery Schedule at Attachment C states that Item X should be delivered to the Commonwealth on the 13 January at Depot C. Instead the Contractor delivers the Supplies on the 10 January to Depot C. Risk of loss of or damage to the Supplies will not pass to the Commonwealth until the 13 January.

Example B

The Delivery Schedule at Attachment C states that Item X should be delivered to the Commonwealth on the 13 January at Depot C. Instead the Contractor delivers the Supplies on the 13 January to Depot A. Risk of loss of or damage to the Supplies will not pass to the Commonwealth until the Supplies are delivered to Depot C.

Example C

The Contractor delivers Item A for Acceptance by the Commonwealth in accordance with the Delivery Schedule at Attachment C. The risk of loss of or damage to the Supplies passes to the Commonwealth at the time of delivery. The Supplies do not conform to the requirements of the Contract and the Commonwealth rejects the Supplies. The Contractor retakes possession of the Supplies at the request of the Commonwealth within the 7 days required by clause 6.5.9 of the conditions of contract. Risk of loss of or damage to the Supplies re-passes to the Contractor when it retakes possession.

Drafter's Action: Nil

Related Clauses: Clause 6.4 of the draft conditions of contract details the conditions under which Progress Certification will be provided by the Commonwealth and the procedure that will apply to Progress Certification.

Clause 6.5 of the draft conditions of contract details the conditions under which Supplies will be Accepted and the procedure that will apply to Acceptance.

Clause 7.2 of the draft conditions of contract details the process under which Milestone Payments will be paid.

Clause 8.6 of the draft conditions of contract details any insurance required to be taken out by the Contractor in relation to the Supplies.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments, including a list of the Milestones that are subject to Progress Certification (if required), Acceptance and Final Acceptance and include the amount of the payment that will be made upon achievement of each Milestone.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule, including the delivery points and dates for delivery of Supplies.

Further Reading: Nil

**7. PRICE AND PAYMENT****7.1 Price and Price Basis**

- Sponsor:** Contracting Policy & Operations
- Status:** Core
- Purpose:** To identify the Contract Price and detail how the Contract Price will be payable.
- Policy:** Nil
- Guidance:** The Contract Price is set out in the Price Schedule in Annex A to Attachment B to the conditions of contract. The Commonwealth must pay the Contractor in accordance with the payment provisions in clause 7 of the conditions of contract. For further guidance read the discussion on the other clause 7 provisions.
- Drafter's Action:** Nil
- Related Clauses:** Tenderers are requested to complete the Price Schedule at Tender Data Requirement D-1 of Annex D to the TDRL.
- Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract.
- Annex A to Attachment B to the draft conditions of contract will contain the agreed Price Schedule.
- Further Reading:** Nil

## 7.2 Milestone Payments

**Sponsor:** Materiel Finance Division and Contracting Policy & Operations

**Status:** Core. The optional clause 7.2.1.a should be included where the Progress Certification clause at clause 6.4 of the draft conditions of contract is included.

**Purpose:** To detail the process that applies to Milestone Payments under the Contract.

**Policy:** The Commonwealth has a preference for payment on delivery. Where payment on delivery is not appropriate, the Commonwealth prefers to pay by Milestone Payments only, with a Mobilisation Payment where required. The Commonwealth will, however, in most strategic materiel acquisitions agree to pay the Contractor by a combination of Milestone and Earned Value Payments. Where the Commonwealth will allow for payment by a combination of Earned Value and Milestone Payments its preference is for a 50/50 ratio.

The Commonwealth may also allow for payment by Cost Reimbursement Payments where aspects of the Contract are high risk and/or developmental. Drafters should refer to information on Cost Reimbursement Payments at clause 7.9 of the draft conditions of contract.

It is Defence policy that accounts should be paid 30 days from the receipt of a correctly rendered invoice.

*Defence CEI Part 3 Instruction 2*

*DPPM – Section 3, Chapter 3.4*

**Guidance:** Payment of the Contract Price under the Contract may comprise a combination of Milestone Payments, Earned Value Payments and Cost Reimbursement Payments depending upon which options are selected.

### REQUIRED DOCUMENTATION FOR A MILESTONE PAYMENT

Under clause 7.2.1, all Milestone Payment claims submitted by the Contractor must be accompanied by either a Progress Certificate, Supplies Acceptance Certificate or Final Acceptance Certificate signed by both parties and other relevant documentation necessary to establish the claim is in accordance with the Contract. Annex B to Attachment B to the conditions of contract should identify the certificate that must accompany each claim for a Milestone Payment. In addition to the Progress Certificate, Supplies Acceptance Certificate or Final Acceptance Certificate, required documentation may include plans, reports, other certificates and evidence of insurance or financial securities. Claims for payment submitted under clause 7.2 must comply with the tax invoice requirements detailed in clause 7.15 of the conditions of contract.

### DOCUMENTATION ESTABLISHING TITLE TO THE SUPPLIES

Clause 7.2.1d also requires the Contractor to supply documentation establishing that the Contractor is able to pass title to the Supplies forming part of the Milestone to the Commonwealth upon payment of the Milestone Payment. This clause aims to protect the Commonwealth by ensuring that the Commonwealth receives good title to the Supplies at the time of payment of the Milestone Payment. It is important to note that in order for the Commonwealth to receive title to the Supplies from the Contractor, the Contractor must have received title to the Supplies from their original owner. The documentation required to establish that the Contractor can pass good title to the Supplies to the Commonwealth will therefore depend upon the source of the Supplies and the method of their acquisition. Documentation required by the Project Authority to provide evidence of good title may include the relevant Subcontract, records and documentation establishing payment of Subcontractors or suppliers, and records and documentation establishing acceptance by the Contractor of the Supplies or components of the Supplies.

### APPROVAL OF A CLAIM FOR A MILESTONE PAYMENT

Clauses 7.2.2 to 7.2.5 set out the procedure and time periods that apply to the approval of a claim for a Milestone Payment. The Project Authority may approve the whole or part of a claim for payment. In accordance with Defence policy, claims for payment should be paid 30 days after the receipt of the claim for payment. Clause 7.2.3 provides for payment 30 days after achievement of the Milestone or submission of the claim, whichever occurs last. Where payments are made earlier or later than 30 days, the early and late payment provisions of clause 7.12 of the conditions of contract will apply.

### REJECTION OF A CLAIM FOR A MILESTONE PAYMENT

It is important to note that the Project Authority should only reject a claim for a Milestone Payment where the claim is not accompanied by the documentation required by clause 7.2.1. Where the Project Authority rejects a claim for a Milestone Payment, the Project Authority must notify the Contractor of the reasons for the rejection and the actions to be taken by the Contractor in order for the claim to be paid. The Contractor must immediately undertake the required actions and submit a revised claim for payment. The Contractor is entitled to dispute the decision of the Project Authority to reject the claim for payment by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

### AMORTISATION OF MILESTONE PAYMENTS

It is also important to note that where the Contractor has been paid a Mobilisation Payment under clause 7.5 of the conditions of contract, Milestone Payments due to the Contractor will be amortised against the Mobilisation Payment in accordance with clause 7.5.2 of the conditions of contract. All Milestone Payments will therefore be deemed to have been paid to the Contractor until the total amount of the approved Milestone and Earned Value Payments claims equal the amount of the Mobilisation Payment.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment and/or Schedule Compression Milestones.

Clauses 6.4 to 6.6 of the draft conditions of contract detail the conditions under which Progress Certification, Acceptance and Final Acceptance will be provided by the Commonwealth and the procedure that will apply.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.4 of the draft conditions of contract, where included, details how Milestone Payments will be varied for fluctuations in the cost of labour and materials and clause 7.12 of the draft conditions of contract details how an amount required for payment will be modified where a payment is made early or late.

Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments and Milestone Entry/Exit Criteria that will identify the prerequisites for submittal of each claim for a Milestone Payment, including identification of the necessary certificates.

Further Reading: Nil

### 7.3 Earned Value Payments

**Sponsor:** Materiel Policy & Services and Materiel Finance Division

**Status:** Optional. To be included where it is considered appropriate to pay the Contractor Earned Value Payments under the Contract and full Cost Schedule Control Systems (CSCS) requirements are applied to the Contract. Drafters should include the alternative formula where Cost Reimbursement Payments will be payable to the Contractor under clause 7.9 of the draft conditions of contract.

**Purpose:** To detail the process that applies to Earned Value Payments under the Contract including acceptable Earned Value Techniques (EVTs) and the applicable Earned Value Payment formula.

**Policy:** The Commonwealth has a preference for payment on delivery. Where payment on delivery is not appropriate, the Commonwealth prefers to pay by Milestone Payments only, with a Mobilisation Payment where required. The Commonwealth will, however, in most strategic materiel acquisitions agree to pay the Contractor by a combination of Milestone and Earned Value Payments. Where the Commonwealth will allow for payment by a combination of Earned Value and Milestone Payments its preference is for a 50/50 ratio.

It is Defence policy that accounts should be paid 30 days from the receipt of a correctly rendered invoice.

*DEF(AUST) 5655 Australian Cost Schedule Control Systems Criteria Standard*

*DEF(AUST) 5657 Australian Cost Schedule Control Systems Criteria Implementation Guide*

*DEF(AUST) 5658 Cost Schedule Status Reporting Specification and Implementation Guide*

*Defence CEI Part 3 Instruction 2*

*DPPM – Section 3, Chapter 3.4*

*Integrated Baseline Review (IBR) Team Handbook*

**Guidance:** Payment of the Contract Price under the Contract may comprise of a combination of Milestone Payments, Earned Value Payments and Cost Reimbursement Payments depending upon which options are selected.

#### USE OF THE EARNED VALUE PAYMENT OPTION

Payment by a combination of Earned Value Payments and Milestone Payments enables the Commonwealth to pay the Contractor progressively for work performed and enables the Contractor to better maintain a predominantly neutral cash flow under the Contract. Therefore the Earned Value Payment option should normally be selected for most strategic procurements where full CSCS requirements are applied to the Contract. Payment on an earned value basis may be inappropriate where sufficient resources to verify Earned Value Payments under the Contract are not available.

#### SELECTION OF EARNED VALUE PAYMENT/ MILESTONE PAYMENT RATIO

Tenderers may propose a different ratio of Milestone Payments and Earned Value Payments than the preferred 50/50 ratio. Careful consideration should be given to any proposed ratio. The percentage of the Contract Price to be paid as Earned Value Payments should normally be between 50% and 70%, depending upon the level of risk associated with the Contract. For guidance on the selection of an appropriate Earned Value Payment/ Milestone Payment ratio, reference should be made to the guidance provided in relation to Tender Data Requirement D-8 to Annex D to the TDRL.

## REQUIREMENTS FOR AN EARNED VALUE PAYMENT

Under clause 7.3, Earned Value Payments will be payable to the Contractor on the last day of each month for work performed in that month as indicated in the reports generated by the Contractor's validated Earned Value Management System. Claims for payment submitted under clause 7.3 must comply with the tax invoice requirements detailed in clause 7.15 of the conditions of contract.

It is important to note that the Contractor is not entitled to claim an Earned Value Payment until the Integrated Baseline Review has been successfully completed or where the Contractor does not have a validated Earned Value Management System, until the Earned Value Management System of the Contractor is validated.

It is also important to note that, under clause 7.3.3, the Commonwealth will not pay an Earned Value Payment claim where:

- a. the Earned Value Techniques employed by the Contractor do not include one or more of the techniques specified in clause 7.3.3a;
- b. Level of Effort accounts for 10% or more of the non-Subcontracted Contract Budget Base; or
- c. Work Packages are longer than six months duration.

## AMORTISATION OF EARNED VALUE PAYMENTS

Where the Contractor has been paid a Mobilisation Payment under clause 7.5 of the conditions of contract, Earned Value Payments due to the Contractor will be amortised against the Mobilisation Payment in accordance with clause 7.5.2. All Earned Value Payments will therefore be deemed to have been paid to the Contractor until the total amount of approved Milestone and Earned Value Payment claims equal the amount of the Mobilisation Payment.

## CALCULATION OF EARNED VALUE PAYMENTS

Earned Value Payments will be calculated using the Earned Value Payments formula in clause 7.3.5. The Earned Value Payment formula uses the Contract Budget Base rather than the Performance Measurement Baseline as the denominator in order to prevent the Commonwealth from making progressive payments against Management Reserve. While it is understood that this method potentially increases the inherent negativity of cash flow at the start of a Contract, it also recognises that such negativity decreases as Management Reserve is consumed, resulting in the fairest possible payment regime. Concerns regarding the negativity of cash flow introduced by this method can be addressed by selecting appropriately timed and valued Milestone Payments.

## APPROVAL OF EARNED VALUE PAYMENT CLAIMS

Clauses 7.3.6 to 7.3.11 set out the procedure and time periods that apply to the approval of a claim for an Earned Value Payment. The Project Authority may approve the whole or part of a claim for payment. In accordance with Defence policy, claims for payment should be paid 30 days after the receipt of the claim for payment. However, where additional verification of a claim is required, payment of the claim will be made 30 days after the claim is approved. Where payments are made earlier or later than required by clause 7.3, the early and late payment provisions at clause 7.12 of the conditions of contract will apply.

In order to approve Earned Value Payment claims under clause 7.3, the Contractor must provide the Project Authority with access to a list of all Work Packages, relevant Earned Value Status Sheets, relevant Contractor and Subcontractor invoices and progress documentation. Clause 7.3.6 also requires that the Project Authority be given access to the Contractor's managers associated with earned value progress. This will enable most queries regarding Earned Value Payment claims to be resolved as quickly as possible. Additional verification of claims should only be conducted where the Project Authority is unclear as to whether the Contractor has completed the work claimed to have been performed. The time

period in which the Project Authority must conduct the additional verification has to be included in clause 7.3.10 prior to release of the RFT. Drafters should give careful consideration to the time period included, especially since the Contractor will not be paid where additional verification is required until 30 days after the approval of the claim.

#### REJECTION OF A CLAIM FOR AN EARNED VALUE PAYMENT

It is important to note that the Project Authority may only reject a claim for an Earned Value Payment where the claim does not meet the requirements of clause 7.3. Where the Project Authority rejects a claim for an Earned Value Payment, the Project Authority must notify the Contractor of the reasons for the rejection. The Contractor is entitled to dispute the decision of the Project Authority to reject the claim for payment by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

**Drafter's Action:** Prior to contract signature, drafters must insert the period in clause 7.3.10 within which the Project Authority must conduct additional verifications of Earned Value Payment claims.

**Related Clauses:** Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment and/or Schedule Compression Milestones. Tender Data Requirement D-8 also requests tenderers to specify the proposed ratio of Earned Value Payments to Milestone Payments.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.4 of the draft conditions of contract, where included, specifies how Earned Value Payments will be varied for fluctuations in the cost of labour and materials and clause 7.12 of the draft conditions of contract details how an amount required for payment will be modified where a payment is made early or late.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Clause 3.2.5 of the draft Statement of Work specifies the Earned Value Management System requirements for the Contract and the process for validation of the Contractor's earned value management system.

Clause 3.2.7 of the draft Statement of Work details the measurement requirements for the Contract, which should be integrated into the earned value management program.

**Further Reading:** Nil



## 7.4 Price Variation

**Sponsor:** Contracting Policy & Operations and Materiel Finance Division

**Status:** Optional. Clause 7.4 is to be included where the Commonwealth agrees that fluctuations in the cost of labour and materials over the life of the Contract will be payable to the Contractor. The optional clause 7.4.1b should be included where the Earned Value Payments clause at clause 7.3 of the draft conditions of contract is included. The optional clause 7.4.1c should be included where the Cost Reimbursement clause at clause 7.9 of the draft conditions of contract is included.

**Purpose:** To explain how the price variation formula at Annex D to Attachment B to the draft conditions of contract is to be applied to Milestone Payments, Earned Value Payments and Cost Reimbursement Payments (where applicable) and to outline the process that applies to the approval and payment of price variation claims.

**Policy:** It is Defence policy that contracts of up to two years duration should not allow contractor's to claim compensation for variations in the cost of labour and materials. Where a contract is to extend beyond two years the Department's preference is that price variation clauses should be included to cater for increases or decreases in the cost of labour and materials. Failure to adopt a price variation clause in a contract which runs for more than two years may result in tenderers including a significant contingency amount to mitigate unforeseeable increases in labour and materials costs.

It is Defence policy that payments shall be payable in source currency unless foreign currency amounts otherwise payable under the Contract are insignificant. A determination of whether the amounts are significant will be made by Defence after receipt of tenders. Where the Contract is to be payable in Australian currency only, the Contractor will be entitled to claim for fluctuations in the exchange rate between the Base Date and the date for payment.

*DPPM – Section 2, Chapter 2.2 and Section 3, Chapter 3.3*

**Guidance:** Prior to release of the RFT, drafters must determine whether the Contract should include a price variation formula so that tenders can be submitted in accordance with the selected price basis.

### SELECTION OF FIRM PRICE OR VARIABLE PRICE BASIS

While Defence policy creates the expectation that price variation clauses should be used in all contracts of over two years duration, an approach in which no such clause is included may still be valid for low risk or commercial-off-the-shelf procurements, where the Contract requirement is clearly defined, the cost can be estimated with a high degree of confidence and performance goals are readily identifiable.

Inclusion of an appropriate price variation formula is preferable where it is likely that the Contract Price will be affected by fluctuations in the cost of labour and materials. This is most likely to occur in contracts of more than two years duration or where the market for labour and materials utilised in the Contract requirement is volatile. In such circumstances it is appropriate for the Commonwealth to accept the risk of such fluctuation on value for money grounds, as it avoids the risk of the Contractor including excessive contingency in the Contract Price.

### REQUIREMENTS FOR PRICE VARIATION

In accordance with clause 7.4 the Contractor is required to submit a separate claim for payment of price variation no later than three months after the publication of the final indices for the relevant period. The Contractor is also required to advise the Commonwealth in writing if the amount calculated by the Contractor is a credit to the Commonwealth. The applicable indices are detailed in the price variation formula in Annex D to Attachment B. Where the Contractor fails to make a claim for payment of price variation within that period the Commonwealth will not be liable to reimburse the Contractor for the relevant variation amount.

The Contractor is only entitled to claim for fluctuations in the cost of labour and materials that occur between the Base Date and:

- a. for Milestone Payments, the Milestone Date or the date of achievement by the Contractor of the Milestone, whichever occurs first;
- b. for Earned Value Payments, the scheduled date for completion of the cumulative value of work achieved by the Contractor up to the date of the Earned Value Payment claim or where the work is achieved early the actual date of completion of the work; and
- c. for Cost Reimbursement Payments, the date of the Cost Reimbursement Payment.

The amount of any variation claim will be calculated in accordance with the formula at Annex D to Attachment B.

#### PRICE VARIATION FOR MILESTONE PAYMENTS

Price variation of claims relating to Milestone Payments are baselined against the date at which the Milestone is scheduled for completion in the Delivery Schedule. Where a Contractor is late in achieving a Milestone the Department's policy is that the Contractor should not derive benefit from this delay in the form of increased price variation. Accordingly, where a Contractor is late in achieving a Milestone, the date at which price variation is to be calculated is the date at which achievement of the Milestone should have occurred. Where a Milestone is achieved early, the Contractor shall receive price variation calculated between the Base Date and the date at which the Milestone was achieved.

#### PRICE VARIATION FOR EARNED VALUE PAYMENTS

Earned Value Payments are claimed by the Contractor on a monthly basis and are calculated on the volume of work subject to payment by Earned Value Payments undertaken in that month. As the work completed within that month will have occurred against numerous work packages, at various stages of completion, it would be impractical to require a Contractor to identify individually in its claim which Work Package the earned value work being claimed attaches to and the date at which that Work Package was scheduled to be completed.

To address this limitation when calculating price variation of Earned Value Payments it is Defence policy that price variation is to be calculated on the cumulative value of earned value work to the date of the claim baselined against an agreed Budgeted Cost of (earned value) Work Scheduled.

The Budgeted Cost of Work Scheduled is provided by the Contractor as part of their Integrated Baseline Review (IBR). The IBR is normally a Milestone under the Contract and depending on the terms, is usually required to be undertaken within 3 to 6 months of the signing of the Contract.

In order to calculate the amount of price variation payable on an Earned Value claim, it is necessary to measure the cumulative amount of earned value work claimed including the month the subject of the claim, known as the Budgeted Cost of Work Performed, and baseline this against the Budgeted Cost of Work Scheduled.

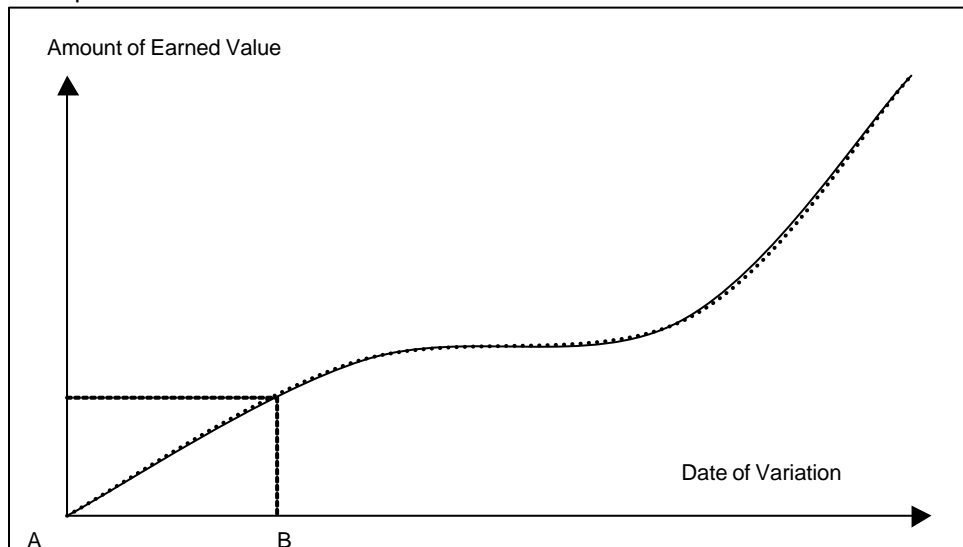
Where the cumulative amount of Budgeted Cost of Work Performed:

- a. Equals the Budgeted Cost of Work Scheduled, the Contractor shall receive price variation between the Base Date and the date at which the value of work subject to the claim was achieved;
- b. Exceeds the Budgeted Cost of Work Scheduled, the Contractor shall receive price variation between the Base Date and the date at which that work subject to the claim was achieved; or
- c. Is less than the Budgeted Cost of Work Scheduled, the Contractor shall receive price variation between the Base Date and the earlier date at

which the Contractor should have completed that value of work against the Budgeted Cost of Work Scheduled.

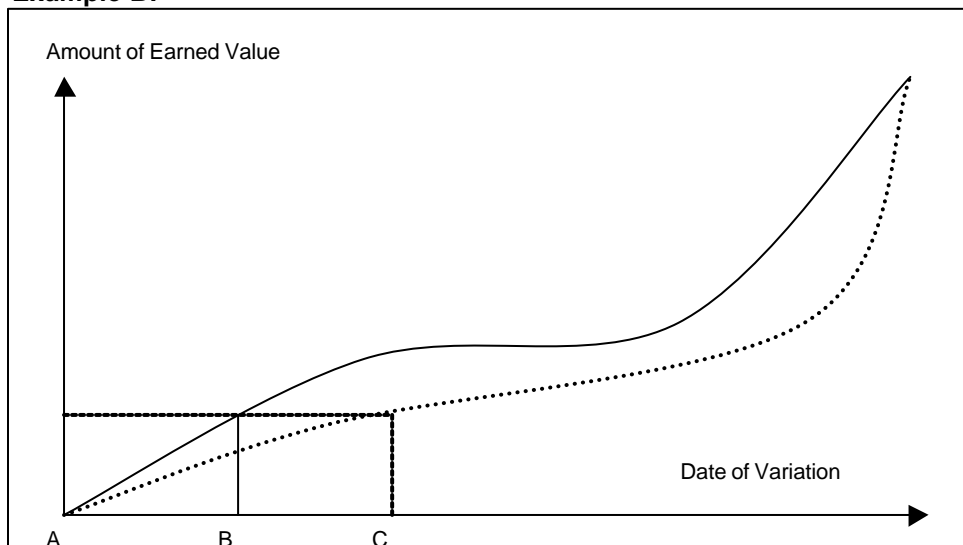
A pictorial explanation of the different scenarios appears below:

Example A:



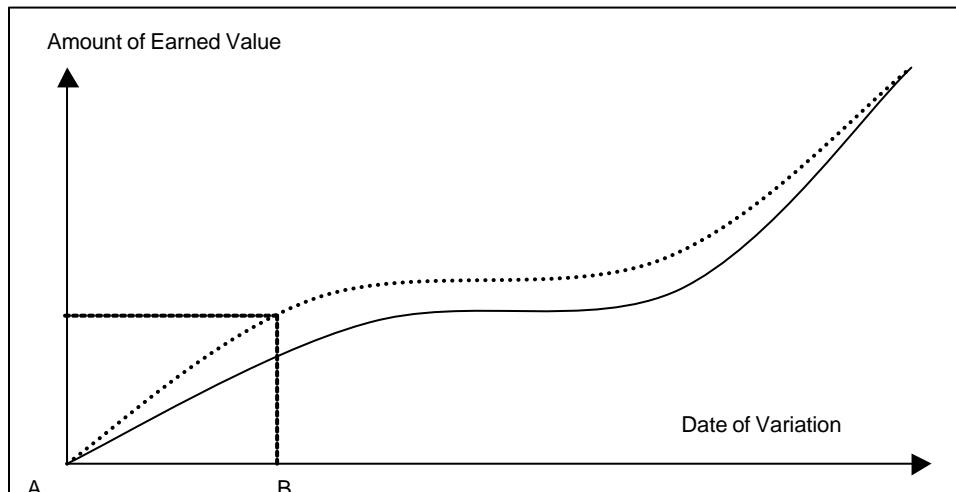
Where: A = Base Date  
 B = Price Variation Date

Example B:



Where: A = Base Date  
 B = Price Variation Date  
 C = Actual Date Value of Work Achieved

## Example C:



Where: A = the Base Date

B = Price Variation Date

#### PRICE VARIATION FOR COST REIMBURSEMENT PAYMENTS

Due to the developmental and variable nature of the work to which Cost Reimbursement Payments will apply, there is no baseline against which claims for price variation can be measured. Accordingly, the Commonwealth will pay price variation calculated between the Base Date and the date of a claim. The only protection that the Commonwealth has against the Contractor delaying claims for payment to achieve increased variation is that the Contractor will bear the cost of money spent on Cost Reimbursement work until they submit a claim for payment to the Commonwealth.

#### APPROVAL OF A CLAIM FOR PRICE VARIATION

Clauses 7.4.2 and 7.4.3 set out the procedure and time periods that apply to the submission and approval of a claim for price variation. Claims for payment submitted under clause 7.4 must comply with the tax invoice requirements detailed in clause 7.15 of the conditions of contract. In accordance with Defence policy, claims for payment should be paid 30 days after the receipt of the claim for payment. Where payments are made earlier or later than 30 days, the early and late payment provisions in clause 7.12 of the conditions of contract will apply.

#### REJECTION OF A CLAIM FOR PRICE VARIATION

It is important to note that the Project Authority should only reject a claim for price variation where the claim is not submitted in accordance with clause 7.4. Where the Project Authority rejects a claim for price variation, the Project Authority must notify the Contractor of the reasons for the rejection. The Contractor is entitled to dispute the decision of the Project Authority to reject the claim for payment by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

#### RECOVERY OF PRICE DECREASES BY THE COMMONWEALTH

Clause 7.4.4 makes it clear that, if the application of the price variation formula results in a payment decrease, the amount of the decrease is a debt due to the Commonwealth and may be recovered in accordance with clause 12.4 of the conditions of contract.

The Project Authority should ensure that price variations are calculated in accordance with the formula in relation to each payment so that it is able to verify the amount of a price variation claim made by a Contractor, and if the application of the formula results in a price decrease, recover the amount of the decrease from

the Contractor. Under clause 7.4, the Contractor shall notify the Commonwealth where the price variation results in a credit to the Commonwealth.

#### EXCHANGE RATE VARIATION

In the strategic procurement environment most contracts will be payable in source currency or contain a significant source currency component and accordingly clause 7.4 does not contain a standard exchange rate variation clause. Where the Contract Price is to be payable in Australian dollars only, drafters should insert the appropriate clauses in the draft conditions of contract to allow for claims to be made for fluctuations in exchange rate.

Where optional clause 7.4 has been selected for inclusion the following clauses should be added to allow for claims for fluctuations in exchange rate to be made:

7.4.2	Subject to clause 7.4.4, the element of the Contract Price representing the purchase of imported items from overseas suppliers to form part of the Supplies shall be subject to variation to reflect fluctuations in Exchange Rate occurring between: <ol style="list-style-type: none"> <li>a. the Base Date; and</li> <li>b. the date on which the overseas supplier's account is settled, or the date 3 months after the date of the overseas supplier's invoice, whichever occurs first.</li> </ol>
7.4.3	For the purposes of clause 7.4.2, Exchange Rate means the spot selling rate of (...INSERT THE RELEVANT FOREIGN CURRENCY/CURRENCIES...) relative to the dollar used by (...INSERT THE RELEVANT FINANCIAL INSTITUTION...).
The following changes should also be made to clause 7.4:	
a.	clause 7.4.1: the reference to clause 7.4.2 should be changed to a reference to clause 7.4.4; and
b.	clause 7.4.2: should be renumbered to 7.4.4 and amended as follows:
7.4.4	The Contractor shall submit a separate claim for payment of any amount claimed pursuant to this clause 7.4 no later than 6 months after submission of an initial claim for payment under clause 7. The Commonwealth shall not be liable for any variation claims made outside this period.
c.	clause 7.4.3: should be renumbered to 7.4.5 and the reference to clause 7.4.2 should be changed to a reference to clause 7.4.4; and
d.	the Note to Tenderers should be deleted.

Where optional clause 7.4 has not been selected for inclusion the following clause should be included to allow for claims for fluctuations in exchange rate to be made:

Price Variation	
7.4.1	Subject to clause 7.4.3, the element of the Contract Price representing the purchase of imported items from overseas suppliers to form part of the Supplies shall be subject to variation to reflect fluctuations in Exchange Rate occurring between: <ol style="list-style-type: none"> <li>a. the Base Date; and</li> <li>b. the date on which the overseas supplier's account is settled, or the date 3 months after the date of the overseas supplier's invoice, whichever occurs first.</li> </ol>
7.4.2	For the purposes of clause 7.4.1, Exchange Rate means the spot selling rate of (...INSERT THE RELEVANT FOREIGN CURRENCY/CURRENCIES...) relative to the dollar used by

(...INSERT THE RELEVANT FINANCIAL INSTITUTION...)	
7.4.3	The Contractor shall submit a separate claim for payment of any amount claimed pursuant to this clause 7.4 no later than 6 months after submission of an initial claim for payment under clause 7. The Commonwealth shall not be liable for any variation claims made outside this period.
7.4.4	On receipt of a claim for payment under clause 7.4.3, the Project Authority shall: <ul style="list-style-type: none"> <li>a. approve the claim where it is submitted in accordance with clause 7.4 and make payment within 30 days of receipt of the claim; or</li> <li>b. reject the claim and notify the Contractor in writing, within 14 days of receipt of the claim, of the reasons for the rejection.</li> </ul>

**Drafter's Action:** Prior to Contract signature, drafters should consider whether a clause allowing for fluctuations in exchange rate should be included.

**Related Clauses:** Tender Data Requirement D-3 of Annex D to the TDRL requests tenderers to provide information required in the event that the Contract is written in Australian currency.

Tender Data Requirement D-4 of Annex D requests tenderers to provide the tenderer's preferred indices for the price variation formula at Attachment D to the draft conditions of contract

Tender Data Requirement D-8 of Annex D requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment and/or Schedule Compression Milestones.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.12 of the draft conditions of contract details how an amount required for payment will be modified where a payment is made early or late.

Clause 12.4 of the conditions of contract contains the right of the Commonwealth to recover money, where the application of the price variation formula results in a credit to the Commonwealth.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments..

Annex D to Attachment B to the draft conditions of contract will contain the agreed Price Variation formula.

**Further Reading:** Nil

## 7.5 Mobilisation Payment

**Sponsor:** Contracting Policy & Operations and Materiel Finance Division

**Status:** RFT Core. This clause must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.

**Purpose:** To detail the amortisation process applicable to Mobilisation Payments, the financial security requirements for Mobilisation Payments and the Commonwealth's rights to exercise the Mobilisation Payment security.

**Policy:** The Commonwealth has a preference for payment on delivery. Where payment on delivery is not appropriate, the Commonwealth prefers to pay by Milestone Payments only, with a Mobilisation Payment where required.

It is Defence policy that accounts should be paid 30 days from the receipt of a correctly rendered invoice.

**Guidance:** A Mobilisation Payment is a mechanism by which the Contractor can receive funding to procure items required for it to fulfil its contractual obligations prior to achievement of Milestones, delivery or Acceptance of any Supplies.

### APPROPRIATENESS AND AMOUNT OF THE MOBILISATION PAYMENT

It is important that any proposal for a Mobilisation Payment is given careful consideration to ensure that the Mobilisation Payment is required by the Contractor and can be justified in accordance with the following guidance. Mobilisation Payments are unlikely to be required for commercial-off-the-shelf acquisitions or procurements off a well established production line where only minor modifications to the products are required. Mobilisation Payments will usually be between 5 and 15% of the Contract Price, however, in determining the appropriate amount for the Mobilisation Payment consideration should be given to the entire payment regime. For further guidance on the use of Mobilisation Payments and the appropriate amount of a Mobilisation Payment, reference should be had to the guidance provided in relation to Tender Data Requirement D-8 of Annex D to the TDRL.

### AMORTISATION OF PAYMENTS AGAINST THE MOBILISATION PAYMENT

Only one Mobilisation Payment will be payable under the Contract. The amount and date of the payment will be detailed in the Schedule of Payments at Annex B to Attachment B of the draft conditions of contract. Where the Mobilisation Payment is made earlier or later than required, the early and late payment provisions at clause 7.12 of the conditions of contract will apply. The Mobilisation Payment will be offset by the amount of each claim for payment paid by the Commonwealth, until the amount of claims paid equals the amount of the Mobilisation Payment.

### MOBILISATION SECURITY AND STOP PAYMENT MILESTONES

Clause 7.5.5 of the conditions of contract refers to claims paid by the Commonwealth. Where a Stop Payment Milestone has been activated, the Contractor cannot claim to have the Mobilisation Security released. Under these circumstances, a Contractor can continue to submit claims for payment for work completed that is not on the same critical path as the Stop Payment Milestone. These approved claims are not paid because of the activation of a Stop Payment Milestone and should not be offset against the Mobilisation Security, until such time that the Stop Payment Milestone is achieved.

#### Example

The Contract Price is \$60 million. The Commonwealth pays the Contractor a Mobilisation Payment of 10% of the Contract Price. The amount of the Mobilisation Payment is therefore \$6 million.

The Contractor then claims payment of the first Milestone Payment under the Contract of \$3 million. The Commonwealth approves the claim and the payment is deemed to have been paid.

Following successful completion of the Integrated Baseline Review, the Contractor then claims \$2 million of Earned Value Payments. The Commonwealth approves the claims and the payments are deemed to have been paid.

The Contractor then claims its second Milestone Payment under the Contract of \$2 million. The Commonwealth approves the claim. \$1 million is deemed to have been paid and the Commonwealth makes payment of \$1 million, 30 days after receipt of the claim for payment.

#### FORM OF THE MOBILISATION SECURITY DEED

The Mobilisation Payment will be paid to the Contractor prior to delivery or Acceptance of any Supplies and vesting of ownership of Supplies in the Commonwealth. To prevent the Commonwealth from being an unsecured creditor, clause 7.5 requires the Contractor, prior to payment of the Mobilisation Payment, to provide the Commonwealth with an unconditional financial security for 50% of the Mobilisation Payment. The financial security must be from a bank or financial institution acceptable to the Project Authority and in the form of the Mobilisation Security Deed at Annex J to Attachment I to the conditions of contract.

It is important that the Project Authority ensures that the Contractor's proposed bank or financial institution is acceptable. Issues to be considered in determining the acceptability of a bank or financial institution include the financial viability of the bank or financial institution, the accessibility of funds and the enforceability of the Mobilisation Security Deed in the applicable jurisdiction. For further guidance on the acceptability of the proposed promisor, reference should be had to the guidance provided in relation to Tender Data Requirement D-5 of Annex D to the TDRL.

A tenderer may propose amendments to the standard Mobilisation Security Deed. It is important to ensure that the security required under the Contract meets the Defence's standard financial security requirements. Prior to any changes being made to the Mobilisation Security Deed, advice should be sought from Contracting Policy and Operations Branch. For further guidance on the standard Defence financial security requirements, reference should be had to the guidance provided in relation to Tender Data Requirement D-5.

#### EXERCISING RIGHTS UNDER THE MOBILISATION SECURITY DEED

The Mobilisation Payment security is exercisable by the Commonwealth to recover debts under the Contract or to obtain repayment of the non-amortised portion of the Mobilisation Payment where the Contractor fails to perform the Contract. The Commonwealth should not exercise the security in any other circumstances or the Contractor may have grounds for legal action against the Commonwealth. Advice should be sought from Contracting Policy and Operations Branch prior to the Commonwealth exercising its rights under the security. Careful consideration should also be given to the amount that the Commonwealth should demand under the security.

#### RELEASE OF THE MOBILISATION SECURITY

In accordance with clause 7.5.5, the security provided by the Contractor in relation to the Mobilisation Payment will be released by the Commonwealth on amortisation of the Mobilisation Payment. Where Earned Value Payments will be made under the Contract, the security will be released:

- a. on achievement of the Milestone that occurs after the Mobilisation Payment has been amortised; or
- b. where the Milestone is achieved early, on the scheduled date for achievement of the Milestone; or



- c. where the Integrated Baseline Review has not been completed, upon the successful completion of the Integrated Baseline Review.

**Example A**

A Mobilisation Payment of \$4 million is made to the Contractor. As required by the Contract, the Contractor obtains a financial security for \$2 million in the form of the Mobilisation Security Deed at Annex J to Attachment I.

The Contractor claims payment of the first Milestone Payment under the Contract of \$1 million. The Commonwealth approves the claim and the payment is amortised against the Mobilisation Payment.

Following successful completion of the Integrated Baseline Review, the Contractor then claims \$2 million of Earned Value Payments. The Commonwealth approves the claims and the payments are amortised against the Mobilisation Payment.

The Contractor then claims its next monthly Earned Value Payment claim of \$2 million. The Commonwealth approves the claim and \$1 million of the payment is amortised against the Mobilisation Payment and \$1 million is paid to the Contractor.

The next Milestone under the Contract is scheduled for completion in 6 weeks. The Contractor actually achieves the Milestone 8 weeks later. The financial security is released by the Commonwealth on achievement by the Contractor of the Milestone.

**Example B**

A Mobilisation Payment of \$10 million is made to the Contractor. As required by the Contract, the Contractor obtains a financial security for \$5 million in the form of the Mobilisation Security Deed at Annex J to Attachment I.

The Contractor claims its first 3 Milestone Payments under the Contract each of \$3 million. The payments are amortised against the Mobilisation Payment.

The Contractor claims its fourth Milestone Payment under the Contract also of \$3 million. \$1 million of the fourth payment is amortised against the Mobilisation Payment and \$2 million is paid to the Contractor.

The Integrated Baseline Review is not successfully completed until 6 weeks after the fourth Milestone is achieved by the Contractor. The financial security is released by the Commonwealth on successful completion of the Integrated Baseline Review.

**Drafter's Action:** Prior to the release of the RFT, drafters must choose an option in line with the guidance. Prior to Contract signature, drafters must insert the amount of the financial security at clause 7.5.3.

**Related Clauses:** Tender Data Requirement D-5 of Annex D to the TDRL requests tenderers to state the proposed promisor and the acceptability of the Mobilisation Security Deed.

Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the amount, purposes of and date of the proposed Mobilisation Payment. Tender Data Requirement D-8 of Annex D also requests tenderers to specify the proposed ratio of Earned Value Payment to Milestone Payments.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. Clause 7.7 reserves to the Commonwealth certain rights in the event that the Contractor fails to provide the securities required by clauses 7.5 and 7.6 or the Commonwealth exercises its rights under the securities.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Annex J to Attachment I to the draft conditions of contract will contain the agreed Mobilisation Security Deed.

Further Reading: Nil

## 7.6 Performance Security

<u>Sponsor:</u>	Contracting Policy & Operations and Materiel Finance Division
<u>Status:</u>	RFT Core. This clause must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
<u>Purpose:</u>	To require the Contractor to provide a financial security to secure its performance of the Contract and to detail the Commonwealth's right to exercise the security.
<u>Policy:</u>	The Commonwealth requires the Contractor to provide either a performance security under clause 7.6 of the draft conditions of contract or a Deed of Substitution and Indemnity under clause 7.8 of the draft conditions of contract. <i>DPPM – Section 2, Chapter 2.1 and Section 3, Chapter 3.2</i>
<u>Guidance:</u>	A Contractor may elect to provide a performance security or a Deed of Substitution and Indemnity in accordance with Tender Data Requirement D-5 of Annex D to the TDRL.

### USE OF PERFORMANCE SECURITY VERSUS DEED OF SUBSTITUTION

Both the performance security and the Deed of Substitution and Indemnity secure the proper performance of the Contract. The performance security provides the Commonwealth with financial relief, whereas the Deed of Substitution and Indemnity entitles the Commonwealth to request that the entity (the Substituted Contractor) providing the Deed of Substitution and Indemnity be substituted as the Contractor to perform the Contract.

### FORM OF THE PERFORMANCE SECURITY DEED

If the Contractor elects to provide a performance security, clause 7.6 requires the Contractor to provide the performance security from a bank or financial institution acceptable to the Project Authority in the form of the Performance Security Deed at Annex K to Attachment I to the conditions of contract. It is important that the Project Authority ensures that the Contractor's proposed bank or financial institution is acceptable. Issues to be considered in determining the acceptability of a bank or financial institution include the financial viability of the bank or financial institution, the accessibility of funds and the enforceability of the Performance Security Deed in the applicable jurisdiction. For further guidance on the acceptability of the proposed promisor, reference should be had to the guidance provided in relation to Tender Data Requirement D-5 of Annex D to the TDRL.

A tenderer may propose amendments to the standard Performance Security Deed. It is important to ensure that the security required under the Contract meets the Commonwealth's standard financial security requirements. Prior to any changes being made to the Performance Security Deed, advice should be sought from Contracting Policy and Operations Branch. For further guidance on the standard Defence financial security requirements, reference should be had to the guidance provided in relation to Tender Data Requirement D-5.

### AMOUNT OF THE PERFORMANCE SECURITY

Drafters should include the amount of the required performance security prior to release of the RFT. The amount of the performance security may be expressed as a percentage of the Contract Price or as a specified value. In determining the security required, consideration should be given to the likely magnitude of loss in the event that a Contractor fails to perform the Contract and the relative cost of providing the performance security. It is important that a comprehensive risk assessment is undertaken as the cost of obtaining and maintaining the performance security will affect the overall price of the Supplies. The amount of the performance security should be sufficient to provide the Contractor with a reasonable disincentive to breach the Contract.

### SELECTION OF DATE FOR COMMENCEMENT AND RELEASE OF SECURITY

Prior to release of the RFT, drafters must also select the date by which the performance security is required and the date for release of the performance security. Careful consideration should be given to the selection of both dates. The performance security will usually be required shortly after the Effective Date, often at the first Milestone. Performance securities will usually be kept in place until Final Acceptance is achieved.

### EXERCISING RIGHTS UNDER THE PERFORMANCE SECURITY DEED

The performance security is exercisable by the Commonwealth to recover debts under the Contract and to obtain compensation for loss suffered in the event that the Contractor fails to perform the Contract. The Commonwealth should not exercise the security in any other circumstances or the Contractor may have grounds for legal action against the Commonwealth. Advice should therefore be sought from Contracting Policy and Operations Branch prior to the Commonwealth exercising its rights under any security. Careful consideration should also be given to the amount that the Commonwealth should demand under the performance security in respect of a particular failure to perform.

**Drafter's Action:** Prior to release of the RFT, drafters must include the value of the security, the date by which the security must be provided and the release event of the security.

**Related Clauses:** Tender Data Requirement D-5 of Annex D to the TDRL requests tenderers to state whether they will provide a performance security or a Deed of Substitution and Indemnity, the proposed promisor or Substituted Contractor, and the acceptability of the Performance Security Deed.

Clause 7.7 of the draft conditions of contract reserves to the Commonwealth certain rights in the event that the Contractor fails to provide the securities required by clauses 7.5 and 7.6 or the Commonwealth exercises its rights under the securities.

Annex K to Attachment I to the draft conditions of contract will, if required, contain the agreed Performance Security Deed.

**Further Reading:** Nil

**7.7 Securities**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	RFT Core. This clause must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
<b><u>Purpose:</u></b>	To reserve to the Commonwealth certain rights in the event that the Contractor fails to provide the securities required by clauses 7.5 and 7.6 of the conditions of contract or the Commonwealth exercises its rights under the securities.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Clause 7.7 provides protection for the Commonwealth in the event that it exercises its right under either the Mobilisation Payment security or the performance security. It also notifies the Contractor of the Commonwealth's rights in the event that the Contractor fails to provide a security required by the Contract.

**FAILURE TO PROVIDE THE SECURITIES REQUIRED BY THE CONTRACT**

Clause 7.7.1 notifies the Contractor that if it fails to provide or maintain any security required by clauses 7.5 or 7.6 of the conditions of contract, the Project Authority may withhold all or part of any payment under the Contract until the Contractor provides the required security. It should also be noted that where the Contractor fails to provide or maintain a financial security required under clauses 7.5 or 7.6 of the conditions of contract, the Contractor will be in breach of Contract and the Commonwealth may have additional rights including termination of the Contract for default. Where the Contractor fails to provide or maintain a security required by clauses 7.5 or 7.6 of the conditions of contract, advice should be sought from Contracting Policy and Operations Branch prior to any action being taken by the Project Authority.

Given the importance of financial securities and the protection that they afford to the Commonwealth, the Commonwealth should take all steps available to it to ensure that the Contractor obtains and maintains the required security. Careful consideration should therefore be given to withholding future payments under the Contract where a security is not provided or maintained by the Contractor. The waiver clause at clause 10.3 of the conditions of contract acts to protect the Commonwealth from being prevented from exercising its right to withhold future payments in the event that the Commonwealth does not immediately exercise its rights under clause 7.7. However, to ensure that the Commonwealth's rights to withhold future payments will not be prejudiced, advice should be sought from Contracting Policy and Operations Branch prior to the Commonwealth electing not to exercise its right to withhold future payments under clause 7.7.

**COMMONWEALTH LIABILITY WHERE RIGHTS ARE EXERCISED**

Clause 7.7 provides protection for the Commonwealth in the event that it exercises its rights under either the Mobilisation Payment security or the performance security. It has a twofold effect. First, it requires the Contractor to release the Commonwealth from liability for loss or damage suffered by the Contractor which results from the Commonwealth exercising its rights under a security unless the Commonwealth was not entitled to draw down against the security. Second, it preserves the Commonwealth's right to recover from the Contractor the balance of amounts owed to the Commonwealth or losses suffered by the Commonwealth in the event the securities provided under the Contract are insufficient.

It is important to note that the Commonwealth will only be protected by clause 7.7 in circumstances where the Commonwealth was entitled to exercise its rights under the security. Advice should therefore be sought from Contracting Policy and Operations Branch prior to any action being taken in relation to a financial security.

**Drafter's Action:** Nil

Related Clauses: Clauses 7.5 and 7.6 of the draft conditions of contract detail when a Mobilisation Payment security or performance security must be provided by the Contractor, the amount, commencement date and release date of the security and the Commonwealth's rights to exercise the securities.

Annexes J and K to Attachment I to the draft conditions of contract will, if required, contain the agreed Mobilisation Payment and performance security.

Further Reading: Nil

**7.8 Deed of Substitution and Indemnity**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	RFT Core. This clause must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
<b><u>Purpose:</u></b>	To require the Contractor to provide a Deed of Substitution and Indemnity to secure its performance of the Contract and to detail the Commonwealth's right to issue a notice of substitution.
<b><u>Policy:</u></b>	The Commonwealth requires the Contractor to provide either a performance security under clause 7.6 of the draft conditions of contract or a Deed of Substitution and Indemnity under clause 7.8 of the draft conditions of contract.  <i>DPPM – Section 5, Chapters 5.9 and 5.10</i>
<b><u>Guidance:</u></b>	A Contractor may elect to provide a performance security or a Deed of Substitution and Indemnity in accordance with Tender Data Requirement D-5 of Annex D to the TDRL.

**USE OF PERFORMANCE SECURITY VERSUS DEED OF SUBSTITUTION**

Both the performance security and the Deed of Substitution and Indemnity secure the proper performance of the Contract. The performance security provides the Commonwealth with financial relief, whereas the Deed of Substitution and Indemnity entitles the Commonwealth to request that the entity (the Substituted Contractor) providing the Deed of Substitution and Indemnity be substituted as the Contractor to perform the Contract.

**FORM OF THE DEED OF SUBSTITUTION AND INDEMNITY**

If the Contractor elects to provide a Deed of Substitution and Indemnity, clause 7.8 requires the Contractor to provide a deed in the form of the deed at Annex L to Attachment I to the conditions of contract from the Substituted Contractor detailed in the Contract. Where a tenderer proposes amendments to the standard Deed of Substitution and Indemnity it is important to ensure that the deed provided by the Contractor meets the Commonwealth's requirements. Prior to any changes being made to the Deed of Substitution and Indemnity, advice should be sought from Contracting Policy and Operations Branch.

**ACCEPTABILITY OF THE PROPOSED SUBSTITUTED CONTRACTOR**

The Substituted Contractor will usually be the Contractor's parent company but may be another entity acceptable to the Project Authority. Under the Deed the Substituted Contractor agrees to perform the Contract in the place of the Contractor in the event that the Commonwealth is entitled to terminate the Contract for default. Therefore the viability of the company proposed as Substituted Contractor under the Deed of Substitution and Indemnity and its capacity to perform the Contract upon substitution must be fully evaluated to ensure that the Commonwealth is adequately protected.

**ISSUE OF A NOTICE OF SUBSTITUTION**

Under clause 7.8.2, the Project Authority may issue a notice of substitution where it is entitled to issue a notice of termination for default under clause 12.2 of the draft conditions of contract or at common law. It is important to note that the notice of substitution may be issued where the Commonwealth is entitled to issue a notice of termination, and the power does not require the actual issue of a notice of termination. Indeed, it is likely that the right to issue a notice of substitution will be lost if a notice of termination is issued to the Contractor. Where all of the parties agree, the Substituted Contractor may also be substituted for the Contractor at any time in accordance with clause 7.8.5.

In some circumstances it may be preferable to terminate the Contract for default rather than issue a notice of substitution. Issues to be considered include the continuing ability of the Substituted Contractor to perform the Contract from both

a financial and technical perspective, the existing delay in the delivery of Supplies under the Contract and the likely damages recoverable by the Commonwealth if it terminates the Contract for default. Advice should be sought from Contracting Policy and Operations Branch prior to the Project Authority issuing a notice of termination or substitution under the Contract.

#### SECURITIES REQUIRED FOLLOWING SUBSTITUTION

Clause 5.1 of the Deed of Substitution and Indemnity at Annex L to Attachment I to the conditions of contract requires the Substituted Contractor, upon substitution, to provide a replacement security for the security provided by the Contractor under clause 7.5 of the conditions of contract where the security has not already been released by the Commonwealth. The security provided by the Contractor will be released upon receipt of the replacement security from the Substituted Contractor. In addition, clause 5.1 of the Deed of Substitution and Indemnity at Annex L to Attachment I requires the Substituted Contractor to provide a performance security to secure its performance of the Contract. Where the Substituted Contractor fails to provide the required securities, clause 7.8.4 entitles the Commonwealth to terminate the Contract for default pursuant to clause 12.2 of the conditions of contract.

**Drafter's Action:** Prior to Contract signature, drafters must insert the Substituted Contractor's name.

**Related Clauses:** Tender Data Requirement D-5 of Annex D to the TDRL requests tenderers to state whether they will provide a performance security or a Deed of Substitution and Indemnity, the proposed Substituted Contractor or promisor, and the acceptability of the Deed of Substitution and Indemnity.

Annex L to Attachment I to the draft conditions of contract will, if required, contain the agreed Deed of Substitution and Indemnity.

**Further Reading:** Nil



## 7.9 Cost Reimbursement

**Sponsor:** Contracting Policy & Operations and Materiel Finance Division

**Status:** Optional. To be included where the draft Statement of Work contains high risk and/or developmental elements for which it is considered appropriate to pay the Contractor on a cost reimbursement basis.

**Purpose:** To detail the process that applies to Cost Reimbursement Payments under the Contract. To detail the process for reviewing progress in relation to Cost Reimbursement Supplies and to notify the Contractor of the Commonwealth's rights under the Contract where the Contractor's rate of progress is unsatisfactory.

**Policy:** In addition to Milestone Payments and Eamed Value Payments, the Commonwealth may allow the Contractor to be paid Cost Reimbursement Payments where aspects of the Contract are high risk and/or developmental. Usually the Commonwealth will not agree to a contract where Cost Reimbursement Payments exceed more than 25% of the Contract Price.

It is Defence policy that accounts should be paid 30 days from the receipt of a correctly rendered invoice.

*Defence CEI Part 3 Instruction 2*

*DPPM – Section 2, Chapter 2.2*

*Financial Management and Accountability Act 1997*

**Guidance:** The cost reimbursement provisions in clause 7.9 are designed to benefit both the Contractor and the Commonwealth where the Contract includes high risk and/or developmental elements.

### REASONS FOR USE OF COST REIMBURSEMENT PAYMENTS

In a firm or variable price Contract, the Contractor, to protect its profit margin, may include considerable contingency to cover the risks associated with the high risk and developmental aspects of the Statement of Work. The Commonwealth will then be obliged to pay the firm price agreed, including the inherent contingency, whether or not the Contractor required the contingency to perform the work. Conversely, where the contingency is insufficient to cover the costs incurred by the Contractor in performing the work under a firm price arrangement, the Contractor must bear the loss.

By reimbursing the Contractor for the costs incurred in providing the high risk or developmental aspects of the Contract, the Commonwealth will only pay the actual cost incurred by the Contractor and the risk to the Contractor of performing the work will be significantly reduced. However, it is important that cost reimbursement be used only where the work to be performed is truly of a high risk nature.

The risk to the Commonwealth of cost reimbursement is that it is paying for the work performed and not necessarily any particular outcome. To minimise this risk, the clauses allow for review points and for the Commonwealth to elect not to continue with the work.

### DESCRIPTION OF THE COST REIMBURSEMENT SUPPLIES

It is essential that the elements of the Contract that are to be performed by the Contractor on a cost reimbursement basis are clear to both the Commonwealth and the Contractor. Each different high risk or developmental component of the Contract and the associated Cost Reimbursement Supplies for that component should be detailed in a separate Annex of the Statement of Work. The Delivery Schedule at Attachment C of the conditions of contract should clearly state the time for delivery of each item of Cost Reimbursement Supplies for Acceptance by the Commonwealth.

### AMOUNT AND TYPE OF COST REIMBURSEMENT PAYMENTS

In accordance with the *Financial Management and Accountability Act 1997*, the liability approver must certify funds availability for the amount payable under the Contract prior to Contract signature. The Price Schedule at Annex A to Attachment B to the conditions of contract must therefore specify the maximum amount payable under the Contract as Cost Reimbursement Payments. The Contractor will be contractually bound to deliver the Cost Reimbursement Supplies under the Contract for the amount included in Annex A to Attachment B. It is therefore important to ensure that a realistic amount that reflects the high risk and/or developmental nature of the Cost Reimbursement Supplies is included in Annex A to Attachment B. The Commonwealth is only required to reimburse the Contractor for costs that are set out in Annex H to Attachment B to the conditions of contract up to the maximum amount specified in Annex A to Attachment B.

Costs payable under Annex H to Attachment B include labour costs in accordance with the Schedule of Rates (including profit) at Annex F to Attachment B to the conditions of contract, direct material costs, Subcontract costs, direct expenses and profit on direct material costs. Clause 7.9.3 requires costs that have been incurred both in relation to Cost Reimbursement Supplies and the performance of other work, whether under the Contract or not, to be allocated on a pro-rata basis, i.e. apportioned proportionally between the Cost Reimbursement Supplies and the other work.

#### Example A

The Contractor takes out an insurance policy required under the Contract in relation to the premises in which the Cost Reimbursement Supplies are being produced. The insurance policy costs \$30 000. The premises are used by the Contractor on the following basis:

- 10% used to produce the Cost Reimbursement Supplies;
- 40% used to produce other Supplies under the Contract; and
- 50% used to produce goods not associated with the Contract.

The Contractor would be entitled to recover \$3000 as a Cost Reimbursement Payment.

#### Example B

The Contractor employs a mechanical engineer to assist in the design of the Cost Reimbursement Supplies. The labour costs associated with the mechanical engineer are \$200 000. The mechanical engineer also provides other services to the Contractor on the following basis:

- 10% of time spent on design of the Cost Reimbursement Supplies;
- 20% of time spent on design of other Supplies under the Contract; and
- 70% of time spent of design of goods not associated with the Contract.

The Contractor would be entitled to recover \$20 000 as a Cost Reimbursement Payment.

Costs relating to taxes and duties including GST that have already been provided for under the Contract may not be claimed by the Contractor under clause 7.9.

### APPROVAL OF A CLAIM FOR A COST REIMBURSEMENT PAYMENT

Clauses 7.9.7 to 7.9.11 set out the procedure and time periods that apply to the approval of a claim for a Cost Reimbursement Payment. Cost Reimbursement Payments may be claimed on the last day of each month for work completed in that month in accordance with the Statement of Work. Claims for payment submitted under clause 7.9 must comply with the tax invoice requirements detailed in clause 7.15 of the conditions of contract. The Project Authority may approve the whole or part of a claim for payment. In accordance with Defence policy, claims for

payment should be paid 30 days after the receipt of the claim for payment. Where payments are made earlier or later than 30 days, the early and late payments provisions of clause 7.12 of the conditions of contract will apply.

#### REJECTION OF A CLAIM FOR A COST REIMBURSEMENT PAYMENT

In accordance with clause 7.9.6, the Contractor must maintain records justifying all costs claimed in relation to the Cost Reimbursement Supplies and the Project Authority or Commonwealth officers authorised by the Project Authority may cost investigate those records. The Commonwealth should only reject a claim for a Cost Reimbursement Payment where the Contractor is claiming costs not recoverable in accordance with Annex H to Attachment B or costs that records do not establish have been incurred by the Contractor. The Contractor is entitled to dispute the decision of the Project Authority to reject the claim for payment by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

#### REVIEW OF CONTRACTOR PROGRESS

To enable the Commonwealth to monitor progress against cost reimbursement elements of the Contract, clauses 7.9.12 to 7.9.14 detail the review process applicable to Cost Reimbursement Supplies. The Commonwealth will review progress made towards the delivery of Cost Reimbursement Supplies when 25%, 50% and 75% of the amount allocated for payment in the Price Schedule at Annex A to Attachment B for each different component of Cost Reimbursement Supplies has been claimed by the Contractor. At each review point the Commonwealth may authorise the Contractor to proceed or require the Contractor to submit a Contract change proposal to amend the Contract.

The Contractor is contractually bound to deliver the Cost Reimbursement Supplies for the Contract Price, however, in some cases it will be appropriate for the Commonwealth to agree to increase the Contract Price through a Contract change proposal where unexpected costs have been incurred by the Contractor. In some cases, however, no matter how much money is paid to the Contractor it will not be possible for the Contractor to deliver the Cost Reimbursement Supplies. In such a case the Commonwealth should consider reducing the scope of the Contract or terminating the Contract for default.

The Commonwealth may only exercise its rights under clause 12.2 of the conditions of contract where the parties cannot agree on a Contract change proposal and the cost reimbursement payments made to the Contractor exceed by 25% or more the progress made in completing the Cost Reimbursement Supplies.

#### Example

The Contract contains two Annexes detailing Cost Reimbursement Supplies against which the Commonwealth will pay the Contractor on a cost reimbursement basis.

Annex A: The maximum amount payable for the Cost Reimbursement Supplies in Annex A is \$10 million. The Contractor has claimed \$5 million and as measured by the Earned Value Management System the Contractor has made 15% progress towards delivery of the Cost Reimbursement Supplies. The Contractor is not progressing as required. In accordance with clause 7.9.14 the Commonwealth is entitled to reduce the scope of the Contract or terminate the Contract for default pursuant to clause 12.2 where a Contract change proposal can not be agreed.

Annex B: The maximum amount payable for the Cost Reimbursement Supplies in Annex B is \$20 million. The Contractor has claimed \$15 million and as measured by the Earned Value Management System has made 90% progress towards delivery of the Cost Reimbursement Supplies. The Contractor is progressing better than required and the Commonwealth is not entitled to reduce the scope of the Contract or terminate the Contract for default pursuant to clause 12.2 of the conditions of contract.

Advice should be sought from Contracting Policy and Operations Branch prior to terminating the Contract for default or reducing the scope of the Contract. Careful consideration should be given to which is the more appropriate option. In some cases the Cost Reimbursement Supplies will be so essential to the performance of the Contract that the scope of the Contract cannot be reduced and the Contract must be terminated. In other cases, the Cost Reimbursement Supplies may not be essential or another supplier may be able to provide the Cost Reimbursement Supplies for integration by the Contractor.

**Drafter's Action:** Prior to release of the RFT, drafters must reference the applicable Cost Reimbursement Payments Annex or Annexes to the Statement of Work.

Drafters must also insert the period in clause 7.9.10 within which the Project Authority may complete a cost investigation process in order to approve or reject a claim.

**Related Clauses:** Tender Data Requirement D-10 of Annex D to the TDRL requests tenderers to propose the high risk and/or developmental aspects of the Contract that should be subject to cost reimbursement, the maximum amount payable as Cost Reimbursement Payments, the Schedule of Rates for labour costs and the percentage profit for direct materials.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.12 details how an amount required for payment will be modified where a payment is made early or late.

Attachment B to the draft conditions of contract will contain the agreed Price Schedule, including the maximum amount of Cost Reimbursement Payments, the agreed Schedule of Rates and the terms related to Cost Reimbursement, including the agreed profit percentage.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule, including the date of delivery for Cost Reimbursement Supplies.

**Further Reading:** Nil

**7.10 Time of Payment**

<u>Sponsor:</u>	Contracting Policy & Operations and Materiel Finance Division
<u>Status:</u>	Core
<u>Purpose:</u>	To place an obligation on the Commonwealth to notify the Contractor of the date each payment is made.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Clause 7.10.1 places an obligation on the Commonwealth to notify the Contractor of the date on which a payment is made. It is important that the Commonwealth notifies the Contractor when a payment is made as the notification of the payment date will reduce the risk of the payment being considered to be a late payment. Where a payment is made late, the early and late payment provisions of clause 7.12 of the conditions of contract will apply.
<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.12 details how an amount required for payment will be modified where a payment is made early or late.  Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.  Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule.
<u>Further Reading:</u>	Nil

**7.11 Failure To Achieve Certain Milestones**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	Core. The optional clause 7.11.2 should be included where the Schedule Compression Milestone clause at clause 6.1.2.c of the draft conditions of contract is included.
<b><u>Purpose:</u></b>	To notify the Contractor that the Commonwealth may elect to withhold payments under the Contract where the Contractor fails to achieve a Stop Payment Milestone.  In addition, the Commonwealth has the option of specifying Schedule Compression Milestones. If the Contractor fails to achieve a Schedule Compression Milestone, the Commonwealth can request the Contractor to prepare a full schedule review including proposed rectification action. The Commonwealth has the right to issue a notice of termination for default where the Contractor's failure to meet the Schedule Compression Milestone continues for a specified period beyond the relevant Milestone Date.
<b><u>Policy:</u></b>	Stop Payment and Schedule Compression Milestones under the Contract should represent Milestones that significantly impact on the Contract schedule.
<b><u>Guidance:</u></b>	Stop Payment and Schedule Compression Milestones provide the Commonwealth with additional remedies where the Contractor fails to achieve a Milestone as scheduled.

**SELECTION OF STOP PAYMENT MILESTONES**

Stop Payment Milestones are listed in the Schedule of Payments at Annex B to Attachment B to the conditions of contract. Stop Payment Milestones should represent significant Milestones under the Contract such as initial design approval, first flight, Acceptance of first ship, Acceptance of important items of Supplies under the Contract such as simulators and achievement of flight or seaworthiness certification. Depending upon the length and complexity of the Contract, there should be between 3 and 10 Stop Payment Milestones.

Under clause 6.7.1a of the conditions of contract ownership of Supplies forming part of a Milestone passes to the Commonwealth upon payment of the relevant Milestone. Under clause 6.7.1b of the conditions of contract ownership of Supplies that are not included in a Milestone nominated for Progress Certification or Acceptance passes to the Commonwealth upon payment of the next Milestone Payment that is achieved after Acceptance of the Supplies. The Commonwealth therefore does not take ownership of Supplies until a Milestone is achieved by the Contractor and the applicable Milestone Payment is paid by the Commonwealth.

Prior to ownership of Supplies passing to the Commonwealth, the Commonwealth may have paid significant amounts of money to the Contractor as Earned Value Payments and/or Cost Reimbursement Payments for work performed under the Contract. As Earned Value Payments and Cost Reimbursement Payments are not secured by a financial security, careful consideration should be given to the selection of Milestones, including Stop Payment Milestones. The risk to the Commonwealth can be minimised by:

- a. ensuring that significant Earned Value and/or Cost Reimbursement payments are not paid to the Contractor without the Commonwealth obtaining ownership to Supplies; and
- b. providing the Commonwealth with the ability to stop future payments where the Contractor fails to achieve a Milestone (i.e. under a Stop Payment Milestone).

**USE OF SCHEDULE COMPRESSION MILESTONES**

The optional clause 7.11.2 provides the Commonwealth with a remedy in the event of schedule compression. Schedule compression is a critical issue in software intensive projects where experience has shown that delays may be irrecoverable

once the Contractor falls behind schedule by a certain extent. Schedule compression refers to the extent to which the Contract schedule needs to be compressed as a result of the failure by the Contractor to meet earlier delivery dates or Milestones under the Contract. So, for example, if the Contractor fails to pass the Detailed Design Review by the required Milestone Date, the project may need to consider the effect this will have on the ability of the Contractor to achieve later Milestones or the Delivery Schedule.

Clause 7.11.2 provides that, without limiting the Commonwealth's rights in relation to the treatment of Stop Payment Milestones under clause 7.11.1, if the Contractor fails to complete a Schedule Compression Milestone by the relevant Milestone Date, the Project Authority may:

- a. require the Contractor to prepare and deliver to the Commonwealth a Contract change proposal (CCP) under clause 10.1 of the conditions of contract which includes a full schedule review and sets out the extent to which the Contractor proposes to rectify the problem; or
- b. if the failure to meet the Milestone continues for a period greater than that specified in clause 7.11.2b, whether or not a CCP under clause 7.11.2a has been required or subsequently approved by the Commonwealth, give the Contractor a notice of termination for default.

It is important to note, however, that the Commonwealth is under no obligation to accept a CCP provided by the Contractor under clause 7.11.2a. The normal CCP provisions will apply (see the guidance on clause 10.1 of the draft conditions of contract).

#### SELECTION OF SCHEDULE COMPRESSION MILESTONES

The purpose of clause 7.11.2 is to recognise that there may be certain critical path Milestones which are fundamental to the completion of a software intensive project, and which may have a corresponding negative impact on the Commonwealth's capability requirements. This is why the clause permits the Commonwealth to require full schedule reviews to satisfy itself that the Contractor will be able to rectify the delay and meet the Contract schedule with no (or little) slippage. In software-intensive projects, it is likely that critical path Milestones such as Mandated System Reviews or other key points (probably early) in the overall project schedule would be nominated as the Schedule Compression Milestones. It will be important to nominate Milestones where the extent of any schedule compression can be measured, and more readily absorbed as part of the schedule review. For delays occurring later in the project for which a full schedule review would have little benefit, the liquidated damages provisions at clause 7.14 of the conditions of contract may provide a more appropriate remedy.

Where clause 7.11.2 is used, the Schedule Compression Milestones should be set out in the Schedule of Payments at Annex B to Attachment B of the Contract. Drafters should note that the period beyond which a continuing failure to meet a Milestone Date will trigger the Commonwealth's right to issue a notice of termination needs to be included in clause 7.11.2b. In order to retain the right to issue a notice of termination on the expiration of the period identified in clause 7.11.2b, the Commonwealth will need to ensure that any revised schedule agreed to under the CCP process at clause 7.11.2a does not allow for the completion of Milestones beyond this identified point. This will necessarily involve the Commonwealth determining, prior to contract signature, the 'terminal' point beyond which schedule delay would be considered no longer recoverable, and where the Commonwealth's interest would then best be served by seeking to terminate the contract.

#### EXERCISING THE COMMONWEALTH'S RIGHTS

Where a Contractor fails to achieve a Stop Payment Milestone, clause 7.11 entitles the Commonwealth to withhold the Milestone Payment and all subsequent payments including Earned Value Payments and Cost Reimbursement Payments

until the Contractor achieves the Stop Payment Milestone. It should also be noted that where the Contractor fails to achieve a Stop Payment Milestone by the date specified in Attachment C to the conditions of contract, the Contractor will be in breach of contract and the Commonwealth may have additional rights including termination of the Contract for default.

Given the importance of ensuring satisfactory Contractor performance under the Contract, in most circumstances the Commonwealth should exercise its rights under clause 7.11.1 to withhold the Milestone Payment and all future payments where a Stop Payment Milestone is not achieved as scheduled. The waiver clause at clause 10.3 of the conditions of contract acts to protect the Commonwealth from being prevented from exercising its right to withhold future payments in the event that the Commonwealth does not immediately exercise its rights under clause 7.11.1. However, to ensure that the Commonwealth's rights to withhold future payments will not be prejudiced, advice should be sought from Contracting Policy and Operations Branch prior to the Commonwealth electing not to exercise its rights to withhold future payments under clause 7.11.1.

Clause 7.11.1 makes it clear that the Commonwealth does not prejudice its right to terminate the Contract under clause 12.2.1m of the conditions of contract by withholding payments under the Contract in accordance with clause 7.11.1. It should also be noted that in addition to withholding the Milestone Payment and all future payments under the Contract, the Commonwealth may be entitled to claim liquidated damages for failure to achieve a Stop Payment Milestone in accordance with clause 7.14 of the conditions of contract. Advice should be sought from Contracting Policy and Operations Branch prior to the Project Authority making payment of the Milestone Payment or any future payments under the Contract or seeking to exercise other rights under the Contract or at common law.

Where clause 7.11.2 is included in the conditions of contract, the Project Authority will need to ensure that it has the capacity to assess whether the delay in meeting a Schedule Compression Milestone is recoverable. The impact of a particular delay on the overall project schedule is represented by the schedule compression ratio. Project personnel should seek the assistance of Contracting Policy and Operations Branch in the first instance where guidance on the calculation of the schedule compression ratio is required.

#### CONTINUED PERFORMANCE OF THE CONTRACT

It should be noted that despite failing to achieve a Stop Payment Milestone or Schedule Compression Milestone, the Contractor is still obliged to continue to meet its obligations under the Contract, including delivering other items of Supplies for Progress Certification and Acceptance in accordance with the Contract. This assumes that delivery of the items would not be on the same critical path as the Stop Payment or Schedule Compression Milestone such that the Milestone would need to be achieved before the items could be delivered.

The issues of withholding payment for Supplies and rejecting Supplies must be viewed as separate issues. Clause 7.11.1 does not provide the Commonwealth with grounds to reject Supplies delivered by the Contractor under subsequent Milestones that are delivered in accordance with the Contract or to reject an otherwise valid claim for payment. However, where Supplies are Progress Certified or Accepted under clauses 6.4 and 6.5 of the conditions of contract, and the Contractor submits a valid claim for payment under clause 7.2, of the conditions of contract the Commonwealth retains the discretion to withhold payments under clause 7.11.1 where a previous Stop Payment Milestone has not been met.

#### ACCEPTING SUPPLIES UNDER SUBSEQUENT MILESTONES

In circumstances where a subsequent Milestone is dependant on a Stop Payment Milestone or Schedule Compression Milestone, it will usually be possible for the Commonwealth to reject the Supplies offered for Progress Certification or Acceptance on the basis that the Supplies do not meet the requirements of clause



6.4 of the conditions of contract for Progress Certification or clause 6.5 of the conditions of contract for Acceptance.

By exercising its right to withhold future payments and rejecting Supplies under subsequent Milestones because the requirements of clause 6.5 of the conditions of contract have not been met, the Commonwealth avoids the following risks:

- a. Accepting subsequent Supplies that are dependant on the Supplies forming part of the Stop Payment Milestone will have the effect of excluding the right of the Commonwealth to require any flow down or remedial work on the Accepted Supplies, once the Stop Payment Milestone is achieved; and
- b. Accepting subsequent Supplies and withholding the related payment exposes the Commonwealth to bear the risks of loss or damage to the Supplies, without the benefit of ownership, which will only pass on payment for the Supplies by the Commonwealth (see clause 6.7.1 of the conditions of contract).

#### ELECTING TO MAKE FUTURE PAYMENTS

In some circumstances the Commonwealth may elect to make a future payment even though it is entitled to withhold the payment under clause 7.11.1. For example, where the Contractor has delivered Supplies under a subsequent Milestone that meet the requirements of clause 6.5 of the conditions of contract for Acceptance and the Commonwealth wishes to commence use of those Supplies, the Commonwealth may elect to pay the Contractor for the Supplies in order to obtain ownership and consequently the right to full and effective use of those Supplies. This discretion should be exercised on a case by case basis and in consultation with Contracting Policy and Operations Branch.

The following points should be considered when exercising this discretion:

- a. If Acceptance is granted and payment is approved with the intention to withhold all other future payments, it is essential that at the time of payment, it is made clear that the Commonwealth is not waiving its right to withhold other future payments; and
- b. It would only be in extremely rare circumstances that it would be in the Commonwealth's interest to made a decision to exercise the discretion to authorise the payment of future Earned Value Payments, Cost Reimbursement Payments or Incentive Payments where the Contractor has failed to meet a Stop Payment Milestone.

**Drafter's Action:** Prior to release of the RFT and where the Schedule Compression option is included, drafters must insert the period in clause 7.11.2b after which the Commonwealth is able to terminate the Contract for failure by the Contractor to achieve the Schedule Compression Milestone.

**Related Clauses:** Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment Milestones.

Clauses 6.2 and 6.3 of the draft conditions of contract detail the circumstances in which the Contractor may claim a postponement of the date for delivery of the Supplies and/or a Milestone Date and postponement costs.

Clauses 6.4 to 6.6 of the draft conditions of contract detail the conditions under which Progress Certification, Acceptance and Final Acceptance will be provided by the Commonwealth and the procedure that will apply.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.14 details when the Commonwealth is entitled to claim liquidated damages under the Contract.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments, including any Stop Payment and Schedule Compression Milestones.

Further Reading: Nil

**7.12 Early and Late Payment**

Sponsor: Contracting Policy & Operations and Materiel Finance Division

Status: Core

Purpose: To set out the amount of interest that will be payable by the Contractor and the Commonwealth, respectively, in the event of early or late payment of amounts due under the Contract.

Policy: The Commonwealth's standard terms are payment 30 days from the receipt of a correctly rendered invoice. The Department of Finance and Administration sourced overdraft rate should be used for early payments and the Australian Taxation Office sourced General Interest Charge should be used for late payments.

*Commonwealth Procurement Guidelines and Best Practice Guidance*

Guidance: Clause 7.12 sets out the amount of interest that the parties agree will be payable to the Contractor and the Commonwealth in the event of an early or late payment.

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**SELECTION OF AN APPROPRIATE INTEREST RATE**


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Where payment of an amount due under a contract is made late, interest should be made payable by the Commonwealth. The interest payment will be calculated in accordance with the formula at clause 7.12.3 using the Australian Taxation Office sourced General Interest Charge rate that can accessed at the Australian Taxation Office's website.

Where the payment of an amount due under a contract is made early, interest shall be made payable to the Commonwealth. The interest payment will be calculated in accordance with the formula at clause 7.12.3 using the overdraft rate applied to Commonwealth Agencies by the Department of Finance and Administration. This rate can be accessed at the Chief Finance Officer Group website.

It should be noted that the amount of interest payable to, or by the Commonwealth does not represent a reduction or an increase to the Contract Price for GST purposes. Therefore, an adjustment note does not need to be issued.

Where a tenderer requests an alternative interest rate be applied to early and/or late payments the following issues should be considered. It is preferable that an Australian bank or financial institution rate is used, however, where the Contractor is an overseas company it may be appropriate to allow a foreign bank rate to be used. Prior to permitting an alternative rate to be used, consideration should be given to the ease of obtaining information about the rate and the amount of the rate as contrasted with the Department of Finance and Administration sourced overdraft rate or the Australian Taxation Office sourced General Interest Charge, as applicable. Drafters who are unsure about the acceptability of a proposed rate should seek advice from their DFM or the cost investigation area in Contracting Policy and Operations Branch.

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**ADVANCE PAYMENTS AND EARLY AND LATE PAYMENTS**


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An early payment should not be confused with a Mobilisation Payment. A Mobilisation Payment is made in advance of satisfactory performance or delivery of Supplies. An early payment is the early payment of any amount that is due under the Contract. A late payment is the late payment of any amount that is due under the Contract.

Clause 7.12.2 states that any payment made later than sixty days after the due date will be in breach of Contract. This clause seeks to protect the Commonwealth from a claim of breach of Contract where payment is late by less than sixty days on the basis that clause 7.12 provides adequate compensation to the Contractor in such cases. If, however, the Commonwealth fails to make the payment within the sixty days then the Commonwealth will be in breach of Contract for which the Contractor may take legal action (e.g. to seek damages for that breach and/or potentially to terminate the contract). Therefore, notwithstanding the ability of the

Commonwealth to pay 'late', it remains in the Commonwealth's best interests to pay the claims within 30 days of a correctly rendered invoice.

Where the required interest payment resulting from an early or late payment is not offset by or paid as a part of the actual payment, clause 7.12.4 entitles the Commonwealth to adjust the next approved payment under the Contract.

Drafter's Action: Nil

Related clauses: Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.2 of the draft conditions of contract specifies when Milestone Payments should be made, clause 7.3 of the draft conditions of contract specifies when Earned Value Payments should be made, clause 7.4 of the draft conditions of contract specifies when Price Variation claims should be paid and clause 7.9 of the draft conditions of contract specifies when Cost Reimbursement Payments should be made.

Further Reading: Nil

**7.13 Incentive Payments**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	Optional. To be included where it is considered appropriate to pay the Contractor Incentive Payments for superior performance of the Contract.
<b><u>Purpose:</u></b>	To detail the process that applies to Incentive Payments under the Contract.
<b><u>Policy:</u></b>	In accordance with the <i>Financial Management and Accountability Act 1997</i> , the Commonwealth may only pay the Contractor Incentive Payments for superior performance of the Contract.  <i>DPPM – Section 2, Chapter 2.2</i>
<b><u>Guidance:</u></b>	Clause 7.13 entitles the Contractor to claim Incentive Payments for superior performance of the Contract in addition to the Contract Price.

**REQUIREMENT FOR SUPERIOR PERFORMANCE OF THE CONTRACT**

As Incentive Payments are paid to the Contractor in addition to the Contract Price, to be in accordance with the *Financial Management and Accountability Act 1997* (FMA Act), the Incentive Payment must be for superior performance of the Contract where the superior performance is of benefit to the Commonwealth. This is because additional payments must meet the value for money test laid down in the *Commonwealth Procurement Guidelines and Best Practice Guidance*, to which approvers must have regard in approving proposals to spend public money.

**KEY PERFORMANCE INDICATORS, WEIGHTINGS, ASSESSMENT PERIODS**

The Contractor's performance will be measured in accordance with the assessment periods, weightings, and key performance indicators listed in Annex I to Attachment B to the conditions of contract. The maximum amount payable as Incentive Payments under the Contract is specified in clause 7.13.3.

Prior to Contract signature, drafters must include the negotiated key performance indicators, weightings, assessment periods and Incentive Payments payable for each assessment period at Annex I to Attachment B to the conditions of contract. It is essential that drafters ensure that the key performance indicators are objective, measurable and clearly stated. Further guidance on the selection of key performance indicators, weightings, assessment periods and the Incentive Payments payable for each assessment period is contained in the guidance on Annex I to Attachment B.

**ENTITLEMENT TO CLAIM AN INCENTIVE PAYMENT**

The procedure for claiming an Incentive Payment is detailed in clauses 7.13.5 to 7.13.7. Where the Contractor is not awarded an Incentive Payment for an assessment period the amount of the Incentive Payment will not be payable by the Commonwealth in any subsequent assessment period. To ensure that the Contractor cannot be paid an Incentive Payment where it has achieved the agreed key performance indicators but is performing poorly in other areas, the Contractor will not be entitled to receive an Incentive Payment where during an assessment period the Contractor has not achieved a due Milestone or the Commonwealth is entitled to claim liquidated damages or terminate the Contract for default.

**PROCESSING CLAIMS FOR AN INCENTIVE PAYMENT**

In accordance with clause 7.13.5, the Contractor must provide the Project Authority with a written statement of its achievement of the key performance indicators and evidence to support the statement at the end of each assessment period. On receipt of the Contractor's written statement, the Project Authority must assess the Contractor's performance for the assessment period and notify the Contractor of the amount of any Incentive Payment that has been awarded to the Contractor. The Contractor is entitled to dispute the decision of the Project Authority by following the dispute resolution procedures in clause 12.1 of the conditions of contract.

Where the Commonwealth informs the Contractor that it is entitled to an Incentive Payment, the Contractor must submit a claim for payment. Claims for payment submitted under clause 7.13 must comply with the tax invoice requirements detailed in clause 7.15 of the conditions of contract and will be paid 30 days from receipt of the claim.

#### IMPACT OF POSTPONEMENTS ON INCENTIVE PAYMENTS

It is important to note that schedule based key performance indicators may be affected by the granting of postponement claims in accordance with clause 6.2 of the conditions of contract. Where the Contractor successfully claims a postponement of the date for delivery of Supplies and/or a Milestone Date a key performance indicator relating to the Milestone Date will also be affected. Where the key performance indicator is directly linked to the Milestone Date or delivery date then no change will need to be made to the description of the key performance indicator.

##### Example

KPI 12 - To achieve Milestone Y, 3 months prior to the scheduled Milestone Date.

Where the key performance indicator is not directly linked to the Milestone Date or delivery date, the Contractor should propose a change to the description of the key performance indicator in the Contract change proposal submitted in accordance with clause 6.2 of the conditions of contract.

##### Example

KPI 3 - To achieve Acceptance of Item X by 21 December 2003

It is important to note that the achievement by the Contractor of the key performance indicator by the postponed date may no longer represent a value for money benefit for the Commonwealth as required by the FMA Act. However, as the Commonwealth is contractually bound to pay the Contractor an Incentive Payment where it meets the key performance indicators detailed in Annex I to Attachment B and the Contractor has been granted a postponement because the delay was not within its reasonable control, the Commonwealth should agree to the schedule based key performance indicator being postponed by the same period as the delivery date or Milestone.

When selecting key performance indicators, consideration should be given to the risk of postponement claims and the impact that they will have upon the superior benefit of the early achievement of a Milestone or early Acceptance of Supplies.

**Drafter's Action:** Prior to release of the RFT, the maximum amount payable as Incentive Payments should be included in clause 7.13.3.

**Related Clauses:** Tender Data Requirement D-11 of Annex D to the TDRL requests tenderers to propose assessment periods, key performance indicators and weightings.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract.

Annex I to Attachment B to the draft conditions of contract will contain the agreed assessment periods, weightings and key performance indicators.

**Further Reading:** Nil

**7.14 Liquidated Damages and Other Compensation**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations, Materiel Finance Division and Treasury and Tax Management
<b><u>Status:</u></b>	Optional. To be included where the Commonwealth will suffer loss if a Milestone is not achieved on time and it is appropriate to recover the loss from the Contractor.
<b><u>Purpose:</u></b>	To set out the parties agreement on the amount of damages to be paid by the Contractor in the event that the Contractor fails to achieve specific Milestones on time.
<b><u>Policy:</u></b>	<i>Accounts Receivable and Debt Management Procedures Manual</i> <i>A New Tax System (Goods and Services Tax) Act 1999</i> <i>DPPM – Section 5, Chapter 5.9</i> <i>Defence CEIs Part 6 Instructions 2 and 3</i> <i>DRB 47 – Manual of Financial Delegations</i> <i>Financial Management and Accountability Act 1997</i>
<b><u>Guidance:</u></b>	If the Contractor fails to achieve a Milestone by the Milestone Date specified in Attachment C to the conditions of contract, the Contractor will be in breach of Contract and the Commonwealth will be entitled to recover damages for that breach. To provide certainty and avoid the costs associated with litigation, the parties may, through a liquidated damages clause, agree on the amount of damages to be recovered in the event of a failure by the Contractor to achieve a Milestone on time.

**LIQUIDATED DAMAGES BECOME A DEBT DUE UPON ELECTION**

Where the Contractor fails to achieve a Milestone listed in Attachment D to the conditions of contract by the date listed in Attachment D, clause 7.14 entitles the Commonwealth to elect to claim liquidated damages or another agreed form of compensation. Once liquidated damages are triggered under a contract they are considered to be an amount owing to the Commonwealth (i.e. 'a debt due to the Commonwealth') for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act). This means that Defence will be required to pursue recovery of such amounts, unless they are waived by the Finance Minister under section 34 of the FMA Act.

To ensure that liquidated damages specified in Attachment D will not become a debt due to the Commonwealth immediately upon the Contractor failing to achieve the relevant Milestone, the following statement has been included in clause 7.14.2: "No amount shall be owing to the Commonwealth until the Commonwealth elects, in accordance with clause 7.14.3, to recover any such liquidated damages". The inclusion of this statement ensures that the liquidated damages specified in Attachment D will only become a debt due to the Commonwealth at the time the Commonwealth makes an election to claim the liquidated damages. By granting the Commonwealth an election to claim liquidated damages or another agreed form of compensation, clause 7.14.3 also allows the Commonwealth and Defence industry greater flexibility in the collection and management of liquidated damages.

**TIME PERIOD TO MAKE THE ELECTION**

It should be noted that clause 7.14.4 imposes a time period in which the Commonwealth must make an election in accordance with clause 7.14.3. The Commonwealth must make its election within:

- a. the period of four months after the end of the relevant period of delay; or
- b. four months after notification by the Contractor that its liability limit in relation to liquidated damages has been reached.

Clause 7.14.7 provides that the expression 'relevant period of delay' can refer to either the whole period of each delay for which liquidated damages are recoverable

by the Commonwealth under clause 7.14, or one or more periods within the whole period of delay which the Commonwealth may nominate in writing to the Contractor, as the case requires. This definition makes it clear that the Commonwealth does not have to wait until the end of the delay (which could be a considerable period of time) or the liquidated damages cap is reached before it can decide whether to levy liquidated damages or agree alternative compensation with the Contractor.

Instead, the clause makes it clear that the Commonwealth has a right to make elections in accordance with clause 7.14.3 on an ongoing basis so that liquidated damages or alternative compensation can be claimed closer to the time at which the Commonwealth is actually suffering loss.

In practice, this means that the Commonwealth could nominate specified individual periods (e.g. monthly) within the overall period of delay and elect to levy liquidated damages for each individual period, or enter into discussions regarding alternative compensation, within 4 months of the end of each of those specified periods. This process could then continue for each individual component of the whole period of delay.

If the Commonwealth fails to make an election within the relevant time period to recover the liquidated damages in accordance with clause 7.14.3, clause 7.14.5 has the effect of according the recoverable liquidated damages, as a debt owed to the Commonwealth by the Contractor. On the next day after the expiration of the period mentioned at clause 7.14.4 the Commonwealth is entitled to rely on the provisions of clause 12.4 to recover the debt owed.

The Commonwealth would, however, still be entitled to claim damages at law where it has suffered loss as a result of the breach of contract, but this would only cover loss for causes other than the Contractor's delay in delivering the Supplies (see the guidance on Claiming Liquidated Damages as the Sole Remedy for Delay below). It is therefore important for the Commonwealth to be aware of the relevant election period set out in clause 7.14.4, and to ensure that the Commonwealth's rights are protected by seeking compensation (either as liquidated damages or alternative compensation) for the delay from the Contractor.

#### ELECTING TO CLAIM ALTERNATIVE FORMS OF COMPENSATION

In accordance with clause 7.14.3, the Commonwealth may elect to claim an alternative form of compensation to the equivalent value of the liquidated damages specified at Attachment D. The Commonwealth may also elect to claim a combination of liquidated damages and alternative forms of compensation to the equivalent value of the liquidated damages specified in Attachment D. It should be noted, however, that both parties must agree to the alternative form of compensation. The Commonwealth cannot compel the Contractor to provide alternative compensation or dictate its form.

When seeking to agree with the Contractor on any form of alternative compensation, care should be taken to ensure that the Commonwealth does not take any action or make any statement that could endanger the Commonwealth's right to subsequently claim liquidated damages in the event that no agreement can be reached. Where the Commonwealth and the Contractor cannot agree to an alternative form of compensation, the Commonwealth will be entitled to claim the liquidated damages specified at Attachment D as long as the time periods specified in clause 7.14.4 have not expired. Where the time periods specified in clause 7.14.4 are close to expiry, it may be in the best interests of the Commonwealth to elect to claim the liquidated damages specified in Attachment D rather than risk losing the right to claim any compensation for the Contractor's delay.

#### REACHING AGREEMENT ON ALTERNATIVE COMPENSATION

Careful consideration should be given to the form of any alternative compensation prior to an agreement being reached with the Contractor. Issues to be considered include:



- a. estimating the value of the compensation;
- b. the usefulness of the compensation to the Commonwealth;
- c. costs associated with the compensation that would be borne by the Commonwealth (e.g. storage, maintenance, fuel, training etc);
- d. whether the compensation is within the scope of the Contract;
- e. whether the compensation will be provided under the current Contract or another contract;
- f. what delivery dates, functional/performance requirements, warranties, liquidated damages etc should be agreed with the Contractor and included in the relevant contract; and
- g. whether electing to claim the liquidated damages specified in Attachment D would better compensate the Commonwealth for the loss it has suffered as a result of the Contractor's delay.

Where the Commonwealth elects to claim compensation in lieu of liquidated damages, clause 7.14.5 places an obligation on the Contractor to prepare a Contract change proposal to affect a change to the Contract and any other contract between the Commonwealth and the Contractor which may be affected. Clause 7.14.5 also states that where the compensation is to be provided in the form of goods or services, the goods and services will be incorporated into the Supplies under the relevant contract. This clause ensures that the standard warranty and other relevant contractual provisions will apply unless expressly varied.

#### WAIVING OR WRITING OFF DEBTS

The Commonwealth may, in accordance with *Part 6 Instruction 2 and 3* of the *Defence CEIs*, decide to write-off or waive debts (including liquidated damages owed to the Commonwealth). Further guidance on the write-off and waiver of debts is contained in the guidance on clause 12.4 of the draft conditions of contract. It is important to remember, however, that liquidated damages will not become a debt due to the Commonwealth until the Commonwealth elects to recover the liquidated damages under clause 7.14.3.

#### DECISION MAKING AUTHORITY

All decisions relating to the recovery, trade-off, allocation, waiver or write-off of liquidated damages must be referred to Branch Head level or higher. *DRB 47* lists the delegates who are entitled to write-off liquidated damages in accordance with *Part 6 Instruction 2* of the *Defence CEIs*. All requests for the waiver of liquidated damages must be referred to the Minister for Finance through the Assistant Secretary Personnel Service Delivery in Corporate Services and Infrastructure Group in accordance with *Part 6 Instruction 3* of the *Defence CEIs*.

#### CLAIMING LIQUIDATED DAMAGES AS THE SOLE REMEDY FOR DELAY

It is important to note that in accordance with clause 7.14.6, the Commonwealth's right to claim liquidated damages for delay is the sole remedy of the Commonwealth for loss or damage suffered as a result of a delay during the period in which liquidated damages accrue. Clause 7.14.6 does not limit the Commonwealth's remedies in respect of a delay in delivery of Supplies for which an entitlement to recover liquidated damages does not accrue under the Contract or where the loss or damage suffered by the Commonwealth is caused other than by the Contractor's delay in delivering the Supplies. Clause 7.14.6 also does not limit the Commonwealth's right to terminate the Contract for convenience in accordance with clause 12.3 of the conditions of contract or to terminate the Contract for default.

#### ENFORCEABILITY OF LIQUIDATED DAMAGES

To be enforceable against the Contractor in law, the liquidated damages amounts included in Attachment D must represent a genuine pre-estimate of the loss likely

to be suffered by the Commonwealth as a result of the failure by the Contractor to achieve the Milestone on time. The calculation of the amount of liquidated

damages is therefore critical to the enforceability of clause 7.14. For guidance on the calculation of liquidated damages, reference should be had to the guidance provided in relation to Attachment D.

Because the Commonwealth is not a company that trades with a view to profit, it can sometimes be difficult to identify the loss suffered as a result of a failure to deliver on time. To lessen the chances of an argument over whether the Commonwealth suffered loss, clause 7.14.1 has been included to establish the Contractor's agreement that the Commonwealth will suffer loss and damage should there be a failure to achieve a Milestone on time.

#### INCLUSION OF INFORMATION IN ATTACHMENT D

Where a genuine pre-estimate of loss can be made, the Milestone, the date for achievement of the Milestone and the genuine pre-estimate of loss should be included in Attachment D. The date for achievement of the Milestone may be the Milestone Date specified in Attachment C or where the Commonwealth allows the Contractor a grace period, a date later than the Milestone Date. Where the Contract allows for a grace period in relation to a particular Milestone and the Contractor fails to achieve that Milestone within the grace period, the Commonwealth will be entitled to claim liquidated damages from the Milestone Date detailed in Attachment C. Liquidated damages are applied from the Milestone Date in Attachment C rather than the date in Attachment D to ensure that the Commonwealth is fully compensated for the loss it suffers as a result of the delay in achieving the Milestone.

If no genuine pre-estimate of loss can be made in relation to a Milestone, the Milestone should not be included in Attachment D. Where a Milestone is not included in Attachment D, the Commonwealth will only be able to recover damages for the Contractor's failure to achieve the Milestone if the Commonwealth can show that it has suffered loss as result of the breach of Contract.

#### GST IMPLICATIONS

Under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) the Commonwealth will be liable to pay GST to the Australian Taxation Office where it claims liquidated damages under the Contract. This liability arises because clause 7.14.6 makes liquidated damages the Commonwealth's sole remedy for loss or damage resulting from the delay. By agreeing to restrict its remedies to liquidated damages, the Commonwealth is effectively waiving its right to claim damages at common law. As the waiver of a right constitutes a 'taxable supply' under the GST Act, the Commonwealth is therefore liable to pay GST to the Australian Taxation Office. The amount of GST payable to the Australian Tax Office should be included in the liquidated damages amounts specified in Attachment D.

The Commonwealth must provide the Contractor with a valid tax invoice in accordance with clause 7.15.6 of the conditions of contract when claiming liquidated damages or alternative compensation. Where the liquidated damages are deducted from the next payment due under the Contract or where alternative forms of compensation are claimed by the Commonwealth, it is important to remember that the Commonwealth will be required to remit the required GST amount to the Australian Taxation Office in Australian dollars.

Where alternative forms of compensation are included in the Contract or another contract with the Contractor, GST will be payable by the Contractor in relation to goods and services that constitute 'taxable supplies' under the GST Act. Where the contract is GST inclusive, the relevant GST amounts should therefore be added to the Contract Price.

Defence staff can obtain further advice on GST issues from the Defence Tax Management Office in the Treasury and Tax Management Branch of the Chief Finance Officer Group.

## LIABILITY CAP FOR LIQUIDATED DAMAGES

Drafters should also note that tenderers often seek to cap their liability in relation to liquidated damages by setting a cap on the amount of liquidated damages that are payable under the Contract. It should be noted that although the Commonwealth has a preference for assessing the Contractor's liability on the basis of common law, the limitation of liability clause at clause 8.5 of the draft conditions of contract proposes to cap liquidated damages under the Contract to an aggregate amount.

The amount of the cap must be included prior to release of the RFT. Issues to be considered when determining an appropriate cap include:

- a. the likelihood of the Contractor failing to meet the required Contract schedule or All Industry Requirements;
- b. the genuine pre-estimate of loss that the Commonwealth will suffer where particular Milestones or Industry Requirements are not achieved; and
- c. the impact of the cap on the tendered price.

A tenderer may propose an alternative liability cap in its tender. Careful evaluation of any alternative proposal is required to ascertain whether the concession in the form of the cap on liability reduces the value of the liquidated damages clause to the extent that the Commonwealth would do better to exclude clause 7.14 and rely on its general contractual rights to sue for breach of the Contract and recover damages.

Drafter's Action: Nil

Related Clauses: Clause 4.1 of the draft conditions of contract details the liquidated damages that may be claimed by the Commonwealth where the Contractor fails to achieve the Industry Requirements in the All Plan by Final Acceptance.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract.

Clause 8.5 of the draft conditions of contract proposes a cap for liquidated damages under the Contract.

Attachment D to the draft conditions of contract will contain the agreed Liquidated Damages schedule, including the agreed amount of liquidated damages applicable for relevant Milestones and the date for achievement of each Milestone. These amounts should be GST inclusive.

Further Reading: Nil

**7.15 Taxes and Duties**

**Sponsor:** Contracting Policy & Operations and Materiel Finance Division

**Status:** Core

**Purpose:** To state that all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Contract are the Contractor's responsibility with the exception of the Australian Goods and Services Tax (GST). If GST is applicable because a 'taxable supply' has been made, the Contractor will be able to claim GST as an amount additional to the Contract Price.

**Policy:** The Commonwealth is notionally liable to pay GST to its suppliers and collect GST from purchasers of its goods or services in accordance with Australian tax legislation.

*A New Tax System (Goods and Services Tax) Act 1999*

*Defence CEI Part 1 Instruction 9*

*DPPM – Section 3, Chapter 3.7*

**Guidance:** Drafter's should note that 'taxes, duties and government charges' includes customs duty payable where Supplies do not originate in Australia; and any other tax, duty or government charge imposed either in Australia or overseas in connection with the Contract. These taxes, duties and government charges will be payable by the Contractor and must be included in the Contract Price. The only exception to this is the Australian GST which the Contractor is entitled to recover as an additional amount in accordance with clause 7.15.2.

**CHARGING GST**

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In order to charge GST, the Contractor must have an Australian Business Number (A.B.N.) and be registered for GST with the Australian Taxation Office (ATO). Registration for GST is required by entities that satisfy the registration requirements of the GST legislation. As a general rule, entities carrying on an enterprise in Australia with a turnover of \$50,000 (\$100,000 for non-profit organisations) must register for GST. Entities with a turnover of less than \$50,000 may choose to register for GST. Registration for GST entitles that Contractor to charge GST and claim input tax credits on the purchases of goods and services it makes for the purpose of carrying on its business. Amounts of GST collected by the Contractor must be remitted to the ATO and can be offset against any input tax credits which the Contractor is entitled to receive in a given tax period.

Details of entities registered for an A.B.N. and GST can be checked via the Internet at: <http://www.abr.business.gov.au/>

**REQUIREMENT TO ISSUE TAX INVOICES**

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Central to the operation of the GST legislation is the issuance of tax invoices relating to taxable supplies by suppliers. To obtain payment of a GST amount from the Commonwealth, the Contractor is required to submit a valid tax invoice with each claim for payment in accordance with clause 7.15.4. The Contractor is required on the tax invoice to identify the amount of GST claimed as a separate line item.

The GST amount identified on the invoice represents the amount of GST that Defence will be entitled to claim as an input tax credit from the Australian Taxation Office when it lodges its monthly Business Activity Statement (BAS). It should be noted that a valid tax invoice must be held by Defence before it lodges its Business Activity Statement in order for it to claim an input tax credit for the amount of GST paid. If Defence does not hold a valid tax invoice at the time it lodges the Business Activity Statement, it will not be entitled to claim an input tax credit in that or subsequent tax periods, until it does receive a valid tax invoice from the supplier.

## ADJUSTMENTS

Where the Contractor incorrectly states or otherwise revises the amount of GST paid or payable by the Commonwealth, the Contractor is required to issue the Commonwealth with an adjustment note under clause 7.15.5. The adjustment note must be in accordance with the GST legislation.

## TAXABLE SUPPLIES BY THE COMMONWEALTH

It should be noted that the application of the GST legislation is extremely broad. It will capture transactions under a Contract, which flow either from the Commonwealth to the Contractor or from the Contractor to the Commonwealth. The GST legislation makes the supplier of a 'taxable supply' liable to account for GST. The GST legislation does not provide a supplier with a statutory right to collect GST from the recipient of the supply. For this reason, the Commonwealth has to ensure that if it makes a 'taxable supply' to the Contractor, it has taken GST into account or is able to recover its GST liability as an additional amount under the Contract. Clause 7.15.6 provides the Commonwealth with such a contractual mechanism and it is therefore extremely important that this clause is not deleted or amended unless advice has been obtained from Contracting Policy and Operations Branch. In accordance with clause 7.15.7 any amount to be paid by the Contractor under clause 7.15.6 may be recovered by the Commonwealth as a debt under clause 12.4 of the conditions of contract.

## DEFENCE'S AUSTRALIAN BUSINESS NUMBER

Each Commonwealth department has been allocated a separate A.B.N. by the ATO. The A.B.N. is used to identify which government department has entered into a particular transaction. It is therefore important to ensure that the Department of Defence's A.B.N. is recorded in the parties clause located on the front page of the Contract. The A.B.N. for the Department of Defence is 68 706 814 312.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement D-1 of Annex D to the TDRL requests tenderers to tender prices on a GST exclusive basis.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.16 of the draft conditions of contract details the contractual requirements that apply where the Contractor appoints a resident agent under the Contract.

Further Reading: Nil

**7.16 GST Agent**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	RFT Core. This clause must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
<b><u>Purpose:</u></b>	The purpose of this clause is to record the identity of a resident agent appointed by an overseas Contractor to account for GST in accordance with Division 57 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
<b><u>Policy:</u></b>	The Commonwealth prefers not to have any agent interposed between itself and the Contractor, however, the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (GST Act) provides an overseas entity with the right to appoint a resident agent and have that resident agent account for GST on the overseas entity's behalf.  <i>DPPM – Section 3, Chapter 3.7</i>
<b><u>Guidance:</u></b>	As noted, it is Commonwealth policy not to have an agent interposed between the Commonwealth and the Contractor. The GST Act however provides an overseas Contractor with the right to appoint a resident agent to account for GST purposes on its behalf. It is for this reason that the GST resident agent clause must be included in all RFTs.

**APPOINTING A RESIDENT AGENT**

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The appointment of a resident agent will not relieve the Contractor from registering in its own capacity for an A.B.N. and for GST where it satisfies the registration requirements of the GST Act. The primary reason that the GST Act allows an overseas entity to appoint a resident agent is the view held by the ATO that it is easier to enforce Australian taxation legislation upon a resident of Australia as opposed to a non-resident.

Clause 7.16 provides a mechanism by which the identity of the resident agent appointed by a Contractor is recorded in the Contract. Drafters will be required to insert the relevant details of the resident agent prior to Contract signature. Clause 7.16.2 clearly indicates to the Contractor that the appointment of a resident agent will not relieve it of its liabilities or obligations under the Contract. Clause 7.16.3 places an obligation on the Contractor to ensure that its resident agent provides the Commonwealth with all necessary documentation it requires for a claim for payment to be considered in accordance with clause 7.15 of the conditions of contract, and that the resident agent complies with Division 57 of the GST Act.

**PAYMENTS UNDER THE CONTRACT**

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Clause 7.16.4 states that the Commonwealth will make all payments otherwise due to the Contractor under clause 7 of the conditions of contract to the resident agent. This clause also obtains the Contractor's agreement that such payments to the resident agent shall discharge to the extent of the payment, the Commonwealth's liability to the Contractor for those Supplies. Clause 7.16.5 places a contractual obligation upon the Contractor to inform the Commonwealth within 14 days if it appoints a resident agent and to provide the relevant details of that resident agent as required by clause 7.16.1. Clause 7.16.6 places an obligation on the Contractor to supply the Commonwealth with a copy of the agreement between it and the resident agent. The agreement provided does not need to contain prices.

**OBTAINING SPECIALIST GST ADVICE**

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It should be noted that a GST resident agent cited in the Contract may have certain statutory or common law agency obligations in relation to the Supplies whether or not the actual supplier (i.e. the Contractor or a Subcontractor) is known to the Commonwealth. Accordingly, persons may be unwilling to act as GST resident agents for Contractors without appropriate safeguards. This would be a matter for the Contractor and the resident agent. As such the note to tenderers in clause 7.16

recommends that tenderers make their own enquiries regarding the suitability of proposing a GST resident agent.

**Drafter's Action:** Prior to Contract signature, drafters must insert the name, address, telephone number, fax number and A.C.N. and A.B.N. of the resident agent.

**Related Clauses:** Clause 7.15 of the draft conditions of contract details the process by which the Contractor can claim GST as an amount additional to the Contract Price.

**Further Reading:** Nil





## 8. INSURANCE AND LIABILITY

### 8.1 Contractor's Employees

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To obtain from the Contractor an indemnity in favour of the Commonwealth in respect of employees of the Contractor who are undertaking work under the Contract.

Policy: It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk. An express indemnity from the Commonwealth to the Contractor should never be offered in a RFT and an indemnity should only be negotiated in response to a request from a tenderer in circumstances where commercial insurance is either unavailable or inappropriate.

*Defence CEI Part 2 Instruction 5*

*Defence Safety Management Agency website at <http://dsma.dcb.defence.gov.au>*

*Defence Safety Manual, Volume 1, Part 1, Chapter 8.*

*DPPM – Section 3, Chapter 3.2*

Guidance: An indemnity is a promise whereby one party undertakes to meet the financial cost of loss and damage suffered by the indemnified party.

#### INDEMNITY FOR CONTRACTOR EMPLOYEES

The requirements of clause 8.1 reflect an employer's common law responsibility for employees and should therefore not pose any problem to tenderers. Under the indemnity the Contractor assumes liability for death of, or personal injury to, employees of the Contractor who are undertaking work under the Contract, except to the extent that the death or injury resulted from an unlawful or negligent act or omission of the Commonwealth or a person acting through the Commonwealth.

#### DEFENCE OCCUPATIONAL HEALTH AND SAFETY REQUIREMENTS

Where work under the Contract will be carried out in premises owned by the Commonwealth, it is important to ensure that appropriate occupational health and safety procedures are observed. The Commonwealth must ensure that employees of the Contractor are provided with a safe environment in which to work. Further guidance can be obtained by contacting the Defence Safety Management Agency on 1800 019 955.

#### REQUEST FOR RECIPROCAL INDEMNITY

Careful consideration should be given to any request from a tenderer for an indemnity for loss resulting from the Commonwealth's negligence and advice should be sought from Contracting Policy and Operations Branch prior to the Commonwealth providing an indemnity to the Contractor. Where the Commonwealth does provide an indemnity to the Contractor, a financial limit on the indemnity should be imposed and in accordance with the *Defence CEIs*, the indemnity must be registered on the Defence Portfolio wide register, administered by the Director Costing and Analysis, Accounting Policy and Practices Branch of the Chief Finance Officer Group.

Commonwealth officers should note that Defence is now covered under the Comcover scheme for loss arising from certain types of liabilities. Advice on Defence's coverage under the Comcover scheme can be obtained by contacting the Defence Insurance Office on 1 800 990 900.

Drafter's Action: Nil

Related Clauses: Clause 8.6 of the draft conditions of contract places an obligation on the Contractor to insure or register with the appropriate statutory authority against liability for death of, or injury to, persons employed by the Contractor.

Further Reading: Nil

**8.2 Property Damage and Public Risk**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To obtain from the Contractor an indemnity in favour of the Commonwealth against loss or damage arising from a default or negligent or unlawful act or omission of the Contractor, its officers, employees, agents or Subcontractors in relation to property damage, personal injury and death, and associated costs and expenses of settling a claim.

Policy: It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk. An express indemnity from the Commonwealth to the Contractor should never be offered in a RFT and an indemnity should only be negotiated in response to a request from a tenderer in circumstances where commercial insurance is either unavailable or inappropriate.

*Defence CEI Part 2 Instruction 5*

*DPPM – Section 3, Chapter 3.2*

Guidance: An indemnity is a promise whereby one party undertakes to meet the financial cost of loss and damage suffered by the indemnified party.

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**INDEMNITY FOR PROPERTY DAMAGE AND PERSONAL INJURY**

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Under clause 8.2, the Contractor takes responsibility for the consequences of work performed under the Contract, whether the work is being performed by the Contractor itself or by one of its Subcontractors unless it can show that the Commonwealth or a third party, other than its Subcontractors, was at fault. The Commonwealth is therefore only protected from loss resulting from claims by any person in respect of loss or damage to the person's property or in respect of personal injury or death where the loss results from a default or unlawful or negligent act or omission of the Contractor, or its officers, employees, agents or Subcontractors.

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**REQUEST FOR RECIPROCAL INDEMNITY**

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Careful consideration should be given to any request from a tenderer for an indemnity for loss resulting from the Commonwealth's negligence and advice should be sought from Contracting Policy and Operations Branch prior to discussions with a tenderer, or prior to the Commonwealth providing an indemnity to the Contractor. Where the Commonwealth does provide an indemnity to the Contractor, a financial limit on the indemnity should be imposed and in accordance with the *Defence CEIs*, the indemnity must be registered on the Defence Portfolio wide register, administered by the Director Costing and Analysis, Accounting Policy and Practices Branch of the Chief Finance Officer Group.

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**INSURANCE COVERAGE**

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Prior to Contract signature, consideration should be given to the need for the Contractor to obtain insurance in relation to the third party property damage, personal injury and death. Consideration should be given to the financial stability of the Contractor, the capacity of the Contractor to effectively self-insure, the type and amount of any global insurance policies held by the Contractor, the magnitude and likelihood of loss in relation to third party property damage, personal injury and death and the cost of obtaining insurance coverage. In the first instance advice should be sought from Contracting Policy and Operations Branch who may in turn arrange for expert insurance advice where appropriate.

Commonwealth officers should note that Defence is now covered under the Comcover scheme for loss arising from certain types of liabilities. Advice on Defence's coverage under the Comcover scheme can be obtained by contacting the Defence Insurance Office on 1800 990 900.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement C-3 of Annex C to the TDRL requests tenderers to provide details of currently held or proposed insurance policies. The insurance policies required for performance of the Contract will be negotiated with the successful tenderer.

Clause 8.6 of the draft conditions of contract will specify any insurance policies required to be taken out by the Contractor.

Further Reading: Nil

**8.3 Care of the Supplies**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To place a contractual obligation on the Contractor to make good any loss or damage to the Supplies that occurs while risk resides with the Contractor, unless the damage is a direct consequence of an excepted risk.

Policy: It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk.

*DPPM – Section 3, Chapter 3.2*

Guidance: Under clause 8.3, the Contractor must make good any damage to, or loss of, the Supplies where the risk resides with the Contractor and the loss or damage was not caused by an excepted risk. In accordance with clause 6.7 of the conditions of contract, risk of loss or damage to the Supplies will reside with the Contractor until the Supplies are delivered to the Commonwealth in accordance with Attachment C to the conditions of contract and also where the Contractor retakes possession of the Supplies.

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**INCLUSION OF ADDITIONAL 'EXCEPTED RISKS'**

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Excepted risks are defined in clause 8.3.2 and include negligent acts of the Commonwealth, war, contamination by radioactivity and confiscation by a government. The Commonwealth is accepting the risk of loss or damage to the Supplies in relation to the events listed in clause 8.3.2. Careful consideration should therefore be given to any proposal to extend the list of excepted risks and advice should be sought from Contracting Policy and Operations Branch prior to any additional events being included.

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**INSURANCE COVERAGE**

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Under clause 8.3, the Contractor will be responsible for the Supplies, regardless of whether it has take out any insurance in respect of the Supplies. Careful consideration should be given to the need for the Contractor to obtain insurance for loss or damage to the Supplies, the type of coverage sought and the dollar amount of the coverage. Issues to be considered include the financial stability of the Contractor, the capacity of the Contractor to effectively self-insure, the type and amount of any global insurance policies held by the Contractor, the magnitude and likelihood of loss in relation to the Supplies and the cost of obtaining insurance coverage. In the first instance advice should be sought from Contracting Policy and Operations Branch who may in turn arrange for expert insurance advice where appropriate.

The Department of Defence is currently not covered for damage to Commonwealth military equipment under the Comcover scheme. Advice on changes to Defence's coverage can be obtained by contacting the Defence Insurance Office on 1800 990 900.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement C-3 of Annex C to the TDRL requests tenderers to provide details of currently held or proposed insurance policies. The insurance policies required for performance of the Contract will be negotiated with the successful tenderer.

Clause 6.7 of the draft conditions of contract, states that risk of loss or damage to the Supplies will reside with the Contractor until the Supplies are delivered to the Commonwealth in accordance with Attachment C to the conditions of contract and also where the Contractor retakes possession of the Supplies.

Clause 8.6 of the draft conditions of contract will specify any insurance policies required to be taken out by the Contractor.

Further Reading: Nil

## 8.4 Intellectual Property Indemnity

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To obtain from the Contractor an indemnity in favour of the Commonwealth against any loss suffered as a result of a claim against the Commonwealth for infringement of IP rights. The clause also sets out how any litigation in relation to an infringement of IP covered by the indemnity will be managed.

Policy: It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk. An express indemnity from the Commonwealth to the Contractor should never be offered in a RFT and an indemnity should only be negotiated in response to a request from a tenderer in circumstances where commercial insurance is either unavailable or inappropriate.

*Defence CEI Part 2 Instruction 5*

*DPPM – Section 3, Chapter 3.2*

*Judiciary Act 1903*

Guidance: An indemnity is a promise whereby one party undertakes to meet the financial cost of loss and damage suffered by the indemnified party. Under clause 8.4, the Contractor takes responsibility for the loss suffered by the Commonwealth as a result of claims by a third party against the Commonwealth that the Commonwealth's use of IP rights under the Contract has infringed that third party's IP.

### REQUEST FOR RECIPROCAL INDEMNITY

Careful consideration should be given to any request from a tenderer for a reciprocal indemnity in relation to IP provided by the Commonwealth and advice should be sought from Contracting Policy and Operations Branch prior to either discussions with a tenderer or the Commonwealth providing an indemnity to the Contractor. Where the Commonwealth does provide an indemnity to the Contractor a financial limit on the indemnity should be imposed and in accordance with the *Defence CEIs*, the indemnity must be registered on the Defence Portfolio wide register, administered by the Director Costing and Analysis, Accounting Policy and Practices Branch in the Chief Finance Officer Group.

### INSURANCE COVERAGE

Prior to Contract signature, consideration should be given to the need for the Contractor to obtain insurance in relation to the IP indemnity in clause 8.4. In determining the insurance requirements, consideration should be given to the financial stability of the Contractor, the capacity of the Contractor to effectively self-insure, the type and amount of any global insurance policies held by the Contractor, the magnitude and likelihood of loss in relation to third party IP infringement and the cost of obtaining insurance coverage. In the first instance advice should be sought from Contracting Policy and Operations Branch who may in turn arrange for expert insurance advice where appropriate.

It should be noted that Defence is now covered under the Comcover scheme for loss arising from certain types of liabilities. Advice on Defence's coverage under the Comcover scheme can be obtained by contacting the Defence Insurance Office on 1800 990 900.

### REQUIREMENT TO NOTIFY THE CONTRACTOR OF LITIGATION

Clause 8.4.3 obliges the Commonwealth to notify the Contractor as soon as practicable in writing of any action, claim, dispute, suit or proceedings threatened or brought, against the Commonwealth arising from an alleged infringement or infringement as referred to in clause 8.4. It is important to note that where the Commonwealth fails to notify the Contractor as required by clause 8.4.3, the

Commonwealth will be in breach of contract and the Contractor may be entitled to recover damages where it has suffered loss as a result of the breach.

#### RIGHT TO WITHDRAW FROM PROCEEDINGS

Clause 8.4.4 permits the Commonwealth to withdraw from proceedings, where leave is granted by the relevant court. However, the Commonwealth should only withdraw if the Contractor agrees to comply with Commonwealth policy, including the Legal Services Directions (LSDs), in relation to the conduct of the litigation. The LSDs are issued by the Attorney-General under the *Judiciary Act 1903* (for information about the LSDs, contact the Office of Legal Services Coordination, Attorney-General's Department). Where the Commonwealth is granted leave to withdraw from the proceedings the Contractor must, in its own name and at its own expense, carry out the proceedings.

If the Commonwealth is not granted leave to withdraw and the Contractor acknowledges its obligation under clause 8.4, clause 8.4.5 enables the Commonwealth to continue with the proceedings. The Contractor may be required to lodge a security of a reasonable amount with the Commonwealth. The Commonwealth will keep the Contractor informed of all developments throughout the proceedings.

#### JUDGEMENTS OR AWARDS AGAINST THE COMMONWEALTH

The Contractor's obligation under clause 8.4 to indemnify the Commonwealth is not affected by a judgment against the Commonwealth. If a judgment or award is made against the Commonwealth, clause 8.4.6 obliges the Contractor to pay the Commonwealth the award amount.

#### REQUIREMENT TO OBTAIN CONTRACTOR AGREEMENT TO SETTLEMENTS

Clause 8.4.7 requires the Commonwealth to consult with the Contractor prior to agreeing to a settlement of a claim.

#### SUSPENDING CONTRACTOR PAYMENTS

If the Contractor fails to comply with clause 8.4, clause 8.4.8 empowers the Commonwealth to suspend any payment due to the Contractor under the Contract until the infringement proceedings are finalised.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement C-3 of Annex C to the TDRL requests tenderers to provide details of currently held or proposed insurance policies. The insurance policies required for performance of the Contract will be negotiated with the successful tenderer.

Clause 5 of the draft conditions of contract contains the Intellectual Property clauses for the Contract. In particular, clause 5.3 of the draft conditions of contract details the entity that will own Foreground IP and the Intellectual Property licence rights of the Commonwealth.

Clause 8.6 of the draft conditions of contract will specify any insurance policies required to be taken out by the Contractor.

Further Reading: Nil

## 8.5 Limitation of Liability

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	RFT Core. This clause must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
<u>Purpose:</u>	To limit the Contractor's liability in relation to specific heads of damage.
<u>Policy:</u>	It is Commonwealth policy that risk should be allocated to and managed by the party in the best position to manage the risk.

In accordance with the *Commonwealth Procurement Guidelines and Best Practice Guidance*, liability should be determined according to common law principles wherever possible. If a limitation of liability is necessary, then it should only be applied on a 'per event' basis. Agencies are required to undertake a risk assessment commensurate with the complexity of the purchase before negotiating a limitation of liability.

*Commonwealth Procurement Guidelines and Best Practice Guidance*

*DPPM – Section 3, Chapter 3.2*

*Finance Circular 1997/06: Potential Liabilities and Losses*

<u>Guidance:</u>	In line with Commonwealth policy, risk is allocated under the Contract to the party in the best position to manage the risk. Notwithstanding the inclusion of clause 8.5 in the draft conditions of contract, the Commonwealth retains its preference for liability to be determined on the basis of Australian common law. Where a tenderer proposes to limit its liability on an alternative basis to Australian common law, the proposal will be considered on its merits in the context of value for money considerations.
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### PREFERRED ALTERNATIVE LIABILITY REGIME

Clause 8.5 contains the Commonwealth's preferred liability regime where a tenderer proposes to limit liability on an aggregate basis. Under clause 8.5, the Contractor's liability for personal injury and death, loss of, or damage to, third party property and the IP indemnity provided by the Contractor under clause 8.4 of the conditions of contract will be determined on the basis of Australian common law. The Contractor's liability for:

- a. obligations and warranties in clause 9 of the conditions of contract will be limited in aggregate to a nominated amount;
- b. loss of, or damage to, the Supplies will be limited in aggregate to a nominated amount;
- c. loss of, or damage to, Commonwealth property, including GFF and GFM, will be limited in aggregate to a nominated amount;
- d. liquidated damages under the Contract (under clause 4.1 of the conditions of contract or clause 7.14 of the conditions of contract) will be limited in aggregate to a nominated amount; and
- e. a breach of contract, breach of statute or negligent act or omission not otherwise mentioned in clause 8.5, will be limited in aggregate to a nominated amount.

### SELECTION OF APPROPRIATE LIABILITY LIMITS

Careful consideration should be given to the liability limits to be included for the liabilities mentioned in clause 8.5.1, particularly, as discussed below, for the 'other' breaches of contract or statute or negligent acts or omissions (clause 8.5.1.e). A risk assessment should be undertaken to determine an appropriate amount and to ensure that the other limits are appropriate for the specific project. The *Commonwealth Procurement Guidelines and Best Practice Guidance* requires agencies to protect the Commonwealth's interests through undertaking a risk assessment, preparing a risk management plan as appropriate and seeking legal

advice appropriate to the complexity of the purchase. The risk needs to be assessed so the likelihood and consequences of the risk eventuating are fully understood.

Issues to be considered when determining an appropriate cap for the obligations and warranties in clause 9 of the draft conditions of contract include:

- a. the length of the specified warranty and latent defects periods;
- b. the nature of the Supplies warranted and therefore the kind of defects likely to arise and the potential cost of fixing or replacing those Supplies if they are defective or otherwise not fit for purpose;
- c. the extent to which the Supplies will have been progressively tested, validated and verified prior to Acceptance under the Contract; and
- d. the effect of the cap on the tendered price.

Issues to be considered when determining an appropriate cap for loss of or damage to the Supplies include the nature and type of the Supplies being provided by the Contractor, the likelihood and consequences of risks associated with the production of the Supplies prior to their delivery to the Commonwealth, and the effect of the cap on the tendered price.

Issues to be considered when determining an appropriate cap for liquidated damages include:

- a. the likelihood of the Contractor failing to meet the required Contract schedule or All Industry Requirements;
- b. the genuine pre-estimate of loss that the Commonwealth will suffer where particular Milestones or Industry Requirements are not achieved; and
- c. the impact of the cap on the tendered price.

Issues to be considered when determining an appropriate cap for loss or damage to Commonwealth property include:

- a. the nature and type of GFM, GFF or other Commonwealth property provided to or used by the Contractor in relation to the Contract;
- b. the likelihood and consequences of risks associated with the use of the GFM, GFF or other Commonwealth property; and
- c. the impact of the cap on the tendered price.

#### LIABILITY FOR OTHER BREACHES OF CONTRACT AND STATUTE, NEGLIGENT ACTS OR OMISSIONS

A thorough risk assessment will be critical for determining the amount of the cap for losses arising from breaches of contract or statute or negligent acts or omissions not otherwise covered by clause 8.5. The inclusion of clause 8.5.1e (with the other limitations in clause 8.5.1) effectively means that all of the Contractor's potential liabilities under the Contract will be capped, with the only exceptions being the liabilities mentioned in clause 8.5.2: i.e. personal injury and death, loss of or damage to third party property and the IP indemnity. Therefore, in determining an appropriate cap for clause 8.5.1e, the risk assessment will need to take into account the full potential for Commonwealth loss if the Contractor fails to perform the Contract as required. Other issues to be considered include the nature and type of the Supplies, the likelihood of the Contractor being able to complete the Contract as required, and the effect of the cap on the tendered price.

For high value contracts, the aggregate cap may need to be significant, to be justifiable on the basis of the risk assessment.

#### ASSESSING ALTERNATIVE TENDERER PROPOSALS

A tenderer may propose to limit its liability for additional heads of damage or propose different liability caps. Careful consideration should be given to each



proposal to ensure that the Commonwealth is adequately protected and is assuming risk appropriate to the specific contract. A tenderer may also propose to limit its liability in relation to personal injury, third party property damage or under an indemnity. As such limitations are against Defence policy a proposal of this nature should only be accepted in exceptional circumstances following a detailed risk analysis.

#### AMOUNT OF A LIMITATION OF LIABILITY CAP

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A tenderer may attempt to link the size of the cap to the profit being made on the project and thus limitations are often put forward as multiples or fractions of the Contract Price. There is no link between the liability or damage which may be suffered and the Contract Price so such considerations are highly artificial. Any such proposal should be the subject of a risk assessment so that the likely magnitude of loss is known.

In line with Commonwealth policy, if in a particular case a small monetary cap is accepted the likelihood of the Commonwealth having to bear some loss may be so great that it is a contingent liability which must be recorded in the accounts in the same way as if the Commonwealth had given an indemnity. The *Finance Circular 1997/06: Potential Liabilities and Losses* then applies.

#### RISK ASSESSMENTS

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Guidance on the conduct of risk assessments can be obtained from the Risk Management section in the Materiel Policy and Services Branch of the Defence Materiel Organisation.

The basis of a risk assessment is to identify the possible scenarios in a project that might expose the Commonwealth to loss, the likelihood of the scenarios arising and the consequences for the Commonwealth if they do arise (e.g. the amount of the potential Commonwealth loss). Once this assessment has been undertaken, the Commonwealth will then need to decide how to manage the identified risks.

In each case, the Commonwealth must consider what a sufficient liability cap would be in each circumstance so as to evaluate what is being offered by each tenderer. This would then form the basis for a decision as to whether the cap can be justified.

#### USAGE OF UNDEFINED LEGAL TERMS

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When assessing alternative liability proposals, it is important to understand the effect of clauses and terms being put forward by tenderers as often they are developed by overseas lawyers or parent companies to suit foreign jurisdictions and do not necessarily make sense in the Australian law context. Tenderers may propose to limit or exclude liability for things like 'consequential loss', 'special damages', 'indirect loss' or 'economic loss'. These terms do not have a well defined meaning in Australian law and should not be included in the Contract as the interpretation that will be afforded to these terms by a court should it be required to interpret the limitation of liability clause is uncertain and may not be favourable to the Commonwealth. Instead of using undefined legal terms, a specific and clear statement of the required area of loss for which the Contractor requires its liability to be limited should be included.

For example, in relation to 'economic loss', the kinds of loss that the Contractor may wish to exclude could include: loss of profit, loss of productivity, cost of repair in foreign countries, loss of use, expense in obtaining substitute equipment, cost of maintaining existing equipment, cost of maintaining project office and payments to third parties for firefighting, rescue, environmental clear-up etc. It will be a matter of considering any such exclusion on a case by case basis.

It is therefore much simpler to use the model set out in clause 8.5 of the draft conditions of contract and have a monetary cap as the sole limitation without other exclusions. However, any exclusion proposed by a tenderer must be the subject of a risk assessment and considered on a case by case basis. For example, a

specifically defined loss in an exclusion clause could cut across what the Commonwealth would otherwise be entitled to be awarded as direct loss, and so may already be covered by one or other of the limitations in clause 8.5. If an exclusion is agreed, the clause must be carefully drafted so that it has a clear meaning in law as well as to ensure it is understood by the parties.

#### INSURANCE COVERAGE

Once the liability caps are determined, careful consideration should be given to the insurance coverage required for the Contract. In determining the insurance requirements for a Contract, consideration should be given to the financial stability of the Contractor, the capacity of the Contractor to effectively self-insure, the type and amount of any global insurance policies held by the Contractor, the magnitude and likelihood of loss in relation to each specific area of risk and the cost of obtaining insurance coverage. In the first instance advice should be sought from Contracting Policy and Operations Branch who may in turn arrange for expert insurance advice where appropriate. Usual practice is to align the Contractor's insurance with the liability caps under the Contract where such insurance is cost effective for the Commonwealth.

Commonwealth officers should note that Defence is now covered under the Comcover scheme for loss arising from certain types of liabilities. Advice on Defence's coverage under the Comcover scheme can be obtained by contacting the Defence Insurance Office on 1800 990 900.

#### CUMULATIVE OPERATION OF THE LIMITATIONS

Clause 8.5.3 recognises that there could be some overlap between the various limitations mentioned in clause 8.5.1. Accordingly, clause 8.5.3 provides that the various limitations operate cumulatively, so that if more than one of the limitations are capable of applying to a particular liability, the Commonwealth could recover for that liability up to the cap under one limitation, and then, to the extent that the liability exceeds that cap, recover for the liability under another limitation up to its cap.

#### DETERMINATION OF THE AMOUNT TO BE INCLUDED IN CLAUSE 8.5.3

Clause 8.5.4 places an obligation on both parties to negotiate in good faith to amend the liability caps specified in clause 8.5.1 and the liquidated damages amounts set out in Attachment D to the conditions of contract where a change to the contract is proposed:

- a. that will by itself or cumulatively with previous changes represent an increase in the Contract Price of more than a specified amount; or
- b. that varies the Statement of Work.

In determining an appropriate amount for inclusion in clause 8.5.4, drafters should consider the original Contract Price, the price variation mechanisms under the Contract and the change in risk profile that is likely to arise from price variation changes or other changes not affecting the Statement of Work. The specified amount should be expressed as a percentage and should in most cases be between 10% and 20% of the original Contract Price.

#### NEGOTIATION OF REVISED LIABILITY CAPS AND LIQUIDATED DAMAGES

When a change to the Contract is proposed by either party that falls within clause 8.5.4, in most cases alteration of both the liability caps and liquidated damages amounts in Attachment D will be required. Issues that should be considered by the Commonwealth when determining appropriate revised liability caps include:

- a. the change in risk profile to the Commonwealth and Contractor;
- b. the impact of any change in risk profile on each particular liability cap;
- c. the ability of the Contractor to insure against the risk; and
- d. the associated insurance costs to the Commonwealth.

Issues that should be considered by the Commonwealth when determining appropriate revised liquidated damages amounts include:

- a. whether the proposed change will affect Milestone Dates already included in Attachment D;
- b. whether the current liquidated damages amounts in Attachment D reflect a genuine pre-estimate of the Commonwealth's likely loss in the event of a delay by the Contractor in achieving the Milestones affected by the proposed change;
- c. whether additional/new Milestones should be included in Attachment D as a result of the proposed change; and
- d. what would be a genuine pre-estimate of the Commonwealth's likely loss if those additional/new Milestones were not achieved by the Contractor as scheduled.

It should be noted, however, that where an agreement can not be reached in relation to the revision of the liability caps and/or liquidated damages amounts, the Commonwealth retains the right, under clause 10.1 of the conditions of contract, to reject the proposed change to the Contract.

**Drafter's Action:** Prior to release of the RFT, drafters must insert the amount of the liability caps for the limitations set out in clause 8.5.1.

Prior to release of the RFT, drafters must also insert in clause 8.5.4a the amount by which the Contract Price must be increased for clause 8.5.4a to operate.

**Related Clauses:** Tender Data Requirement C-2 of Annex C to the TDRL provides further guidance on Commonwealth and Defence policy in relation to limitation of liability and requests tenderers to specify their proposal for liability under the Contract, including an explanation of any limitation on liability and a cost benefit analysis of the proposed limitation.

Tender Data Requirement C-3 of Annex C to the TDRL requests tenderers to provide details of currently held or proposed insurance policies. The insurance policies required for performance of the Contract will be negotiated with the successful tenderer.

Clause 8 of the draft conditions of contract contains all the indemnities provided by the Contractor under the Contract. Any insurance policies required to be taken out by the Contractor will be included in clause 8.6 of the draft conditions of contract prior to Contract signature.

Attachment D to the draft conditions of contract will contain the agreed details pertaining to Liquidated Damages.

**Further Reading:** Nil

**8.6 Insurance**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To detail the insurance policies that must be taken out and maintained by the Contractor during the Contract.
<u>Policy:</u>	<i>DPPM – Section 3, Chapter 3.2</i>
<u>Guidance:</u>	Clause 8.6 details the insurance requirements for the Contract and drafters must ensure that all insurance requirements are detailed in clause 8.6 prior to Contract signature.

**WORKERS COMPENSATION INSURANCE**

Clause 8.6.1 places a contractual obligation on the Contractor to take out and maintain workers compensation insurance or register with the appropriate statutory authority that provides coverage for workers. Under clause 8.6.2 the Contractor must ensure that each of its Subcontractors is similarly insured.

**OTHER TYPES OF INSURANCE COVERAGE**

Details of any additional insurance policies required to be held and maintained by the Contractor should be included in clause 8.6.3 prior to Contract signature. Insurance policies that may be required include public liability insurance, professional indemnity insurance, insurance for the Supplies, insurance of items of GFM, GFF or other Commonwealth property and product liability insurance. In determining the insurance requirements for a Contract, consideration should be given to the financial stability of the Contractor, the capacity of the Contractor to effectively self-insure, the type and amount of any global insurance policies held by the Contractor, the magnitude and likelihood of loss in relation to each specific area of risk and the cost of obtaining insurance coverage. In the first instance advice should be sought from Contracting Policy and Operations Branch who may in turn arrange for expert insurance advice where appropriate. Usual practice is to align the Contractor's insurance with the liability caps under the Contract where such insurance is cost effective for the Commonwealth.

**PERIOD OF INSURANCE AND GLOBAL POLICIES**

Drafters should ensure that the period of any insurance policy required under clause 8.6 in relation to the Supplies or other Commonwealth property does not extend past the point in time where risk of loss or damage passes to the Commonwealth. Where an existing global insurance coverage of the Contractor is accepted for the Contract by the Commonwealth, only a percentage of the cost of the policy should be passed on to the Commonwealth as part of the Contractor's overheads. In no circumstances should the Commonwealth agree to pay for all or a large percentage of the cost of the global insurance coverage.

**INSURANCE POLICY REQUIREMENTS AND SUBROGATION**

It should also be noted that the Commonwealth no longer requires that it is a party to any insurance policy obtained by the Contractor for the Contract and therefore no cross liability provision in which the insurer agrees to waive all rights of subrogation against the Commonwealth is required. As the Commonwealth is not a party to the insurance policy, it will be able to act on its own behalf in any litigation in relation to a claim covered by the insurance policy. Where the Commonwealth is concerned about the financial viability of the Contractor and wishes to be a secured creditor then consideration should be given to whether being a party to an insurance policy provides the Commonwealth with added protection. Where consideration is being given to including the Commonwealth as a party to an insurance policy, in the first instance advice should be sought from Contracting Policy and Operations Branch who may in turn arrange for expert insurance advice where appropriate.

Defence is now covered under the Comcover scheme for loss arising from certain types of liabilities. Advice on Defence's coverage under the Comcover scheme can be obtained by contacting the Defence Insurance Office on 1800 990 900.

**Drafter's Action:** Prior to Contract signature, drafters must insert details on the nature of the insurance required.

**Related Clauses:** Tender Data Requirement C-3 of Annex C to the TDRL requests tenderers to provide details of currently held or proposed insurance policies. The insurance policies required for performance of the Contract will be negotiated with the successful tenderer.

Clause 8 of the draft conditions of contract contains all the indemnities provided by the Contractor under the Contract and any limitation placed on the Contractor's liability under the Contract.

**Further Reading:** Nil



## 9. WARRANTIES AND SUPPORT OF THE SUPPLIES

### 9.1 Fitness for Purpose

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To place an obligation on the Contractor to ensure that Supplies provided under the Contract are fit for the purposes detailed in the Contract.
<u>Policy:</u>	<i>DPPM – Section 2, Chapter 2.1</i>
<u>Guidance:</u>	Clause 9.1 places an obligation on the Contractor to provide Supplies under the Contract that are fit for the purposes detailed in the Contract.

#### INCLUSION OF PURPOSES IN THE CONTRACT

To ensure that the Commonwealth receives the full protection offered by this clause it is essential that the purpose or purposes for which the Supplies will be used by the Commonwealth are detailed in the Contract. The most appropriate place to include the purposes for which the Supplies will be used is in the Operational Concept Document (OCD). The OCD should be included at Annex B to the Statement of Work. Where an OCD has not been developed, drafters must ensure that the purposes for which the Supplies will be used are clearly stated in sufficient detail in the Statement of Work so that there is no ambiguity or uncertainty.

A clear statement of agreement between the parties as to the purposes for which the Supplies will be used is necessary to ensure that the Commonwealth can rely on clause 9.1 to seek remedies against the Contractor where the Supplies can not be used for the stated purposes.

#### REMEDIES OF THE COMMONWEALTH

Under clause 9.1 the Contractor is under an obligation to ensure and warrants that the Supplies will be fit for the purposes detailed in the Contract. As such the Commonwealth will be entitled to claim damages for breach of the warranty where the Supplies are not fit for the purposes described in the Contract. In addition to damages, the Commonwealth may be entitled to terminate the Contract for default under clause 12.2.1m of the conditions of contract or at common law where it can be established that the Contractor's failure to deliver Supplies that are fit for purpose was an essential condition of the Contract or the breach of the warranty was a fundamental breach of the Contract. Advice should be sought from Contracting Policy and Operations Branch prior to any action being taken to litigate for damages or terminate the Contract for default.

<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	Clause 9 of the draft conditions of contract contains all the warranties provided by the Contractor under the Contract.
	A clear statement of the purpose or purposes for which the Supplies will be used by the Commonwealth should be included in the OCD at Annex B to the draft Statement of Work prior to release of the RFT. Following negotiation and refinement of the Statement of Work, the agreed purposes should be included in the OCD prior to Contract signature.

Further Reading: Nil

**9.2 Date Dependency**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To obtain the Contractor's warranty that the Supplies provided under the Contract are not date dependent and that the operation of the Supplies will not be adversely affected by the date.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	In clause 9.2, the Contractor warrants that the Supplies will correctly interpret dates and correctly perform calculations or functions using dates and that the operation of the Supplies, including in conjunction with related products, will not be adversely affected by the date.

**OPERATION OF SUPPLIES IN CONJUNCTION WITH RELATED PRODUCTS**

It is important to note that under clause 9.2, the Contractor is not warranting the performance of related products but only that the Supplies when used with related products will not be adversely affected by the date. This is to ensure that date deficiencies are not remedied by a 'quick fix' to the Supplies that may no longer work when the Supplies are used in conjunction with related equipment. Where the Supplies, when operated in conjunction with other equipment, do not operate due to the fact that the other equipment is adversely affected by the date, the Contractor will not be liable under clause 9.2.

**REMEDIES OF THE COMMONWEALTH**

It is important to note that a breach of a warranty does not in itself give rise to a right to terminate the Contract. The Commonwealth will, however, be entitled to claim damages for breach of Contract where the delivered Supplies do not comply with the requirements of clause 9.2. The Commonwealth will only be entitled to terminate the Contract for default where it can be shown that the warranty contained in clause 9.2 was an essential condition of the Contract or the breach of the warranty was a fundamental breach of the contract. Where the Contractor breaches its warranty in clause 9.2 advice should be sought from Contracting Policy and Operations Branch prior to any action being taken to litigate for damages or terminate the Contract for default.

<b><u>Drafter's Action:</u></b>	Nil
<b><u>Related Clauses:</u></b>	Clause 9 of the draft conditions of contract contains all the warranties provided by the Contractor under the Contract.
<b><u>Further Reading:</u></b>	Nil



### 9.3 Warranty

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To place an obligation on the Contractor to remedy defects in design, materials or workmanship in the Supplies for a specified period and to establish the process for carrying out remedial work.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	Under clause 9.3, the Contractor agrees to remedy defects in design, materials and workmanship in the Supplies notified to it by the Project Authority within the specified warranty period by repair, replacement or modification.

#### SELECTION OF THE WARRANTY PERIOD

Careful consideration should be given to the warranty period that will apply for the Contract. The warranty period will commence upon Acceptance of the Supplies. In determining an appropriate warranty period consideration should be given to the type of Supplies being procured, the standard commercial warranty period, the cost of the proposed warranty and the repair and maintenance requirements in any through life support contract.

#### DEFECTS ARISING FROM COMMONWEALTH NEGLIGENCE

The warranty in clause 9.3 does not extend to defects in the Supplies that arise from the Commonwealth's negligent or wilful damage of the Supplies. Whether the defect in the Supplies arises from the Contractor's defective design, materials or workmanship or a wilful or negligent act of the Commonwealth will depend upon the relevant facts. In most cases it will be clear where responsibility for the defect in the Supplies lies, however, Commonwealth officers should ensure that the Supplies are used in accordance with any limitations placed on the Supplies and for the purpose or purposes detailed in the Contract.

#### RECTIFYING DEFECTS IN SUPPLIES

Where the Contractor rectifies a defect in the Supplies under the warranty in clause 9.3 the cost of performing the remedial work, including packing and freight, will be borne by the Contractor unless otherwise agreed by the Project Authority. Where the Project Authority is concerned that the rectified Supplies do not comply with the requirements of the Contract, the Project Authority may require the Contractor to carry out tests as provided for under the Contract to determine the compliance of the Supplies with the Contract. Consideration should be given to whether testing of rectified Supplies is necessary prior to the Project Authority requiring the Contractor to test the Supplies. It is important to note that the Commonwealth will bear the cost of the testing where the Supplies are found to comply with the requirements of the Contract. The Contractor will only be responsible for the cost of the testing where the Supplies do not comply with the requirements of the Contract.

Where as a result of the Contractor's efforts to rectify a defect, other Supplies are affected, this warranty will also extend to those incidental effects. There is an obligation on the Contractor in clause 9.3.2 to remedy by repair, replacement or modification any Supplies affected by corrective actions taken by the Contractor.

#### FAILURE TO RECTIFY A DEFECT IN THE SUPPLIES

If the Contractor fails to remedy a defect in the Supplies within the nominated period following notification by the Project Authority of the defect, clause 9.3.5 entitles the Commonwealth to perform or have performed the necessary remedial work at the Contractor's expense. Careful consideration should be given to the time period inserted in clause 9.3.5 as the Contractor must be provided with sufficient time to remedy defects notified to it by the Project Authority. Issues to be considered include the complexity of the Supplies, the operational importance of the Supplies and the time required for the Contractor to access and assess the

Supplies prior to commencing the remedial work. Clause 9.3.5 also makes it clear that such remedial work does not affect the Contractor's warranties and other obligations under clause 9 of the conditions of contract (e.g. to remedy other defects during the Warranty Period).

#### EXTENSION OF THE WARRANTY PERIOD FOR RECTIFIED SUPPLIES

Where Supplies are remedied in accordance with clause 9.3, clause 9.3.6 requires the Contractor to remedy any further defects in the remedied Supplies notified to the Contractor before the expiry of the warranty period or during a period of half the original warranty period commencing on the date of return of the remedied Supplies to the Commonwealth.

##### Example

The Contractor warrants the Supplies for 3 years following Acceptance of the Supplies. The Supplies are Accepted by the Commonwealth on 1 November 2001.

A defect is notified to the Contractor on 30 March 2002 and the remedied Supplies are returned to the Commonwealth on 1 July 2002. The original warranty period ends on the 31 October 2004. The remedied Supplies will therefore be warranted by the Contractor under clause 9.3.6 until 31 October 2004.

A second defect is notified to the Contractor on 20 March 2003 and the remedied Supplies are returned to the Commonwealth on 1 June 2003. The original warranty period ends on the 31 October 2004. Half the original warranty period is 18 months. The extended warranty period of the remedied Supplies will therefore end on 30 November 2004.

A third defect in the Supplies is notified to the Contractor on 20 October 2004 and the remedied Supplies are returned to the Commonwealth on 1 January 2005. The extended warranty period ended on 30 November 2004. Half the original warranty period is 18 months. The warranty on the remedied Supplies will therefore be extended again until 30 June 2006.

#### ADDITIONAL RIGHTS OF THE COMMONWEALTH

Clause 9.3.7 makes it clear that the rights and remedies provided for in clause 9.3 do not limit the rights and remedies available to the Commonwealth at common law or under statute. Tenderers may propose to remove clause 9.3 or exclude or limit the rights and remedies available to the Commonwealth where the Supplies are defective. Careful consideration should be given to any proposal from a tenderer of this nature and advice should be sought from Contracting Policy and Operations Branch prior to any changes being agreed. The Commonwealth will retain limited protection under statute in relation to defects in the Supplies, however, in most cases statutory rights and remedies will be unsuitable to the strategic procurement environment.

#### RECTIFICATION OF DEFECTS IN GFM

Clause 9.3.8 makes it clear that the Contractor's obligations under clause 9.3 to remedy defects in Supplies do not extend to remedying defects in GFM incorporated into the Supplies. The parties' responsibilities for remedying defects in GFM are dealt with under clause 3.6 of the conditions of contract.

**Drafter's Action:** Prior to release of the RFT, drafters must include the warranty period in clause 9.3.1, half the warranty period in clause 9.3.6 and the period in which the Contractor must remedy defects notified to it in accordance with clause 9.3 in clause 9.3.5.

**Related Clauses:** Tender Data Requirement C-4 of Annex C to the TDRL requests tenderers to provide details of the warranty and Latent Defects coverage being proposed for the Supplies and requests tenderers to include the cost of the cover in the Price Schedule at Tender Data Requirement D-1 of Annex D to the TDRL.

Clause 9 of the draft conditions of contract contains all the warranties provided by the Contractor under the Contract.

Further Reading: Nil

**9.4 Notification of Defects**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To place an obligation on the Contractor to notify the Project Authority for a specified time of any defect in the Supplies of which it becomes aware that will affect or is likely to affect the operation of the Supplies or the safety of personnel.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Clause 9.4 places an obligation on the Contractor to notify the Project Authority of defects affecting both the operation of the Supplies and the safety of personnel. This requirement is consistent with the Commonwealth's obligations to its employees under occupational health and safety legislation.

**NOTIFICATION OF DEFECTS**

Under clause 9.4, where the Contractor becomes aware of any defect it must notify the Commonwealth immediately and provide a written statement of the nature of the defect, its cause and effect and proposed remedial action within a further 28 days. Where the period for notification of defects extends past the 'life' of the Project Authority, then the Contractor must be advised of the new contact point for correspondence.

**PERIOD OF NOTIFICATION REQUIREMENT**

Drafters must include the period for which the Contractor must notify the Project Authority of defects in clause 9.4. The notification period commences on the Effective Date rather than at delivery or Acceptance of the Supplies to enable defects experienced by other users operating the Supplies to be taken into account at the earliest opportunity, possibly even resulting in a Contract amendment to require redesign of the Supplies. A common period included in Defence contracts is the number of years of the expected life of type of the Supplies. However, in determining the period consideration should be given to the likely cost associated with the requirement and the terms of any through life support contract.

**RECTIFICATION OF DEFECTS UNDER CLAUSES 9.3 AND 9.5**

Defects notified to the Project Authority in accordance with clause 9.4 may qualify for rectification under clauses 9.3 or 9.5 of the conditions of contract. Defects in design, materials or workmanship in the Supplies that are discovered during the warranty period must be remedied by the Contractor under clause 9.3 of the conditions of contract. Latent Defects in the Supplies that are discovered during the latent defect period must be diagnosed and corrected by the Contractor under clause 9.5 of the conditions of contract.

<b><u>Drafter's Action:</u></b>	Prior to release of the RFT, drafters must include the notification period in clause 9.4.1.
<b><u>Related Clauses:</u></b>	Clause 9 of the draft conditions of contract contains all the warranties provided by the Contractor under the Contract. In particular clause 9.3 of the draft conditions of contract places an obligation on the Contractor to remedy defects in design, materials or workmanship in the Supplies for a specified period and clause 9.5 of the draft conditions of contract places an obligation on the Contractor to remedy Latent Defects in the Supplies for a specified period.
<b><u>Further Reading:</u></b>	Nil

**9.5 Latent Defects**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Optional. To be included where the Commonwealth requires the Contractor to remedy Latent Defects.
<b><u>Purpose:</u></b>	To place an obligation on the Contractor to diagnose and correct Latent Defects in the Supplies for a specified period and to establish the process for carrying out remedial work.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Under clause 9.5, the Contractor agrees that where the Project Authority notifies it of a Latent Defect within the specified period it will, as required and at its own expense, redesign the Supplies, correct the Supplies by repair, replacement or modification and make any correction, modification or replacement of any other Supplies, affected by the Latent Defect.

**DEFINITION OF A LATENT DEFECT**

A Latent Defect is defined in the Glossary as a deficiency in design, materials or workmanship not discoverable by reasonable care or inspection prior to Acceptance or Final Acceptance which causes a software failure or a failure of Supplies other than software which falls outside the incidence of random failures to be expected from those Supplies. Technical advice should be sought where it is suspected that a failure falls within the definition of a Latent Defect.

**INCLUSION OF LATENT DEFECT WARRANTY AND THE WARRANTY PERIOD**

It should be noted that the inclusion of clause 9.5 will impact upon the cost of the Supplies. In determining whether to include clause 9.5 consideration should be given to the type of Supplies being procured, the cost associated with the requirement and the repair and maintenance provisions in any through life support contract. Where it is determined that a Latent Defect warranty is appropriate, consideration should be given to the length of the warranty period required under the Contract.

**FAILURE TO RECTIFY LATENT DEFECT IN THE SUPPLIES**

If the Contractor fails to remedy a Latent Defect in the Supplies within the period required by the Project Authority in its notice to the Contractor, clause 9.5.3 entitles the Commonwealth to perform or have performed the necessary rectification work at the Contractor's expense. In selecting the time period to be included in a notice under clause 9.5 the Project Authority must ensure that the Contractor is provided with sufficient time to rectify the Latent Defect. Consideration should be given to the complexity of the Supplies, the significance and impact of the Latent Defect, the operational importance of the Supplies and the time required for the Contractor to access and assess the Supplies prior to commencing the remedial work. Clause 9.5.3 also makes it clear that such remedial work does not affect the Contractor's warranties and other obligations under clause 9 of the conditions of contract (e.g. to remedy other defects during the Latent Defect warranty period).

**Drafter's Action:** Prior to release of the RFT, drafters must include the period for which Latent Defects will be rectified by the Contractor in clause 9.5.1.

**Related Clauses:** Tender Data Requirement C-4 of Annex C to the TDRL requests tenderers to provide details of the warranty and Latent Defects coverage being proposed for the Supplies and requests tenderers to include the cost of the cover in the Price Schedule requested at Tender Data Requirement D-1 of Annex D to the TDRL.

Clause 9 of the draft conditions of contract contains all the warranties provided by the Contractor under the Contract. In particular clause 9.3 of the draft conditions of contract places an obligation on the Contractor to remedy defects in design, materials or workmanship in the Supplies for a specified period.

**9.6 Support Period**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Optional. To be included where the Commonwealth requires the Contractor to support the Supplies for a period after delivery but does not intend to negotiate a separate support agreement with the Contractor prior to Contract signature.
<b><u>Purpose:</u></b>	To place an obligation on the Contractor to support the Supplies for a specified period following delivery.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Where ever possible a comprehensive through life support contract should be signed at the same time as the Contract for the Supplies as the Commonwealth will be in a better position to negotiate a support agreement that represents the best value for money. If the Commonwealth waits until the Contract for the Supplies is signed, the Commonwealth's bargaining power will be reduced unless support for the Supplies can be obtained from a number of suppliers. Where a through life support contract is signed along with the Contract for the Supplies, clause 9.6 should not be included.

**SUPPORT PERIOD FOR THE SUPPLIES**

Under clause 9.6.1 the Contractor undertakes to support the Supplies for a specified period by providing facilities for the supply of sufficient quantities of spare parts and support equipment to maintain the Supplies in effective operation. The Support period also refers to the maintenance of Technical Data delivered under the Contract. Careful consideration should be give to the duration of the support period. A common support period requested by Defence is the number of years of the expected life of type of the Supplies. However, consideration should be given to the cost of requiring the Contractor to support the Supplies and the alternative sources of support available to the Commonwealth.

Under clause 9.6.3 the Contractor must include a similar requirement in all Approved Subcontracts to ensure that the rights provided to the Commonwealth by clause 9.6 are available from Approved Subcontractors.

**INABILITY TO PROVIDE THE REQUIRED SUPPORT**

Clause 9.6.2 places an obligation on the Contractor to notify the Commonwealth within a specified time period where the Contractor's ability to provide the support requirements may be adversely affected. The Contractor must also provide the Commonwealth with the opportunity to place final orders where a final production run will occur.

It should be noted, however, that clause 9.6 does not bind the Commonwealth to order any quantities of spare parts or support equipment from the Contractor.

<b><u>Drafter's Action:</u></b>	Prior to release of the RFT, drafters must include the period for which the Contractor will support the Supplies in clause 9.6.1 and the period in which the Contractor must notify the Commonwealth that its ability to provide the support may be adversely affected in clause 9.6.2.
<b><u>Related Clauses:</u></b>	Clause 9 of the draft conditions of contract contains all the warranties provided by the Contractor under the Contract.
<b><u>Further Reading:</u></b>	Nil

**9.7 Draft Data Items**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Optional. To be included where the Commonwealth may wish to attach draft data items to the Contract at Attachment K to the conditions of contract in accordance with clause 2.4 of the draft Statement of Work.
<b><u>Purpose:</u></b>	To obtain a warranty from the Contractor that the draft data items referred to in clause 2.4 of the Statement of Work, even though not yet finalised, are nevertheless satisfactory for their intended purpose.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	This warranty is included to give the Commonwealth the ability to hold Contractors to baseline versions of particular deliverable data items which have not been finalised by the Effective Date, and which are to be developed or updated and submitted for Approval after the Effective Date. A key objective of the draft data items provisions is to enable the Commonwealth to 'capture' the Contractor's tender as far as possible in the Contract. In this way, important elements of the Contractor's tender can be incorporated into the Contract so that the Contractor can be held at least to what was tendered.

**SELECTING DRAFT DATA ITEMS**

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Draft data items will normally be important plans to be delivered under the Contract. For example, as part of its tender, the Contractor may have included detailed plans such as the Project Management Plan (PMP), Systems Engineering Management Plan (SEMP) Integrated Support Plan (ISP) and the Verification and Validation (V&V) Plan, or other documents such as its proposed Spares list (including pricing). Under the CDRL, these plans and documents may not be required to be delivered until some time after Effective Date. However, the Commonwealth may decide to include the tendered plans and documents as draft data items to obtain the benefit of the warranty set out in clause 9.7 of the conditions of contract. In addition, the draft data items will then form a baseline for the Commonwealth to consider when making its decision whether to Approve the final version of the items delivered by the Contractor after the Effective Date. The Commonwealth would not normally Approve a data item that was less detailed or offered less than the draft item (see clause 9.7.1b of the conditions of contract).

It is important that the draft data items provisions should not be relied on in relation to plans or other data items that are required to be Approved and incorporated into the Contract by Contract signature, e.g. the IP Plan and the All Plan. Similarly, any other data items that have been Approved by the Commonwealth prior to Contract signature should not be included as draft data items. To ensure that all prior Approvals are captured at Contract signature, data items that have already been Approved during a pre-contract or formal risk reduction phase should instead be formally annotated in the CDRL with Delivery required at 'Effective Date' and Commonwealth Action and Commonwealth Action Period specified as 'Approval' 'by the Effective Date'.

It is not intended that all data items required to be delivered after the Effective Date be listed as draft data items and the draft version of the item set out in Attachment K. However, as noted above, this clause and clause 2.4 of the Statement of Work are intended to provide the Commonwealth with a facility to identify particular plans or other documents required to be delivered by the Contractor which can be included in the Contract in draft form as the minimum basis for work to be performed by the Contractor. It is expected that any update of the plan or document submitted for Approval by the Contractor in accordance with the CDRL would conform generally with the draft data item and would provide further detail, definition and improvement to the draft data item.

Drafters will need to specify the draft data items in clause 2.4 of the draft Statement of Work and set out the items in Attachment K to the draft conditions of contract.

### IMPACT ON OTHER CONTRACTUAL PROVISIONS

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Clause 9.7 also provides that the inclusion of an item as a draft data item does not relieve the Contractor of its obligations under the Contract (e.g. to deliver data items for Approval in accordance with the CDRL, and to provide conforming Supplies).

Drafter's Action: Nil

Related Clauses: Attachment K to the draft conditions of contract will contain the agreed draft data items.

Clause 2.4 of the draft Statement of Work sets out the draft data items to which the warranty relates. Clause 2.4.3 provides that once the final version of the data item has been Approved in accordance with clause 2.3 of the draft Statement of Work, the draft data item will be taken to be replaced by the Approved item. This is to be given effect to by a formal Contract amendment.

Further Reading: Nil



**9.8 Technical Data Warranty**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core.
<u>Purpose:</u>	To obtain a warranty from the Contractor that the Technical Data it provides is sufficient to meet the Commonwealth's requirements, the requirements of the All Plan, and to satisfy the Support System Functional Baseline.
<u>Policy:</u>	Nil
<u>Guidance:</u>	The Contractor is best placed to ensure that the Technical Data it provides is complete, and sufficient to meet the requirements of the Contract and of the Commonwealth. For this reason, the Contractor provides a warranty that it has fulfilled the requirements of the Contract relating to Technical Data and that all the Commonwealth's rights will be operative.

**EXERCISING IP RIGHTS**

Clause 9.8 works in conjunction with clause 5.4 of the conditions of contract to ensure that the Commonwealth is provided with all the rights it needs to effectively and efficiently use the Supplies, and ensures that the Commonwealth can exercise those rights to the fullest extent. Clause 9.8 creates an obligation and a warranty on the part of the Contractor that all Technical Data contained in the Technical Data List (TDL) shall enable the Commonwealth to exercise its IP rights under the Contract.

Clause 9.8.1b is complimented by the warranty in clause 9.8.1a that the Contractor has listed all the Technical Data associated with the Contract in the TDL and Data Accession List (DAL). Together, these clauses ensure that the Commonwealth is provided with the broadest scope of rights and associated Technical Data that it might require to deal with the capability.

**RELATIONSHIP TO THE ALL PLAN**

Under the All Plan the Contractor may have an obligation to provide Technical Data to Subcontractors in relation to in-country support and to facilitate the ongoing support. This clause ensures that the Technical Data provided by the contractor. reflects the requirements under the All Plan.

**RELATIONSHIP TO THE SUPPORT SYSTEM FUNCTIONAL BASELINE**

Clause 9.8.1d seeks to ensure that the Technical Data listed on the TDL is sufficient to meet the needs of the Support System Functional Baseline. Without adequate Technical Data the Mission System may not be adequately supported.

Drafter's Action: Nil

Related Clauses: Clause 4 of the draft conditions of contract provides the contractual obligations pertaining to the All Program.

Clause 3.14 of the draft Statement of Work sets out the work requirements for the All Plan.

Clause 5 of the Statement of Work deals with integrated logistic support. The clause sets out the various support requirements which has Technical Data implications.

Clause 5.3.3 of the draft Statement of Work sets out how the TDL and DAL are developed, delivered, and updated.

Clause 5.3 of the draft conditions of contract sets out the IP rights under the Contract.

Attachment G to the draft conditions of contract sets out the Intellectual Property Plan that contains all IP rights not specified in clause 5.3 of the draft conditions of contract.

Clause 5.4 of the draft conditions of contract requires the Contractor to provide additional Technical Data to enable the Commonwealth to fully exercise its rights; allows the Commonwealth to provide Technical Data to third parties in order to fully exercise its rights; and obligates the Contractor to ensure that the Technical Data needed by the Commonwealth to effectively and efficiently do the things it has a right to do are provided.

Further Reading: Nil

**10. CONTRACT MANAGEMENT****10.1 Change to the Contract**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To notify the Contractor that the Contract may only be varied in accordance with clause 10.1 and to detail the process relating to development and approval of Contract change proposals.

Policy: *DPPM – Section 5, Chapter 5.9*

Guidance: All changes to the Contract must be proposed and approved in accordance with clause 10.1.

**VARIATION OF THE CONTRACT**

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Clause 10.1.1 notifies the Contractor that the Contract may only be varied in accordance with clause 10.1 and that the Contractor should not rely on any other action which purports to amend the Contract. However, it should be noted that this clause does not completely protect the Commonwealth as the legal doctrines of estoppel or misrepresentation may apply in some circumstances.

**APPROVAL OF CONTRACT CHANGE PROPOSAL**

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Clauses 10.1.2 to 10.1.5 provide the process for submitting and approving Contract change proposals. Under clause 10.1 both the Project Authority and the Contractor may propose a change to the Contract. All Contract change proposals must be in the form of the Contract change proposal at Annex H to Attachment I to the conditions of contract and, where a change to the Statement of Work is being proposed, must be accompanied by an engineering change proposal in the format set out at Annex I to Attachment I to the conditions of contract.

**PREPARATION COSTS OF CONTRACT CHANGE PROPOSALS**

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Clause 10.1.4 entitles the Project Authority to request the Contractor to provide a 'not to exceed' quote for the preparation of a Contract change proposal. Where a quote has been requested by the Commonwealth, the Commonwealth will not pay preparation costs exceeding the quote provided by the Contractor.

In accordance with clause 10.1.8 and Annex H to Attachment I, the Commonwealth will usually meet the reasonable cost of preparation of Contract change proposals that are approved by the Project Authority and all Contract change proposals required by the Commonwealth whether they are approved or not. This is subject to clause 10.1.7 which lists Contracts change proposals for which the costs will be borne by the Contractor. Drafters should ensure that the list included in clause 10.1.7 is accurate and complete prior to release of the RFT and signature of the Contract. The list should contain all clauses where the CCP is required to address the non-performance of the Contractor.

**COST INVESTIGATION OF CONTRACT CHANGE PROPOSALS**

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It is also important to note that clause 10.7 of the conditions of contract provides the Project Authority or any person authorised by the Project Authority with the right to access the Contractor's premises, records and accounts to investigate the reasonableness of the proposed prices and costs in the Contract change proposal.

Drafter's Action: Prior to release of the RFT, drafters must validate the list included in clause 10.1.7 against the draft conditions of contract and the draft Statement of Work to ensure that it is both accurate and complete.

Related Clauses: Clause 10.7 of the draft conditions of contract details the access rights of the Commonwealth when investigating the reasonableness of the proposed prices and costs in the Contract change proposal.

Annex H to Attachment I to the draft conditions of contract will contain the agreed Contract change proposal proforma.

Annex I to Attachment I to the draft conditions of contract will contain the agreed Engineering change proposal proforma.

Further Reading: Nil

**10.2 Condition as to Disclosure by the Contractor**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To place a contractual obligation on the Contractor to notify the Commonwealth of any event actual or threatened that may affect the Contractor's ability to perform the Contract, including conflicts of interest, and to set out the process for dealing with such events.

Policy: *DPPM – Section 3, Chapter 3.13*

Guidance: Clause 10.2 has been included in the Contract to assist the Project Authority to manage the Contract by ensuring that it is provided with early notification of conflicts of interest and other problems arising under the Contract.

**REQUIREMENT TO DISCLOSE**

Clause 10.2.1 places an obligation on the Contractor to disclose to the Commonwealth in writing any event or occurrence actual or threatened during the performance of the Contract that may materially affect the Contractor's ability to perform the Contract. This clause is designed to ensure that the Commonwealth is notified of any occurrence that may affect the performance of the Contract at the time the Contractor becomes aware of the problem. The Commonwealth will then be aware of any problem prior to the point in time where the Contractor's performance under the Contract is affected and the Contractor is in default. The Commonwealth may therefore be able to assist the Contractor with the potential problem at an early stage so that action can be taken to minimise the impact of the problem on the Contract.

**CONFLICTS OF INTEREST**

Without limiting the Contractor's obligation to disclose such problems, clause 10.2.2 deals specifically with disclosure of conflicts of interest. The clause requires the Contractor to undertake that, as at the date of the Contract, the Contractor is not aware of any conflict of interest that would affect its performance of the Contract, whether by itself, or any of its employees, officers, agents or Subcontractors. In addition, the Contractor must notify the Commonwealth immediately it becomes aware of a conflict or possible conflict so that the Commonwealth also becomes aware of the conflict as early as possible. The Commonwealth may then be able to assist the Contractor to put in place strategies to deal with the conflict.

**DEALING WITH CONFLICTS OR OTHER PROBLEMS**

If a conflict or other problem arises, clause 10.2.3 requires the Contractor to inform the Commonwealth of the steps it proposes to deal with the matter. If the Commonwealth considers that those steps are inadequate, it may direct the Contractor to resolve the conflict or problem in another way.

**COMMONWEALTH REMEDIES**

Where the Contractor fails to disclose matters that may materially affect the performance of the Contract as required by clause 10.2, or contrary to its undertaking, the Contractor did in fact have a conflict of interest at the date of the Contract, the Contractor may be in breach of Contract. Unless the matter is fundamental to the performance of the Contract, the breach is unlikely to give rise to a right to terminate the Contract. The Commonwealth may, however, be entitled to damages for the breach but again the amount of such damages would depend upon the loss suffered by the Commonwealth as a result of the breach which will depend upon the circumstances in each case. The obligation placed on the Contractor by clauses 10.2.1 and 10.2.2 serve more as a timely reminder to the Contractor that the Commonwealth expects them to disclose actual or threatened conflicts of interest or other problems at an early stage.

However, clause 10.2.3 does provide the Commonwealth with the power to terminate the Contract in certain circumstances. If the Contractor is unable or unwilling to resolve the conflict or other problem in the manner required by the Commonwealth under that clause, the Commonwealth may terminate the Contract by giving a notice of termination for default as permitted by clause 12.2.1k of the conditions of contract.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement A-2 of Annex A to the TDRL requests tenderers to disclose matters that might adversely impact on the tenderer's performance of any resultant contract.

Clause 12.2.1k of the draft conditions of contract permits the Commonwealth to terminate the Contract if the Contractor commits a breach for which the Contract provides a notice of termination for default may be given.

Further Reading: Nil

**10.3 Waiver**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To protect the rights of a party to the Contract in the event that a party fails to enforce a provision of the Contract.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	Clause 10.3 notifies both parties that neither party may assume that they no longer need to abide by a provision of the Contract or the Contract as a whole where the other party fails to enforce a provision of the Contract.

**ESTOPPEL**

It is important to note however, that clause 10.3 does not provide absolute protection for a party who fails to enforce a provision. Where it is reasonable for a party to rely on a representation of another party that they need not comply with a provision of the Contract, the legal doctrine of estoppel may apply, even though the representation does not accord with the Contract change requirements of clause 10.1 of the conditions of contract.

**Example**

The Contractor fails to obtain the export approvals required for the performance of the Contract by the date specified in clause 3.3.1 of the conditions of contract. Under clause 12.2.1i of the conditions of contract, the Commonwealth is entitled to terminate the Contract for default where the failure to obtain the export approvals was within the Contractor's reasonable control. However, the Contractor is otherwise performing the Contract so the Commonwealth does not believe its interests would be best served by terminating. Instead the Commonwealth sets a new time limit for obtaining the export approvals. In these circumstances, clause 10.3 would operate to preserve the Commonwealth's right to terminate the Contract should the Contractor fail to obtain the export approvals by the new date.

The Contractor informs the Commonwealth that, due to issues with the US Department of State, it is unable to obtain one of the required export approvals by the date specified in clause 3.3.1 of the conditions of contract. The Project Authority writes to the Contractor stating that the parties should look at other ways in which the Contractor can perform the Contract without obtaining the export approval. The Contractor does nothing further as it is waiting on advice from the Project Authority. Some months later the Contractor's performance declines and the Commonwealth attempts to terminate the Contract under clause 12.2.1i of the conditions of contract.

In these circumstances, the actions of the Project Authority may have gone beyond a mere failure to enforce a provision of the Contract at a particular time and amount to a representation that export approvals are no longer required on which the Contractor has relied to its detriment. Therefore the Contractor may be able to claim that the Commonwealth is estopped from exercising its right to terminate the Contract for default for the Contractor's failure to obtain the export approval. In these circumstances, the Commonwealth would normally seek to reserve its rights under the contract (i.e. to terminate the contract for failure to obtain export approvals) pending any investigation or other action proposed to be taken by the Commonwealth. Even so, the Commonwealth would still need to exercise its reserved rights within a reasonable time.

**PRESERVING THE COMMONWEALTH'S POSITION**

It is important therefore for the Project Authority to do all things necessary to comply with the provisions of the Contract and where necessary to enforce the Commonwealth's rights under the Contract. Where the Project Authority has the discretion to enforce a right of the Commonwealth and it decides not to do so, care must be taken to ensure that its future position is not compromised. Advice should

be sought from Contracting Policy and Operations Branch prior to a Project Authority exercising its discretion not to enforce a right of the Commonwealth under the Contract.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil



**10.4 Commercial-in-Confidence Information**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To describe the process for dealing with Commercial-in-Confidence Information and to place a contractual obligation on both parties to protect Commercial-in-Confidence Information provided to them.
<u>Policy:</u>	<i>Department of Finance and Administration Guidance on Confidentiality of Contractors' Commercial Information</i> <i>DPPM – Section 3, Chapter 3.11</i>
<u>Guidance:</u>	Commercial-in-Confidence Information is defined in the Glossary at Attachment M to the conditions of contract as information that is by its nature confidential or the receiving party knows or ought to know is confidential.

**PROTECTION OF COMMERCIAL-IN-CONFIDENCE INFORMATION**

Clause 10.4.1 places a contractual obligation on both parties to protect Commercial-in-Confidence Information that is received or produced by them except where disclosure of the information is required by law, statutory or portfolio duties, or where disclosure is required so that the Commonwealth can exercise its Intellectual Property rights under the Contract.

The reference to statutory and portfolio duties has been included in clause 10.4.1 to recognise the fact that Defence may be required under statute or as part of its portfolio duties to disclose "Commercial-in-Confidence Information" provided by the Contractor to parliamentary committees or other government agencies such as the Australian National Audit Office.

Clause 10.4.2 places a contractual obligation on both parties to obtain the written consent of the other party prior to disclosing Commercial-in-Confidence Information to a third party unless the third party is a legal adviser or the disclosure is allowed by one of the exceptions listed in clause 10.4.1. In granting its consent, the Commonwealth is entitled to require the Contractor to arrange for the third party to enter into a confidentiality agreement in the form of the Deed of Confidentiality and Fidelity at Annex M to Attachment I to the conditions of contract.

The obligation on the Commonwealth to keep Commercial-in-Confidence Information confidential will involve taking reasonable measures to safeguard the information from unauthorised access and seeking consent from the other party in accordance with clause 10.4 prior to releasing it to a third party. The Project Authority should implement appropriate procedures to ensure Commercial-in-Confidence Information provided under the Contract is adequately protected.

**USE OF TERM "COMMERCIAL-IN-CONFIDENCE"**

Clause 10.4.4 makes it clear to the Contractor that it must not misuse the term "Commercial-in-Confidence" or the Contractor's equivalent term when marking information to be supplied to the Commonwealth. Clause 10.4 and the common law will apply to determine whether information is Commercial-in-Confidence Information and should be protected as such. Clause 10.4 is included to prevent the Commonwealth from being unable to use documentation provided to it under the Contract because the documentation has been incorrectly marked as "Commercial-in-Confidence". Clause 10.4 also protects the Commonwealth where the Contractor uses a different term to "Commercial-in-Confidence" such as "Company X-in-Confidence".

Whether information provided or produced under the Contract is "Commercial-in-Confidence" depends upon the nature of the information and whether it is reasonable to assume that the party providing or producing the information would wish it to be kept confidential. Sensitive commercial information should be marked

as “Commercial-in-Confidence” but as detailed in clause 10.4.4 a decision as to whether the information is confidential will be based on the legal nature and character of the information, not how it is marked.

#### PROVISIONS AGREED TO BE COMMERCIAL-IN-CONFIDENCE

Under clause 10.4.6, the Commonwealth and the Contractor are able to identify the parts, if any, of the Contract and its Attachments that the parties agree will be Commercial-in-Confidence Information as at the Effective Date. These must then be specified in Attachment N to the Contract.

In determining whether to classify any contractual provision as Commercial in Confidence Information, the Commonwealth should have regard to the Department of Finance and Administration *Guidelines on Confidentiality*. These guidelines propose four tests that **must all** be met before information can be designated as Commercial in Confidence Information. The four tests to be satisfied are:

- a. The information which is proposed as Commercial in Confidence must be specific, not a global or blanket claim;
- b. The information must have the necessary quality of confidentiality, in so far as there is a continuing benefit of non disclosure;
- c. The impact of disclosure would cause a significant detriment to the relevant party; and
- d. The information was provided on the basis of an understanding that it would be kept confidential.

Information that is in the public domain, for example Total Contract Price or generic template clauses, is not Commercial-in-Confidence Information.

Six standard reasons why a clause may be classified as Commercial in Confidence have been developed for use by drafters, once the information has been identified as Commercial in Confidence Information. These are that the material contains:

- a. commercially sensitive information, disclosure of which is not in the relevant party’s best interest;
- b. details about commercially sensitive pricing information including profit margins and the underlying price basis;
- c. details about insurance and liability regimes that are commercially sensitive;
- d. details about intellectual property regimes that are commercially sensitive;
- e. details about the capability/services being delivered that are commercially sensitive; and
- f. details about contractual rights and remedies, including warranties, financial guarantees and securities and liquidated damages that are commercially sensitive.

Drafter’s Action: Nil

Related Clauses: Clause 5 of the draft conditions of contract details the Commonwealth’s Intellectual Property rights under the Contract.

Annex M to Attachment I to the draft conditions of contract will contain the agreed Deed of Confidentiality and Fidelity.

Further Reading: Nil

**10.5 Assignment and Novation**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To prevent the assignment of the Contract in whole or part without the written consent of the other party. To place a contractual obligation on the Contractor where it is proposing to novate the Contract to notify the Project Authority of the proposed novation within a reasonable period prior to the novation.

Policy: Nil

Guidance: The tender evaluation process aims to ensure that the Commonwealth enters into Contract with a tenderer that is capable of providing the requirement on a value for money basis. Therefore the Commonwealth may be reluctant to assign or novate the Contract to another party.

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**LEGAL PRINCIPLES OF ASSIGNMENT AND NOVATION**

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Assignment means the transfer by a party to a contract of their contractual rights to another person. It should be noted that a party can not assign its obligations under a contract. Obligations must be 'novated'. Accordingly, a deed of novation will be required if a party wants to transfer all its rights and obligations under a contract to a third party. A novation is effectively the substitution of another entity for a party named in the contract. At law, novation can only occur where both parties to the contract agree to the novation whereas, unless the contract provides otherwise, a party can assign its rights under the contract to another person without the consent of the other party to the contract. Therefore clause 10.5.1 has been included to prevent the Contractor or the Commonwealth from assigning the Contract, in whole or in part, without first obtaining the written consent of the other party.

**Example**

Company A has entered into a contract with the Commonwealth for the supply of tanks. The Contract Price is \$300 million.

Assignment: If clause 10.5.1 is not included Company A can assign its right to payment of the \$300 million to Company B without the prior consent of the Commonwealth. Company A can not, however, assign its obligation to deliver the tanks to the Commonwealth to Company B.

Novation: With the consent of the Commonwealth, Company A can novate the Contract to Company B so that Company B is substituted for Company A under the Contract and Company B assumes all the rights and obligations of Company A.

It is unlikely that the Commonwealth will need to assign its rights under a Contract or novate the Contract to another party. A need may arise where a statutory authority or Commonwealth corporation takes over responsibility for the Contract.

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**ASSIGNMENT OF THE CONTRACT**

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Any request by the Contractor to allow an assignment of the Contract in whole or in part should be considered carefully to assess the impact of the assignment on the Contractor's performance of the Contract and the Commonwealth. The Commonwealth is not obliged to consent to any assignment proposed by the Contractor but any refusal to allow an assignment should not be unreasonable.

It should be noted that in accordance with clause 12.2.11 of the conditions of contract, the Commonwealth may terminate the Contract for default where the Contractor makes an assignment without the Project Authority's prior written consent.

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**NOVATION OF THE CONTRACT**

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Clause 10.5.2 places an obligation on the Contractor to notify the Project Authority within a reasonable period where the Contractor is seeking to novate the Contract to another party. Careful consideration should be given by the Commonwealth to

any request by the Contractor to allow a novation. Issues for consideration include the Contractor's current performance under the Contract, the financial stability of the proposed party to be substituted for the Contractor, the ability of the proposed party to perform the Contract and deliver the Supplies, the impact on Subcontract arrangements, any taxation issues, the impact on securities provided under the Contract and the Commonwealth's previous relationship with the proposed party.

The Commonwealth is not obliged to consent to any proposed novation of the Contract, however, where the Contractor is unable to perform the Contract, novation of the Contract to another entity may be preferable to termination for default.

Drafter's Action: Nil

Related Clauses: Clause 12.2.11 of the draft conditions of contract entitles the Commonwealth to terminate the Contract for default where the Contractor assigns its rights under the Contract without obtaining the Commonwealth's prior written consent.

Further Reading: Nil

**10.6 Negation of Employment and Agency**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To negate the existence of an employment, partnership or agency relationship under the Contract and to place a contractual obligation on the Contractor not to represent otherwise.

Policy: The Commonwealth is entering into a contract for service by a Contractor and it is not appropriate for a relationship of employment, partnership or agency to be implied.

*DPPI 9/2002 Providing Purchasing Authority and Financial Delegations to Contractors*

Guidance: Clause 10.6.1 places a contractual obligation on the Contractor to not represent itself or allow its officers, employees, agents or Subcontractors to represent themselves as being employees, partners or agents of the Commonwealth.

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**EMPLOYMENT, PARTNERSHIP OR AGENCY RELATIONSHIP**

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Clause 10.6.2 negates the existence of an employment, partnership or agency relationship, however, it should be noted that whether a partnership, employment or agency relationship exists will be determined at law and an express statement in the Contract to the contrary may not be sufficient to override the legal nature of the substantive relationship between the parties. An express statement is nonetheless advisable as it indicates that it was not the intention of the parties to form such a relationship. It is also important that additional clauses included in the Contract or statements made by the parties do not create a presumption on the part of a third party that a partnership, employment or agency relationship exists between the Commonwealth and the Contractor or its officers, employees, agents or Subcontractors.

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**CREATION OF A LIMITED AGENCY ARRANGEMENT**

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In some circumstances it may be necessary to create a limited agency arrangement under the Contract so that the Contractor may act as a representative of the Commonwealth for a specific aspect of the Contract. Where a limited agency arrangement is created, clear limitations must be placed on the authority of the Contractor to act as the Commonwealth's agent. Prior to an agency arrangement being created under the Contract advice should be sought from Contracting Policy and Operations Branch to ensure that the Commonwealth is adequately protected and the limits of the agency arrangement are clear to both parties.

In no circumstances should an employment or partnership arrangement be entered into by the Commonwealth with a Contractor.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

**10.7 Commonwealth Access**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To set out the circumstances in which the Project Authority may have access to the Contractor's or its Approved Subcontractor's premises, records and accounts and to set out the Contractor and Subcontractor requirements that the Project Authority or a person authorised by the Project Authority must comply with.

Policy: Nil

Guidance: Clause 10.7.1 places a contractual obligation on the Contractor to permit the Project Authority or a person authorised by the Project Authority to access its premises and access and copy records and accounts in connection with the performance of the work under the Contract. Under clause 10.7.4 the Contractor must ensure that all Approved Subcontracts provide the Project Authority with similar access rights, including the right to copy.

**SPECIFIC ACCESS REQUIREMENTS**

Clause 10.7.2 details some specified circumstances in which the Project Authority may require access to the Contractor's premises, records and accounts but it should be noted that the Commonwealth's rights are not limited by this clause. Circumstances in which the Project Authority may require access include inspecting and removing GFM, performing quality audits, validating progress against the All Plan, investigating the reasonableness of costs in Contract change proposals, determining steps necessary to register or otherwise protect Intellectual Property and validate the Contractor's progress in meeting the IP Plan, auditing data and software related aspects of the Contract to validate the Contractor's performance and performing reviews of the Contractor's Earned Value Management System. It should be noted that under clause 10.7.3 the Contractor may request a copy of any cost investigation report.

Clause 10.7 should not be invoked unreasonably by the Project Authority to gain access to premises, records or accounts which do not support other rights provided for in the Contract. It should be noted that the words "in connection with performance of work under the Contract" limit the Project Authority's access rights to premises, accounts and records which are connected to the performance of work under the Contract. Therefore the Project Authority can not use clause 10.7 to gain access to general information about the Contractor or to obtain information about other existing or proposed contracts.

**Example A**

The Contractor proposes a change to the Contract through use of the Contract change proposal process in clause 10.1 of the conditions of contract. The Project Authority is entitled to access Contractor accounts and records to determine whether the prices quoted in the Contract change proposal are reasonable and represent value for money for the Commonwealth.

**Example B**

The Contract Price is firm with no cost reimbursement components. The Project Authority should not request access to Contractor accounts and records to determine the appropriateness of the Contract Price or the profit margin of the Contractor.

**Example C**

Government Furnished Material has been provided to the Contractor under the Contract which, with the Commonwealth's consent, has been provided by the Contractor to an Approved Subcontractor for incorporation into the Supplies. The Project Authority is entitled to access the Approved Subcontractor's premises to inspect the GFM.

**Example D**

The Contractor claims a postponement of the date for delivery of Supplies and the effected Milestone Date under clause 6.2 of the conditions of contract. The Project Authority is entitled to access the Contractor's premises, accounts and records to determine whether the Contractor can absorb the delay elsewhere in the Contract.

**COMPLIANCE WITH REASONABLE CONTRACTOR REQUIREMENTS**

Clause 10.7.5 places an obligation on the Commonwealth to comply with and to require any person authorised by the Project Authority to comply with any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour.

**Drafter's Action:** Prior to release of the RFT and where Subcontractors may perform significant software management activities, drafters should consider using a tripartite deed to capture obligations in clause 10.7.2.f and 10.7.4. In such cases an additional contract clause will be required in order to place an obligation on the Contractor to obtain such a deed.

**Related Clauses:** Nil

**Further Reading:** Nil

**10.8 Contractor Access**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Optional. To be included where the Contractor's personnel may be required to enter Commonwealth places, areas or facilities.
<b><u>Purpose:</u></b>	To set out the circumstances in which the Contractor's personnel will be allowed to enter Commonwealth premises and the Commonwealth requirements that the Contractor's employees must comply with.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Clause 10.8.1 places a contractual obligation on the Commonwealth to provide the Contractor's employees with access to Commonwealth places, areas or facilities where it is required for the performance of the Contract. Under clause 10.8.2, the Contractor must seek written permission from the Commonwealth at least 8 days prior to entry being required except where the premises are Government Furnished Facilities in which case clause 3.8 of the conditions of contract will apply.

**RIGHT TO CLAIM A POSTPONEMENT FOR FAILURE TO ALLOW ACCESS**

It should be noted that clause 10.8.3 entitles the Project Authority to withdraw access rights to any Commonwealth premises at any time and for any period. Where the Contractor is delayed in the performance of the Contract due to a failure by the Commonwealth to provide the Contractor's personnel with access to Commonwealth premises, the Contractor may be entitled to a postponement of the date for delivery of Supplies and/or a Milestone Date and postponement costs under clauses 6.2 and 6.3 of the conditions of contract.

**COMPLIANCE WITH COMMONWEALTH REQUIREMENTS**

Clause 10.8.4 places an obligation on the Contractor to ensure that its personnel comply with any relevant Commonwealth safety and security requirements, regulations, standing orders, or codes of behaviour for the Commonwealth premises. Under clause 10.8.5 where the Project Authority notifies the Contractor of any special security or access provisions that apply to particular Commonwealth premises, the Contractor must comply with those provisions.

<b><u>Drafter's Action:</u></b>	Nil
<b><u>Related Clauses:</u></b>	Clause 3.8 of the draft conditions of contract and the Government Furnished Facilities licence at Annex D to Attachment I to the draft conditions of contract detail the Contractor's rights to access Government Furnished Facilities.
<b><u>Further Reading:</u></b>	Nil



**10.9 Subcontracts**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To inform the Contractor of the Commonwealth's requirements when Subcontractors are involved in the production of the Supplies and to outline the requirement to use only Approved Subcontractors for certain aspects of the Contract.
<u>Policy:</u>	<i>Equal Opportunity for Women in the Workplace Act 1999</i>
<u>Guidance:</u>	Clause 10.9.1 prohibits the Contractor from Subcontracting out the entirety of the work to be performed under the Contract. This clause has been included to prevent the Contractor from merely acting as a 'receiver of money' from the Commonwealth on behalf of the various Subcontractors. To ensure that the involvement of the Contractor in the procurement adds value, the Contractor must perform some of the work under the Contract itself.

**WORK TO BE PERFORMED BY APPROVED SUBCONTRACTORS**

Approved Subcontractors are listed in Attachment H to the conditions of contract. Clause 10.9.3 prevents the Contractor from Subcontracting work to Subcontractors who are not Approved Subcontractors without first obtaining the Project Authority's written approval where:

- a. the work under the Subcontract will exceed a specified amount;
- b. the work under the Subcontract involves the performance of specified tasks; or
- c. the Subcontractor will be bringing IP to the proposed Subcontract or creating IP under the proposed Subcontract necessary to enable the Commonwealth to use and support the Supplies.

When selecting the Subcontract value and specific aspects of the Contract to be included in clause 10.9.3, drafters should consider the criticality of the Subcontractors, the additional contractual obligations under the Contract that relate to Approved Subcontractors and the administrative burden of having to approve each Approved Subcontractor.

It should be noted that where a Subcontractor falls within one category in clause 10.9.3, it is possible to exempt them from complying with the additional requirements that are placed on Approved Subcontractors that do not relate to that particular category. Further information on this issue is contained in the guidance on Attachment H.

**PROCESS FOR OBTAINING APPROVAL OF SUBCONTRACTORS**

A tenderer may propose a list of Approved Subcontractors in its response to Tender Data Requirement A-3 of Annex A to the TDRL. Subcontractors proposed during the tender process that are approved by the Commonwealth will be listed in Attachment H prior to Contract signature. Where the Contractor wishes to Subcontract work to a Subcontractor falling within one of the categories in clause 10.9.3 that is not listed in Attachment H, the Contractor must obtain the Project Authority's written approval. The written approval must be in the form of a Contract change proposal requesting the inclusion of the Subcontractor as an Approved Subcontractor in Attachment H. The Project Authority must approve or reject the Contract change proposal in accordance with clause 10.1 of the conditions of contract. The Project Authority's approval should not be unreasonably withheld.

**RESPONSIBILITY FOR WORK PERFORMED BY SUBCONTRACTORS**

Under clause 10.9.6, the Contractor retains full responsibility for the work performed under the Contract regardless of whether it Subcontracts out that work. It should be noted that the Commonwealth is not approving the suitability of Approved Subcontractors to perform work under the Contract and clause 10.9.6

makes it clear that the Contractor retains responsibility for the performance of the Contract. This is important as the Commonwealth has a contractual relationship with the Contractor but not with the Subcontractors. In the event of a default in relation to the work, the Commonwealth may claim against the Contractor even where the work was performed by a Subcontractor, and the Contractor must then pursue any remedy it may have against the Subcontractor. This clause ensures that the Contractor cannot defend a claim by the Commonwealth in relation to the Contract by asserting that a Subcontractor was at fault.

#### MANDATING SUBCONTRACTORS

It is important to note that clause 10.9 is not suitable in its current form where the Commonwealth is mandating the use of a particular Subcontractor. Mandating Subcontractors should be avoided unless it is absolutely necessary for the performance of the Contract. For guidance on the risks associated with mandating Subcontractors and the circumstances in which the Commonwealth may be required to mandate a Subcontractor, reference should be had to the guidance provided in relation to Tender Data Requirement A-3.

Where the Commonwealth does need to mandate the use of a particular Subcontractor, advice should be sought from Contracting Policy and Operations Branch on required changes to clause 10.9 and associated clauses in the Contract to ensure that the Commonwealth is adequately protected and the Commonwealth's responsibility for the performance of the mandated Subcontractor is clearly detailed.

#### FLOWDOWN OF REQUIREMENTS TO SUBCONTRACTORS

As the Contractor is responsible for the performance of its Subcontractors, it is in the Contractor's interests to ensure that all significant Subcontracts include provisions that mirror the Contract. In certain circumstances, a right under the Contract is considered so important to the Commonwealth that the Commonwealth places a contractual obligation on the Contractor to ensure that the clause is directly flowed down to all Subcontractors or Approved Subcontractors. Areas requiring flow down include:

- a. the right of the Project Authority to access Approved Subcontractor premises, records and accounts relating to work under the Contract;
- b. the security requirements under clause 10.10 of the draft conditions of contract for Subcontractors requiring access to classified material;
- c. the right to terminate all Approved Subcontracts for convenience in accordance with clause 12.3 of the draft conditions of contract;
- d. the requirement for all Approved Subcontractors to have appropriate quality systems under clause 8.1.4 of the Statement of Work; and
- e. the IP requirements for Approved Subcontractors to execute Deeds and maintain and provide access to records and premises to review compliance with the IP Plan.

#### OTHER GENERAL ISSUES ASSOCIATED WITH SUBCONTRACTS

Under clause 10.9.7 the Contractor must notify the Commonwealth if any Subcontract is terminated, repudiated or rescinded and must complete the work itself or organise another Subcontract. Clause 10.9.8 entitles the Project Authority to request a copy of any Subcontract from the Contractor which need not show prices. In accordance with Commonwealth policy, clause 10.9.9 prohibits the Contractor from entering into a Subcontract with a Subcontractor who does not comply with the *Equal Opportunity for Women in the Workplace Act 1999*.

#### Drafter's Action

Prior to release of the RFT, drafters must insert in clause 10.9.3a the amount above which the total value of all work with a Subcontractor must exceed before the Subcontractor is required to be included as an Approved Subcontractor. Similarly, drafters must insert in clause 10.9.3b (4) the specific types of work a

Subcontractor must perform before the Subcontractor is classified as an Approved Subcontractor.

Related Clauses: Tender Data Requirement A-3 of Annex A to the TDRL requests tenderers to provide details of Subcontractors who will be required to be listed as Approved Subcontractors.

Attachment H to the draft conditions of contract will contain the agreed list of Approved Subcontractors.

Further Reading: Nil

**10.10 Defence Security**

**Sponsor:** Defence Security Authority

**Status:** Core. The optional clauses 10.10.9 and 10.10.11 must be included where COMSEC material is required under the Contract.

**Purpose:** To state the security requirements of the Contract.

**Policy:** *ACSI 53 – Australian Communications-Electronic Security Instructions 53*  
*Defence Security Manual*  
*DPPM - Section 3, Chapter 3.9*

**Guidance:** Clause 10.10 details the security requirements of the Contract and the security classification of work to be performed under the Contract. Clause 10.10 places an obligation on the Contractor to ensure that the requirements of clause 10.10 are flowed down to all Subcontractors that require access to security classified information in order to fulfil their duties under the Contract.

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**SELECTION OF APPROPRIATE OPTION**


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Unless drafters know that all tenderers will be either overseas Contractors or Australian Contractors, a choice between A, B, C and D for clause 10.10.1 can not be made before the release of the RFT. In Australia, Facility Security Clearances and Personnel Facility Clearances only apply where classified work will be at the CONFIDENTIAL level or higher. Prior to Contract signature drafters should select from the following clause options:

- a. Option A is used for when the Contract is placed with an Australian Contractor and a Facility Clearance is required.
- b. Option B is for when the Contract is placed with an overseas Contractor.
- c. Option C is used when the Contract is placed with an Australian Contractor and a Personnel Facility Clearance is required.
- d. Option D is for when the Contract only involves RESTRICTED information and the Contractor is not in the Defence Industrial Security Program.

If the Contractor will be required to possess a Facility Security Clearance, drafters should include Options A and B in the RFT and select the option corresponding to the identity of the Contractor prior to Contract signature.

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**CLASSIFICATION OF MATERIAL UNDER THE CONTRACT**


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Clause 10.10.7 places an obligation on the Contractor to classify and protect all material in its possession relating to the performance of the Contract according to the Security Classification Grading Document at Attachment J to the conditions of contract. Under clause 10.10.7 the Contractor must obtain the prior written consent of the originator through the Project Authority prior to releasing security classified information to a third party and under clause 10.10.7 must report to the Project Authority any known or suspected disclosure or loss of security classified information.

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**TERMINATION FOR BREACH OF CLAUSE 10.10**


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Under clause 10.10.14 the Commonwealth may terminate the Contract for default if there has been a breach or non-observance of the security requirements by the Contractor, a Subcontractor, or their officers, employees or agents or Subcontractors. The clause provides that the Project Authority may terminate the Contract without the need to issue a prior notice requiring the default to be remedied. The clause requires an objective test, i.e. that there must have been an actual breach of the security requirements. So for example, it would not be enough for the Project Authority simply to have formed an opinion that a breach had occurred, if in fact there had not been a breach. Advice should be sought from

Contracting Policy and Operations Branch prior to a notice of termination being issued to terminate the Contract for default.

#### DEFENCE SECURITY REQUIREMENTS FOR SUBCONTRACTORS

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Clause 10.10.13 details the facility security clearance requirements for Subcontractors who will be required to have access to classified material under the Contract. The requirements differ depending upon whether the Subcontractor is an Australian based or an overseas based Subcontractor. Clause 10.10.15 places an obligation on the Contractor to ensure that the requirements of clause 10.10 are included in all Subcontracts where the Subcontractor will require access to security classified information. If the Contractor fails to ensure that its Subcontractors obtain appropriate facility security clearances, the Contractor will be in breach of Contract and the Commonwealth may terminate the Contract in accordance with clause 10.10.14 without prior issue of a notice requiring the default to be remedied.

**Drafter's Action:** Prior to release of the RFT, drafters must choose an option, where possible, in line with the guidance.

Prior to release of the RFT, drafters must include the classification level of work to be performed under the Contract if either Option A, B or C of clause 10.10. is selected. A description of the facilities to be covered must also be included if either Option A or B of clause 10.10. are selected.

**Related Clauses:** Tender Data Requirement E-11 of Annex E to the TDRL requests tenderers to provide details of premises proposed for the storage of security classified information and the clearances held by the tenderer and proposed Subcontractors who will require access to security classified information.

Attachment J to the draft conditions of contract will, if required, contain the agreed Security Classification Grading Document.

**Further Reading:** Nil

**10.11 Post Defence Separation Employment**

Sponsor: Contracting Policy and Operations

Status: Core

Purpose: To advise Contractors of the requirement to seek Defence's approval before allowing former Defence personnel to contribute to the performance of a contract.

Policy: *Commonwealth Crimes Act*

*DPPM* Version 4.0: 2003

*Defence Workplace Relations Manual (DRB 19)*

*DI(G) 25-4 Notification of Post Separation Employment*

Guidance: Defence has policies in place dealing with the acceptance of employment with Defence related industries by former Defence employees.

Where ex-Defence staff are employed by existing or potential Contractors, issues arise regarding 'inside' knowledge. The *Commonwealth Crimes Act* and *The Criminal Code Act* constrain former Commonwealth employees from passing on information that they obtained by virtue of their employment, which at the time of ceasing Commonwealth employment, it was their duty not to disclose.

However, a distinction should be drawn between knowledge that is obtained by the nature and environment of the tasks, and knowledge that relates directly to the trade or profession of the employee. The former knowledge is the legitimate 'property' of the government, and can be protected, the latter is a matter of professional skill which cannot be constrained. Unfortunately, these two classifications of knowledge are not always easy to delineate.

Both civilian and military employees are required by Defence policy to discuss proposed post separation employment with the potential for a conflict of interest with the Department and may, depending upon the outcome of the discussions, be required to lodge a formal request to take up such employment. In deciding whether to grant approval, the Project Authority, in conjunction with the appropriate DRB 19 or DI(G) PERS 25-4 delegate, must consider the factors listed in clause 10.11. Failing to consider these factors could result in Defence being in breach of Contract and liable to the Contractor for damages or Defence being subject to claims from individuals in relation to detriment to their post separation employment prospects. In granting approval, restrictions of up to 24 months may be place on the use of former Defence employees on specific contracts. Any questions arising in connection with the application of clause 10.11 of the draft conditions of contract should be referred to the Contracting Policy and Operations Branch Helpdesk.

#### APPLYING THE CRITERIA IN CLAUSE 10.11.3

Where an application is made to the Project Authority, for a former Defence employee to contribute to the preparation or performance of a tender or Contract, clause 10.11 of the draft conditions of contract requires the Project Authority to have regard to the criteria in contained in clause 10.11.3.

The following sections provide some general guidance on the intent and operation of each of the criteria listed in clause 10.11.3. The guidance below should be read in conjunction with the post separation policy in *DRB19* and *DI(G) PERS 25-4*. If there is a perceived conflict between this guidance and the provisions of *DRB19* or *DI(G) PERS 25-4*, the latter should take precedence.

The first criterion in clause 10.11.3 requires Defence to consider the following;

- a. the character and duration of the engagement, services or work performed by the Employee or Service Provider in the period specified in clause X.X.2 (a) or (b).

Clause 10.11.3a requires Defence to take into account the kind of activities undertaken by the employee or service provider while involved with Defence. It

applies slightly differently depending on whether such a person is excluded from working with the Defence contractor by clause 10.11.2a or b.

A former employee or service provider is prevented from performing services under the Contract if, in the preceding 24 months, that person was involved in the preparation or management of the Contract, the selection of the contractor or the performance of the project or activity to which the Contract relates.

Under clause 10.11.2(b) a person is excluded if they were an employee of Defence in the 12 months preceding the request for approval. This clause applies even when the employee was not involved in the preparation or management of the Contract or the selection of the contractor.

If the nature of the work performed by the employee or service provider was related to or otherwise connected with the Contract or selection process, then Defence would be likely to withhold approval under clause 10.11.2. Approval cannot be unreasonably withheld. For example, if an ADF member provided technical specifications but had no direct role in the selection of the Contractor, there is an appreciably lower risk of conflict of interest or probity issues occurring than where the ADF member was directly engaged in the selection process. However, the ADF member's proximity to the Contract would still be sufficient to favour withholding approval. In contrast to this, if an Employee had performed administrative functions or technical work that was not material to the Contract or the selection process, there would be little risk of a conflict of interest or a probity issue. This would favour the employee or service provider being approved to take up the employment opportunity.

The second criterion Defence is required to consider is;

- b. any information provided by the Contractor about the character and duration of the services to be performed by the Employee or Service Provider under this Contract

Defence must take into account the nature of the activities proposed to be performed by the employee or service provider under the Contract. If the employee or service provider is to be involved in activities closely connected with their activities while an employee or service provider, Defence may refuse to approve their involvement in the Contract.

For example, if an employee or service provider was engaged by Defence to design technical specifications for helicopters, and then proposed to work for a contractor in connection with the supply of clothing, there would be no real risk of a conflict of interest or of a probity issue.

The third criterion Defence is required to consider is;

- c. the potential for real or perceived conflicts of interest or probity objections if the Employee or Service Provider performs or contributes to the performance of the Contract.

Clause 10.11.3(c) requires Defence to assess whether there is risk of an actual conflict of interest or probity issue arising in respect to clauses 10.11.3(a) and (b) and also assess the potential for **perceived** conflicts of interest and probity concerns if the Employee or Service Provider is engaged on the relevant Contract. Clause 10.11.3(c) does not require Defence to consider how a situation may appear if the relevant facts are unreasonably interpreted. The relevant test is whether or not there could be an actual or perceived conflict of interest or probity issues judging the known facts in a reasonable way.

As a general rule, Defence should err on the side of caution and withhold approval where it believes that a reasonable person may perceive a risk of a conflict of interest existing if approval is given to the Employee or Service Provider.

The fourth criterion Defence is required to consider is;

- d. any information provided by the Contractor concerning any significant effect which withholding approval will have on the Employee or Service Provider's employment opportunities or the performance of the Contract.

Clause 10.11.3(d) aims to ensure that Defence takes into account the effect on an employee or service provider's reasonable employment opportunities by withholding approval. This is particularly important where there is a possibility that if approval is withheld, the employee or service provider will be denied work in their chosen field. For most people this will not be an issue. However, in the highly specialised area of Defence materiel it is possible that the only employment option for some employees or service providers is to work on the Defence Contract at issue. Similarly, the Contractor may not be able to perform the Contract without the relevant employee or service provider.

For example, an employee or service provider specialising in software design for F111 weapon systems may show that if the person cannot work on the outsourced contract for maintenance of those weapon systems, the person cannot use his or her expertise anywhere else.

When assessing the impact of the individual's work opportunities it is not appropriate to take account of employment opportunities in other fields which may be open to the employee or service provider where he/she abandons their area of expertise or must accept a significant salary reduction. In addition, it is not appropriate to consider employment opportunities open to the individual in other cities, states or countries which would require relocation of the employee or service provider and their family.

It is advisable to seek assistance from the Contracting Policy and Operations Branch where the employee or service provider will be denied employment in a field of expertise if approval is not given or where there are concerns about conflicts of interest or probity issues if approval is given.

Drafter's Action: Nil

Related Clauses: Clause 3.3.5 of the conditions of tender states that tenderers shall not use the improper assistance of employees or former employees of the Commonwealth in compiling their tenders. Under this clause the Commonwealth may not consider a tender further where it has been compiled using such assistance.

Clause 3.4 of the conditions of tender requires the tenderer to seek prior written approval from Defence in certain circumstances before allowing former Defence employees, ADF members or service providers to Defence to contribute to a tender response to a Defence requirement.

Further Reading: Nil



**11. POLICY AND LAW****11.1 Applicable Law**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To set out which laws will apply to the Contract and the jurisdiction of the relevant State/Territory Courts in determining disputes. To ensure the *United Nations Convention for the International Sale of Goods* does not apply to the Contract.

Policy: DPPM – Section 2, Chapter 2.2

DPPM – Section 5, Chapter 5.10

*United Nations Convention on the International Sale of Goods*

Guidance: The parties to a contract may specify that the laws of a particular jurisdiction will apply to the contract provided there is some reasonable connection between the contract and the jurisdiction chosen. That connection may be the place where the contract is made or the place where the contract is carried out.

**SELECTION OF APPROPRIATE JURISDICTION**

Defence preference is for the laws of the ACT to apply to Defence contracts. This is possible to justify provided the Contract is made in the ACT (that is, the contract is signed in the ACT by the last party to sign). This does not mean that court proceedings in relation to the Contract need necessarily occur in an ACT court. Any court may hear a matter provided that in doing so it applies the laws of the ACT.

Where the application of ACT law cannot be justified, drafters should specify the most appropriate Australian jurisdiction. There may be some hesitancy on the part of an overseas tenderer to accept the application of laws with which the company may be unfamiliar and some tenderers may request that the law of an overseas jurisdiction be specified. The law of an overseas jurisdiction should not be used unless the jurisdictional connection required by law can not be established with an Australian jurisdiction. In such a situation advice must be obtained from Contracting Policy and Operations Branch on the impact of the application of the proposed laws. Contracting Policy and Operations Branch will in turn seek advice from a lawyer familiar with the laws being proposed. Before a proposal to specify an overseas jurisdiction may be accepted, the Contract must be rewritten to minimise any adverse impact on the Commonwealth of the application of the law of the overseas jurisdiction.

**UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS**

The *United Nations Convention on the International Sale of Goods* contains provisions that may conflict with the terms contained in contracts that have been developed based upon *ASDEFCON (Strategic Materiel)* or terms that are not in the best interests of the Commonwealth. Advice should be sought from Contracting Policy and Operations Branch prior to clause 11.1.2 being excluded.

Drafter's Action: Prior to release of the RFT, drafters must include the jurisdiction that they wish to apply to the Contract.

Related Clauses: Nil

Further Reading: Nil

**11.2 Compliance with Laws**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To impose on the Contractor a contractual obligation to comply with all laws in the jurisdictions in which the work under the Contract is carried out.

Policy: *DPPM – Section 2, Chapter 2.2*

*DPPM – Section 5, Chapter 5.10*

Guidance: Clause 11.2 places a contractual obligation on the Contractor to comply at all times with the laws of the jurisdictions in which the work done under the Contract is performed.

**RIGHT TO TERMINATE FOR BREACH OF LEGISLATION**

Clause 11.2 may provide the Commonwealth with grounds for terminating the Contract at common law where the Contractor fails to comply with the laws of the jurisdiction where the work is being performed and the particular breach would be considered by a court to be a breach of an essential term or a fundamental breach of the Contract. This may depend on the nature of the law not being complied with or the extent or effect of the non-compliance. This issue may be particularly important where the Contractor is unable to comply with both the Contract and the laws of the relevant jurisdiction. Advice must be obtained from Contracting Policy and Operations Branch prior to any action being taking where a Contractor breaches this provision.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

**11.3 Policy Requirements**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To impose on the Contractor the contractual obligation to comply with all Commonwealth policy of general application listed in this clause.
<u>Policy:</u>	Commonwealth policy of general application includes: <ul style="list-style-type: none"> <li>a. Company ScoreCard policy;</li> <li>b. Defence Equity and Diversity;</li> <li>c. Equal Opportunity for Women in the Workplace;</li> <li>d. Freedom of Information;</li> <li>e. use of Hazardous Substances and Ozone Depleting Substances;</li> <li>f. Maximising Employment for Aboriginals and Torres Strait Islanders; and</li> <li>g. Occupational Health and Safety.</li> </ul>
<u>Guidance:</u>	Relevant Commonwealth policy will be listed in clause 11.3.

**CONTRACTOR COMPLIANCE WITH POLICIES**

It should be noted that the Contractor need only comply with the Commonwealth policy of general application listed in clause 11.3. The Contractor need not comply with Commonwealth policy in its performance of other contracts with government or commercial entities unless obliged to do so under those contracts.

**AMENDMENT OF THE POLICIES**

The policies to be complied with by the Contractor may not be amended following signature of the Contract except by Contract change proposal in accordance with clause 10.1 of the conditions of contract. Where consideration is being given to requiring the Contractor to comply with amended policy documentation through approval of a Contract change proposal, drafters should weigh up the importance of the policy to the performance of the Contract against the additional costs associated with the Contractor complying with the amended policy.

**REMEDIES FOR BREACH OF CLAUSE 11.3**

In the event the Contractor breaches the requirement to abide by relevant Commonwealth policy the Commonwealth may be able to seek damages for the breach if the Commonwealth has suffered loss or damage. In most cases, it is probably unlikely that a breach of clause 11.3 will be considered sufficiently fundamental to give rise to a right to terminate the Contract for default. Advice should be sought from Contracting Policy and Operations Branch prior to any action be taken against the Contractor for breach of clause 11.3.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

**11.4 Occupational Health and Safety**

- Sponsor:** Contracting Policy & Operations and Defence Safety Management Agency
- Status:** Core
- Purpose:** To impose a contractual obligation on the Contractor to assist the Commonwealth in complying with its OH&S obligations.
- Policy:** The *Occupational Health and Safety (Commonwealth Employment) Act 1991* imposes a statutory duty on the Commonwealth as an employer to take all reasonably practicable steps to protect the health and safety of its employees, Contractors and their staff and other persons at or near Defence workplaces.
- Defence Safety Management Agency website at*  
<http://www.defence.gov.au/dpe/dsma/>
- Defence Safety Manual, Volume 1, Part 1, Chapter 8.*
- DPPM – Section 3, Chapter 3.10*
- Guidance:** Clause 11.4 imposes a contractual obligation on the Contractor to perform the Contract in such a way that Commonwealth employees are able to participate in any necessary inspections of work under the Contract and the Supplies can be used for their intended purpose without the Commonwealth being rendered in breach of its OH&S obligations.
- Drafter's Action:** Nil
- Related Clauses:** Clause 2.5 of the draft Statement of Work refers to Annexes that will detail the Ozone Depleting Substances and Hazardous Substances that may be included in the Supplies.
- Further Reading:** Nil

**11.5 Severability**

Sponsor: Contracting Policy & Operations

Status: Core

Purpose: To express the agreement of the parties that any part of the Contract which is, or becomes, illegal, invalid or unenforceable may be severed and shall not be taken to affect the remainder of the Contract.

Policy: Nil

Guidance: Clause 11.5 sets out what will happen in the event a part of the Contract is or becomes illegal, invalid or unenforceable within the jurisdiction applicable to the Contract. The clause states that the Contract shall be read as if the offending part has been severed so that the legality, validity or enforceability of the remainder of the Contract is not affected.

Clause 11.5 should be effective in most circumstances. In the event that a large part of the Contract has to be severed, it is possible to imply terms in the Contract to make it workable. Advice should be obtained from Contracting Policy and Operations Branch prior to asserting that any part of the Contract has been severed because it is illegal, invalid or unenforceable.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

**12. DISPUTES AND TERMINATION****12.1 Resolution of Disputes**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To detail the dispute resolution process to be used to settle a dispute between the Commonwealth and the Contractor prior to commencing court proceedings.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.10</i>
<u>Guidance:</u>	Clause 12.1 provides the mechanism by which parties to the Contract must deal with disputes under the Contract. The clause ensures that the parties initially attempt to use Alternative Dispute Resolution (ADR) procedures to settle their dispute without recourse to the courts at first instance.

**CIRCUMSTANCES IN WHICH COURT PROCEEDINGS MAY BE COMMENCED**

A party is only entitled to commence court proceedings when:

- a. the party is seeking urgent relief such as an injunction;
- b. the other party to the Contract fails to comply with clause 12.1; or
- c. ADR has failed under clause 12.1.

**FORMS OF ALTERNATIVE DISPUTE RESOLUTION**

There are several forms of ADR ranging from arbitration, which resembles formal litigation, to informal negotiations. Where a dispute arises under the Contract, advice should be obtained from Contracting Policy and Operations Branch on the most appropriate method of resolving the dispute.

<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	Clause 11.1 of the draft conditions of contract specifies what jurisdiction shall be applicable in governing any litigation or arbitration of a dispute arising under the Contract.
<u>Further Reading:</u>	Nil

**12.2 Contractor Default**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To set out the procedure and the circumstances under which the Commonwealth may terminate the Contract or reduce the scope of the Contract for the Contractor's default.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	Advice should be obtained from Contracting Policy and Operations Branch before any decision is made to terminate the Contract under clause 12.2 or by exercising a general right at common law.

**TERMINATION UNDER THE CONTRACT OR AT COMMON LAW**

Clause 12.2 sets out the circumstances in which the Commonwealth may terminate the Contract or reduce the scope of the Contract and the procedure that must be adopted to terminate in accordance with the rights given by the Contract itself. However it should be noted that the Commonwealth is not obliged to follow the processes detailed in clause 12.2 to terminate the Contract, and may be able to terminate at common law if the relevant breach gives rise to a common law right of termination.

**TERMINATION OR REDUCTION IN SCOPE**

Clause 12.2 is drafted to give the Commonwealth a range of options in the event the Contractor is in default. Upon the occurrence of any of the prescribed events the Commonwealth may, by notice to the Contractor, immediately terminate the Contract as a whole or reduce the scope of the Contract to remove the part that is affected by the default. Issues to be considered prior to electing to reduce the scope of the Contract include the effect of the reduction of scope on the relationship between the parties, the usefulness of the remainder of the requirement to the Commonwealth, the viability for the Contractor of performing the remainder of the work under the Contract and the likelihood of the Contractor defaulting on the remainder of the work.

**EVENTS ALLOWING FOR TERMINATION FOR DEFAULT**

Clause 12.2 allows the Commonwealth to terminate the Contract immediately by notice in writing in the event the Contractor:

- a. becomes insolvent or bankrupt (12.2.1a), becomes subject to external administration (12.2.1b&c), is wound up by order of a court, suffers execution against any of its assets or ceases to carry on business (12.2.1d,e&h), enters into an arrangement with its creditors or goes into liquidation (12.2.1f&g);
- b. fails to obtain or ceases to hold any relevant licence, approval, authorisation or consent required to enable it to comply with its obligations under the Contract except where the failure or cessation was outside the Contractor's reasonable control (12.2.1i); or
- c. breaches any of its obligations under clause 5 (12.2.1j), commits any breach of the Contract that gives rise to termination for default (12.2.1k), or assigns its rights other than in accordance with the Contract (12.2.1l).

Under the provisions of clause 12.2.1m, the Project Authority may give the Contractor notice to remedy a failure where the Contractor fails to:

- a. commence work under the Contract,
- b. proceed at a rate of progress sufficient for the Contract to be completed on time; or
- c. take action to remedy a default.

If the Contractor has not taken action to remedy its failure within 30 days of the notice the Project Authority may issue a notice terminating the Contract for default. If the Contractor takes action in respect of the first notice but fails to remedy the default within 60 days of the notice, the Project Authority may also issue a notice terminating the Contract for default. It is important that legal advice be sought in relation to drafting the notice of default because if not drafted correctly the notice could be invalid and the Commonwealth could potentially be seen to be repudiating the Contract. For example, the notice must specify the relevant default with sufficient particularity (i.e. not simply that the Contractor has failed to deliver Supplies in accordance with the Contract).

In addition to the above rights, the Commonwealth may also immediately terminate the Contract by written notice to the Contractor where the Contractor, except for the operation of clause 8.5 of the conditions of contract, would have been liable for Commonwealth loss in respect of the liability caps under the Contract that:

- a. exceeds the amount set for any one of the individual liability caps under clause 8.5 of the conditions of contract; or
- b. exceeds the Contract Price on any one or more of the liability caps in clause 8.5 of the conditions of contract.

#### WAIVER OF RIGHTS UNDER CLAUSE 12.2

The waiver clause at clause 10.3 of the conditions of contract may help to protect the Commonwealth from being prevented from exercising its right to terminate or reduce the scope of the Contract in the event the Commonwealth does not immediately exercise its rights under clause 12.2, or extends the time periods referred to in clause 12.2.1m. However, to ensure that the Commonwealth's rights to terminate will not be prejudiced, advice should be sought from Contracting Policy and Operations Branch prior to the Commonwealth electing not to exercise its rights on the occurrence of an event detailed in clause 12.2 or the Contractor being given a greater period of time to remedy a default than provided for in clause 12.2.1m.

#### REPAYING THE MOBILISATION PAYMENT AND RECOVERY OF DAMAGES

Where the Contract is terminated for default, clause 12.2.3 requires the Contractor to repay the amount of the Mobilisation Payment that has not been offset in accordance with clause 7.5 of the conditions of contract. Clause 12.2.3 also makes it clear that once the Contract is terminated the parties will be relieved from future performance of the Contract and the Commonwealth's right to recover damages suffered as a result of the Contractor's breach of Contract will not be affected (and vice versa).

In accordance with clause 12.2.3 the Commonwealth will be entitled to recover "full contractual damages" where awarded by a court. The reference to "full contractual damages", which includes damages for all losses resulting from the failure of the Contractor to carry out its obligations under the Contract, is inserted to make it clear that the Commonwealth can recover all its loss if it terminates for default under clause 12.2 of the conditions of contract notwithstanding that the Commonwealth may not have been able to terminate the Contract for the particular breach at common law. However, the amount of damages that can be recovered by the Commonwealth will be subject to the liability caps in clause 8.5 of the conditions of contract.

#### TERMINATION FOR DEFAULT OR SUBSTITUTION

Where the Contractor has provided a Deed of Substitution and Indemnity under clause 7.8 of the conditions of contract and the Commonwealth is entitled to issue a notice of termination under clause 12.2 or at common law, the Commonwealth may elect to issue a notice of substitution instead of terminating the Contract for default. If a notice of substitution is issued the person guaranteeing the Contractor's performance under the Deed of Substitution and Indemnity will be substituted for the Contractor under the Contract and all the Contractor's rights and



obligations under the Contract will be transferred to that person. Advice should be sought from Contracting Policy and Operations Branch prior to a decision being made to issue a notice of substitution or termination.

Drafter's Action: Nil

Related Clauses: Clause 7.8 of the draft conditions of contract requires the Contractor to provide a Deed of Substitution and Indemnity to secure its performance of the Contract and details the Commonwealth's right to issue a notice of substitution.

Clause 8.5 of the draft conditions of contract sets out the liability caps for the Contract.

Clause 10.3 of the draft conditions of contract seeks to protect the rights of a party to the Contract in the event that a party fails to enforce a provision of the Contract.

Further Reading: Nil

**12.3 Termination for Convenience**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To allow the Commonwealth to terminate the Contract or reduce the scope of the Contract at its convenience.
<u>Policy:</u>	<i>DPPM – Section 2, Chapter 2.1</i>
<u>Guidance:</u>	In the Defence environment, the circumstances governing acquisition priorities may change rapidly. Clause 12.3 provides a mechanism for the Commonwealth to terminate the Contract or reduce the scope of the Contract in reaction to a change in circumstances or potentially for any other reason, and to compensate the Contractor for legitimate costs incurred by it as a result of such termination or reduction in scope. Clause 12.3.5 requires the Contractor to secure an equivalent right of termination and equivalent compensation provisions in all Approved Subcontracts.

**LIABILITY OF THE COMMONWEALTH UPON TERMINATION**

Clause 12.3 recognises that the Contractor may suffer loss from the termination because it is in possession of Supplies, or has undertaken work, at the time of termination for which it has not been paid under the Contract. Where the Commonwealth exercises its rights under clause 12.3, the Contractor must stop work in accordance with the notice, comply with any directions given by the Commonwealth and mitigate all loss, costs and expenses, including those arising from affected Subcontracts. The Commonwealth will be liable only for payments for work conducted before the effective date of termination and any other reasonable costs incurred by the Contractor that are directly attributable to the termination. Under no circumstances will the Contractor be entitled to future lost profits. The Contractor must be able to substantiate any claim to the satisfaction of the Project Authority.

**Example**

In order to meet the Contract schedule, the Contractor orders steel in week 7 of the Contract so that it will be available for use in the production of the Supplies in week 12. If the Contract is terminated under clause 12.3 in week 9, the Contractor will be entitled to claim compensation for the cost of the steel but must mitigate its loss by trying to cancel the order or sell the steel at the best available price.

**EXERCISING THE COMMONWEALTH'S RIGHT TO TERMINATE**

The Commonwealth's right to terminate or reduce the scope of the Contract under clause 12.3 should be exercised only in exceptional circumstances and not where the Contractor is in default such that clause 12.2 of the conditions of contract or the common law would apply to enable the Commonwealth to terminate for default. Issues to be considered in relation to termination for convenience include the impact the termination or reduction in scope will have on any future relationship with the Contractor and the Commonwealth's place in the commercial market.

In addition, it may be that the Commonwealth would be required to act in good faith and in accordance with a duty of fair dealing in exercising its power to terminate for convenience. Accordingly, even though clause 12.3 provides for reasonable compensation to be paid to the Contractor on termination for convenience, a court may also require the Commonwealth to show that the actual decision to exercise the power to terminate for convenience was undertaken in good faith in the circumstances of the case. Advice should therefore be sought from Contracting Policy and Operations Branch prior to any decision being made to terminate the Contract or reduce the scope of the Contract under clause 12.3.

## TERMINATION OR REDUCTION IN SCOPE

Issues to be considered prior to electing to reduce the scope of the Contract include the effect of the reduction of scope on the relationship between the parties, the usefulness of the remainder of the requirement to the Commonwealth, the viability for the Contractor of performing the remainder of the work under the Contract and the likelihood of the Contractor defaulting on the remainder of the work.

Where the Commonwealth decides to reduce the scope of the Contract, it may give the Contractor such directions as it thinks fit in relation to the subsequent performance of the Contract. This allows the Commonwealth some flexibility to shape the remainder of the Contract to fit the Commonwealth's requirements in light of the changed acquisition priorities which led to the reduction. However, the directions must relate to the Contractor's performance of the Contract as written. Should the Commonwealth wish the Contractor to perform work not originally contemplated under the Contract, the procedure set out in clause 10.1 of the conditions of contract must be followed.

Drafter's Action: Nil

Related Clauses: Clause 12.2 of the draft conditions of contract sets out the procedure and the circumstances under which the Commonwealth may terminate the Contract or reduce the scope of the Contract for the Contractor's default.

Further Reading: Nil

**12.4 Right of the Commonwealth to Recover Money**

Sponsor: Contracting Policy & Operations and Materiel Finance Division

Status: Core

Purpose: To reserve the right of the Commonwealth to recover any payment or debt owed to it by the Contractor and to entitle the Commonwealth to recover interest on the debt.

Policy: It is Commonwealth policy that all agreements between the Commonwealth and other legal entities should include a provision allowing the Commonwealth to be compensated for any loss suffered through non payment of an amount due.

*Accounts Receivable and Debt Management Procedures Manual*

*Defence CEIs Part 6, Instructions 2 and 3*

*DPPM – Section 5, Chapter 5.9*

*DRB 47 Manual of Financial Delegations*

Guidance: Clause 12.4 provides the Commonwealth with the right to withhold moneys from the Contractor to satisfy debts due to the Commonwealth under the Contract.

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**RECOVERY OF DEBTS**


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Under clause 12.4 the Commonwealth can recover a debt in three ways:

- a. deduct the money owed from a payment under the Contract;
- b. issue the Contractor with a notice requesting payment of the debt; or
- c. where the debt is not fully recovered by methods a. and b., exercise its rights under any security provided in accordance with clauses 7.5 or 7.6 of the conditions of contract.

In accordance with clause 12.4.3, the Commonwealth must advise the Contractor in writing if it has deducted an amount from a payment or security. Notification should be provided after the deduction is made to protect the Commonwealth from an action by the Contractor to prevent the deduction. If the Contractor wishes to dispute the deduction it may do so in accordance with the dispute resolution procedures detailed in clause 12.1 of the conditions of contract.

It should be noted that clause 12.4.5 makes it clear that clause 12.4 does not in any way limit the Commonwealth's right to recover money owed by the Contractor at common law.

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**CLAIMING OF INTEREST OF DEBTS**


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Clause 12.4.4 entitles the Commonwealth to claim interest on any debt owed to the Commonwealth. The rate at which interest is to be charged is the Department of Finance and Administration sourced overdraft rate current at the date the payment was due.

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**WAIVING OR WRITING OFF DEBTS DUE TO THE COMMONWEALTH**


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In accordance with *Part 6 Instruction 2* of the *Defence CEIs*, the Commonwealth may write-off debts in particular circumstances, including where:

- a. it is unlikely that the debt will be legally recoverable, e.g. because the Contractor would not reasonably be found liable on a common law basis; or
- b. it is uneconomical to pursue the recovery of the debt, e.g. the cost of pursuing the debt would be greater than the amount of the debt.

Further guidance on the write-off of debts is contained in *Part 6 Instruction 2* of the *Defence CEIs*.

The Commonwealth may also waive debts in accordance with *Part 6 Instruction 3* of the *Defence CEIs* on a case by case basis. Normally the waiver of a debt will be approved only where there are morally compelling grounds for the waiver. Further guidance on the waiver of debts is contained in *Part 6 Instruction 3* of the *Defence CEIs*.

#### DECISION MAKING AUTHORITY

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*DRB 47* lists the delegates who are entitled to write-off debts under *Part 6 Instruction 2* of the *Defence CEIs*. All requests for the waiver of debts must be referred to the Minister for Finance through the Assistant Secretary Personnel Service Delivery in Corporate Services and Infrastructure Group in accordance with *Part 6 Instruction 3* of the *Defence CEIs*

Drafter's Action: Nil

Related Clauses: Clause 7.12 of the draft conditions of contract sets out the rate to be applied for early and late payments.

Clause 12.1 of the draft conditions of contract sets out the procedure for the resolution of disputes arising under the Contract.

Further Reading: Nil

**12.5 Survivorship**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To identify those clauses that will survive the termination or expiration of the Contract.
<u>Policy:</u>	Nil
<u>Guidance:</u>	There are some terms of the Contract which should continue to operate past the date of termination or expiration of the Contract.

**CLAUSES SURVIVING TERMINATION OR EXPIRATION**

Clause 12.5 states that provisions of the Contract that expressly or by implication are intended to survive the termination or expiration of the Contract and any rights arising on termination or expiration will survive. Clauses that will survive include:

- a. Commercial-in-Confidence Information;
- b. Intellectual Property;
- c. Right of the Commonwealth to Recover Money;
- d. Defence Security;
- e. warranties under the Contract;
- f. guarantees, licences, indemnities; and
- g. financial and performance securities provided under the Contract,

but it should be noted that the list in clause 12.5 is not exclusive and the nature of each clause would be considered by a court to determine whether it will survive the termination or expiration of the Contract.

For the purposes of this clause expiration means that date on which the last specific contractual obligation occurs. This will usually be upon expiry of any support or Latent Defects warranty period or at Final Acceptance where those options are not selected.

<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	Nil
<u>Further Reading:</u>	Nil



**EXECUTION PAGE**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To demonstrate the parties' agreement to be bound by the terms set out in the Contract.
<u>Policy:</u>	<i>Corporations Act 2001</i> <i>Defence CEs</i> <i>DPPM – Section 5, Chapter 5.7</i> <i>DRB 47 Manual of Defence Delegations</i>
<u>Guidance:</u>	There are a number of ways in which a company may execute a contract. However, unless the correct execution clause is used the Contractor may not be legally bound. Drafters should note that the following provides an overview of the common ways in which contracts are executed. It is not an exhaustive summary of the law relating to the execution of contracts and in particular does not deal with the law of agency which may operate to bind either the Commonwealth or the Contractor in circumstances where a person is held out by a party as having actual or apparent authority to execute the Contract on behalf of that party.

**EXECUTION OF THE CONTRACT AS A DEED**

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Drafters should also note that *ASDEFCON (Strategic Materiel)* has not been drafted to be executed as a deed and so this commentary does not deal with the special requirements for the valid execution of a deed. The parties to a deed generally have a longer period of time in which to commence claims based on the deed than parties to a contract. It may be appropriate to execute the Contract as a deed when it is intended that the Contract will be in effect for a long period, for example, a period greater than six years (which is a common limitation period on commencing claims in relation to contracts). However, drafters should note that the limitation period runs from the time the claim first arises and not from the commencement of the contract. Drafters should also note that there are limitations on the remedies which can be obtained for a breach of a deed. Advice should be obtained from Contracting Policy and Operations Branch if drafters believe a deed would be more appropriate.

**EFFECTIVE METHODS FOR EXECUTING THE CONTRACT**

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The guidance below generally relates to execution of the Contract by a company incorporated under the *Corporations Act 2001*, except for the guidance on powers of attorney. Drafters should obtain advice from Contracting Policy and Operations Branch as to the correct execution clause to be used for an overseas Contractor.

A Contract may be executed by an Australian company in one of four ways:

- a. by affixing its company seal;
- b. by company officers signing the Contract;
- c. by an individual acting with the company's express or implied authority signing on the behalf of the company; or
- d. by signature of an individual with a power of attorney authorising the individual to bind the Contractor.

Drafters should seek advice from Contracting Policy and Operation Branch on the correct execution clause to be used.

**EXECUTION BY AFFIXING THE COMPANY SEAL**

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An Australian company may sign a contract by affixing its company seal. The seal is a stamp which includes the name of the company and its Australian Company Number (A.C.N). The company's constitution may set out the way in which the company seal may be affixed. For example, the constitution may require that the



company's Board of Directors pass a resolution authorising the affixing of the seal to a Contract. Normally, the seal must be affixed in the presence of two directors or a director and the secretary of the company in order to be valid. These people indicate their presence by signing the Contract next to the seal.

However, it should be noted that Australian companies have not been required to have a company seal since amendments to the Corporations Law in 1998. Some companies, therefore will not execute contracts in this way.

Example

The seal of  
 [...INSERT COMPANY NAME  
 AND A.C.N...]  
 is hereby affixed in accordance  
 with its constitution by  
 [...NAME OF DIRECTOR...]  
 in the presence of  
 [...NAME OF DIRECTOR/ SECRETARY...]

#### EXECUTION BY SIGNATURES OF COMPANY OFFICERS

If an Australian company does not have a seal or if it does but opts not to use it, the Contract can be executed by certain company officers signing the document. The Contract must either be signed by two directors of the company or, one director and the secretary of the company. Where a proprietary company has a sole director who is also the company secretary that person can sign the Contract.

Example

SIGNED for and on behalf of  
 [...INSERT COMPANY NAME  
 AND ACN...]  
 by  
 [NAME OF COMPANY OFFICER AND POSITION]  
 in the presence of:  
 [NAME OF WITNESS]  
 and by  
 [NAME OF COMPANY OFFICER AND POSITION]  
 in the presence of:  
 [NAME OF WITNESS]

#### ASSUMPTIONS CONCERNING PROPER EXECUTION

Affixing the company seal or having the specified company officers sign the Contract are preferred over other ways of executing a contract. The reason for this is that using either of these methods will, in certain circumstances, allow the Commonwealth to rely on some important assumptions concerning proper execution.

Provided that the Contract is executed in either of these two ways a person, who does not know that the Contract was not properly executed, can assume that it has been correctly executed. A person may also assume that anyone who signs the Contract and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices, where they are making

that assumption for the purpose of assuming the Contract has been properly executed.

#### EXECUTION BY A PERSON WITH ACTUAL OR EXPRESS AUTHORITY

Under the Corporations Act a person dealing with an Australian company is entitled to rely on a document as binding the company if it is signed by an individual acting with the company's express or implied authority and on behalf of the company. In contracts of high value, such as those for which *ASDEFCON (Strategic Materiel)* is drafted, it is reasonable for drafters to request that the company provide evidence of the officer's authority to bind the company, should the company wish to execute the Contract in this manner. Advice should be obtained from Contracting Policy and Operations Branch as to whether the Commonwealth can rely on the officer's authority to bind the company.

##### Example

SIGNED for and on behalf of  
 [...INSERT COMPANY NAME  
 AND ACN...]  
 by  
 [NAME OF COMPANY OFFICER]  
 in the presence of:  
 [NAME OF WITNESS]

#### EXECUTION BY A PERSON WITH A POWER OF ATTORNEY

In some cases the company will issue a power of attorney authorising a person to bind the company in certain circumstances. Drafters should ask to see a copy of the power of attorney in order to check that it is current, it appears to be executed in a way which will bind the company and the circumstances it covers include the Contract in question.

##### Example

SIGNED for and on behalf of  
 [...INSERT COMPANY NAME  
 AND ACN...] by  
 [...NAME OF PERSON...]  
 who is authorised by Power  
 of Attorney [NUMBER OR DATE]  
 and who states [HE/SHE] has no  
 notice of its revocation  
 in the presence of  
 [NAME OF WITNESS]

#### SIGNATURE OF THE CONTRACT BY THE COMMONWEALTH

The Commonwealth must also sign the Contract. A Commonwealth officer with appropriate authority to bind the Commonwealth should sign for and on behalf of the Commonwealth. The officer signing the Contract should have a delegation under the *Defence CEIs* to enter into an obligation on behalf of the Commonwealth to expend money. The officer's delegation will usually be limited according to the level of the officer by reference to an amount of money. The Minister with portfolio responsibility for the funds in question may also authorise an officer to sign the Contract. Such an authorisation will usually be limited to a particular contract. The

execution clause to be used in either case is set out in *ASDEFCON (Strategic Materiel)* on the execution page.

A company dealing with the Commonwealth is entitled to rely on a document as binding the Commonwealth if it is signed on behalf of the Commonwealth by an officer of the Commonwealth who the Commonwealth has held out as having authority to bind the Commonwealth. A Commonwealth officer who purports to bind the Commonwealth by signing a contract in the absence of a delegation or other authority may be subject to disciplinary action but their action will not affect the validity of the Contract signed.

In some cases a company may request evidence from the Commonwealth of the authority of the officer signing the Contract to bind the Commonwealth. Drafters should refer such a request to Contracting Policy and Operations Branch, who will normally draft a letter setting out the basis for the officer's authority.

#### FINAL REVIEW OF THE CONTRACT PRIOR TO SIGNATURE

Drafters should ensure that prior to Contract signature the Contract documents are checked for accuracy and completeness. Sufficient time should be allowed between completion of negotiations and Contract signature to enable the parties to check the final Contract. It is important not to rush this final checking process.

#### INITIALLING OF INDIVIDUAL PAGES

In order to ensure that the parties are able to clearly identify the 'as signed' version of the Contract it is recommended that a representative from each party initial each page of the Contract (including the Statement of Work).

#### PROMULGATION AND STORAGE OF EXECUTED CONTRACTS

Generally at least two copies of the Contract will need to be executed, one for each party. For the Commonwealth, the Project Authority should retain the original, with a copy provided to the relevant area within Contracting Policy and Operations Branch.

**Drafter's Action:** Prior to Contract signature, drafters must insert the correct execution clauses for each party.

**Related Clauses:** Nil

**Further Reading:** Nil



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**ATTACHMENT A - STATEMENT OF WORK**

- Sponsor:** Materiel Policy & Services
- Status:** Core
- Purpose:** To detail the work to be performed and the Supplies to be delivered under the Contract.
- Policy:** *DPPM – Section 5, Chapter 5.2*
- Guidance:** No information is required to be inserted in Attachment A prior to release of the RFT. The draft Statement of Work is contained at Part 3 of the RFT. Drafters requiring guidance on how to develop the draft Statement of Work should consult the guidance below in relation to Part 3 of the RFT.
- Drafter's Action:** No input is required prior to release of the RFT. Drafters must include the negotiated Statement of Work prior to Contract signature. The Statement of Work should be based on Part 3 of the RFT and the successful tenderer's response.
- Related Clauses:** Part 3 of the RFT contains the draft Statement of Work proposed by the Commonwealth.
- Further Reading:** Nil



**ATTACHMENT B - PRICE AND PAYMENTS**

<u>Sponsor:</u>	Contracting Policy & Operations and Materiel Finance Division
<u>Status:</u>	Core
<u>Purpose:</u>	To specify the price and payment terms for the Contract.
<u>Policy:</u>	Nil
<u>Guidance:</u>	In order to show that a contract has been formed at law, the parties must be able to demonstrate that there has been an offer, acceptance of that offer and that there is consideration. Offer and acceptance can only be demonstrated where there is certainty as to the terms being offered and accepted. Therefore, the information required at Attachment B is crucial in order to demonstrate the formation of a legally binding contract.

**INFORMATION IN THE PRICE AND PAYMENTS ATTACHMENT**

The Price and Payments Attachment (Attachment B) details all the pricing and payment information relating to the Contract and consists of the:

- a. Price Schedule;
- b. Schedule of Payments;
- c. Milestone Entry/Exit Criteria;
- d. Price Variation formula;
- e. Schedule of Further Quantities and Optional Extras;
- f. Schedule of Rates;
- g. Schedule of Unit and NTE Prices;
- h. Cost Reimbursement Annex; and
- i. Incentive Payments Annex.

Further guidance on each of these Annexes is provided below.

**PRECEDENCE OF DELIVERY DATES**

The Price and Payments Attachment (Attachment B) also notifies the Contractor, that where there is an inconsistency between the dates specified in the Delivery Schedule at Attachment C to the conditions of contract and any dates specified in Attachment B or its Annexes, the dates in the Delivery Schedule will take precedence. Notwithstanding this, drafters should ensure that all dates included in Attachments B and C are consistent prior to signature of the Contract.

<u>Drafter's Action:</u>	Nil
<u>Related Clauses:</u>	Clause 7 of the draft conditions of contract details the payment provisions for the Contract.  Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule.
<u>Further Reading:</u>	Nil

**ANNEX A TO ATTACHMENT B - PRICE SCHEDULE**

<u>Sponsor:</u>	Contracting Policy & Operations and Materiel Finance Division
<u>Status:</u>	Core
<u>Purpose:</u>	To detail the Price Schedule for the Supplies.
<u>Policy:</u>	Nil
<u>Guidance:</u>	No information should be included in Annex A to Attachment B prior to release of the RFT. Prior to Contract signature drafters must include the negotiated Price Schedule at Annex A to Attachment B. The Schedule should be based on the guidance provided in Tender Data Requirements D-1 and D-2 of Annex D to the Tender Data Requirements List (TDRL) in the conditions of tender and the successful tenderer's response.

**INFORMATION TO BE INCLUDED IN THE PRICE SCHEDULE**

Information contained in the Price Schedule should include:

- a. a description of each item or service to be provided under the Contract;
- b. the quantity of each item to be provided under the Contract;
- c. the unit price for each item or service;
- d. the warranty premium for each item;
- e. the Latent Defect premium for each item where clause 9.5 is included in the draft conditions of contract;
- f. the customs duty payable for each imported item;
- g. the total price of each item or service;
- h. the value of Local Content in each item or service;
- i. the price basis for each item or service; and
- j. the applicability of GST in relation to each item or service.

**COST REIMBURSEMENT PAYMENTS**

The Cost Reimbursement Supplies and the maximum amount payable to the Contractor as Cost Reimbursement Payments should be detailed in the Price Schedule.

Drafter's Action: No input is required prior to release of the RFT. Prior to Contract signature drafters must include the negotiated Price Schedule in Annex A to Attachment B.

Related Clauses: Tender Data Requirement D-1 of Annex D to the TDRL requests each tenderer to detail the price schedule it is proposing.

Tender Data Requirement D-2 of Annex D to the TDRL requests each tenderer to complete the Specific Price Schedule for the items specified in that schedule.

Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed Milestone Dates, the amount of each proposed Milestone Payment and any proposed Stop Payment and Schedule Compression Milestones. Where applicable, Tender Data Requirement D-8 of Annex D also requests tenderers to specify the proposed ratio of Earned Value Payments to Milestone Payments.

Clause 6.1 of the draft conditions of contract places an obligation on the Contractor to deliver Supplies in accordance with the Contract and to comply with the delivery requirements in the Contract.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule.

Prior to Contract signature, drafters must ensure consistency between the items of Supplies referred to in the draft Statement of Work at Attachment A and the descriptions included in column (b) of the Price Schedule.

Further Reading: Nil

**ANNEX B TO ATTACHMENT B - SCHEDULE OF PAYMENTS**

<u>Sponsor:</u>	Contracting Policy & Operations and Materiel Finance Division
<u>Status:</u>	Core
<u>Purpose:</u>	To specify when payments by the Commonwealth are due under the Contract.
<u>Policy:</u>	<p>The Commonwealth has a preference for payment on delivery. Where payment on delivery is not appropriate, the Commonwealth prefers to pay by Milestone Payments only, with a Mobilisation Payment where required. The Commonwealth will, however, in most strategic materiel acquisitions agree to pay the Contractor by a combination of Milestone Payments and Earned Value Payments. Where the Commonwealth will allow payment by a combination of Earned Value and Milestone Payments its preference is for a 50/50 ratio.</p> <p>In addition to Milestone Payments and Earned Value Payments, the Commonwealth may allow the Contractor to be paid Cost Reimbursement Payments where aspects of the Contract are high risk and/or developmental. Cost Reimbursement Payments should not exceed more than 25% of the Contract Price.</p>
<u>Guidance:</u>	It should be noted that although the Commonwealth has a preference for payment on delivery, in most cases the Commonwealth will accept an alternative payment regime comprising Milestone Payments, Earned Value Payments and a Mobilisation Payment.

**INFORMATION TO BE INCLUDED IN THE SCHEDULE OF PAYMENTS**

Drafters should, wherever possible, include the Commonwealth's preferred Milestone Dates, and Milestone Payments in Annex B to Attachment B of the draft conditions of contract prior to release of the RFT. Prior to Contract signature drafters must include the negotiated Schedule of Payments in Annex B to Attachment B. This should be based on Tender Data Requirement D-8 of Annex D to the TDRL, the contents of the draft Annex B to Attachment B and the successful tenderer's response. Annex B to Attachment B should contain:

- a. the amount of any Mobilisation Payment;
- b. the amount of each Milestone Payment including whether it will be signified by a Progress Certificate, Supplies Acceptance Certificate or Final Acceptance Certificate;
- c. the Stop Payment Milestones for the Contract; and
- d. any Schedule Compression Milestones.

The Milestone Payments included in Annex B to Attachment B should be linked to well defined Milestones which relate to Supplies which are capable of vesting in the Commonwealth under clause 6.7 of the draft conditions of contract or review points which demonstrate significant progress under the Contract.

Incentive Payments should not be included in the Schedule of Payments as they do not form part of the Contract Price. The negotiated key performance indicators, assessment periods, weightings and incentive payments payable for each assessment period should be detailed in Annex I to Attachment B to the draft conditions of contract prior to Contract signature.

Cost Reimbursement Payments should not be included in the Schedule of Payments as the schedule relates solely to Milestone Payments. Annex H to Attachment B to the draft conditions of contract should contain details of the types of costs that are reimbursable as Cost Reimbursement Payments and the Price Schedule at Annex A to Attachment B to the draft conditions of contract should contain details of the proposed Cost Reimbursement Supplies and the maximum amount of Cost Reimbursement Payments.

## APPROPRIATENESS AND AMOUNT OF THE MOBILISATION PAYMENT

It is important that any proposal for a Mobilisation Payment is given careful consideration to ensure that payment of the Mobilisation Payment to the Contractor represents value for money for the Commonwealth. Mobilisation Payments will usually be between 5 and 15% of the Contract Price, however, in determining the amount of the Mobilisation Payment consideration should be given to the entire payment regime. For further guidance on the appropriateness of any proposed Mobilisation Payment, reference should be had to the guidance provided in relation to Tender Data Requirement D-8 of Annex D to the TDRL.

## SELECTION OF EARNED VALUE PAYMENT/ MILESTONE PAYMENT RATIO

The Commonwealth's preferred ratio of Earned Value Payments to Milestone Payments is 50/50. Tenderers may, however, propose a different ratio in response to Tender Data Requirement D-8. Careful consideration should be given to any proposed ratio. Proposals to pay more than 70% of the Contract Price as Earned Value Payments should not normally be accepted. For guidance on the selection of an appropriate Earned Value Payment/ Milestone Payment ratio, reference should be had to the guidance provided in relation to Tender Data Requirement D-8.

**Drafter's Action:** Prior to the release of the RFT drafters should, wherever possible, include the Commonwealth's preferred Milestone Dates and Milestone Payments in Annex B to Attachment B. Prior to Contract signature, drafters must include the negotiated Schedule of Payments in Annex B to Attachment B. The Schedule should be based on the guidance provided in Tender Data Requirement D-8 of Annex D to the TDRL, the contents of the draft Annex B to Attachment B and the successful tenderer's response.

**Related Clauses:** Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the proposed amount of each Milestone Payment, the amount of any Mobilisation Payment and any proposed Stop Payment and Schedule Compression Milestones.

Tender Data Requirement D-10 of Annex D to the TDRL requests tenderers to propose the high risk and/or developmental aspects of the Contract that should be subject to cost reimbursement, the maximum amount payable as Cost Reimbursement Payments, the Schedule of Rates for labour costs and the percentage profit for direct materials.

Clause 7.2 of the draft conditions of contract details the process that applies to payment of Milestone Payments under the Contract.

Clause 7.3 of the draft conditions of contract details the process that applies to payment of Earned Value Payments under the Contract, including acceptable Earned Value Techniques (EVTs) and the applicable Earned Value Payment formula.

Clause 7.5 of the draft conditions of contract details the amortisation process applicable to the Mobilisation Payment, the financial security requirements for the Mobilisation Payment and the Commonwealth's rights to exercise the Mobilisation Payment security.

Clause 7.9 of the draft conditions of contract details the process that applies to Cost Reimbursement Payments under the Contract.

Clause 7.11 of the draft conditions of contract notifies the Contractor that the Commonwealth may elect to withhold payments under the Contract where the Contractor fails to achieve a Stop Payment Milestone and, where applicable, the impact of failure to complete a Schedule Compression Milestone.

Attachment B to the draft conditions of contract will, if required, contain the agreed Cost Reimbursement arrangements.

**Further Reading:** Nil

**ANNEX C TO ATTACHMENT B - SCHEDULE OF MILESTONE ENTRY AND EXIT CRITERIA**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Policy & Services
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To specify the Milestone entry and exit criteria for Milestones under the Contract.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Annex C to Attachment B details the entry and exit criteria for all Milestones under the Contract. The entry and exit criteria should be tailored to suit the specific needs of the project.

The entry and exit criteria provide agreement by the parties to those conditions that must be met before Milestones may be entered or exited. In the past, the lack of definition as to whether or not the requirements of a particular Milestone have been met has led to dispute between the parties, particularly for those Milestones to which payment was attached. Agreement on entry and exit criteria, in advance, provides certainty to both parties of those conditions that must be met before payment can be made.

Systems-engineering standards have always required that the schedule of developmental activities for a project be “event driven” and not “time driven”. An event-driven schedule is one in which progress is measured through a pre-determined and defined series of events. This approach underpins earned value management, which assesses the “earned value” at particular times (e.g. monthly) by reference to well-defined measures of performance that underpin each work package. At the macro level, the systems-engineering process is based around a series of events or “gates”, such as the System Reviews, which are used, inter alia, to adjudge progress of the Contractor’s design. The inclusion of Milestone entry and exit criteria helps to ensure that the developmental activities under the Contract will be event driven, as required by the standards.

In tailoring the entry and exit criteria, drafters should ensure that the ability of these criteria to act as “gates” is not compromised. In other words, the DMO Checklists should clearly define the criteria that enable an objective assessment as to whether or not Milestones should be entered or exited. Subjective criteria should be avoided unless no other alternative exists.

Users of *ASDEFCON (Strategic Materiel)* should be aware that the DID for the System Review Plan (SRP) (DID-ENG-RVW-SRP) requires the SRP to be based upon the standard DMO Checklists. As such, the Contractor is able to tailor these Checklists to the specifics of the project and to the Contractor’s proposed solution. Drafters should ensure that those criteria that should not be tailored by the Contractor are clearly identified in the Checklists attached to the draft Contract.

Drafters should also be aware that the list of DMO Checklists contained in the Standard Assets for *ASDEFCON (Strategic Materiel)* is not definitive. If additional Checklists are required, drafters should develop these additional Checklists using the existing Checklists as a guide.

**INFORMATION TO BE INCLUDED IN THE SCHEDULE OF MILESTONE ENTRY AND EXIT CRITERIA**

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Prior to release of the RFT, drafters should review the list of Milestones and entry and exit criteria to ensure that all proposed Milestones are included and that the entry and exit criteria appropriately reflect the proposed Milestones. Prior to Contract signature, drafters should ensure that the Milestones and entry and exit criteria reflect the agreement reached with the Contractor during negotiations. Drafters should ensure that all Milestone Payments are listed in the Schedule of Payments at Annex B to Attachment B to the conditions of contract rather than in Annex C to Attachment B. However, the Milestones listed in Annex C to Attachment B must align with the Milestones detailed in the Schedule of Payments at Annex B to Attachment B.



### IMPACT OF THE SCHEDULE OF MILESTONE ENTRY AND EXIT CRITERIA

Clause 1.1 of the Annex makes it clear that the entry and exit criteria detailed in Annex C to Attachment B are the minimum criteria that will be used by the Commonwealth to determine whether the Contractor can commence work under a Milestone and whether a Milestone has been achieved.

Drafter's Action: Prior to release of the RFT, drafters should review the Annex and ensure that the Checklists reflect the requirements and risks for the specific project. Prior to Contract signature, drafters should reflect the negotiated agreement with the Contractor in the Annex.

Related Clauses: Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Annex C to Attachment B to the draft conditions of contract will contain the agreed Milestone Entry/Exit Criteria.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule, including the relevant Milestone Dates.

Clauses 4.2, 4.3, 5.1.2, 6.7 and 7.1.4 of the draft Statement of Work specify the requirement for the Contractor to accord with the relevant Checklists for the specific Mandated System Reviews detailed under those clauses.

The DID for the System Review Plan (SRP) (DID-ENG-RVW-SRP) requires the SRP to be based upon the standard DMO Checklists.

Annex D to the draft Statement of Work provides the list of DMO Checklists that are invoked by the draft Statement of Work.

Further Reading: Nil

**ANNEX D TO ATTACHMENT B – PRICE VARIATION**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Optional. To be included where clause 7.4 of the draft conditions of contract is included to allow the Contractor to claim variations for fluctuations in the cost of labour and materials. Drafters must determine which alternatives need to be included in the RFT based on the nature of the required Supplies.
<b><u>Purpose:</u></b>	To explain the application of price variation to Milestone Payments, Earned Value Payments and Cost Reimbursement Payments made under the Contract.
<b><u>Policy:</u></b>	It is Defence policy that contracts of up to two years duration should not allow contractor's to claim compensation for variations in the cost of labour and materials. Where a contract is to extend beyond two years the Department's preference is that price variation clauses should be included to cater for increases or decreases in the cost of labour and materials. Failure to adopt a price variation clause in a contract which runs for more than two years is likely to result in tenderers including a significant contingency amount to mitigate unforeseeable increases in labour and materials costs over the life of the contract.  <i>DPPM – Section 2, Chapter 2.2</i>
<b><u>Guidance:</u></b>	Clause 7.4 of the draft conditions of contract states that the formula in Annex D to Attachment B must be applied to calculate the price variation applicable for Milestone Payments, Earned Value Payments and Cost Reimbursement Payments, as applicable. A determination as to whether the 'one index' or 'several indices' alternatives are to be included in the RFT will depend on the nature of the Supplies being procured. Noting that there is a preference for the use of a single output index, if it is believed that the material portion of the price is likely to move at a markedly different rate in comparison to labour portions then the 'several indices' approach might be preferred. It is also acceptable for the choice to be left to industry.

**USE OF SINGLE OUTPUT INDEX PREFERRED**

The Department's preference is that output indices (reflecting variations in the cost of an item produced) be used to calculate price variation of both labour and materials under a contract. Output indices do not require adjustment for productivity gains (as these are reflected in the cost of the item) and they enable the parties to simplify the calculation of price variation claims as per the single index formula in paragraphs 1, 2 and 3 of Annex D to Attachment B.

**USE OF MULTIPLE INDICES**

Where a single output index is deemed inappropriate by the parties the alternative is to utilise separate input (reflecting variation in the cost of inputs used to produce an item e.g. labour and materials) or output indices to calculate labour and materials price variation as per the multiple indices formula in paragraphs 5 and 6 of Annex D to Attachment B. Where multiple indices are used it is necessary for the parties to agree what percentage of the Contract Price will be attributed to the cost of labour, local materials and imported materials. Additionally the parties will need to identify indices that are acceptable for application to these three categories which collectively make up the Contract Price.

**CALCULATING PRICE VARIATION CLAIMS**

When calculating price variation claims it is recommended that calculations are rounded to four decimal places. This ensures that calculations are made on the same basis by the parties and rounding is not used to the detriment of the other.

Policy questions and requests for advice on the calculation of price variation should be directed to Contracting Policy and Operations Branch.

### ACCEPTABLE INDICES

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Indices which are acceptable to the Department are identified in the notes to Annex D to Attachment B. It is Departmental policy not to accept private association indices because:

- a. the results of private association wages surveys are closely guarded by the association and non members are often refused access to the results;
- b. the survey sample can be subject to changes in composition thereby invalidating the relative nature of the measure; and
- c. depending on the skill level and employment conditions of the individual, the often high wage rate increases reflected in the survey may not be paid to the individual employees under contract.

Further advice on acceptable indices can be obtained from Contracting Policy and Operations Branch or the Australian Bureau of Statistics (ABS) on Client Services telephone 1300 135 070. The ABS Internet address is <http://www.abs.gov.au>

### ALTERNATIVE COST INVESTIGATION METHOD

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Where suitable indices cannot be agreed upon by the parties to the Contract an alternative approach is to conduct a once a year cost investigation to determine what real increases in wages have occurred and use these results to vary the Contract Price. This is not the Department's preferred approach due to the administrative burden assumed by the Commonwealth but it may provide an equitable solution where a compromise between the parties cannot be achieved. Where this approach is taken regard must be had as to whether any part of the wage increases were due to productivity increases. Where a wage increase is offset by a productivity increase, it may not be fair to pass on the wage increase to the Commonwealth through higher prices.

**Drafter's Action:** Prior to release of the RFT, drafters must select the appropriate sections of this Annex to include.

**Related Clauses:** Tender Data Requirement D-4 of Annex D to the TDRL requests tenderers to provide the tenderer's preferred indices for the price variation formula at Annex D to Attachment B.

Clause 7 of the draft conditions of contract contains the various clauses that deal with payment under the Contract. In particular, clause 7.4 details how price variation will apply to the Contract and which elements of the Contract Price shall be subject to price variation.

**Further Reading:** Nil

**ANNEX E TO ATTACHMENT B – SCHEDULE OF FURTHER QUANTITIES AND OPTIONAL EXTRAS**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	Optional. To be included where clause 1.7 of the draft conditions of contract is included to provide the Commonwealth with an option to purchase additional quantities of Supplies and/or optional extras.
<b><u>Purpose:</u></b>	To detail the agreed Price Schedule for the additional quantities of Supplies and/or optional extras, and any additional or varied terms that will apply where the Commonwealth exercises its option under clause 1.7 of the conditions of contract.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Where it is clear that additional quantities and optional extras will not be required, Tender Data Requirement D-7 of Annex D to the TDRL, clause 1.7 of the draft conditions of contract and Annex E to Attachment B should not be included in the RFT.

**INFORMATION TO BE INCLUDED IN THE SCHEDULE OF FURTHER QUANTITIES AND OPTIONAL EXTRAS**

Prior to release of the RFT, drafters may elect to include details of the further quantities and optional extras required under the proposed contract including:

- a. a brief description of the additional quantities of Supplies and/or optional extras that the Commonwealth may require;
- b. the quantity required; and
- c. the proposed delivery points.

Prior to Contract signature drafters must include the negotiated Price Schedule for the additional quantities of Supplies and/or optional extras. The Schedule will be based on the guidance provided in Tender Data Requirement D-7 of Annex D to the TDRL, the information included in Annex E to Attachment B (if any) and the successful tenderer's response. Information should include:

- a. a description of each item or service;
- b. the quantity of each item;
- c. the unit price for each item or service;
- d. the warranty premium for each item;
- e. the Latent Defect premium for each item where clause 9.5 is included in the conditions of contract;
- f. the customs duty payable for each imported item;
- g. the total price of each item or service;
- h. the value of Local Content in each item or service;
- i. the price basis for each item or service;
- j. the delivery point for each item or service; and
- k. the applicability of GST in relation to each item or service.

In addition to the negotiated Price Schedule, Annex E to Attachment B will contain any additional or varied terms to the Contract that will apply should the Commonwealth exercise its option to purchase additional quantities of the Supplies and/or optional extras. Careful consideration should be given to the terms included in Annex E to Attachment B and drafters must ensure that they are clear, especially where they vary the standard terms of the Contract.

<b><u>Drafter's Action:</u></b>	Prior to release of the RFT, drafters may elect to include information on the Commonwealth's proposed optional extras and further quantities. Prior to Contract
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signature, drafters must include the negotiated Price Schedule for the additional quantities of Supplies and/or optional extras and any additional or varied terms.

Related Clauses: Tender Data Requirement D-7 of Annex D to the TDRL requests tenderers to provide full details of the additional quantities of Supplies and/or optional extras that they are willing to provide in the format of the Price Schedule.

Clause 1.7 of the draft conditions of contract obtains from the Contractor an offer to supply additional quantities of Supplies and/or optional extras and specifies the terms that will apply if the Contractor's offer is accepted by the Commonwealth.

Further Reading: Nil

**ANNEX F TO ATTACHMENT B - SCHEDULE OF RATES**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	Optional. To be included where clause 7.9 of the draft conditions of contract is included to allow for Cost Reimbursement Payments to be paid under the Contract or where agreed hourly rates are considered necessary for other aspects of the Contract.
<b><u>Purpose:</u></b>	To detail the agreed hourly labour costs and overheads rates (including G&A and percentage profit) that will be applied by the Contractor and Approved Subcontractors under the Contract, including in relation to any Cost Reimbursement Payments (see section 1 of Annex H to Attachment B to the conditions of contract) and proposed Contract change proposals.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	Annex F to Attachment B lists the hourly labour rates and overhead rates (including G&A and percentage profit) that will apply to the Contractor and Approved Subcontractors nominated in the table.

**INCLUSION OF THE SCHEDULE OF RATES**

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Annex F to Attachment B must be included where clause 7.9 of the draft conditions of contract is included to allow for Cost Reimbursement Payments under the Contract. Annex H to Attachment B refers to the Schedule of Rates to calculate the labour costs that may be reimbursed in relation to Cost Reimbursement Supplies in accordance with clause 7.9 of the conditions of contract.

Annex F to Attachment B may also be included where agreed hourly rates are considered necessary for other aspects of the Contract. For example, the Annex refers to Contract change proposals under the Contract and states that the agreed hourly rates and overheads costs must be applied to all proposed Contract change proposals under the Contract.

Where the Schedule of Rates is included it should detail the labour, profit and overhead rates for the Contractor and each Approved Subcontractor.

**PRICE VARIATION**

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The rates contained in the Schedule of Rates may need to be linked to a price variation formula where the Contract will run for a number of years. Advice on an appropriate price variation formula can be obtained by contacting Contracting Policy and Operations Branch.

<b><u>Drafter's Action:</u></b>	Prior to release of the RFT where this Annex is considered necessary, drafters should include an appropriate price variation formula. Prior to Contract signature, drafters should include the agreed Schedule of Rates based on Tender Data Requirement D-10 and the successful tenderer's response.
<b><u>Related Clauses:</u></b>	Tender Data Requirement D-10 of Annex D to the TDRL requests tenderers to provide a Schedule of Rates in relation to Cost Reimbursement Payments.  Annex H to Attachment B to the draft conditions of contract will contain, if required, the guidance on the costs that may be reimbursed in relation to Cost Reimbursement Supplies in accordance with clause 7.9 of the draft conditions of contract.
<b><u>Further Reading:</u></b>	Nil

**ANNEX G TO ATTACHMENT B - SCHEDULE OF UNIT PRICES AND NTE PRICES**

- Sponsor:** Contracting Policy & Operations and Materiel Finance Division
- Status:** Optional. To be included where Unit prices and NTE prices for Spares, Support and Test Equipment (S&TE) and Training Equipment are to be attached to the Contract.
- Purpose:** To detail the agreed Unit and NTE prices for Spares, S&TE and Training Equipment that will apply under the Contract.
- Policy:** Nil
- Guidance:** The purpose for obtaining NTE prices for Spares, S&TE, and Training Equipment is discussed in the guidance relating to Annex I to the TDRL.
- The Unit prices provide the prices for the individual line items of equipment at the time of Contract signature (linked to Base Date). Drafters are advised that, with respect to the management of these Unit prices, accompanying contractual clauses need to be included in the Contract to ensure that the prices will still stand at the time that procurement action for specific items on the lists occurs. Drafters are advised to seek advice from Contracting Policy and Operations Branch in developing these clauses.
- The NTE prices bound the Commonwealth's exposure at the time of tendering, and enable budgeting for the three separate elements to occur. When the final lists of Spares, S&TE and Training Equipment are determined under the Contract, these lists and the actual prices associated with these lists would be placed on Contract through CCP action, with the Contract price adjusted accordingly. Of note, the actual prices would not be able to exceed the NTE prices and appropriate contractual clauses would need to be developed to provide for the management of these NTE prices. Once again, drafters are advised to seek advice from Contracting Policy and Operations Branch in developing these clauses.
- Drafter's Action:** Prior to release of the RFT, drafters are to liaise with Contracting staff to develop the contractual framework for managing both the NTE prices and the Unit prices associated with each list.
- Related Clauses:** Tender Date Requirement D-2 of Annex D to the TDRL requires each tenderer to provide NTE prices for Spares, S&TE and Training Equipment.
- Tender Data Requirement I-1 of Annex I to the TDRL addresses the requirement for NTE prices.
- Clauses 5.3.2 and 5.3.5 of the draft Statement of Work require NTE prices for those clauses to be effective.
- Further Reading:** Nil

**ANNEX H TO ATTACHMENT B – COST REIMBURSEMENT**

- Sponsor:** Contracting Policy & Operations
- Status:** Optional. To be included where the draft Statement of Work may contain high risk and/or developmental elements for which it will be appropriate to pay the Contractor on a cost reimbursement basis and where clause 7.9. of the draft conditions of contract has been included.
- Purpose:** To detail the costs for which the Commonwealth will reimburse the Contractor under clause 7.9 of the conditions of contract, including the profit percentage applicable to direct material costs.
- Policy:** In addition to Milestone Payments and Earned Value Payments, the Commonwealth may allow the Contractor to be paid Cost Reimbursement Payments where aspects of the Contract are high risk and/or developmental. Usually the Commonwealth will not agree to a contract where Cost Reimbursement Payments exceed more than 25% of the Contract Price.
- DPPM – Section 2, Chapter 2.2*
- Guidance:** The cost reimbursement provisions in clause 7.9 of the conditions of contract are designed to benefit both the Contractor and the Commonwealth where the Contract includes high risk and/or developmental elements.

**COSTS PAYABLE TO THE CONTRACTOR**

Annex H to Attachment B sets out the costs payable to the Contractor under clause 7.9 of the conditions of contract. These costs include:

- a. labour costs in accordance with the Schedule of Rates;
- b. direct material costs;
- c. Subcontract costs;
- d. direct expenses; and
- e. profit on direct material costs.

It is important to note that clause 7.9.3 of the conditions of contract requires costs that have been incurred both in relation to Cost Reimbursement Supplies and the performance of other work, whether under the Contract or not, to be allocated on a pro-rata basis i.e. apportioned proportionally between the Cost Reimbursement Supplies and the other work.

**Example**

The Contractor takes out an insurance policy required under the Contract in relation to the premises in which the Cost Reimbursement Supplies are being produced. The insurance policy costs \$30 000. The premises are used by the Contractor on the following basis:

- 10% used to produce the Cost Reimbursement Supplies;
- 40% used to produce other Supplies under the Contract; and
- 50% used to produce goods not associated with the Contract.

The Contractor would be entitled to recover \$3000 as a Cost Reimbursement Payment.

Costs relating to taxes and duties including GST that have already been provided for under the Contract may not be claimed by the Contractor under clause 7.9 of the conditions of contract.

- Drafter's Action:** No input is required prior to release of the RFT. Prior to Contract signature, drafters must include the agreed percentage payable as profit for direct material costs.
- Related Clauses:** Tender Data Requirement D-10 of Annex D to the TDRL requests tenderers to propose the high risk and/or developmental aspects of the Contract that should be



subject to cost reimbursement, the maximum amount payable as Cost Reimbursement Payments, the Schedule of Rates for labour costs and the percentage profit for direct materials.

Clause 7.4 of the draft conditions of contract allows the Contractor to claim for fluctuations in the cost of the labour component of Cost Reimbursement Payments.

Clause 7.9 of the draft conditions of contract details the process that applies to Cost Reimbursement Payments under the Contract and the process for reviewing progress in relation to Cost Reimbursement Supplies.

Annex D to Attachment B to the draft conditions of contract will, if required, contain the agreed Price Variation formula that is to be applied to determine the price variation allowed under clause 7.4 of the draft conditions of contract for the labour component of Cost Reimbursement Payments.

Further Reading: Nil

**ANNEX I TO ATTACHMENT B – INCENTIVE PAYMENTS**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	Optional. To be included where clause 7.13 of the draft conditions of contract is included to allow for payment of Incentive Payments under the Contract.
<b><u>Purpose:</u></b>	To detail the key performance indicators, assessment periods, weightings and Incentive Payments payable for each assessment period.
<b><u>Policy:</u></b>	In accordance with the <i>Financial Management and Accountability Act 1997</i> , the Commonwealth may pay the Contractor Incentive Payments only for superior performance of the Contract.  <i>DPPM – Section 2, Chapter 2.2</i>  <i>Financial Management and Accountability Act 1997</i>
<b><u>Guidance:</u></b>	Clause 7.13 of the conditions of contract entitles the Contractor to claim Incentive Payments in addition to the Contract Price for superior performance of the Contract.

**INFORMATION TO BE INCLUDED IN ATTACHMENT F**

Drafters should include the Commonwealth's preferred assessment periods, key performance indicators and weightings (if any) in Annex I to Attachment B prior to release of the RFT. Prior to Contract signature drafters must include the negotiated key performance indicators, weightings, assessment periods and the Incentive Payment payable for each assessment period. The information included should be based upon the guidance contained in Tender Data Requirement D-11 of Annex D to the TDRL, the contents of the draft Annex I to Attachment B and the successful tenderer's response.

**SELECTION OF KEY PERFORMANCE INDICATORS AND WEIGHTINGS**

In most cases, drafters will only include categories of key performance indicators rather than identify specific key performance indicators in this Annex prior to release of the RFT. This is because the areas of the proposed contract for which superior performance by the Contractor will be of benefit to the Commonwealth will depend upon each tenderer's proposal.

It is essential that drafters ensure that the key performance indicators negotiated for the Contract are objective, measurable and clearly stated. Categories on which key performance indicators may be based include:

- a. cost/price where the Contract includes the cost reimbursement option;
- b. schedule;
- c. quality;
- d. contract relationship including relationship between Defence, the Contract, Subcontractors and third parties;
- e. innovation under the Contract;
- f. All;
- g. IP; and
- h. government procurement policies including policy on Occupational Health and Safety, the environment, employment of Aboriginal and Torres Strait Islanders, equity and diversity and security.

When selecting the weightings for the key performance indicators for each assessment period it should be noted that the weightings for each key performance indicator may vary depending upon the work being conducted in the assessment period and the importance of the key performance indicator at the relevant stage of the Contract.

### SELECTION OF THE INCENTIVE PAYMENTS FOR ASSESSMENT PERIODS

Prior to Contract signature drafters must also include the negotiated Incentive Payments payable for each assessment period. In accordance with clause 7.13.3 of the draft conditions of contract, the maximum amount payable as Incentive Payments under the Contract must be apportioned over the assessment periods. It should be noted that the amount need not be apportioned equally over the assessment periods but may be distributed based upon the importance of the key performance indicators in the various assessment periods and the relevant stage of the Contract.

**Drafter's Action:** Prior to release of the RFT, drafters should include the Commonwealth's preferred assessment periods, key performance indicators and weightings (if any). Prior to Contract signature drafters must include the negotiated key performance indicators, weightings, assessment periods and the Incentive Payment payable for each assessment period.

**Related Clauses:** Tender Data Requirement D-11 of Annex D to the TDRL notifies tenderers of the proposed Incentive Payment regime and requests tenderers to provide details in relation to the Incentive Payment provisions.

Clause 7.13 of the draft conditions of contract details the process that applies to the payment of Incentive Payments under the Contract.

**Further Reading:** Nil



**ATTACHMENT C - DELIVERY SCHEDULE**

<u>Sponsor:</u>	Contracting Policy & Operations and Materiel Finance Division
<u>Status:</u>	Core
<u>Purpose:</u>	To detail the delivery requirements for the Contract.
<u>Policy:</u>	Nil
<u>Guidance:</u>	The Delivery Schedule at Attachment C details the applicable Milestone Dates, delivery dates and delivery locations for the Supplies.

**SELECTION OF DELIVERY DATES**

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As Attachment C sets out the delivery dates applicable to the Supplies and a failure to meet those delivery dates will result in the Contractor being in breach of Contract and may result in the Contractor being liable for damages, drafters must ensure that the information included in the Delivery Schedule is accurate and unambiguous.

The Milestone Dates included in Table 1 to Attachment C should be expressed in terms of their relationship to the Effective Date (i.e. Effective Date + nn months) and should align to the Milestones and Milestone Payments detailed in the Schedule of Payments at Annex B to Attachment B to the draft conditions of contract. As the Commonwealth has 21 days to Accept Supplies, the Milestone Dates included in Table 1 should be at least 21 days after the actual delivery date for the Supplies detailed in Table 2.

As not all Supplies will form part of a Milestone, the delivery dates and delivery locations for all Supplies to be provided under the Contract should be included in Table 2 of Attachment C.

**RELATION TO ATTACHMENT B**

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Annex B to Attachment B details the Schedule of Payments for the Contract and includes the applicable Milestone Payments. Annex C to Attachment B details the entry and exit criteria for each Milestone. It is important that the dates, Milestones and other information contained in Attachments B and C are consistent. Clause 1.1 of Attachment C notes that in the event of an inconsistency, the delivery dates specified in Attachment C will have precedence over dates specified elsewhere in the Contract.

Drafter's Action: Prior to release of the RFT, drafters should ensure that the Milestones listed in Table 1 align with those detailed in Annex C to Attachment B. Prior to Contract signature, drafters should include the Milestone Dates, delivery dates and delivery locations for Supplies based on the information contained in Tender Data Requirement E-3 and the successful tenderer's response.

Related Clauses: Tender Data Requirement E-3 of Annex E to the TDRL requests tenderers to provide a Contract Master Schedule which details the Milestones for the Contract and the proposed Milestone Dates.

Clause 6.1 of the draft conditions of contract defines the delivery requirements for the Contract.

Annex B to Attachment B to the draft conditions of contract will contain the agreed Schedule of Payments.

Annex C to Attachment B the draft conditions of contract will contain the agreed Milestone Entry/Exit Criteria.

Further Reading: Nil



**ATTACHMENT D – LIQUIDATED DAMAGES**

<u>Sponsor:</u>	Contracting Policy & Operations, Materiel Finance Division and Industry Policy
<u>Status:</u>	Core. The optional section (Failure to Achieve a Milestone) should be included where the Commonwealth will suffer loss if a Milestone is not achieved on time and it is appropriate to recover the loss from the Contractor.
<u>Purpose:</u>	To specify the amount of liquidated damages that will apply for failure to achieve specific Industry Requirements. To specify the amount of liquidated damages that will apply for failure to achieve specific Milestones.
<u>Policy:</u>	<i>A New Tax System (Goods and Services Tax) Act 1999</i> <i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	If the Contractor fails to achieve a Milestone by the Milestone Date specified in Attachment C to the conditions of contract or the Industry Requirements specified in Attachment F to the conditions of contract by Final Acceptance, the Contractor will be in breach of Contract. The Commonwealth will be entitled to recover damages for that breach where it can be shown that the Commonwealth has suffered loss as a result of the breach. To provide certainty and avoid the costs associated with litigation, the parties may, through a liquidated damages clause, agree on the amount of damages to be recovered in the event of a failure by the Contractor to achieve a Milestone on time or the Industry Requirements by Final Acceptance or by the Milestone specified in the All Plan.

**INFORMATION TO BE INCLUDED IN ATTACHMENT D**

Prior to release of the RFT, drafters must insert details of the relevant Industry Requirements to which liquidated damages are to apply, the amount of liquidated damages that is to apply for each Industry Requirement and any other specific conditions which are to apply.

Where the optional section – Failure to Achieve a Milestone – is included in the RFT, drafters must insert details of the Milestones to which liquidated damages are to apply, the rate of liquidated damages or formula for the calculation of the liquidated damages that is to apply for each Milestone and any other specific conditions which are to apply. It should be noted that the date by which a Milestone must be achieved may be the Milestone Date specified in Attachment C or where the Commonwealth allows the Contractor a grace period, a date later than the Milestone Date.

Prior to Contract signature, drafters must include the negotiated liquidated damages details based upon the information in the Attachment and the successful tenderer's response.

**ENFORCEABILITY OF LIQUIDATED DAMAGES**

To be enforceable against the Contractor in law, the liquidated damages amounts included in Attachment D must represent a genuine pre-estimate of the loss likely to be suffered by the Commonwealth as a result of the failure by the Contractor to achieve the Milestone on time, or the Industry Requirements by Final Acceptance or by the Milestone specified in the All Plan. The calculation of the amount of liquidated damages is therefore critical to the enforceability of clauses 4.1 and 7.14 of the draft conditions of contract.

**CALCULATION OF LIQUIDATED DAMAGES**

A liquidated damages amount will be regarded as a genuine pre-estimate if it can be shown to have been calculated on the basis of the likely loss to be suffered, even if the actual loss suffered does not equal the pre-estimate. Drafters must ensure that, having calculated the amount of liquidated damages, the method of calculation is retained. This evidence will be required should the Contractor ever attempt to claim that the liquidated damages do not represent a genuine pre-estimate of loss.

Because the Commonwealth is not a company that trades with a view to profit, it can sometimes be difficult to identify the loss suffered as a result of a failure to deliver on time. To lessen the chances of an argument over whether the Commonwealth suffered loss, clauses 4.1.4 and 7.14.1 of the conditions of contract have been included to establish the Contractor's agreement that the Commonwealth will suffer loss and damage should there be a failure to achieve a Milestone on time or a failure to achieve the Industry Requirements in the All Plan.

Generally, where one amount is specified to apply to each failure to achieve a Milestone regardless of the Milestone in question, it will be difficult to show that the amount represents a genuine pre-estimate of loss. For example, a court would find it difficult to accept, without further explanation, why the loss suffered by the Commonwealth when the Contractor failed to deliver technical manuals on time was the same as the loss suffered when the Contractor failed to complete an aircraft on time. It is therefore important to consider the Supplies to be delivered under each Milestone to determine whether it is likely that the Commonwealth will suffer loss if the Milestone is not achieved on time and to determine what that loss is likely to be.

In some cases the rate of liquidated damages to be applied may be better expressed as a formula.

#### Example

If the Contractor is contracted to supply training equipment and material by a certain date in order for a Commonwealth training course to commence, the loss suffered by the Commonwealth may be measured by the difference in cost between training its members at its own facility and having them trained at the nearest private training facility. An estimate of the difference in cost may be made but the loss will depend on the number of members to be trained. If it is not possible to make a genuine pre-estimate of the likely number of members to be trained, the parties may agree to use a formula:

$$LD = \$300.00 \times P$$

where LD is the liquidated damages to be applied;

\$300.00 is the difference in cost between training its members at its own facility and having them trained at the nearest private training facility; and

P is the number of members requiring training during the period of delay.

Caution should be exercised when using formula to calculate liquidated damages. A formula should not be used to disguise an inability to arrive at a genuine pre-estimate of loss as this will affect the ability of the Commonwealth to enforce the clause and will remove certainty which is the main advantage of using a liquidated damages clause.

#### INCLUSION OF MILESTONE AND INDUSTRY REQUIREMENTS

Where a genuine pre-estimate of loss can be determined for a Milestone or Industry Requirement, it may be included in Attachment D. If no genuine pre-estimate of loss can be determined for a Milestone or Industry Requirement it should not be included in Attachment D.

Where a Milestone or Industry Requirement is not included in Attachment D, the Commonwealth will only be able to recover damages for the Contractor's failure to achieve the Milestone or Industry Requirement if the Commonwealth commences proceedings in a court, the Commonwealth shows that it has suffered loss as a result of the breach of Contract and the court subsequently issues an order for payment of damages.

#### INCLUSION OF A GST AMOUNT

The amount of liquidated damages included in Attachment D must include a component for GST. Under the *A New Tax System (Goods and Services Tax) Act 1999*, where the Commonwealth claims liquidated damages or another agreed



form of compensation under the Contract it will be liable to pay GST to the Australian Taxation Office.

**Drafter's Action:** Prior to release of the RFT, drafters must insert details of the relevant Industry Requirements to which liquidated damages are to apply, the amount of liquidated damages that is to apply for each Industry Requirement and any other specific conditions which are to apply.

Where the optional section – Failure to Achieve a Milestone – is included in the RFT, drafters must insert details of the Milestones to which liquidated damages are to apply, the rate of liquidated damages or formula for the calculation of the liquidated damages that is to apply for each Milestone and any other specific conditions which are to apply.

Prior to Contract signature, drafters must include the negotiated liquidated damages details based upon the information in the Attachment and the successful tenderer's response. These amounts should be GST inclusive.

**Related Clauses:** Clause 4.1 of the draft conditions of contract details the liquidated damages that may be claimed by the Commonwealth where the Contractor fails to achieve the Industry Requirements in the All Plan by Final Acceptance.

Clause 7.14 of the draft conditions of contract sets out the parties agreement on the amount of damages to be paid by the Contractor in the event that the Contractor fails to achieve specific Milestones on time.

Clause 8.5 of the draft conditions of contract allows insertion of a cap for liquidated damages under the Contract.

Attachment C to the draft conditions of contract will contain the agreed Milestone delivery dates.

Attachment F to the to the draft conditions of contract will contain the agreed Industry Requirements.

**Further Reading:** Nil



## **ATTACHMENT E - GOVERNMENT FURNISHED MATERIAL AND GOVERNMENT FURNISHED FACILITIES**

**Sponsor:** Contracting Policy & Operations

**Status:** Optional. To be included where the Commonwealth proposes or mandates GFM or GFF for inclusion in, or use during the production of, the Supplies and/or where the Commonwealth is prepared to allow tenderers to request GFM or GFF.

**Purpose:** To specify the GFM and GFF that will be provided to the Contractor for use in the production of the Supplies.

**Policy:** The preferred Departmental position is to minimise the provision of GFM and GFF to Contractors. However, in some circumstances it will not be possible for a Contractor to perform the work required under the Contract without GFM and/or GFF.

*DI(G) LOG 07-4 "Provision of Material to Contractors"*

**Guidance:** Attachment E will be an amalgamation of Tender Data Requirements E-12 and E-13 of Annex E to the TDRL (and the related details included in Annexes A and B to Attachment E prior to release of the RFT) and the successful tenderer's response. The following information should be included in the Annexes to Attachment E prior to release of the RFT:

- a. Annex A – any Commonwealth Mandated or proposed Government Furnished Material (GFM) to be provided under the Contract, the date for delivery of the GFM, the time period for inspection of the GFM and where relevant, the date for return of the GFM; and
- b. Annex B - any Commonwealth mandated or proposed Government Furnished Facilities to be provided under the Contract, the date for provision of access to the GFF and the time period for inspection.

Further guidance on the Annexes is provided below.

**Drafter's Action:** Prior to release of the RFT, drafters must determine whether this Attachment is necessary.

**Related Clauses:** Tenderers must identify in Tender Data Requirement D-2 of Annex D to the TDRL the additional cost to be added to the tendered price should any GFM or GFF not be made available.

Tender Data Requirement E-12 of Annex E to the TDRL refers tenderers to this Attachment if necessary and allows tenderers to elect to use any proposed GFM and/or request that additional GFM be provided.

Tender Data Requirement E-13 of Annex E to the TDRL refers tenderers to this Attachment if necessary and allows tenderers to propose details of the GFF that they require to perform the Contract, including the date required, location, time period for inspection and intended purpose.

Clauses 3.5 to 3.7 of the draft conditions of contract and clause 3.13 of the draft Statement of Work detail the GFM provisions for the Contract.

Clause 3.8 of the draft conditions of contract and the GFF Licence Deed at Annex D to Attachment I to the draft conditions of contract detail the GFF provisions for the Contract

**Further Reading:** Nil

## **ANNEX A TO ATTACHMENT E - GOVERNMENT FURNISHED MATERIAL**

- Sponsor:** Contracting Policy & Operations
- Status:** Optional. To be included where the Commonwealth proposes or mandates GFM for inclusion in, or use during the production of, the Supplies and/or where the Commonwealth is prepared to allow tenderers to request GFM.
- Purpose:** To specify the GFM that will be provided to the Contractor for use in the production of the Supplies.
- Policy:** The preferred Departmental position is to minimise the provision of GFM to Contractors. However, in some circumstances it will not be possible for a Contractor to perform the work required under the Contract without GFM.  
*DI(G) LOG 07-4 "Provision of Material to Contractors"*
- Guidance:** GFM is any equipment, information or data provided to a contractor by the Commonwealth to assist in the performance of a contract. There are three types of GFM:
- a. Commonwealth Mandated GFM;
  - b. Commonwealth proposed GFM; and
  - c. Contractor proposed GFM.

### **LIABILITY FOR GFM**

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Clause 3.6 of the conditions of contract sets out the risk allocation between the Commonwealth and the Contractor relating to the provision of GFM. Apart from GFI, which the Contractor uses at its own risk, the Commonwealth will be responsible for defects in GFM, unless those defects were caused by the Contractor's or its Subcontractor's negligence, default or unlawful act, in which case the Contractor is responsible. However, it should be noted that, where the Contractor has care, custody and control of GFM, it may be difficult to prove that the GFM was damaged by the Contractor's default or unlawful or negligent act or omission. For these reasons it is the preferred Departmental position to minimise the provision of GFM.

### **INFORMATION TO BE INCLUDED IN ANNEX A TO ATTACHMENT E**

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Drafters should include details of any Commonwealth Mandated or proposed GFM prior to release of the RFT.

Prior to Contract signature drafters must include the Commonwealth Mandated GFM and Commonwealth and Contractor proposed GFM that will be provided under the Contract in Annex A to Attachment E. Drafters must ensure that the description of the GFM, its purpose, the proposed date for delivery or provision of access to the GFM and the proposed time period for inspection of the GFM are clearly stated in the Annex. Annex A will be an amalgamation of Tender Data Requirement E-12 of Annex E to the TDRL (and the related details included in Annex A prior to the release of the RFT) and the successful tenderer's response.

- Drafter's Action:** Prior to release of the RFT, drafters should include details of Commonwealth Mandated or proposed GFM in Annex A to Attachment E. Prior to Contract signature, drafters must include a description of the GFM to be provided under the Contract, its purpose, the proposed date for delivery or provision of access to the GFM and the proposed time period for inspection of the GFM.

- Related Clauses:** Tender Data Requirement E-12 of Annex E to the TDRL refers tenderers to this Attachment if necessary and allows tenderers to elect to use the proposed GFM and/or request that additional GFM be provided.

Clauses 3.5 to 3.7 of the draft conditions of contract contain the GFM provisions for the Contract.

- Further Reading:** Nil

## **ANNEX B TO ATTACHMENT E - GOVERNMENT FURNISHED FACILITIES**

- Sponsor:** Infrastructure Division
- Status:** Optional. To be included where the Commonwealth proposes or mandates GFF for use during the production of the Supplies and/or where the Commonwealth is prepared to allow tenderers to request GFF.
- Purpose:** To specify the GFF that will be provided to the Contractor for use in the production of the Supplies.
- Policy:** The preferred Departmental position is to minimise the provision of GFF to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under the Contract without GFF.
- DI(G) ADMIN 35-1 "Procedures for the Use of Defence Estate Assets by Non-Defence Organisations or Individuals including Commercial Contractors".*
- Guidance:** There are three types of GFF:
- a. Commonwealth mandated GFF;
  - b. Commonwealth proposed GFF; and
  - c. Contractor proposed GFF.

### **INFORMATION TO BE INCLUDED IN ANNEX B TO ATTACHMENT E**

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Drafters should include details of any Commonwealth mandated or proposed GFF prior to release of the RFT. Prior to Contract signature drafters must include the Commonwealth mandated GFF and Commonwealth and Contractor proposed GFF that will be provided under the Contract in Annex B to Attachment E. Drafters must ensure that the description of the GFF, its purpose, the proposed date for provision of access to the GFF and the proposed time period for inspection of the GFF are clearly stated in the Annex. Annex B will be an amalgamation of Tender Data Requirement E-13 of Annex E to the TDRL (and the related details included in Annex B prior to the release of the RFT) and the successful tenderer's response.

- Drafter's Action:** Prior to release of RFT, drafters should include details of Commonwealth mandated GFF or proposed GFF in Annex B to Attachment E. Prior to Contract signature, drafters must include a description of the GFF to be provided under the Contract, its purpose, the proposed date for provision of access to the GFF and the proposed time period for inspection of the GFF.
- Related Clauses:** Tender Data Requirement E-13 of Annex E to the TDRL refers tenderers to this Attachment if necessary and allows tenderers to propose details of the GFF that they require to perform the Contract, including the date required, location, time period for inspection and intended purpose.
- Annex D to Attachment I to the draft conditions of contract will, if required, contain the GFF Licence Deed that specifies the responsibilities of each party for the Commonwealth facilities provided to the Contractor for use in the performance of the Contract.
- Further Reading:** Nil



**ATTACHMENT F – AUSTRALIAN INDUSTRY INVOLVEMENT**

<u>Sponsor:</u>	Industry Policy
<u>Status:</u>	Core
<u>Purpose:</u>	To contain the agreed Australian Industry Involvement Plan for the Contract.
<u>Policy:</u>	<i>All Manual</i> <i>DPPM – Section 3, Chapter 3.12</i>
<u>Guidance:</u>	The All Plan outlines the Industry Requirements for the Contract and the agreed levels of Local Content and Strategic Industry Development Activities to be provided under the Contract.

**INFORMATION TO BE INCLUDED IN ATTACHMENT F**

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Prior to Contract signature, drafters should include the negotiated All Plan in Attachment F. The plan should be based on the information contained in Attachment F, the guidance contained in Annex H to the TDRL, and the successful tenderer's response. Information that should be contained in the All Plan is detailed in DID-PM-All-AIIP and includes:

- a. overview and benefits;
- b. management of the All Plan;
- c. Monitoring of All Achievement;
- d. Industry Requirements;
- e. Australian Industry Involvement Schedule;
- f. Australian Industry Involvement Activity Description Sheets;
- g. Strategic Industry Development Activity Description Sheets;
- h. All Target Summary;
- i. Overseas and ANZ Subcontractor Overview; and
- j. Commitment to Australian Industry.

Drafter's Action: Prior to release of the RFT, drafters should include the project's All Requirements. Prior to Contract signature, drafters must include the negotiated All Plan.

Related Clauses: Tender Data Requirement H-1 of Annex H to the TDRL notifies tenderers of the All requirements for the proposed contract and requests tenderers to provide an All Plan in the specified format detailed in DID-PM-All-AIIP.

Clause 4.1 of the draft conditions of contract places a contractual obligation on the Contractor to deliver the All Program and to achieve the stated levels of Local Content and Strategic Industry Development Activities. Clause 4.1 also details the liquidated damages that may be claimed by the Commonwealth where the Contractor fails to achieve the Industry Requirements in the All Plan by Final Acceptance or the Milestone specified in the All Plan.

Attachment D of the draft conditions of contract will contain the liquidated damages that may be claimed by the Commonwealth where the Contractor fails to achieve specific Industry Requirements by Final Acceptance or the specified Milestone Date.

Clause 3.14 of the draft Statement of Work places a contractual obligation on the Contractor to provide All Progress Reports, and advises that All performance reviews may be undertaken periodically to verify implementation of the Approved All Plan and to validate claimed achievement of activities.

Further Reading: Nil





**ATTACHMENT G –INTELLECTUAL PROPERTY PLAN**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To allow the Commonwealth to accurately capture all IP involved in a specific project and to facilitate the management of IP in Defence.
<b><u>Policy:</u></b>	Defence needs appropriate rights to appropriate technologies at appropriate times. <i>DPPM – Section 3, Chapter 3.6</i> <i>Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.</i>
<b><u>Guidance:</u></b>	The Intellectual Property Plan (IP Plan) will consist of an amalgamation of Tender Data Requirement C-5 of Annex C to the TDRL and the preferred tenderer's response.

**INFORMATION TO BE INCLUDED IN ATTACHMENT G**

No information should be included in Attachment G prior to release of the RFT. Prior to Contract signature drafters must include the negotiated IP Plan. The IP Plan should be in the format specified in DID-PM-IP-IPP and include the following sections:

- a. Overview and Benefits;
- b. Management of the IP Program;
- c. Monitoring Achievement of the IP Program; and
- d. the IP Schedule.

In support of the IP Schedule in the IP Plan at Attachment G the Contractor is required to prepare and maintain IP records in accordance with CDRL Line Number MGT-810. For further guidance refer to the guidance provided in relation to clause 3.15.2 of the draft Statement of Work.

**Drafter's Action:** No input is required prior to release of the RFT. Prior to Contract signature, the negotiated IP Plan must be included.

**Related Clauses:** Tender Data Requirement C-5 of Annex C to the TDRL requests tenderers to provide a draft IP Plan for the proposed contract.

Clause 5 of the draft conditions of contract contains the IP clauses for the Contract. Clause 3.15 of the draft Statement of Work places a contractual obligation on the Contractor to conduct the IP program in accordance with the Approved IP Plan and to provide IP Progress reports.

**Further Reading:** Nil



**ATTACHMENT H – SCHEDULE OF APPROVED SUBCONTRACTORS**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To list the Approved Subcontractors under the Contract.
<u>Policy:</u>	Nil
<u>Guidance:</u>	Tender Data Requirement A-3 of Annex A to the TDRL requests each tenderer to provide details of proposed Approved Subcontractors.

**WORK TO BE PERFORMED BY APPROVED SUBCONTRACTORS:**

Clause 10.9.3 of the conditions of contract prevents the Contractor from Subcontracting work to Subcontractors who are not Approved Subcontractors where:

- a. the work under the Subcontract will exceed a specified amount;
- b. the work under the Subcontract involves the performance of specified tasks; or
- c. the Subcontractor will be bringing IP to the proposed Subcontract or creating IP under the proposed Subcontract necessary to enable the Commonwealth to use and support the Supplies.

Therefore it is essential that all Subcontractors meeting the above requirements are included in Attachment H either before Contract signature or after Contract signature by way of a Contract change proposal.

**INFORMATION TO BE INCLUDED IN THE SCHEDULE**

The Schedule at Attachment H should include the following details:

- a. the name of the Approved Subcontractor;
- b. the work to be subcontracted including its technical significance;
- c. the equipment/Supplies that are to be delivered under the Subcontract;
- d. the value of the Subcontract; and
- e. any comments i.e. exemptions (see discussion below).

Examples of the required information are included in Attachment H and should be deleted prior to Contract signature.

**ADDITIONAL APPROVED SUBCONTRACT REQUIREMENTS**

The purpose of creating a category of Approved Subcontractors is to place additional requirements on Approved Subcontractors than are placed on other Subcontractors. For example, Approved Subcontractors are required to:

- a. provide access to the Project Authority as required to the Approved Subcontractor's premises, records and accounts relating to work under the Contract;
- b. sign up to a termination for convenience clause in their Subcontract with the Contractor similar to clause 12.3 of the conditions of contract;
- c. implement appropriate quality systems under clause 8.1.4 of the draft Statement of Work; and
- d. execute Deeds and maintain and provide access to records and premises to review compliance with the IP Plan.

Given the breadth of the categories of Approved Subcontractors under clause 10.9.3 and the scope of the additional tasks required to be performed by Approved Subcontractors, the Commonwealth may not wish for all additional requirements to apply to each Approved Subcontractor. Therefore, where a Subcontractor falls

within only one category in clause 10.9.3, it is possible to exempt them from complying with the additional requirements that are placed on Approved Subcontractors that do not relate to that particular category.

Example

Subcontractor X is providing a commercial-off-the-shelf product valued at \$10 million for incorporation into the Supplies. Clause 10.9.3 requires all Subcontractors with Subcontracts valued at over \$5 million to be an Approved Subcontractor. Subcontractor X is not producing any Foreground IP and the Commonwealth is happy to accept the Subcontractor's standard licence in relation to the Background IP. In such circumstances it would be appropriate to exempt the Approved Subcontractor from having to comply with the IP requirements relating to Approved Subcontractors under clause 5 and treat the Approved Subcontractor as a Third Party in relation to IP.

Where a decision is made to exempt an Approved Subcontractor from particular requirements, the exemption should be detailed clearly in the 'Comments' column of the Schedule of Subcontractors.

Drafter's Action: Nil

Related Clauses: Tender Data Requirement A-3 of Annex A to the TDRL requests tenderers to provide details of Subcontractors who will be required to be listed as Approved Subcontractors in Attachment H.

Clause 10.9 of the draft conditions of contract informs the Contractor of the Subcontractors who are required to be Approved prior to commencing work.

Further Reading: Nil

**ATTACHMENT I - AGREED DEEDS AND FORMS**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To provide proforma deeds and forms for use during the Contract.
<u>Policy:</u>	<i>Corporations Act 2001</i>
<u>Guidance:</u>	Various clauses of the draft conditions of contract require the Contractor to provide deeds or forms in a particular format. The format for those forms and deeds is contained in Attachment I.

**INFORMATION IN THE AGREED DEEDS AND FORMS ATTACHMENT**

The Agreed Deeds and Forms Attachment contains the following:

- a. Approved Subcontractor IP Deed;
- b. IP Deed of Confidentiality;
- c. Escrow Agreement;
- d. GFF Licence Deed;
- e. Progress Certificate;
- f. Supplies Acceptance Certificate;
- g. Final Acceptance Certificate;
- h. Contract Change Proposal;
- i. Engineering Change Proposal;
- j. Mobilisation Security Deed;
- k. Performance Security Deed;
- l. Deed of Substitution and Indemnity; and
- m. Deed of Confidentiality and Fidelity.

Further guidance on each of these Annexes is provided below.

**EXECUTION OF DEEDS**

An Australian company may sign a deed by affixing its company seal. The company's constitution may set out the way in which the company seal may be affixed. For example, the constitution may require that the company's Board of Directors pass a resolution authorising the affixing of the seal to a deed. Normally, the seal must be affixed in the presence of two directors or a director and the secretary of the company in order to be valid. These people indicate their presence by signing the deed next to the seal.

**Example**

The seal of  
 [...INSERT COMPANY NAME AND A.C.N/A.B.N....]  
 is hereby affixed in accordance with its constitution by  
 [...NAME OF DIRECTOR...]  
 in the presence of  
 [...NAME OF DIRECTOR/ SECRETARY...]

Advice should be obtained from Contracting Policy and Operations Branch as to any limitations on the use of the company's seal and the correct wording of the execution clause for a particular company.

It should be noted that Australian companies have not been required to have a company seal since amendments to the *Corporations Law* in 1998. Some companies, therefore will not execute contracts in this way. If an Australian company does not have a seal or if it does but opts not to use it, the deed can be executed by certain company officers signing the document. The deed must either be signed by two directors of the company or, one director and one company secretary of the company. Where a proprietary company has a sole director who is also the company secretary that person can sign the deed.

Example

SIGNED SEALED and DELIVERED

by [...INSERT COMPANY NAME AND A.C.N./A.B.N....]

{signature}

[NAME OF COMPANY OFFICER AND POSITION]

in the presence of:

{signature}

[NAME OF WITNESS]

{signature}

[NAME OF COMPANY OFFICER AND POSITION]

in the presence of:

{signature}

[NAME OF WITNESS]

Affixing the company seal or having the specified company officers sign the deed are to be preferred over other ways of executing the deed. The reason for this is that using either of these methods will, in certain circumstances, allow the Commonwealth to rely on some important assumptions concerning proper execution.

Provided that the deed is executed in either of these two ways a person, who does not know that the deed was not properly executed, can assume that it has been correctly executed. A person may also assume that anyone who signs the deed and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices, where they are making that assumption for the purpose of assuming the deed has been properly executed.

Under the *Corporations Act 2001* a person dealing with an Australian company is entitled to rely on a document as binding the company if it is signed by an individual acting with the company's express or implied authority and on behalf of the company. If drafters are uncertain as to the authority of the person proposing to sign the deed, drafters should either request that the company provide evidence of the officer's authority to bind the company or seek legal advice as to whether the Commonwealth can rely on the person's authority to bind the Company.

Example

SIGNED, SEALED AND DELIVERED

for and on behalf of

[...INSERT COMPANY NAME AND A.C.N./A.B.N...]

by

[NAME OF COMPANY OFFICER]

in the presence of:

[NAME OF WITNESS]

In some cases the company will issue a power of attorney authorising a person to bind the company in certain circumstances. Drafters should ask to see a copy of the power of attorney in order to check that it is current, it appears to be executed in a way which will bind the company and the circumstances it covers include the deed in question.

Example

SIGNED, SEALED AND DELIVERED

for and on behalf of

[...INSERT COMPANY NAME AND A.C.N./A.B.N...] by

[...NAME OF PERSON...]

who is authorised by Power of Attorney [NUMBER OR DATE]

and who states [HE/SHE] has no notice of its revocation

in the presence of

[NAME OF WITNESS]

Advice should be obtained from Contracting Policy and Operations Branch on the power of attorney, especially where issued by an overseas company. Drafters should also obtain advice from Contracting Policy and Operations Branch as to the correct execution clause to be used for an overseas company. Drafters should ensure that prior to signature the deeds are checked for accuracy and completeness.

Further information about deeds is provided in the section on the Execution Page in the guidance on the draft conditions of contract

Drafter's Action: Nil

Related Clauses: Clause 7 of the draft conditions of contract details the payment provisions for the Contract.

Attachment C to the draft conditions of contract will contain the agreed Delivery Schedule.

Further Reading: Nil

**ANNEX A TO ATTACHMENT I - APPROVED SUBCONTRACTOR IP DEED**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To allow the Commonwealth to gain access to any Approved Subcontractor IP listed in the deed.
<u>Policy:</u>	Defence needs appropriate rights to appropriate technologies at appropriate times. <i>Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.</i>
<u>Guidance:</u>	This deed is a tripartite deed between an Approved Subcontractor, the Contractor and the Commonwealth. It allows for an Approved Subcontractor to license the Commonwealth to exercise IP rights in Approved Subcontractor owned Background and Foreground IP. Clauses in this deed are similar to clause 5 of the draft conditions of contract. For additional guidance, drafters should refer to the guidance on relevant subclauses of clause 5 in the Handbook.

**AMENDMENT OF THE APPROVED SUBCONTRACTOR IP DEED**

Any proposal from a tenderer to alter the terms of Defence's standard Approved Subcontract IP Deed should be carefully evaluated. The Approved Subcontractor IP Deed and the draft conditions of contract have similar definitions and terms. The Approved Subcontractor IP Deed should not be altered unless the proposed amendment is consistent with an amendment made to the corresponding clauses and definitions in the draft conditions of contract.

Where the Contractor or an Approved Subcontractor propose a change to the deed included in Annex A to Attachment I after Contract signature, careful consideration should be given to the request and the potential impact on the Commonwealth's Intellectual Property rights under the Contract. Where the proposed change is acceptable to the Commonwealth, a Contract change proposal should be agreed by the parties to the Contract.

Prior to any changes being made to the Approved Subcontractor IP Deed, whether prior to Contract signature or by way of a Contract change proposal, advice should be sought from Contracting Policy and Operations Branch.

**FAILURE TO DELIVER AN APPROVED SUBCONTRACTOR IP DEED**

Clause 5.3 of the conditions of contract places an obligation on the Contractor to deliver duly executed deeds from each Approved Subcontractor in the format of the Approved Subcontractor IP Deed in Annex A to Attachment I. Where the Contractor fails to deliver a deed from a Approved Subcontractor in the form of the Approved Subcontractor IP Deed, the Contractor will be in breach of Contract. In such instances the Commonwealth may commence proceedings in a court to recover where it can prove it has suffered loss as a result of the breach and/or terminate the Contract for default as provided for by clause 12.2.1j of the conditions of contract. Advice should be sought from Contracting Policy and Operations Branch prior to any action being taken to claim damages or terminate the Contract for default.

**INCLUSION OF THE OPTIONAL SUNRISE LICENSING CLAUSE**

Drafters should note the inclusion of an optional 'Sunrise Licensing' clause in the deed. A Sunrise licence is a licence or sub-licence that does not come into effect until a specified date. The optional clause should be included by drafters in the Approved Subcontractor IP Deed in the RFT where Intellectual Property to be provided by Approved Subcontractors may be commercially sensitive at the time of Contract signature and the owner of the Intellectual Property may wish to protect its commercial interests.

The optional 'Sunrise Licensing' clause should be included by drafters in an Approved Subcontractor IP Deed to be executed by the parties where the IP Plan



specifies that that Approved Subcontractor will grant a licence subject to a Sunrise Date.

#### COMPLETION OF THE SCHEDULES TO THE DEED

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Schedules 1 to 4 of the Approved Subcontractor IP Deed are to be completed by drafters prior to signature of the deed. The Schedules are to contain the following information:

- a. The negotiated IP Plan must be included in Schedule 1;
- b. The negotiated IP Confidentiality Deed must be included in Schedule 2;
- c. The negotiated Escrow Agreement must be included in Schedule 3; and
- d. The negotiated clauses 6.5, 6.6, 9.3, 9.5 and 12.3 of the draft conditions of contract must be included in Schedule 4.

As the Approved Subcontractor is not a party to the Contract between the Commonwealth and the Contractor and there is no privity of contract, it is essential that the above information is included in the Schedules to the deed to ensure that the Approved Subcontractor fully understands its rights and responsibilities under the deed.

#### EXECUTION OF THE APPROVED SUBCONTRACTOR IP DEED

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Drafters should note that as the Approved Subcontractor IP Deed is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

**Drafter's Action:** Prior to release of the RFT, drafters must determine whether the optional clauses should be included. Drafters must include the Schedules prior to signature of each Deed.

**Related Clauses:** Tenderers may propose Approved Subcontractors in their responses to Tender Data Requirement A-3 of Annex A to the TDRL.

Clause 5 of the draft conditions of contract contains the IP clauses for the Contract.

Clause 10.9 of the draft conditions of contract deals with Subcontracts, including Approved Subcontractors.

**Further Reading:** Nil

**ANNEX B TO ATTACHMENT I - IP DEED OF CONFIDENTIALITY**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To set out the format for a deed that the Commonwealth will be required to enter into with any third party which is given access to Contractor or Approved Subcontractor IP.
<u>Policy:</u>	Defence IP management will be clear, consistent and traceable. <i>Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.</i>
<u>Guidance:</u>	There are two versions of this deed available. One is a standard deed while the other is a tripartite deed. The tripartite deed includes the Contractor as a party with specific reference in the recitals. Both versions should be included in the RFT.

**USE OF THE IP CONFIDENTIALITY DEEDS**

Foreground and Background IP that is not owned by the Commonwealth may be of great commercial value to its owner. Under clause 5.6 of the conditions of contract, the Commonwealth undertakes to protect the commercial value of the IP by obtaining a deed of confidentiality from any person to whom the Commonwealth provides access to Foreground or Background IP owned by the Contractor. Similarly, clause 2.5 of the Approved Subcontractor IP Deed places a contractual obligation on the Commonwealth to obtain a deed of confidentiality from any person to whom the Commonwealth provides access to Foreground or Background IP owned by the Approved Subcontractor. The IP Confidentiality Deeds at Annex B to Attachment I to the draft conditions of contract set out the terms of the obligation of confidentiality that will be imposed on any person to whom the Commonwealth grants access to the IP.

**AMENDMENT OF THE IP CONFIDENTIALITY DEEDS**

Any proposal from a tenderer to alter the terms of the IP Confidentiality Deeds should be carefully evaluated. It is important that the IP Confidentiality Deeds at Annex B to Attachment I use the same terms as the draft conditions of contract because the obligation of confidentiality relates to Commercial-in-Confidence Information disclosed under the Contract. The IP Confidentiality Deeds and the draft conditions of contract have similar definitions and terms. These should not be altered unless the proposed amendment is consistent with an amendment made to the corresponding clauses and definitions in the draft conditions of contract.

Where the Contractor or the confidant propose a change to the deeds included in Annex B to Attachment I after Contract signature, careful consideration should be given to the request and the potential impact on the protection of the Intellectual Property. Where the proposed change is acceptable to the Commonwealth and the Contractor, a Contract change proposal should be agreed by the parties to the Contract.

Prior to any changes being made to the IP Confidentiality Deeds, whether prior to Contract signature or by way of a Contract change proposal, advice should be sought from Contracting Policy and Operations Branch.

**FAILURE TO OBTAIN AN IP CONFIDENTIALITY DEED**

Clause 5.6 of the conditions of contract places an obligation on the Commonwealth to obtain from any person to whom it is providing Foreground or Background IP owned by the Contractor a signed deed in the format of the IP Confidentiality Deed in Annex B to Attachment I. Where the Commonwealth fails to obtain a deed in the form of the IP Confidentiality Deed, the Commonwealth will be in breach of Contract and the Contractor may claim damages where it has suffered loss as a result of the breach. The Contractor could also seek to terminate the contract at common law for the breach, although it would be for a court to determine whether clause 5.6 was an 'essential term' of the contract, or whether the breach amounted

to a fundamental breach of contract, so as to give rise to such a right of termination.

#### DEFINITION OF 'COMMERCIAL-IN-CONFIDENCE INFORMATION'

The definition of 'Commercial-in-Confidence Information' is purposely different from the corresponding definition within the Glossary at Attachment M and it is important that this difference is preserved. The difference in definition is because the Commonwealth should be able to precisely define the particular information to be disclosed by the Commonwealth to the Confidant under the IP Confidentiality Deed, in addition to the definition capturing any information that falls within the usual definition of Commercial-in-Confidence Information under the conditions of contract.

#### DISCLOSURE OF CONFLICTS OF INTEREST

Drafters should note the inclusion of clause 8 in the IP Confidentiality Deeds under which the Confidant warrants it has disclosed all conflicts of interest and shall not engage in any activity that constitutes a conflict of interest. The inclusion of this clause is important to ensure that the Commonwealth remains fully informed about the Confidant, especially in relation to any activity which may jeopardise the confidentiality of the Commercial-in-Confidence Information.

#### OTHER REMEDIES NOT EXCLUDED

Drafters should also note the inclusion of clause 13 in the IP Confidentiality Deeds. Clause 13 provides that the rights and remedies provided under the deed are cumulative and not exclusive of any other right or remedy. The inclusion of this clause allows the parties to the deed, without prejudice to any other right or remedy they may have, to pursue a right or remedy allowed to them under the deed.

#### EXECUTION OF THE IP CONFIDENTIALITY DEED

Drafters should note that as the IP Confidentiality Deed is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

Drafter's Action: Nil

Related Clauses: Clause 5 of the draft conditions of contract contains the IP clauses for the Contract. In particular clause 5.6 places a contractual obligation on the Commonwealth to obtain a deed, in the form of the IP Confidentiality Deed at Annex B to Attachment I to the draft conditions of contract, from any person to whom it provides Foreground or Background IP owned by the Contractor.

Annex A to Attachment I to the draft conditions of contract will contain the agreed Approved Subcontractor IP Deed. Clause 2.4 of this Deed places a contractual obligation on the Commonwealth to obtain a deed of confidentiality from any person to whom the Commonwealth provides access to Foreground or Background IP owned by the Approved Subcontractor.

Further Reading: Nil

**ANNEX C TO ATTACHMENT I – ESCROW AGREEMENT**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	RFT Core
<b><u>Purpose:</u></b>	To set out the terms of the Escrow Agreement that is to be entered into by the Contractor, Escrow Agent and the Commonwealth.
<b><u>Policy:</u></b>	Defence needs appropriate rights to appropriate technologies at appropriate times. <i>DPPM – Section 3, Chapter 3.6</i> <i>Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.</i>
<b><u>Guidance:</u></b>	Clause 5.3.3.8 of the Statement of Work places a contractual obligation on the Contractor, where required by the TDL and/or IP Plan, to arrange for an escrow agent approved by the Commonwealth to enter into an escrow agreement in the form of the Escrow Agreement at Annex C to Attachment I. Escrow involves two parties entering into a written undertaking to keep items in the custody of a neutral third party (i.e. ‘the escrow agent’) until certain pre-defined conditions are met. Such arrangements are used in limited circumstances, e.g. for commercially sensitive information that will lose its commercial sensitivity over time, but is highly commercially sensitive at the time of contract signature.

**AMENDMENT OF THE ESCROW AGREEMENT**

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Any proposal from a tenderer to alter the terms of Defence’s standard Escrow Agreement should be carefully evaluated. The Escrow Agreement and the draft conditions of contract have many similar definitions and terms. These should not be altered unless the proposed amendment is consistent with an amendment made to the corresponding clauses and definitions in the draft conditions of contract.

Where the Contractor or escrow agent proposes a change to the deed included in Annex C to Attachment I after Contract signature, careful consideration should be given to the request and the potential impact on the escrow arrangement. Where the proposed change is acceptable to the Commonwealth, a Contract change proposal should be agreed by the parties to the Contract.

Prior to any changes being made to the Escrow Agreement, whether prior to Contract signature or by way of a Contract change proposal, advice should be sought from Contracting Policy and Operations Branch.

**DEFINITIONS IN THE ESCROW AGREEMENT**

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Some definitions within the Escrow Agreement are purposely different from the definitions for corresponding terms within the conditions of contract and it is important that these differences are preserved. For example, the definition of ‘Source Code’ in the Escrow Agreement refers to Source Code deposited with the Escrow Agent in accordance with the Escrow Agreement and does not mirror the definition of ‘Source Code’ under the conditions of contract. The variation in definition is necessary to objectively define Source Code in the conditions of contract and for specific definition of the Source Code to be lodged with the Escrow Agent in accordance with the Escrow Agreement.

**COMPLETION OF THE SCHEDULES TO THE DEED**

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Schedules 1 to 3 of the Escrow Agreement are to be completed by drafters prior to signature of the deed.

Drafters must ensure that Schedule 1 to the Escrow Agreement is accurately completed so as to cover all Technical Data, Source Code and Software Design Data to which the Commonwealth will require access.

The Commonwealth is responsible for payment of all Escrow Agents’ fees in accordance with Schedule 2 to the Escrow Agreement.

The Contractor shall prepare, maintain and deliver to the Commonwealth and the Escrow Agent a current register of the Escrow Materials. The register is to be cross referenced to the Technical Data List (TDL) and to the unique bar codes created by the Contractor from the Escrow Agents Project Escrow System. The format of the register should be set out in Schedule 3.

#### EXECUTION OF THE ESCROW AGREEMENT

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Drafters should note that as the Escrow Agreement is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

**Drafter's Action:** Prior to release of the RFT, drafters must complete required information. Prior to Contract signature, drafters must consider whether this Annex is necessary.

**Related Clauses:** Tender Data Requirement C-5 of Annex C to the TDRL requests tenderers to provide an IP Plan for the proposed contract in accordance with the requirements of DID-PM-IP-IPP.

Clause 5.3.3 of the draft Statement of Work contains clauses relating to the Technical Data List. Technical Data requirements under the proposed contract, including Technical Data to be placed in escrow, should be identified and cross-referenced in the Technical Data List.

Clause 5 of the draft conditions of contract contains the Intellectual Property clauses for the Contract.

Attachment G to the draft conditions of contract will contain the agreed IP Plan.

Clause 5.3.3.8 of the draft Statement of Work places a contractual obligation on the Contractor to deliver TD required to be placed in escrow to the Escrow Agent in accordance with the IP Plan. Various Data Item Descriptions call for the Contractor to provide details on any escrow arrangements.

**Further Reading:** Nil

**ANNEX D TO ATTACHMENT I— GOVERNMENT FURNISHED FACILITIES LICENCE**

<b><u>Sponsor:</u></b>	Infrastructure Division
<b><u>Status:</u></b>	Optional. To be included where GFF is being mandated or offered for use in the performance of the Contract.
<b><u>Purpose:</u></b>	To establish a contractual relationship which specifies the responsibilities of each party for the Commonwealth facilities provided to the Contractor for use in the performance of the Contract.
<b><u>Policy:</u></b>	The preferred Departmental position is to minimise the provision of GFF to Contractors. However, in some circumstances it will not be possible for a Contractor to perform the work required under the Contract without GFF. <i>DI(G) ADMIN 35-1 "Procedures for the Use of Defence Estate Assets by Non-Defence Organisations or Individuals including Commercial Contractors"</i>
<b><u>Guidance:</u></b>	Head Infrastructure Division will determine what facilities can be offered and the basis on which they are offered. The recommendation of the organisation establishing the Contract will be considered when determining availability of GFF.

**INFORMATION TO BE INCLUDED IN ANNEX D TO ATTACHMENT I**

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Drafters should include a GFF licence in Annex D to Attachment I prior to release of the RFT. This should be done in consultation with Infrastructure Division staff.

Prior to Contract signature drafters must include the negotiated GFF licence in Annex D to Attachment I. Any changes should be discussed with Infrastructure Division staff.

**MODIFICATION OF THE STANDARD GFF LICENCE**

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The standard Defence GFF licence can be found at [http://defweb.cbr.defence.gov.au/deodemg/4facilities\\_suite\\_of\\_contracts/default.htm](http://defweb.cbr.defence.gov.au/deodemg/4facilities_suite_of_contracts/default.htm)

The standard GFF licence may require modification to meet the overall objectives of the proposed contract. The licence should not be modified without Infrastructure Division advice.

Tenderers may also propose amendments to the GFF licence contained within the RFT. Where amendments are proposed, advice should be obtained from the Infrastructure Division prior to any amendments being agreed by the Commonwealth.

**NON-EXCLUSIVE LICENCE**

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Clause 1 of the deed grants the Contractor a licence to use the GFF on the terms set out in the deed. It is important to note that the licence is non-exclusive and personal to the Contractor and does not create any legal interest in the GFF nor a relationship of landlord and tenant. Where the Contractor requires an exclusive or sole licence over the GFF changes must be made to the deed. Advice should be sought from Infrastructure Division prior to any changes being made.

**PERIOD OF THE LICENCE**

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Clause 2 of the deed specifies the period of the licence and contains a provision allowing for a monthly licence following expiry of the original licence term where permitted by the Commonwealth. Careful consideration should be given to the Starting Date and Expiry Date included in the deed. Drafters should ensure that the licence does not commence before or extend past the date the GFF is required by the Contractor.

**LICENCE FEES**

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Clauses 3 to 7 of the deed detail the fees applicable under the licence, the operating expenses that must be paid to the Contractor, the GST arrangements for the deed and the financial securities required under the deed. GFF may be either

mandated by the Commonwealth or proposed by the Commonwealth or Contractor. Where the GFF is mandated by the Commonwealth, the Contractor will be required to pay a one-off fee of \$1.00 to enter into the licence. This is a token that ensures the requirement for consideration to support the licence is met, while recognising that the Contractor is not using the facilities by choice. Where the GFF is proposed by the Commonwealth or Contractor, the Contractor will be required to pay a commercial rent as consideration for the licence where the Contractor elects to use the GFF as part of its performance of the Contract.

#### OBLIGATIONS UNDER THE LICENCE

Clauses 8 and 9 detail the Contractor's obligations in relation to the GFF and clause 10 details the Commonwealth's obligations in relation to the GFF. Contractor obligations detailed in clauses 8 and 9 include obligations upon the vacation of the GFF and maintenance, waste disposal, security and environmental obligations. Commonwealth obligations detailed in clause 10 include repair of the GFF and the requirement for fair and reasonable consideration of Contractor requests.

#### LIABILITY FOR DAMAGE, INSURANCE AND INDEMNITIES

Clauses 11 and 12 deal specifically with liability for damage to, and repair of, the GFF and clause 13 deals with insurance and indemnities.

#### TERMINATION OF THE LICENCE

Clauses 15 and 16 detail the circumstances in which the parties will be in breach of the licence, the process by which the parties may terminate the licence and the Commonwealth's right to terminate for convenience.

#### EXECUTION OF THE GFF LICENCE

Drafters should note that as the GFF licence is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

**Drafter's Action:** Prior to release of the RFT, drafters must include a GFF licence. Prior to Contract signature, drafters must include the negotiated GFF licence in Annex D to Attachment I.

**Related Clauses:** Tenderers must identify in Tender Data Requirement D-2 of Annex D to the TDRL the additional cost to be added to the tendered price should any GFF not be made available.

Tender Data Requirement E-13 of Annex E to the TDRL requests tenderers to provide details of the GFF that they require to perform the Contract, including the date required, location, time period for inspection and intended purpose.

Annex B to Attachment E to the draft conditions of contract will, if required, contain the agreed details of all GFF to be provided under the Contract, including the date required, location, time period for inspection and intended purpose of the GFF.

**Further Reading:** Nil

**ANNEX E TO ATTACHMENT I – PROGRESS CERTIFICATE**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Optional. To be included where progressive achievement of Milestones will be certified by Progress Certification prior to Supplies being Accepted.
<b><u>Purpose:</u></b>	To identify the form to be used by the Contractor and the Project Authority to signify Progress Certification.
<b><u>Policy:</u></b>	<i>DPPM – Section 5, Chapter 5.9</i>
<b><u>Guidance:</u></b>	Progress Certification provides a mechanism by which the Project Authority can provide feedback to the Contractor on progress of a particular Milestone, make payment to the Contractor and vest Supplies in the Commonwealth without such feedback, payment or transfer of ownership being construed as Acceptance of the Supplies.

**AMENDMENT OF THE STANDARD PROGRESS CERTIFICATE**

Drafters may substitute another, more appropriate, Progress Certificate where necessary. Where changes are made to the standard Progress Certificate, drafters must ensure that there is no conflict between the Contract definitions of 'Progress Certification' and 'Acceptance' on the one hand and what the certificate purports to certify, through its wording, on the other. Prior to any changes being made to the Progress Certificate, advice should be sought from Contracting Policy and Operations Branch to ensure no conflict is created between the draft conditions of contract and the Progress Certificate.

**Drafter's Action:** Prior to release of the RFT, drafters must consider whether a Progress Certificate is required.

**Related Clauses:** Clause 6.4 of the draft conditions of contract details the conditions under which Supplies will be Progress Certified and the procedure that will apply to Progress Certification.

Clause 7.2 of the draft conditions of contract indicates that, where applicable, a signed Progress Certificate shall accompany any Milestone Payment claim that relates to Progress Certification.

The Schedule of Payments at Annex B to Attachment B lists all the Milestones that are subject to Progress Certification and includes the amount of any payment that will be made upon the achievement of Progress Certification. It is important that the mechanism which will signify the achievement of each Milestone and entitle a Contractor to payment is included in Attachment B prior to Contract signature.

Attachment I to the draft conditions of contract will contain the agreed Supplies Acceptance Certificate and the agreed Final Acceptance Certificate.

**Further Reading:** Nil



**ANNEX F TO ATTACHMENT I – SUPPLIES ACCEPTANCE CERTIFICATE**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To identify the form to be used by the Contractor and the Project Authority to signify Acceptance of the Supplies.
<b><u>Policy:</u></b>	<i>DPPM – Section 5, Chapter 5.9</i>
<b><u>Guidance:</u></b>	Acceptance provides a mechanism by which the Project Authority can notify the Contractor that the Supplies offered for Acceptance meet the requirements of the Contract.

**AMENDMENT OF THE STANDARD SUPPLIES ACCEPTANCE CERTIFICATE**

Drafters may substitute another, more appropriate, Supplies Acceptance Certificate where necessary. Where changes are made to the standard Supplies Acceptance Certificate, drafters must ensure that there is no conflict between the Contract definitions of 'Progress Certification', 'Acceptance' and 'Final Acceptance' on the one hand and what the certificate purports to certify, through its wording, on the other. Prior to any changes being made to the Supplies Acceptance Certificate, advice should be sought from Contracting Policy and Operations Branch to ensure no conflict is created between the draft conditions of contract and the Supplies Acceptance Certificate.

**Drafter's Action:** Nil

**Related Clauses:** Clause 6.5 of the draft conditions of contract details the conditions under which Supplies will be Accepted and the procedure that will apply to Acceptance.

Clause 7.2 of the draft conditions of contract indicates that a signed Supplies Acceptance Certificate shall accompany any Milestone Payment claim that relates to Acceptance.

The Schedule of Payments at Annex B to Attachment B to the draft conditions of contract will list the agreed Milestones that are subject to Acceptance and include the amount of any payment that will be made upon Acceptance. It is important that the mechanism which will signify the achievement of each Milestone and entitle a Contractor to payment is included in Attachment B prior to Contract signature.

Attachment I to the draft conditions of contract will contain the Final Acceptance Certificate and, if required, the agreed Progress Certificate.

**Further Reading:** Nil

**ANNEX G TO ATTACHMENT I – FINAL ACCEPTANCE CERTIFICATE**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To identify the form to be used by the Contractor and the Project Authority to signify Final Acceptance.
<u>Policy:</u>	<i>DPPM – Section 5, Chapter 5.9</i>
<u>Guidance:</u>	The Final Acceptance Milestone provides a mechanism by which the Commonwealth can notify the Contractor that it has fulfilled all of its obligations under the Contract and make the final payment to the Contractor. Final Acceptance also provides the Commonwealth with a mechanism by which it can withhold the final payment due to the Contractor until all the Contractor's obligations under the Contract have been fulfilled, and the Supplies function and integrate in accordance with the Contract.

**AMENDMENT OF THE STANDARD FINAL ACCEPTANCE CERTIFICATE**

Drafters may substitute another more appropriate Final Acceptance Certificate where necessary. Where changes are made to the standard Final Acceptance Certificate, drafters must ensure that there is no conflict between the Contract definitions of 'Progress Certification', 'Acceptance' and 'Final Acceptance' on the one hand and what the certificate purports to certify, through its wording, on the other. Prior to any changes being made to the Final Acceptance Certificate, advice should be sought from Contracting Policy and Operations Branch to ensure no conflict is created between the draft conditions of contract and the Final Acceptance Certificate.

**CERTIFICATION**

The standard Final Acceptance Certificate requires the Contractor to certify that, other than the claims specifically mentioned in the Final Acceptance Certificate, the Contractor has no further claims outstanding against the Commonwealth. This is so the Commonwealth will know, when deciding whether to sign the Final Acceptance Certificate, whether or not the Contractor has any outstanding claims for payment. Normally, the only outstanding claims expected to be set out in the Final Acceptance Certificate would be for the Final Acceptance Milestone, and any related price variation claim, for which the Commonwealth would make payment following its endorsement of the Final Acceptance Certificate.

However, the Final Acceptance Certificate also makes provision for the Contractor to list other outstanding claims which the Contractor may have against the Commonwealth. Depending on the nature of any such claims, the Commonwealth would need to consider whether it can endorse the Final Acceptance Certificate in accordance with clause 6.6. Advice should be sought from Contracting Policy and Operations Branch where any uncertainty exists regarding the Commonwealth's endorsement of the Final Acceptance Certificate.

Drafter's Action: Nil

Related Clauses: Clause 6.6 of the draft conditions of contract details the conditions under which Final Acceptance will be granted and the procedure that will apply to Final Acceptance.

The Schedule of Payments at Annex B to Attachment B to the draft conditions of contract will list the agreed Milestone that will be subject to Final Acceptance and include the amount of the payment that will be made upon Final Acceptance. It is important that the mechanism which will signify the achievement of the Milestone and entitle a Contractor to payment is included in Attachment B prior to Contract signature.

Attachment I to the draft conditions of contract will contain the agreed Supplies Acceptance Certificate and, if required, the agreed Progress Certificate.

Further Reading: Nil

**ANNEX H TO ATTACHMENT I - CONTRACT CHANGE PROPOSAL**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To provide a proforma to be used for all Contract change proposals.
<b><u>Policy:</u></b>	<i>DPPM – Section 5, Chapter 5.9</i>
<b><u>Guidance:</u></b>	All changes to the Contract must be proposed and approved in accordance with clause 10.1 of the conditions of contract. All Contract change proposals must be in the form of the Contract change proposal at Annex H to Attachment I and, where a change to the Statement of Work is being proposed, must be accompanied by an Engineering change proposal.
<b><u>Drafter's Action:</u></b>	Nil
<b><u>Related Clauses:</u></b>	Clause 10.1 of the draft conditions of contract notifies the Contractor that the Contract may only be varied in accordance with the clause 10.1 and details the process for the proposal and approval of Contract change proposals.  Annex I to Attachment I to the draft conditions of contract will contain the agreed Engineering change proposal proforma.
<b><u>Further Reading:</u></b>	Nil

**ANNEX I TO ATTACHMENT I – ENGINEERING CHANGE PROPOSAL**

**Sponsor:** Contracting Policy & Operations and Materiel Policy & Services

**Status:** Core

**Purpose:** To provide a proforma to be used:

- a. with Contract change proposals where a Major (Class I) configuration change (e.g. to the Functional Baseline) is proposed in accordance with clause 6.5 of the Statement of Work; or
- b. where Minor (Class II) configuration changes (e.g. to the Product Baseline) need to be documented, as required under clause 6.5 of the Statement of Work, but a Contract change is not required.

**Policy:** *DI(G) LOG 08-4, Defence Policy on Configuration Management*

**Guidance:** All changes to the Contract must be proposed and approved in accordance with clause 10.1 of the conditions of contract. All Contract change proposals must be in the form of the Contract change proposal at Annex H to Attachment I and, where a Major configuration change is being proposed, must be accompanied by an Engineering Change Proposal (ECP) in the form of the ECP proforma at Annex I to Attachment I.

Clause 6.5 of the Statement of Work defines the full scope of the requirement to use ECPs to document Major (Class I) and Minor (Class II) configuration changes.

**Drafter's Action:** Prior to release of the RFT, drafters must include the ECP proforma. Drafters should note that there is no standard ECP proforma across the ADO; however, the configuration-management practices of the Maritime, Land and Air environments will normally dictate a specific proforma for use in those environments. Drafters must draft an ECP proforma suitable to the specific requirements of the Contract.

**Related Clauses:** Clause 10.1 of the draft conditions of contract notifies the Contractor that the Contract may only be varied in accordance with the clause 10.1 and details the process for the proposal and approval of Contract change proposals.

Annex H to Attachment I to the draft conditions of contract will contain the agreed Contract change proposal proforma.

Clause 6.5 of the draft Statement of Work details the requirement for ECPs, and the Contractor's obligations with respect to these ECPs.

**Further Reading:** Nil

**ANNEX J TO ATTACHMENT I – MOBILISATION SECURITY DEED**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	RFT Core. This Annex must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
<b><u>Purpose:</u></b>	To specify the format for the Mobilisation Security Deed to be provided by the Contractor under clause 7.5 of the conditions of contract where a Mobilisation Payment is made to the Contractor.
<b><u>Policy:</u></b>	<p>The Commonwealth has a preference for payment on delivery. Where payment on delivery is not appropriate, the Commonwealth prefers to pay by Milestone Payments only, with a Mobilisation Payment where required.</p> <p>All Mobilisation Security Deeds are to be lodged with Corporate Services and Infrastructure Group, Territory Corporate Services, Financial Services Branch, Accounting Operations (AO) Section located at the Tuggeranong Churches Centre T1-1-094.</p> <p><i>Defence CEI Part 2 Instruction 6</i></p>
<b><u>Guidance:</u></b>	A Mobilisation Payment is a mechanism by which the Contractor can receive funding to procure items required for it to fulfil its contractual obligations prior to delivery or Acceptance of any Supplies.

**REQUIREMENT FOR THE MOBILISATION SECURITY DEED**

The Mobilisation Payment will be paid to the Contractor prior to delivery or Acceptance of any Supplies and vesting of ownership of Supplies in the Commonwealth. To prevent the Commonwealth from being an unsecured creditor, clause 7.5 of the conditions of contract requires the Contractor, prior to payment of the Mobilisation Payment, to provide the Commonwealth with an unconditional financial security from a bank or financial institution acceptable to the Project Authority in the form of the Mobilisation Security Deed at Annex J to Attachment I.

**ACCEPTABILITY OF PROPOSED PROMISOR**

It is important that the Project Authority ensures that the successful tenderer's proposed bank or financial institution is acceptable to the Commonwealth. Issues to be considered in determining the acceptability of a bank or financial institution include the financial viability of the bank or financial institution, the accessibility of funds and the enforceability of the Mobilisation Security Deed in the applicable jurisdiction. For further guidance on the acceptability of the proposed promisor, reference should be had to the guidance provided in relation to Tender Data Requirement D-5 of Annex D to the TDRL.

**AMENDMENT OF THE STANDARD MOBILISATION SECURITY DEED**

Drafters may substitute another more appropriate Deed where necessary. Tenderers may also propose amendments to the Mobilisation Security Deed included in the RFT.

Prior to any changes being made to the Mobilisation Security Deed, advice should be sought from Contracting Policy and Operations Branch. For further guidance on the standard Defence financial security requirements and the acceptability of proposed amendments to the deed, reference should be had to the guidance provided in relation to Tender Data Requirement D-5.

**EXECUTION OF THE MOBILISATION SECURITY DEED**

Drafters should note that as the Mobilisation Security Deed is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

### EXERCISING RIGHTS UNDER THE MOBILISATION SECURITY DEED

The Mobilisation Payment security is exercisable by the Commonwealth to recover debts under the Contract or to obtain repayment of the non-amortised portion of the Mobilisation Payment where the Contractor fails to perform the Contract. The Commonwealth cannot exercise the security in any other circumstances or the Contractor may have grounds for legal action against the Commonwealth. Advice should be sought from Contracting Policy and Operations Branch prior to the Commonwealth exercising its rights under the security.

Drafter's Action: No input is required prior to release of the RFT. Prior to Contract signature, drafters should verify whether this attachment is necessary based on the result of contract negotiations.

Related Clauses: Tender Data Requirement D-5 of Annex D to the TDRL requests tenderers to state the acceptability of the Mobilisation Security Deed and the proposed promisor.

Tender Data Requirement D-8 of Annex D to the TDRL requests tenderers to provide a proposed Schedule of Payments that includes the amount, purposes of and date of the proposed Mobilisation Payment.

Clause 7.5 of the draft conditions of contract details the security release arrangements, the financial security requirements for Mobilisation Payments and the Commonwealth's rights to exercise the Mobilisation Payment security.

Clause 7.7 of the draft conditions of contract reserves to the Commonwealth certain rights in the event that the Contractor fails to provide the securities required by clauses 7.5 and 7.6 or the Commonwealth exercises its rights under the securities.

Further Reading: Nil

**ANNEX K TO ATTACHMENT I – PERFORMANCE SECURITY DEED**

- Sponsor:** Contracting Policy & Operations and Materiel Finance Division
- Status:** RFT Core. This Annex must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
- Purpose:** To specify the format for the Performance Security Deed to be provided by the Contractor under clause 7.6 of the conditions of contract.
- Policy:** The Commonwealth requires the Contractor to provide either a performance security under clause 7.6 of the draft conditions of contract or a Deed of Substitution and Indemnity under clause 7.8 of the draft conditions of contract.
- All performance securities are to be lodged with Corporate Services and Infrastructure Group, Territory Corporate Services, Financial Services Branch, Accounting Operations (AO) Section located at the Tuggeranong Churches Centre T1-1-094.
- Defence CEI Part 2 Instruction 6*
- Guidance:** A Contractor may elect to provide a performance security or a Deed of Substitution and Indemnity in accordance with Tender Data Requirement D-5 of Annex D to the TDRL.

**USE OF PERFORMANCE SECURITY VERSUS DEED OF SUBSTITUTION**

Both the performance security and the Deed of Substitution and Indemnity secure the proper performance of the Contract. The performance security provides the Commonwealth with financial relief, whereas the Deed of Substitution and Indemnity entitles the Commonwealth to request that another entity be substituted as the Contractor to perform the Contract.

**ACCEPTABILITY OF PROPOSED PROMISOR**

It is important that the Project Authority ensures that the successful tenderer's proposed bank or financial institution is acceptable to the Commonwealth. Issues to be considered in determining the acceptability of a bank or financial institution include the financial viability of the bank or financial institution, the accessibility of funds and the enforceability of the Performance Security Deed in the applicable jurisdiction. For further guidance on the acceptability of the proposed promisor, reference should be had to the guidance provided in relation to Tender Data Requirement D-5 of Annex D to the TDRL.

**AMENDMENT OF THE STANDARD PERFORMANCE SECURITY DEED**

Drafters may substitute another more appropriate Deed where necessary. Tenderers may also propose amendments to the Performance Security Deed included in the RFT.

Prior to any changes being made to the Performance Security Deed, advice should be sought from Contracting Policy and Operations Branch. For further guidance on the standard Defence financial security requirements and the acceptability of proposed amendments to the deed, reference should be had to the guidance provided in relation to Tender Data Requirement D-5 of Annex D to the TDRL.

**EXECUTION OF THE PERFORMANCE SECURITY DEED**

Drafters should note that as the Performance Security Deed is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

### EXERCISING RIGHTS UNDER THE PERFORMANCE SECURITY DEED

The performance security is exercisable by the Commonwealth to recover debts under the Contract and to obtain compensation for loss suffered in the event that the Contractor fails to perform the Contract. The Commonwealth can not exercise the security in any other circumstances or the Contractor may have grounds for legal action against the Commonwealth. Advice should therefore be sought from Contracting Policy and Operations Branch prior to the Commonwealth exercising its rights under any security.

Drafter's Action: No input is required prior to release of the RFT. Prior to Contract signature, drafters should verify whether this attachment is necessary based on the result of contract negotiations.

Related Clauses: Tender Data Requirement D-5 of Annex D to the TDRL requests tenderers to state the acceptability of the Performance Security Deed and the proposed promisor.

Clause 7.6 of the draft conditions of contract requires the Contractor to provide a financial security to secure its performance of the Contract and details the Commonwealth's right to exercise the security.

Clause 7.7 of the draft conditions of contract reserves to the Commonwealth certain rights in the event that the Contractor fails to provide the securities required by clauses 7.5 and 7.6 or the Commonwealth exercises its rights under the securities.

Further Reading: Nil



**ANNEX L TO ATTACHMENT I – DEED OF SUBSTITUTION AND INDEMNITY**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Finance Division
<b><u>Status:</u></b>	RFT Core. This Annex must be included in all RFTs but depending upon the successful tenderer's response may not be required in the Contract.
<b><u>Purpose:</u></b>	To specify the format for the Deed of Substitution and Indemnity to be provided by the Contractor under clause 7.8 of the conditions of contract.
<b><u>Policy:</u></b>	<p>The Commonwealth requires the Contractor to provide either a performance security under clause 7.6 of the draft conditions of contract or a Deed of Substitution and Indemnity under clause 7.8 of the draft conditions of contract.</p> <p>All Deeds of Substitution and Indemnity are to be lodged with Corporate Services and Infrastructure Group, Territory Corporate Services, Financial Services Branch, Accounting Operations (AO) Section located at the Tuggeranong Churches Centre T1-1-094.</p> <p><i>Defence CEI Part 2 Instruction 6</i></p>
<b><u>Guidance:</u></b>	A Contractor may elect to provide a performance security or a Deed of Substitution and Indemnity in accordance with Tender Data Requirement D-5 of Annex D to the TDRL.

**USE OF PERFORMANCE SECURITY VERSUS DEED OF SUBSTITUTION**

Both the performance security and the Deed of Substitution and Indemnity secure the proper performance of the Contract. The performance security provides the Commonwealth with financial relief, whereas the Deed of Substitution and Indemnity entitles the Commonwealth to request that another entity (the Substituted Contractor) be substituted as the Contractor to perform the Contract.

**ACCEPTABILITY OF PROPOSED SUBSTITUTED CONTRACTOR**

It is important that the Project Authority ensures that the tenderer's proposed Substituted Contractor is acceptable. The Substituted Contractor is usually the Contractor's parent company but may be another entity where acceptable to the Project Authority. Under the Deed the Substituted Contractor agrees to perform the Contract in the place of the Contractor in the event that the Commonwealth is entitled to terminate the Contract for default. Therefore the viability of the company proposed as Substituted Contractor under the Deed of Substitution and Indemnity and its capacity to perform the proposed contract upon substitution must be fully evaluated to ensure that the Commonwealth is adequately protected.

**AMENDMENT OF THE STANDARD DEED OF SUBSTITUTION AND INDEMNITY**

Drafters may substitute another more appropriate Deed where necessary. Tenderers may also propose amendments to the Deed of Substitution and Indemnity included in the RFT.

Advice should be sought from Contracting Policy and Operations Branch prior to any changes to the Deed of Substitution and Indemnity being made.

**ISSUE OF A NOTICE OF SUBSTITUTION**

Under clause 7.8.2 of the conditions of contract, the Project Authority may issue a notice of substitution where it is entitled to issue a notice of termination for default under clause 12.2 of the conditions of contract or at common law. It is important to note that the notice of substitution may be issued where the Commonwealth is *entitled* to issue a notice of termination, and the power does not require the actual issue of a notice of termination. Indeed, it is likely that the right to issue a notice of substitution will be lost if a notice of termination is issued to the Contractor. Where all of the parties agree, the Substituted Contractor may also be substituted for the Contractor at any time in accordance with clause 7.8.5.

In some circumstances it may be preferable to terminate the Contract for default rather than issue a notice of substitution. Issues to be considered include the continuing ability of the Substituted Contractor to perform the Contract from both a financial and technical perspective, the existing delay in the delivery of Supplies under the Contract and the likely damages recoverable by the Commonwealth if it terminates the Contract for default. Advice should be sought from Contracting Policy and Operations Branch prior to the Project Authority issuing a notice of termination or substitution under the Contract.

#### EXECUTION OF THE DEED OF SUBSTITUTION AND INDEMNITY

Drafters should note that as the Deed of Substitution and Indemnity is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

**Drafter's Action:** No input is required prior to release of the RFT. Prior to Contract signature, drafters should verify whether this attachment is necessary based on the result of contract negotiations.

**Related Clauses:** Tender Data Requirement D-5 of Annex D to the TDRL requests tenderers to state the acceptability of the Deed of Substitution and Indemnity and the proposed substituted contractor.

Clause 7.8 of the draft conditions of contract requires the Contractor to provide a Deed of Substitution and Indemnity to secure its performance of the Contract and to details the Commonwealth's right to issue a notice of substitution.

**Further Reading:** Nil

**ANNEX M TO ATTACHMENT I – DEED OF CONFIDENTIALITY AND FIDELITY**

<u>Sponsor:</u>	Contracting Policy & Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To specify the format for the Deed of Confidentiality and Fidelity where required under clause 10.4.3 of the conditions of contract.
<u>Policy:</u>	<i>DPPM – Section 3, Chapter 3.11</i>
<u>Guidance:</u>	Commercial-in-Confidence Information is defined in the Glossary at Attachment M as information that is by its nature confidential or the receiving party knows or ought to know is confidential.

**PROTECTION OF COMMERCIAL-IN-CONFIDENCE INFORMATION:**

Clause 10.4.1 of the conditions of contract places a contractual obligation on both parties to protect Commercial-in-Confidence Information that is received or produced by them except where disclosure of the information is required by law, statutory or portfolio duties, or where disclosure is required so that the Commonwealth can exercise its Intellectual Property rights under the Contract.

The reference to statutory and portfolio duties has been included in clause 10.4.1 to recognise the fact that Defence may be required under statute or as part of its portfolio duties to disclose “Commercial-in-Confidence Information” provided by the Contractor to parliamentary committees or other government agencies such as the Australian National Audit Office.

Clause 10.4.2 of the conditions of contract places a contractual obligation on both parties to obtain the written consent of the other party prior to disclosing Commercial-in-Confidence Information to a third party unless the third party is a legal adviser or the disclosure is allowed by one of the exceptions listed in clause 10.4.1. In granting its consent, the Commonwealth is entitled to require the Contractor to enter into or arrange for a third party to enter into a confidentiality agreement in the form of the Deed of Confidentiality and Fidelity at Annex M to Attachment I.

**TWO VERSIONS OF THE DEED OF CONFIDENTIALITY AND FIDELITY**

It should be noted that there are two versions of the Deed of Confidentiality and Fidelity - one for the Contractor and one for third parties such as Subcontractors and Contractor employees. Both versions of the Deed must be included in the RFT.

**REQUIREMENT FOR A DEED OF CONFIDENTIALITY**

It should be noted that requiring the Contractor to enter into a Deed of Confidentiality and Fidelity may not offer much additional protection to the Commonwealth as the Contractor is already under a contractual obligation to protect Commercial-in-Confidence Information received or produced by it. Requiring the Contractor to enter into the Deed of Confidentiality and Fidelity will, however, place clear restrictions on the use and return of Commercial-in-Confidence Information provided to the Contractor and provide the Commonwealth with an indemnity from the Contractor where it or its employees breach the deed.

On the other hand, as third parties, including Subcontractors and the Contractor's employees, are not in a direct contractual relationship with the Commonwealth, the Deed of Confidentiality and Fidelity – Third Party provides the Commonwealth with a direct remedy against the third party (identified as the Confidant in the Deed) where the third party breaches the obligations placed on it by the deed. Under the deed, the third party provides the Commonwealth with an indemnity where it or its employees breach the deed.

### AMENDMENT OF THE DEED OF CONFIDENTIALITY AND FIDELITY

Tenderers may propose amendments to the Deed of Confidentiality and Fidelity included in the RFT. Advice should be sought from Contracting Policy and Operations Branch prior to any changes being made to the deed. Drafters must ensure that the terms of any negotiated Deed of Confidentiality and Fidelity accord with the Commercial-in-Confidence Information provisions in clause 10.4 of the draft conditions of contract and adequately protect Commercial-in-Confidence Information being provided to the Contractor or third parties.

### EXECUTION OF THE DEED OF CONFIDENTIALITY AND FIDELITY

Drafters should note as the Deed of Confidentiality and Fidelity is a deed it must be executed as such. Drafters should refer to the guidance on execution of deeds contained in the guidance on Attachment I.

Drafter's Action: Nil

Related Clauses: Clause 10.4 of the draft conditions of contract describes the process for dealing with Commercial-in-Confidence Information and places a contractual obligation on both parties to protect Commercial-in-Confidence Information provided to them.

Further Reading: Nil

**ATTACHMENT J – SECURITY CLASSIFICATION GRADING DOCUMENT**

- Sponsor:** Defence Security Authority
- Status:** Optional. To be included where classified material will be produced or provided under the Contract.
- Purpose:** To provide a Security Classification Grading Document (SCGD) to be used by the Contractor to classify any material in its possession relating to the performance of the Contract.
- Policy:** *Defence Security Policy.*
- Guidance:** The SCGD individually lists the security classification of each system, subsystem and component relating to a project. Drafters should include the SCGD in Attachment J prior to release of the RFT where classified material will form part of tenders received. In some instances it may be required that the SCGD itself will be classified. Advice on development of a SCGD can be sought from the Defence Security Authority.

**CLASSIFICATION OF MATERIAL UNDER THE CONTRACT**

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Clause 10.10 of the conditions of contract places an obligation on the Contractor to classify and protect all material in its possession relating to the performance of the Contract according to the SCGD at Attachment J. Drafters must include a SCGD in Attachment J prior to Contract signature where classified material will be produced by the Contractor or provided to the Contractor under the Contract.

- Drafter's Action:** Prior to release of the RFT, drafters should include the SCGD in Attachment J where classified material will form part of tenders received.

Prior to contract signature, drafters must include a SCGD in Attachment J where classified material will be produced by the Contractor or provided to the Contractor under the Contract.

- Related Clauses:** Clause 1.10 of the conditions of tender advises tenderers of the source documents that provide guidance on, and the process that applies to, the preparation and transmission of tenders containing classified material.

Tender Data Requirement E-11 of Annex E to the TDRL requests tenderers to provide details of premises proposed for the storage of classified material and the clearances held by the tenderer and proposed Subcontractors who will require access to classified material.

Clause 10.10 of the draft conditions of contract states the security requirements for the Contract.

- Further Reading:** Nil



**ATTACHMENT K - DRAFT DATA ITEMS**

<b><u>Sponsor:</u></b>	Contracting Policy & Operations and Materiel Policy & Services
<b><u>Status:</u></b>	Optional. To be included where the Commonwealth may wish to attach draft data items to the Contract in accordance with clause 2.4 of the draft Statement of Work.
<b><u>Purpose:</u></b>	To enable draft data items from the successful tenderer's response to be incorporated into the Contract.
<b><u>Policy:</u></b>	Nil
<b><u>Guidance:</u></b>	No information is required to be inserted in Attachment K prior to release of the RFT. Prior to Contract signature, the draft data items listed in clause 2.4 of the draft Statement of Work should be included in Attachment K.

**SELECTING DRAFT DATA ITEMS**

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A key objective of the draft data items provisions is to enable the Commonwealth to 'capture' the Contractor's tender as far as possible in the Contract. In this way, important elements of the Contractor's tender can be incorporated into the Contract so that the Contractor can be held at least to what was tendered.

Draft data items will normally be important plans to be delivered under the Contract that have not been Approved prior to Contract signature. Further guidance on the selection of draft data items is contained in the guidance on clause 9.7 of the draft conditions of contract. Further guidance on the process that will apply to draft data items is contained in the guidance on clause 2.4 of the draft Statement of Work.

**Drafter's Action:** No input is required prior to release of the RFT. Prior to Contract signature, drafters must include the relevant draft data items.

**Related Clauses:** Clause 9.7 of the draft conditions of contract obtains a warranty from the Contractor that the draft data items referred to in clause 2.4 of the draft Statement of Work, even though not yet finalised, are nevertheless satisfactory for their intended purpose.

Clause 2.4 of the draft Statement of Work describes the process that will apply to draft data items included in Attachment K to the conditions of contract.

**Further Reading:** Nil





**ATTACHMENT L - RESIDENT PROJECT PERSONNEL**

- Sponsor:** Contracting Policy & Operations and Materiel Policy & Services
- Status:** Optional. To be included where the Commonwealth requires Resident Project Personnel (RPP) to be collocated with the Contractor at the Contractor's premises.
- Purpose:** To specify the numbers of RPP, terms of reference, and duration of their collocation with the Contractor.
- Policy:** Drafters should be aware that Commonwealth policy prohibits the inclusion within the Contract Price of travel or accommodation costs associated with the movement of Commonwealth personnel. Any such costs must be separately programmed and funded by the Project Authority from the appropriate element of project funding. This prohibition does not extend to the allocation of facilities at the Contractor's premises.
- Guidance:** Drafters are advised to read the guidance that accompanies clause 3.17 of the draft Statement of Work.
- The inclusion of the numbers of RPP and the duration of their collocation at the Contractor's premises enables the Contractor to cost this requirement as part of its tender response.
- The terms of reference ensure that the exact scope of authority of the RPP is evident to all parties to ensure that the requirements of the Contract are not inadvertently compromised by the RPP. This scope of authority should be documented in this Attachment, with any additional terms of reference provided to the RPP in writing by the Project Authority.
- Drafter's Action:** Prior to the release of the RFT, drafters are to insert the numbers of RPP, terms of reference, and duration of their collocation with the Contractor.
- Related Clauses:** Clause 2.1 of the draft conditions of contract relates to the authority of Commonwealth staff under the Contract, including 'Authorised Persons'.
- Clause 3.17 of the draft Statement of Work sets out the requirements for the Contractor to provide support to any RPP, who will be collocated at the Contractor's premises during the Contract.
- Further Reading:** Nil



**ATTACHMENT M - GLOSSARY**

- Sponsor: Contracting Policy & Operations and Materiel Policy & Services
- Status: Core. Optional clauses to be included as appropriate.
- Purpose: This Attachment has multiple purposes, including:
- a. to define the meaning of acronyms and abbreviations;
  - b. to define the meaning of words contained in the Contract;
  - c. to incorporate the referenced documents; and
  - d. to include the Commonwealth's summary WBS Dictionary.

Policy: Nil

- Guidance: Attachment M contains the following elements that are used throughout the Contract, including all Contract Attachments:
- a. acronyms and abbreviations;
  - b. definitions of words;
  - c. referenced documents; and
  - d. summary WBS Dictionary.

#### ACRONYMS, ABBREVIATIONS AND DEFINITIONS

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Drafters should ensure that only those acronyms, abbreviations and definitions that appear in the final Contract are included in the acronym list. As stated in the Note to drafters, the Source Reference column should be removed prior to release of the RFT to ensure that the acronyms, abbreviations and definitions are not limited in their applicability, and should also not be included in any resultant Contract. Additionally, any acronyms, abbreviations and definitions that only apply to the conditions of tender should be removed in the final version of the Contract.

#### General Interpretation Principles

If a court is required to interpret the Contract, it will interpret terms in accordance with the definitions set out in the Contract unless a contrary intention is indicated. Where terms are not specifically defined in the Contract, a court will apply the ordinary dictionary meaning or legally defined meaning, where applicable. A court will also endeavour to interpret terms consistently throughout the Contract where such an interpretation is reasonable. Drafters must therefore ensure that any terms used in the Contract are defined appropriately and used consistently throughout the document. In the event of any inconsistency, the definition contained in the Glossary will apply unless a contrary intention is clearly indicated.

#### Example

*The Commonwealth shall notify its Acceptance of any proposed amendment to the Quality Plan within 30 days of receipt of the proposal.*

As 'Acceptance' is defined to have a specific meaning in the Glossary, a drafter wishing to include the above sentence should replace the word 'Acceptance' with an undefined word such as 'agreement' to avoid using a defined term inconsistently with its defined meaning.

Definitions that apply only to a particular clause

Drafters should note that, where a definition will apply only for a particular clause, the definition should be defined in the clause itself. Drafters must clearly describe the extent of the term's applicability. Where the same term is used in other areas of the Contract, the term will be given its ordinary dictionary meaning.

Example

*In this clause 5.14, "Sunrise Date" means a date or a point in time however described that is specified as such in the IP Plan.*

*For the purposes of this clause 8.4, "infringement" includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990, section 40A of the Design Act 1906, section 183 of the Copyright Act 1968, and section 35 of the Circuits Layout Act 1989, constitute an infringement.*

In addition to including the definition in the particular clause, the definition must also be referred to in the Glossary.

Example

*Sunrise Date for clause 5.8 of the conditions of contract, has the meaning given by clause 5.8.1.*

*infringement for clause 8.4 of the conditions of contract has the meaning given by clause 8.4.*

Use of Multiple definitions

As a court will endeavour to interpret terms consistently throughout the Contract, drafters should avoid using multiple definitions for a term as this may lead to ambiguity. Where a specific clause requires a term to have a different meaning and multiple definitions cannot be avoided, the alternative definition and the circumstances in which it will apply must be clearly stipulated.

Example

*Notwithstanding the definition of "Acceptance" in Attachment M, for the purposes of this clause 9.8, "Acceptance" means the approval by the Project Authority of the Project Management Plan.*

Use of the Singular and the Plural

Drafters should note the operation of clause 1.2 of the draft conditions of contract, particularly that the singular includes the plural and vice-versa. The plural of a defined term will be interpreted based upon the definition of that term. Drafters, therefore, do not need to define both the singular and plural versions of a word.

Example

The phrase *'the Supplies or any of them'* is unnecessary because the operation of clause 1.2 would allow the interpretation of *'the Supplies'* as singular or plural.

Interpretation of Terms in the RFT

Drafters should also remember that clause 1.1 of the conditions of tender states that the RFT will be interpreted in the same manner and its terms will have the same meaning as in the draft Contract. Therefore drafters must ensure that the terms defined in Glossary are used consistently in the conditions of tender including the Tender Data Requirements List (TDRL) and Annexes to the TDRL.

Inclusion of Additional Definitions

Where drafters have added additional clauses in the RFT or Contract to cover project specific requirements and words within those additional clauses require definition, the relevant definition should be inserted in alphabetical order in this Attachment. Drafters should note, however, that where a definition is used only for

a particular clause, the definition should be defined in the clause itself and referenced in the glossary. Drafters must ensure that any such definitions do not contradict other definitions or Commonwealth policy.

#### REFERENCED DOCUMENTS

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Drafters should ensure that only those referenced documents that appear in the final Contract are included in the list of reference documents. As stated in the Note to drafters, the Source Reference column should be removed prior to release of the RFT to ensure that the referenced documents are not limited in their applicability, and should also not be included in any resultant Contract. Drafters should also avoid duplicating those standards that may be referenced in the OCD and FPS to avoid potential conflicts between various parts of the Contract.

#### WBS DICTIONARY

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Drafters need to update this part of the Attachment to provide the definitions for the elements of the summary WBS included in TDR E-2 to the conditions of tender. Any changes to these definitions that arise during offer definition activities or during contract negotiations should be incorporated into the resultant Contract.

As stated in the Note to drafters at the front of the Attachment, the Status column should be removed prior to release of the RFT to ensure that they are not limited in their applicability, and should also not be included in any resultant Contract.

**Drafter's Action:** Prior to release of the RFT, drafters must include the appropriate optional definitions. Prior to contract signature, drafters must update the definitions and remove the definitions for the conditions of tender. Drafters must also remove references to the columns entitled "Source Reference" and "Status" prior to release of the RFT.

**Related Clauses:** Clause 1.1 of the conditions of tender states that the RFT will be interpreted in the same manner and its terms will have the same meaning as in the draft Contract.

Clause 1.1 of the draft conditions of contract defines the meaning of words contained in the Contract by reference to the Glossary at Attachment M.

Clause 1.2 of the draft conditions of contract sets out the basic principles by which the Contract will be interpreted.

Tender Data Requirement E-2 of Annex E to the TDRL contains the summary WBS for the project.

**Further Reading:** Nil

**ATTACHMENT N - COMMERCIAL IN CONFIDENCE INFORMATION**

<u>Sponsor:</u>	Contracting Policy and Operations
<u>Status:</u>	Core
<u>Purpose:</u>	To contain the provisions that are agreed by the parties to be Commercial-in-Confidence in the Contract.
<u>Policy:</u>	<i>DPPM Version 4.0: 2003</i> <i>Defence Security Instruction 10/2001</i> <i>Defence Security Instruction 2/2033</i>

Guidance: Under clause 10.4 of the Contract, the Commonwealth and the Contractor are able to identify the parts, if any, of the Contract and its Attachments that the parties agree will be Commercial-in-Confidence Information as at the Effective Date. These parts must then be specified in Attachment N.

In determining whether to classify any contractual provision as Commercial in Confidence Information, the Commonwealth should have regard to the Department of Finance and Administration *Guidelines on Confidentiality*. These guidelines propose four tests that **must all** be met before information can be designated as Commercial in Confidence information. The four tests to be satisfied are:

- a. The information which is proposed as Commercial in Confidence must be specific, not a global or blanket claim;
- b. The information must have the necessary quality of confidentiality, in so far as there is a continuing benefit of non disclosure;
- c. The impact of disclosure would cause a significant detriment to the relevant party; and
- d. The information was provided on the basis of an understanding that it would be kept confidential.

Six standard reasons for confidentiality have been identified for use by drafters viz that the material contains:

- a. commercially sensitive information, disclosure of which is not in the relevant party's best interest;
- b. details about commercially sensitive pricing information including profit margins and the underlying price basis;
- c. details about insurance and liability regimes that are commercially sensitive;
- d. details about intellectual property regimes that are commercially sensitive;
- e. details about the capability/services being delivered that are commercially sensitive; and
- f. details about contractual rights and remedies, including warranties, financial guarantees and securities and liquidated damages that are commercially sensitive.

Drafters should select the appropriate category for inclusion in the 'reasons for classification' column of the attachment.

Information which is in the public domain, for example Total Contract Price or generic template clauses, is not Commercial-in-Confidence Information.

The provisions that have been agreed to be Commercial-in-Confidence Information and included in Attachment N of the Contract may lose their confidential nature over time or as the Contract is subsequently amended.

Where information has been classified as Commercial in Confidence, this has implications for the handling and protection of the information. Users should refer to the Defence Security Instructions listed under Policy for information regarding storage, handling and protection of Commercial in Confidence Information.

Drafter's Action: Prior to release of the RFT, drafters should include the appropriate category for inclusion in the 'reasons for classification' column of the Attachment.

Related Clauses: A tenderer must provide a list of all contract provisions considered to be Commercial-in-Confidence Information and which are therefore proposed for listing in Attachment N in accordance with the terms of the Commercial-in-Confidence Information of Annex C to Attachment A.

Clause 10.4 of the draft conditions of contract outlines that Commercial-in-Confidence Information must be protected from unauthorised disclosure and Contractors must not misuse the term 'Commercial-in-Confidence'.

Further Reading: Nil







**Australian Government**  

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**Department of Defence**

# **ASDEFCON** **(Strategic Materiel)** **HANDBOOK**

**Volume 2**

Incorporating Guidance to:

**Draft Statement of Work**

**Philosophy behind the Draft  
Statement of Work and  
Annexes**

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**1. SCOPE****1.1 Purpose**

Sponsor: Contract Policy & Operations and Materiel Policy & Services

Status: Core

Purpose: To define the purpose of the Statement of Work (SOW).

Policy: Nil

Guidance: Clause 1.1 defines the purpose of the SOW and should not require amendment for inclusion in the RFT.

Drafter's Action: Clause 1.1 is to be included in the RFT without alteration.

Related Clauses: Nil

Further Reading: Nil

## 1.2 Background

Sponsor: Contract Policy & Operations and Materiel Policy & Services

Status: Core

Purpose: To provide background information on the project that may be useful to the Contractor.

Policy: Nil

Guidance: This section of the SOW provides a brief overview of the background to the project, including its genesis and broad objectives. For example, precursor projects could be summarised, as well as other broad Defence initiatives with which the project is intended to align (e.g. "The project is intended to be consistent with the objectives of the Defence Common Operating Environment.").

As this section is not intended to be contractual in nature, "shall" statements should not be used. Care must also be taken to ensure that statements made in this section do not conflict with other elements of the Contract. One way to avoid this is to out-reference to other documents (e.g. "Joint Project XXXX is seeking to provide the world's best multi-user, remote-controlled mouse trap, as described in the Operational Concept Document (OCD) attached at Annex B to the SOW.").

As a guide, this section should be reasonably short, with sufficient information to establish the background and "set the scene" for the project, but should not provide excessive information that could compromise other parts of the Contract.

Drafter's Action: Drafters are to develop an appropriate background section for inclusion in the draft SOW.

Related Clauses: Nil

Further Reading: Nil

## 2. GENERAL REQUIREMENTS

### 2.1 Scope of Work

Sponsor: Contract Policy & Operations and Materiel Policy & Services

Status: Core

Purpose: To define the Contractor's overall scope of work under the Contract.

Policy: Nil

Guidance: This clause should define the Contractor's overall scope of work under the Contract, covering such activities as design, development, installation, integration, testing, verification, modelling, simulation, conducting reviews, etc.

Note that this is intended to provide a high level definition of what is required, to set the context for the remainder of the SOW. Drafters should ensure that these clauses cover the complete scope of Supplies required under the Contract, noting that this may be the only clause where specific Supplies are actually identified.

This clause should call up the relevant system specification(s) in the appropriate context. Specifications at Annex A and the Operational Concept Document (OCD) at Annex B should be referenced because this may be the only place in the Contract where the respective systems are explicitly required to accord with their specifications.

In developing these clauses, drafters should be aware that the Contractor is not required to deliver a Support System. As explained in the Philosophy volume, the Contractor is required to design the Support System, but is only required to deliver the physical products (including services such as Training) necessary to enable the Support System to operate. The Support System does not come into existence until these physical products are integrated with the existing support infrastructure. For the Commonwealth elements of the Support System, the Commonwealth would normally have a role in this integration (e.g. through transition activities). For the In-Service support contractor elements of the Support System, the Contractor would have responsibility for the implementation of these elements. For all of these reasons, this section of the Contract should also specify any activities that the Contractor is not required to perform, as well as any activities that the Commonwealth is required to perform that impact upon the Contractor's activities under the Contract. Finally, care should be taken in generating these scope clauses to avoid creating conflicts with other clauses in the Contract.

The clause may identify major program phases (e.g. such as increments in an incremental delivery process) or a number and/or phasing of output products.

This clause should address the major product and service deliverables of the program (i.e. it does not include the Contract Data Requirements because these requirements are spelt out elsewhere).

Sample clauses, in addition to the existing clause 2.1.1, might look something like the following:

(For the first major end item (e.g. platform)): *“The Contractor shall deliver [the required number of] [Mission System #1] that meet the requirements of the SS, when the Mission System is operated in accordance with the OCD and is supported in accordance with the implemented Support System.”* Additional words may need to be added to this clause to specify the location for the delivery of each Mission System, if not specified elsewhere.

Similar clauses would be inserted for each other major end item required under the Contract (e.g. simulator, operational support capability, etc). Drafters should ensure that all major stand-alone end items are identified and linked to their appropriate specification (e.g. if DSTO is to be provided with some level of capability to support the new Mission System, then this element would also be identified here). Drafters should ensure that these clauses clearly enunciate which elements of the Contract represent Supplies and whether or not ownership will



transfer to the Commonwealth. Typical examples, where there may be some doubt in this regard, include an in-country Software Support Facility operated by a In-Service support contractor (i.e. Contractor(LS) / Subcontractor(LS)) and Spares that are provided to the Contractor(LS) / Subcontractor(LS). Guidance from CPO should be sought when drafting clauses to address these types of issues.

(For the Support System): *“The Contractor shall design and develop a Support System that meets the requirements of the SSSPEC. The Contractor shall deliver Support System elements, as required under the Contract.”* Of note, the physical products that are required to implement the Support System are designed, developed and delivered in accordance with other clauses of the SOW, and do not need to be specified here.

(For those related activities being performed by the Commonwealth): *“The Commonwealth will [for example]:*

- a. *provide all of the Commonwealth facilities required to implement the Capability;*
- b. *incorporate codification data onto SDSS;*
- c. *provide ADO personnel to undergo training at the places and times agreed between the parties;*
- d. *etc.*

(For those specific aspects of work related to the Contract that are explicitly excluded from the Contract): *“The Contractor is not required to [for example]:*

- a. *provide representation during Acceptance Validation activities being managed by the Commonwealth;*
- b. *modify any element of infrastructure outside the walls of building XYZ at Naval Establishment ...;*
- c. *etc.*

**Drafter's Action:** Drafters need to revise the generic words in clause 2.1.1 to reflect the above issues.

**Related Clauses:** Clause 1.6 of the conditions of contract obligates the Contractor to provide the Supplies and to fulfil all of its other obligations under the Contract for the Contract Price.

**Further Reading:** See also – *Capability Definition Documents Guide*

## 2.2 Delivery of Supplies

**Sponsor:** Contract Policy & Operations and Materiel Policy & Services

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to package Supplies and mark the packaging appropriately in accordance with the nature of the specific Supplies.

**Policy:** Nil

**Guidance:** This clause specifies requirements for packaging and marking of Supplies for initial delivery (under the acquisition Contract), and should not be confused with the Packaging requirements under clause 5 of the draft SOW (refer clauses 5.2.8.3 and 5.3.2.2). Clause 5 defines requirements for packaging when the packaging itself is a Supply, whereas this clause 2.2 addresses the packaging used to package other Supplies (e.g. Spares), and this packaging is not, in and of itself, a Supply. The clause interacts with numerous clauses in the conditions of contract (refer Related Clauses), which relate to care, custody, liability, taxes, duties, customs, export approvals, etc. In the main, this clause 2.2 provides for the administrative activities associated with packaging and marking, whereas all of the liabilities, duties, etc are covered under the conditions of contract.

The Note to drafters highlights that this clause is not intended to include exhaustive marking and consignment documentation requirements, as has been specified in other Defence Contracts. Additional requirements should be included, however, where the regulatory framework dictates these requirements (e.g. for explosive ordnance).

In keeping with the ASDEFCON (Strategic Materiel) principle of utilising the Contractor's own processes where applicable, the Defence packaging standard (i.e. DEF(AUST) 1000C) has deliberately not been mandated. Under the conditions of contract, the Contractor is responsible for delivering Supplies to the designated point of delivery, in a serviceable condition, and by the due date, while meeting all other costs and requirements of the Contract within the Contract price. As such, the specification of a packaging standard, which has the potential to conflict with the Contractor's duty of care under the Contract, is not deemed to be appropriate. Of note, for those items of Packaging that are Supplies under clause 5 of the draft SOW, the Defence packaging standard has been mandated.

**Drafter's Action:** Drafters should determine whether or not additional clauses are required to accord with regulatory requirements; however, as indicated by the Note to drafters, these additional requirements should be kept to a minimum. If not, clause 2.2 is to be included in the RFT without alteration.

**Related Clauses:** Clause 3.3 of the conditions of contract relates to export approvals associated with the Supplies.

Clause 3.4 of the conditions of contract relates to imported supplies and customs entry.

Clause 6.1 of the conditions of contract relates to delivery of Supplies.

Clauses 6.5 and 6.6 of the conditions of contract relate to Acceptance of Supplies.

Clause 6.7 of the conditions of contract relates to ownership and risk with respect to the Supplies.

Clause 7.15 of the conditions of contract relate to taxes and duties associated with the Supplies.

Clause 8.3 of the conditions of contract relates to care of the Supplies.

Clause 5 of the draft SOW contains numerous clauses relating to Packaging, where the packaging itself is the Supply.

**Further Reading:** Nil

**2.3 Deliverable Data Items**

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To define the framework and requirements for deliverable data items.

Policy: DI(G) LOG 03-2, Computer-aided Acquisition and Logistic Support

Guidance: Consideration should be given to the delivery of data items via electronic means such as a Contractor Integrated Technical Information Service (CITIS) to effect electronic delivery. Additional clauses will be required to be included to invoke a CITIS. See DI(G)LOG 03-2 and MIL-STD-974.

For further discussion regarding deliverable data items, see the guidance contained in Annex C to the SOW (CDRL).

Drafter's Action: Apart from the potential differences in delivery method using electronic means, this clause does not need significant tailoring. The majority of the work associated with tailoring of the CDRL is reflected in Annex C to the draft SOW and the associated guidance.

Related Clauses: Annex C to the draft SOW incorporates the CDRL.

Further Reading: See also – *MIL-STD-974, Contractor Integrated Technical Information Service*

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**2.3.1 - DEVELOPMENT AND SUBMISSION OF DATA ITEMS**

---

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to produce, deliver and update all data items in accordance with the Contract Data Requirements List (CDRL).

Policy: Nil.

Guidance: Guidance on the CDRL is provided at Annex C to this part of the Handbook, which explains the use of the CDRL and the data fields contained within the CDRL.

Drafter's Action: Clause 2.3.1 is to be included in the RFT without alteration.

Related Clauses: All other clauses within clause 2.3 of the draft SOW.

Annex C to the draft SOW incorporates the CDRL.

Further Reading: See also – *Annex C to Guidance on the SOW, Contract Data Requirements List (CDRL)*

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**2.3.2 - REVIEW, APPROVAL/NON-APPROVAL, AND ACCEPTANCE OF DATA ITEMS**

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To advise the Contractor of the Commonwealth's actions with respect to data items.

Policy: Nil

Guidance: Clause 2.3.2 advises the Contractor that the Project Authority will Review; Approve or not Approve; or Accept or reject, or provide a Contract change proposal (CCP) for Commonwealth approval in accordance with clause 10.1 of the conditions of contract. The processes associated with the Review, Approval, Acceptance and CCP approval of data items is set out in clauses 2.3.3, 2.3.4 2.3.5 and 2.3.6, respectively. Guidance as to the types of data items that should be subject to these processes is provided in the guidance pertaining to the CDRL at Annex C to this part of the Handbook.

Drafter's Action: Clause 2.3.2 is to be included in the RFT without alteration.

Related Clauses: All other clauses within clause 2.3 of the draft SOW.

Annex C to the draft SOW incorporates the CDRL.

Further Reading: See also – *Annex C to Guidance on the SOW, Contract Data Requirements List (CDRL)*

### 2.3.3 - DATA ITEM REVIEW

---

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To advise the Contractor of the meaning of data item Review, and to impose an obligation on the Contractor to respond to any review comments provided by the Project Authority.

Policy: Nil

Guidance: Guidance as to the types of data items that should be subject to data item Review is provided in the guidance pertaining to the CDRL at Annex C to this part of the Handbook.

Clause 2.3.3 enables the Commonwealth to provide comments on those data items that are subject to Review, without “buying into” the Contractor’s developmental processes. The Contractor is recognised as the Design Authority under the Contract and, as such, is required to exercise expert judgement in response to the Commonwealth’s comments. The Commonwealth, on the other hand, does not hold itself up as an expert either:

- a. in the technical domains pertinent to the Contract; or
- b. in the application of the Contractor’s processes in the design and development of the solution.

The Commonwealth is relying upon the expert judgement of the Contractor to evaluate the Project Authority’s comments and to respond accordingly using that expert judgement. The provisions of clause 2.3.3 are based upon this role differentiation, and act to protect the Commonwealth in those situations where review comments could be construed as “over-stepping the mark”.

In general, the Commonwealth should limit its review comments on data items consistent with the principles of Clear Accountability In Design (CAID). This philosophy and the rationale for its adoption in ASDEFCON (Strategic Materiel) is explained further in Section 10.4 of the Philosophy volume.

Clause 2.3.3.1d requires the Contractor to address the Commonwealth’s review comments; however, the clause does not require the Contractor to incorporate the comments into the data item. If the Contractor does not incorporate the review comment, however, the Project Authority should expect the Contractor to advise how it has addressed the Commonwealth’s concerns and, if no action has been taken, to advise why not.

Drafter's Action: Clause 2.3.3 is to be included in the RFT without alteration.

Related Clauses: All other clauses within clause 2.3 of the draft SOW.

Annex C to the draft SOW incorporates the CDRL.

Further Reading: See also – *Annex C to Guidance on the SOW, Contract Data Requirements List (CDRL)*.

### 2.3.4 - DATA ITEM APPROVAL

---

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To advise the Contractor of:

- a. the meaning of data item Approval,
- b. the Commonwealth's obligations with respect to data items that are subject to Approval by the Commonwealth, and
- c. the scope of the Commonwealth's rights with respect to non-Approval of data items.

To impose an obligation on the Contractor to respond to any notification of non-Approval of a data item.

Policy: Nil

Guidance: The guidance under the preceding clause is equally as applicable under this clause.

Specific attention is drawn to clause 2.3.4.4, which outlines the scope of the Commonwealth's rights with respect to data items that are subject to Approval. This clause was inserted after consultation with industry representatives to address their concerns with prior Approval practices, and to ensure that the Commonwealth was only able to non-Approve data items for substantive reasons. The agreed reasons, which require judgement in their application by the Project Authority (as stated in the clause), provide for the full range of possible substantive reasons. For example, the Commonwealth would not be able non-Approve a data item for minor grammatical or spelling problems; however, it would be able to non-Approve the same data item if the grammatical and spelling problems were so widespread that the data item was not "clearly understandable". Clearly, this issue becomes more important if a data item will be delivered to the Commonwealth for support purposes (e.g. a technical manual). It is for these reasons that the clause explicitly allows for subjective judgement and specifies the Project Authority (i.e. the customer's representative) as the final arbiter. In matters of contention, of course, the Project Authority should be addressing his/her concerns with the Contractor in parallel with submitting the formal review comments.

Drafters should note the example provided in the Schedule of Milestone Entry and Exit Criteria at Annex C to Attachment B of the draft Contract. This example schedule includes as entry criteria:

- a. Acceptance/Approval (as relevant) of all CDRL items scheduled for delivery prior to or at each Mandated System Review (for CDRL items subject to Acceptance or Approval); and
- b. Delivery of all CDRL items scheduled for delivery prior to or at each Mandated System Review (for CDRL items subject to Review).

Under this approach, the Commonwealth has the ability not to enter any Mandated System Review until the requisite data items have been delivered, Approved or Accepted, as applicable. Furthermore, given that Mandated System Reviews are generally identified as Stop Payment Milestones, the implications for the Contractor of not entering a Mandated System Review (and, therefore, not being able to exit the review) are self-evident. An alternative approach (but probably not as clean) would be to include the specific data items within the body of the DMO Checklists. Clause 7.11 of the conditions of contract sets out the provisions with respect to failure to achieve certain Milestones.

Drafter's Action: Clause 2.3.4 is to be included in the RFT without alteration.

Related Clauses: All other clauses within clause 2.3 of the draft SOW.

Annex C to the draft SOW incorporates the CDRL.

Annex D to the draft SOW lists the DMO Checklists invoked by the SOW.

Clause 6.1 of the conditions of contract sets out the provisions with respect to delivery of Supplies.

Clause 6.5 of the conditions of contract sets out the provisions with respect to Acceptance of Supplies.

Clause 7.11 of the conditions of contract sets out the provisions with respect to failure to achieve certain Milestones.

Annex C to Attachment B of the draft Contract provides the covering provisions and the repository for the Schedule of Milestone Entry and Exit Criteria.

**Further Reading:** See also – *Annex C to Guidance on the SOW, Contract Data Requirements List (CDRL)*

### 2.3.5 - DATA ITEM ACCEPTANCE

---

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To place a contractual obligation on the Contractor to process data items, which are subject to Acceptance, in accordance with the provisions of this clause.

**Policy:** Nil

**Guidance:** The guidance under clauses 2.3.3 and 2.3.4 is also relevant here.

**Drafter's Action:** Clause 2.3.5 is to be included in the RFT without alteration.

**Related Clauses:** All other clauses within clause 2.3 of the draft SOW.

Annex C to the draft SOW incorporates the CDRL.

Annex D to the draft SOW lists the DMO Checklists invoked by the SOW.

Clause 6.1 of the conditions of contract sets out the provisions with respect to delivery of Supplies.

Clause 6.5 of the conditions of contract sets out the provisions with respect to Acceptance of Supplies.

Clause 7.11 of the conditions of contract sets out the provisions with respect to failure to achieve certain Milestones.

Annex C to Attachment B of the draft Contract provides the covering provisions and the repository for the Schedule of Milestone Entry and Exit Criteria.

**Further Reading:** See also – *Annex C to Guidance on the SOW, Contract Data Requirements List (CDRL)*

### 2.3.6 DATA ITEMS DELIVERED UNDER CONTRACT CHANGE PROPOSALS

---

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to deliver those data items requiring a Contract change proposal to do so in accordance with clause 10.1 of the conditions of contract.

**Policy:** Nil

**Guidance:** Clause 2.3.6 addresses those data items that necessitate a change to the Contract. Examples of these data items include:

- a. the System Specification and the Support System Specification (to establish these specifications as the Functional Baselines for the Mission System and Support System, respectively); and
- b. provisioning lists, which document the exact range and quantities of items (e.g. Spares, Packaging, Support and Test Equipment and Training Equipment) that will be procured under the Contract.

**Drafter's Action:** Clause 2.3.6 is to be included in the RFT without alteration.

**Related Clauses:** All other clauses within clause 2.3 of the draft SOW.

Annex C to the draft SOW incorporates the CDRL.

Further Reading: See also – *Annex C to Guidance on the SOW, Contract Data Requirements List (CDRL)*

### 2.3.7 - DATA ITEM UPDATES

---

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to maintain the accuracy, completeness and currency of all data items delivered under the Contract in accordance with the CDRL.

Policy: Nil.

Guidance: Attention is drawn to clauses 2.3.7.3 and 2.3.7.4. The first clause states that any proposed amendments to data items shall be subject to the same Review and Approval processes specified in clause 2.3. This means that the guidance under 2.3.3 and 2.3.4 is equally applicable here with respect to the proposed amendment. The second clause states that, until a proposed amendment to an Approved data item is Approved, the original data item remains in effect. This second clause provides protection to the Commonwealth in those situations where the Contractor might wish to step away from the agreed position documented in an Approved data item (e.g. for reasons of cost). Clause 2.3.7.4 prevents this from occurring without Commonwealth consent.

Drafter's Action: Clause 2.3.7 is to be included in the RFT without alteration.

Related Clauses: All other clauses within clause 2.3 of the draft SOW.

Annex C to the draft SOW incorporates the CDRL.

Annex D to the draft SOW lists the DMO Checklists invoked by the SOW.

Clause 6.1 of the conditions of contract sets out the provisions with respect to delivery of Supplies.

Clause 6.5 of the conditions of contract sets out the provisions with respect to Acceptance of Supplies.

Clause 7.11 of the conditions of contract sets out the provisions with respect to failure to achieve certain Milestones.

Annex C to Attachment B of the draft Contract provides the covering provisions and the repository for the Schedule of Milestone Entry and Exit Criteria.

Further Reading: See also – *Annex C to Guidance on the SOW, Contract Data Requirements List (CDRL)*

## 2.4 Draft Data Items Included as Contract Annexes

**Sponsor:** Contract Policy & Operations and Materiel Policy & Services

**Status:** Optional. To be included where the Commonwealth requires certain draft data items to be included in the Contract and warranted by the Contractor.

**Purpose:** To identify the specific draft data items that are warranted by the Contractor under clause 9.7 of the conditions of contract, and to identify the actions that will occur on Approval of any subsequent deliveries of these draft data items under the Contract.

**Policy:** Nil

**Guidance:** Each tenderer will deliver many draft data items as part of its tender response (e.g. draft plans, initial provisioning lists for spares and S&TE, etc). Attaching these draft data items provides a mechanism for capturing the tenderer's offer in the resultant Contract. As such, drafters should only attach those draft data items for which there is benefit to the Commonwealth in having them attached to the Contract.

If there is an offer definition phase and, as part of this phase, certain draft data items are updated by the Contractor and Approval of these data items is provided by the Commonwealth, then these Approved data items should not be attached to the resultant Contract (refer to the Note to drafters in this clause). Only data items that are not Approved should be attached to the Contract through this clause.

Following Approval of any of the data items that have been attached to the Contract, clause 2.4.3 specifies that the relevant data item shall be considered superseded and shall be withdrawn from Attachment K through an amendment to the Contract. This approach is required to avoid confusion as to which version of a data item applies to the Contract. Until the further versions of the data items are Approved by the Project Authority, the draft data items at Attachment K have applicability under the Contract, in accordance with the specific warranty provided by the Contractor under clause 9.7 of the conditions of contract. Drafters should note that data items for which prior Approval has been obtained do not require a warranty because a Contract-ready version of the data item has already been obtained.

Clause 9.7 of the conditions of contract provides additional guidance on the issues associated with clause 2.4, and the two sets of guidance should be read together.

**Drafter's Action:** Drafters are to amend clause 2.4.1 to identify the specific data items that are subject to the Contractor's warranty. Drafters also need to attach the draft data items in an annex (or multiple annexes) to Attachment K to the Contract. Drafters should take particular notice of the Note to drafters in this clause.

Drafters are to update the CDRL to ensure that those data items for which Approval was provided prior to the Effective Date are correctly annotated as such, in accordance with the Note to drafters.

**Related Clauses:** Clause 9.7 of the conditions of contract addresses the warranty requirements for draft data items that are attached to the Contract.

Attachment K to the Contract provides the repository for draft data items included as Contract Annexes.

**Further Reading:** Nil



## 2.5 Ozone Depleting Substances and Hazardous Substances

<u>Sponsor:</u>	Contract Policy & Operations and Defence Safety Management Agency
<u>Status:</u>	Core
<u>Purpose:</u>	To detail the Ozone Depleting Substances and Hazardous Substances that may be included in the Supplies.
<u>Policy:</u>	DPPM - Section 3 Chapter 3.10 paragraphs 1010-1016 and 1036-1037 DPPM - Annexes 3F and 3G Annex D to Chapter 1 of Part 5 of Volume 1 of the Defence Safety Manual (SAFETYMAN) Ozone Protection Act 1989
<u>Guidance:</u>	The Commonwealth has a legislative obligation as an employer to take all reasonably practicable steps to protect the health and safety of its employees, Contractors and their staff and other persons at or near Defence workplaces. Commonwealth policy also requires Defence to protect the environment where ever possible. Therefore Defence policy states that Supplies should be free from Ozone Depleting Substances and Hazardous Substances to the maximum extent possible.

### Ozone Depleting Substances

Drafters must select between the two options for Ozone Depleting Substances. Wherever possible, drafters should select the first option, which requires the Contractor to provide Supplies that are free of Ozone Depleting Substances. Where the use of Ozone Depleting Substances can not be avoided due to the nature of the Supplies, the second option should be selected. The second option places a contractual obligation on the Contractor to provide Supplies that do not contain Ozone Depleting Substances, except for substances authorised by the Project Authority and listed in the specified Annex to the Statement of Work.

Substances classed as Ozone Depleting Substances are listed in Schedules 1 and 3 of the Ozone Protection Act 1989. It should be noted that quotas are imposed on individual companies in relation to the importation and manufacture of Ozone Depleting Substances.

### Hazardous Substances

The criteria for determining whether a substance is hazardous are detailed in NOHSC: 1008 (1999) "Approved Criteria for Classifying Hazardous Substances".

Drafters must select between the two options for Hazardous Substances. Wherever possible, drafters should select the first option, which requires the Contractor to provide Supplies that are free of Hazardous Substances. Where the use of Hazardous Substances can not be avoided due to the nature of the Supplies, the second option should be selected. The second option places a contractual obligation on the Contractor to provide Supplies that do not contain Hazardous Substances except for substances authorised by the Project Authority and listed in the specified Annex to the Statement of Work.

Where the second option is selected, the Contractor must also comply with any conditions set out in the Annex and ensure that:

- a. full details of Hazardous Substances included in the Supplies are provided to the Project Authority;
- b. all documentation supporting the Supplies clearly identifies the nature of the hazard; and
- c. all Supplies containing Hazardous Substances are labelled to clearly identify the nature of the substance and the associated hazards.

In addition to the requirement to only use authorised Hazardous Substances, clause 2.5.6 of the second option places an obligation on the Contractor to notify the Project Authority where it becomes aware of a non-Hazardous Substance that could be substituted for a Hazardous Substance being incorporated in the Supplies. Where it is considered appropriate to use the alternative non-Hazardous Substance, a Contract Change Proposal (CCP) should be submitted and Approved in accordance with clause 10.1 of the conditions of contract.

#### General Environmental Requirement

Clause 2.5.7 places an obligation on the Contractor to deliver Supplies that do not emit fumes, liquids, solids, heat, noise, electromagnetic or other radiation which could be detrimental to personnel, the environment or the operation of other equipment. It is important to note that the requirement in clause 2.5.7 is only applicable to the extent it is consistent with the function of the Supplies. Where Supplies will contravene clause 2.5.7, a clear statement of the nature and the extent of the allowable emission should be included in the Statement of Work to ensure both parties understand the nature and impact of the emission and to enable the Commonwealth to put in place procedures to minimise the environmental and/or safety risks associated with the Supplies.

**Drafter's Action:** Drafters must select between the two options for both Ozone Depleting Substances and Hazardous Substances. Where the second option is selected for either Ozone Depleting Substances or Hazardous Substances, drafters should include the details of any Hazardous Substances or Ozone Depleting Substances (as applicable) that are authorised for inclusion in the Supplies in an Annex to the SOW prior to release of the RFT. The relevant Annex reference must be included in clause 2.5.

**Related Clauses:** Tender Data Requirement (TDR) E-10 of the conditions of tender requests tenderers to provide details of any Hazardous Substances or Ozone Depleting Substances that are proposed for inclusion in the Supplies.

'Ozone Depleting Substances' and 'Hazardous Substances' are defined in Attachment M of the conditions of contract.

Clause 11.4 of the conditions of contract places an obligation on the Contractor to provide Supplies that do not render the Commonwealth in breach of its Occupational Health and Safety obligations.

**Further Reading:** Defence Safety Management Agency website at:

<http://www.defence.gov.au/dpe/dsma/>

National Occupational Health and Safety Commission website at:

<http://www.nohsc.gov.au>

## 2.6 Commonwealth-Directed Trade Studies

**Sponsor:** Materiel Policy & Services

**Status:** Optional. To be included where the Commonwealth requires specific issues to be further investigated as Commonwealth-directed trade studies.

**Purpose:** To impose an obligation on the Contractor to undertake trade studies into aspects of its proposed solution for either the Mission System or the Support System.

**Policy:** Policy requirements will depend upon the nature of the Trade Study (e.g. a study into supportability could be subject to a number of logistics policies).

**Guidance:** This optional clause should be utilised if the Project Authority wishes to investigate specific aspects of the Contractor's proposed solution for either the Mission System or the Support System. If an offer definition phase is programmed, these proposed trade studies could be undertaken as part of this phase (to the extent practicable) to enable the cost, schedule and performance implications to be understood and captured before Contract award. In this situation, however, clause 2.6 would not be required, and the required trade studies would be included as part of the offer definition activities in the conditions of tender (e.g. in Annex J to Attachment A to the conditions of tender).

Certain types of trade studies will not be able to be undertaken during the offer definition phase (e.g. those trade studies that require the design process to have been commenced or, perhaps, even well-advanced), and this clause should be utilised for these types of trade studies. Of note, this clause should not be utilised for trade studies that would be a normal part of the Contractor's design processes, and should only be utilised to assess those specific aspects of the Contractor's proposed solution for which there are likely to be benefits to the Commonwealth.

These Commonwealth-directed trade studies would normally be conducted in accordance with the Contractor's own processes, in keeping with the ASDEFCON (Strategic Materiel) principle of utilising the Contractor's own processes where applicable. Nevertheless, there may be specific trade studies where additional requirements need to be included. In these instances, the SOW that describes the trade study requirements would also need to specify these additional requirements. As stated in the Note to drafters under this clause, the SOW should include the tasks to be undertaken, criteria for evaluation, and reports to be delivered. This SOW (and specification, if required) could be included directly into clause 2.6 or, if significant enough, as a separate annex to the main SOW and referenced from clause 2.6. Any data deliverables associated with these trade studies would also need to be included in the CDRL.

Supportability characteristics of the Mission System and Support System (and potential avenues for supportability improvements) are likely candidates for Commonwealth-directed trade studies under this clause. These trade studies are usually applications of the Logistic Support Analysis (LSA) Tasks to analyse specific Standardisation Opportunities, Technological Opportunities, or Support System Alternatives.

The scope and objectives of any Commonwealth-directed trade study need to be clearly defined. For example, requesting the "investigation of Standardisation Opportunities" is inadequate without explanation of the scope of the analysis (e.g. standardisation with particular systems or the level of interoperability that is sought) and the objective (i.e. reduction in Life Cycle Cost (LCC), improved deployability of maintenance support, etc).

For supportability trade studies, Annex A to Chapter 6 of Part 4 of the ADO LSA Manual provides a template outline for such a trade study request. Conduct of the supportability trade study should be in accordance with the Approved ISP and/or SEMP, as specified in clause 2.6.1 of the draft SOW. The exact format of the Contractor's delivery of the results will vary; however, they should contain, as a minimum, the details included in DID-ILS-DES-SUPTSR. Depending upon the program and study requirements, the Project Authority may need to modify DID-

ILS-DES-SUPTSR. Nevertheless, if the template for the trade study request is utilised, the resultant trade study requirement is to be attached as an annex to the SOW and referenced from clause 2.6. In this way, it is clear that these Commonwealth-directed trade studies are subject to the same terms and conditions as the other elements of the draft SOW.

The schedule for conducting any trade study will need to be aligned with the Contractor's developmental processes, with the delivery of the trade study results scheduled to occur at a time when the results can be appropriately fed into these processes. In general, this schedule will need to be negotiated with the Contractor prior to Contract award. For example, a trade study into Mission System design supportability (e.g. to include a health and usage monitoring system) would need to be delivered at the System Requirements Review (SRR) or the System Definition Review (SDR) for feasibility and at the Preliminary Design Review (PDR) and the Detailed Design Review (DDR) for details of implementation. Alternatively, analysis of the use of Interactive Electronic Technical Manuals (IETMs) may not be required until much later (e.g. at the DDR or at the Support System DDR (SSDDR)).

**Drafter's Action:** Drafters must determine whether or not there are any specific issues that require further investigation as Commonwealth-directed trade studies.

Drafters are to include the appropriate Annex reference in clause 2.6.1.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

'Mission System', 'Standardisation Opportunity', 'Support System', and 'Technological Opportunity' are defined in Attachment M of the conditions of contract.

**Further Reading:** Nil



### **3. PROJECT MANAGEMENT**

#### **3.1 Contractor's Project Management Organisation**

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to establish and maintain a discrete project-management organisation with suitable capability to perform the Contract.

Policy: Nil

Guidance: The Commonwealth expects that the Contractor will manage the resultant Contract using sound project-management principles and practices, given the likely scope and cost associated with Defence acquisition Contracts. This clause provides the overarching obligation within which other subordinate elements (e.g. the SE organisation or the ILS organisation) must operate.

The conditions of this clause should apply to the Contractor and all Approved Subcontractors. The Contractor should flow down all requirements of this clause to all Approved Subcontractors.

Drafter's Action: Clause 3.1 is to be included in the RFT without alteration.

Related Clauses: TDR E-5 of the conditions of tender requests tenderers to provide details of their organisational structure as part of the Project Management Plan.

Further Reading: Nil

### 3.2 Project Planning

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that the Contractor (and the Commonwealth Project Office) has realistic plans at all times. This includes activities that are not explicit components of the Contract itself such as the Contractor's setting up of the infrastructure to conduct the project activities.

Policy: DMO policy requires a sound, project-management approach be adopted by the Contractor for the management of its contractual obligations. Specific policy for project management is outlined in relevant Process Reference Pages of the DMO's Standard Acquisition Management System and can be accessed through the DMO Knowledge System. In the ensuing sub-sections, where no specific policy is identified, this overarching policy is relevant.

Guidance: There are no 'winners' in a project having unrealistic plans. Unrealistic plans will result in the Contractor appearing not to perform and the Project Authority appearing not to be doing their job, which will then reflect badly on DMO senior management and will ultimately result in having to replan. Replanning is an expensive exercise in terms of budget and schedule and should be avoided if there are other means of bringing the project back into line with the existing plan.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

#### 3.2.1 - PROJECT START UP PLAN

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to submit a Project Start Up Plan for agreement by the Project Authority and to manage project start up in accordance with the agreed plan.

Policy: See Section 3.2.

Guidance: A Project Start Up Plan is required to ensure orderly and timely establishment of a project team and the necessary infrastructure to perform the Contract. The plan enables the Commonwealth to monitor Contractor progress during this critical phase of the project from Effective Date (or before) up until the time of the planned Earned Value Management System (EVMS) Integrated Baseline Review (IBR).

There are a number of factors that combine to work against an orderly and timely project start up within the Contractor's organisation, including the following:

- a. due to the associated costs, Contractors do not normally commence project start up activities, such as recruiting and infrastructure development until after Contract signature;
- b. at Contract signature, there are usually only a handful of people working on the project.;
- c. there is usually a significant number of document deliverables due within the first few months of the project, against which payment milestones are associated.; and
- d. the Contractor's project team will be put under great internal pressure to deliver these documents and achieve the payment milestones, to the detriment of the project start up activities.

It is possible for the Contractor to perform a considerable number of project start-up activities, before Contract signature, without expending or committing significant funds. Examples of such activities include:

- a. staff recruiting activities for key staff, including advertising, the conduct of interviews and agreement of salary packages, but stopping short of a formal job offer (noting that, once the Contract is signed, formal job offers can be made, thereby permitting the successful applicants to submit their resignation from their current job and to commence work after their contract notice period);
- b. identification of the numbers and types of computers and software needed on a cumulative monthly basis during project start-up (i.e. all activities short of placing an order);
- c. identification of office accommodation and furniture and fittings on a cumulative monthly basis during project start-up (i.e. all activities short of placing a purchase order); and
- d. other potential activities identified in the DID for the Project Start Up Plan (DID-PM-START-PSP).

**Drafter's Action:** Clause 3.2.1 is to be included in the RFT without alteration.

**Related Clauses:** Nil

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Project Planning*

### 3.2.2 - PROJECT MANAGEMENT PLAN

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to submit a Project Management Plan (PMP) for agreement by the Project Authority and to manage the project in accordance with the agreed PMP.

**Policy:** See Section 3.2.

**Guidance:** The Project Management Plan (PMP), including or supplemented by subordinate plans, is used by the Contractor to provide direction and guidance to the Contractor's management team responsible for conduct of the work. The PMP is also used by the Project Authority to gain visibility of the Contractor's planning and to provide input into Project Authority planning.

The PMP should provide an overview of the different project processes and how they fit together to form a totally integrated management system for the project. As an analogy it should be like the key map at the front of a street directory. It should provide an overview and show how all of the detailed processes (maps) fit together.

The PMP identifies the Contractor's Project Management (PM) processes as Approved by the Project Authority and will be the reference used in conducting PM process evaluation at various reviews throughout the project lifecycle.

Note that a distinction is made between the PMP and the detailed planning documents. The PMP is a 'how' document describing the Contractor's approach to the management of the project. The detailed planning documents will include the WBS, WBS Dictionary, Schedule, Staff/Skills Profile, Risk Log and budgets, etc. In a typical project, the PMP may be in the order of 50-100 pages in length, whereas the detailed planning documents may contain the equivalent of many thousands of pages of data.

**Drafter's Action:** Clause 3.2.1 is to be included in the RFT without alteration.

Depending upon whether or not the Project Authority intends to obtain a Contract-ready PMP prior to Contract (i.e. through offer definition activities or contract negotiations), the CDRL delivery times for the PMP may need to be adjusted.

**Related Clauses:** Clause 3.5 of the conditions of tender addresses the offer definition phase.

TDR E-5 of the conditions of tender requests each tenderer to provide a draft PMP.



Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Project Planning*

### 3.2.3 - CONTRACT MASTER SCHEDULE (CMS)

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to submit a Contract Master Schedule (CMS) for agreement by the Project Authority and to use the Approved CMS as the primary schedule for managing the Contract.

Policy: See Section 3.2.

Guidance: The CMS describes the Contractor's planned sequence of activities, milestones and decision points to enable the objectives of the Contract to be met. Additionally, the CMS defines the current project schedule status, comparing the current schedule with the Contracted schedule. The CMS also compares the current schedule status with any applicable baseline schedule. DID-PM-DEF-CMS provides more detail on the scope of coverage of the CMS.

The CMS and the Contract Work Breakdown Structure (CWBS) are the two key deliverables for understanding the Contractor's (and Subcontractors') planned scope of work under the Contract, the plan for undertaking this scope of work, and (for the CMS only), the status of the project at any particular time. Under ASDEFCON (Strategic Materiel), the Contractor only needs to deliver a single, integrated schedule because the (normally) separate schedules for each of the functional disciplines (e.g. SE, ILS and V&V) have been incorporated into the CMS. DID-PM-DEF-CMS provides more detail on the integration of the CMS with other management requirements, such as the Earned Value Management System (EVMS) (noting that the Performance Measurement Baseline (PMB) is defined, in part, by the CMS).

Tender Data Requirement (TDR) E-3 of the conditions of tender requests each tenderer to provide a draft CMS as part of its tender response. The draft CMS would normally provide one of the inputs for determining the payment schedule under the Contract (e.g. by defining the dates for Milestone payments and by defining the basis within which cash-flow issues can be addressed); however, its major function during the tender phase is to assist with the assessment of risk. If an offer definition phase is programmed, it is recommended that the CMS be one of the deliverables that is further refined during this phase. Otherwise, drafters should attach the draft CMS to the Contract for the Contractor to use as a basis for development of the CMS to be delivered under the Contract (clause 2.4 of the draft SOW refers).

Clause 3.2.3 details the procedure and timeframes that apply for the submission, agreement and amendment of the CMS. Specific attention is drawn to clause 3.2.3.5, which allows the Contractor to amend the Approved CMS without first obtaining Commonwealth Approval. This clause provides the Contractor with the flexibility to manage the project as contingencies arise. Nevertheless, this clause also recognises that there are two parties to a Contract, and the Contractor cannot amend the schedule, without first obtaining the Commonwealth's Approval if the Commonwealth will be affected. This obligation on the Contractor means that, for projects that run into difficulties, the Commonwealth is not automatically required to meet its end of the contractual bargain when the Contractor wishes to accelerate the schedule. For example, if a Contractor were to apply more resources to a project and, therefore, be able to undertake more activities in parallel, this could have significant implications for the Commonwealth. Coincident deliveries of multiple data items, for example, could place a Commonwealth project office under considerable stress, given that the CDRL would normally state that the Project Authority has only a set number of days to provide responses. Additionally, parallel testing activities in multiple locations could be equally problematic. For these reasons, clause 3.2.3.5 has been inserted into the draft SOW to ensure that

the implications of any changes on the Commonwealth can be appropriately addressed with the Contractor.

Clause 3.2.3.3 specifies Open Plan Professional as the Commonwealth's preferred scheduling software package. Nevertheless, the clause recognises that there are a great number of scheduling packages that could be used by a contractor. In keeping with the ASDEFCON (Strategic Materiel) principle of utilising the Contractor's own processes where applicable, however, drafters should consider whether or not any alternative software packages proposed by a tenderer will meet the requirements of the project. Advice should be sought from the Director of Project Management Systems, Materiel Policy & Services before any alternative software package is agreed.

**Drafter's Action:** Clause 3.2.3.3 of the draft SOW is to be amended, prior to Contract signature, to incorporate the agreed scheduling software package into the clause.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft SOW describes the process for Draft Data Items included as Contract Annexes.

'Effective Date' is defined in the Glossary at Attachment M to the Contract.

TDR E-3 of the conditions of tender requests each tenderer to provide a draft CMS.

Clause 3.2.4 of the draft SOW sets out the requirement for the establishment, use and maintenance of a CWBS.

Clause 3.2.5 of the draft SOW sets out the requirement for the establishment, use and maintenance of an EVMS.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Project Planning*

### 3.2.4 - CONTRACT WORK BREAKDOWN STRUCTURE

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to submit a Contract Work Breakdown Structure (CWBS) for agreement by the Project Authority and to manage the project in accordance with the agreed CWBS. The clause also establishes the conditions under which the CWBS may be amended without first seeking Commonwealth Approval.

**Policy:** See Section 3.2.

**Guidance:** The CWBS provides the mechanism for the integration of technical control with cost and schedule control for the project. It provides the integration framework for all project activities.

Although it is the Contractor who develops the CWBS, the Project Authority must be able to review any proposed CWBS to ensure that it satisfies all of the Commonwealth's technical, as well as cost and schedule, control objectives.

The CWBS consists of product elements and service elements. The product elements are usually decomposed by other products, as defined by the specification tree. The service elements, such as Project Management and Systems Engineering, are usually decomposed by other lower level service elements, as defined by the Contractor's Statement of Work (SOW). All products and services identified by the SOW must be contained within the CWBS somewhere.

To achieve integrated technical, cost and schedule control within a project:

- a. the specification tree, which defines the products to be built and their interfaces at all levels within the product structure, must be traceable to the customer's originating requirements;

- b. the kernel of the CWBS must consist of the hierarchy of the products defined by the specification tree;
- c. costs and schedules must be associated with the products in the product structure such that each product in the hierarchy has an associated specification, cost and schedule (and, thus, each product CWBS element can be considered as either an internal subcontract or an external subcontract to the organisation);
- d. each CWBS element must have a corresponding CWBS dictionary entry, which describes the total scope of work associated with that WBS element (noting that, for a product, this will include the specification for that product); and
- e. the CWBS should be structured such that a single person or organisation can be held responsible for the delivery of any product or system, as defined by the specification tree.

The CWBS may require amendment during the course of the Contract. A proposed amendment of the CWBS at a level above the reporting level will require negotiation with the Commonwealth and a CCP to implement. However, it is important that the Contractor is able to amend the CWBS, below the reporting level, without first seeking Commonwealth approval. Clause 3.2.5.5 establishes the reporting level of the CWBS. The amendments must be consistent with the Approved CWBS such that the integration of project technical control with cost and schedule control, established by the Approved CWBS, is not compromised.

Tender Data Requirement (TDR) E-2 of the conditions of tender requests each tenderer to provide a draft CWBS as part of its tender response. The draft CWBS is a key deliverable during the tender phase because it assists with understanding each tenderer's proposed scope of work and with assessing of each tenderer's risk profile. If an offer definition phase is programmed, it is recommended that the CWBS be one of the deliverables that is further refined during this phase. Otherwise, drafters should include the draft CWBS in the SOW for the Contractor to use as a basis for development of the CWBS to be delivered under the Contract (clause 2.4 of the draft SOW refers).

**Drafter's Action:** Clause 3.2.4 is to be included in the RFT without alteration.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft SOW describes the process for Draft Data Items included as Contract Annexes.

TDR E-2 of the conditions of tender requires tenderers to provide a draft CWBS as part of their tender responses.

Clause 3.2.3 of the draft SOW sets out the requirement for the establishment, use and maintenance of a CMS.

Clause 3.2.5 of the draft SOW sets out the requirement for the establishment, use and maintenance of an EVMS.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Project Planning*

### 3.2.5 - EARNED VALUE MANAGEMENT SYSTEM

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to manage the Contract in accordance with earned-value management requirements.

**Policy:** Defence policy is to require an EVMS complying with DEF(AUST) 5655 on all Contracts and Subcontracts worth over \$200 million, regardless of the nature of work being performed. Furthermore, an EVMS complying with DEF(AUST) 5655

should also be required on Contracts and Subcontracts worth over \$60 million that involve a significant developmental component and/or a high level of risk.

An EVMS complying with DEF(AUST) 5658 should be required on all Contracts worth between \$20 million and \$60 million, which involve a significant developmental component, or between \$20 million and \$200 million for all other projects.

DMOKS 2.36, "Earned Value Management"

DPPM – Section 3, Chapter 3.4, "Earned Value Management"

DEF(AUST) 5655, "Australian Cost/Schedule Control Systems Criteria; Standard"

DEF(AUST) 5657, "Australian Cost Schedule Control Systems Criteria; Implementation Guide" (ACSIG)

DEF(AUST) 5658, "Cost Schedule Status Reporting (CSSR) Specification and Implementation Guide; Standard"

**Guidance:**

Tender Data Requirement (TDR) E-7 of the conditions of tender requests each tenderer to provide:

- a. a declaration that its existing system complies with the EVMS requirements of the draft Contract; or
- b. a list of shortcomings in its existing system and details of proposed corrective actions.

A tenderer must also state its agreement to an assessment by the Commonwealth of the tenderer's EVMS. Where a tenderer has a validated EVMS, the tenderer may cite the relevant memorandum of understanding in lieu of providing the information requested by paragraph 7.

Under the Contract, the Contractor is required to have a validated EVMS in accordance with clause 3.2.5 of the draft SOW whether or not payment by Earned Value Payments have been included in the Contract.

To achieve validation of its EVMS, the successful tenderer need only meet the validation criteria of the DEF(AUST) standard required by the Contract to the satisfaction of the Commonwealth. Drafters must select the appropriate DEF(AUST) standard based upon the expected value of the Contract and the nature of the work under the Contract.

The Project Authority needs to decide on the appropriate EVMS standard to be utilised under a Contract. Issues to be considered include the value of the Contract, the complexity and nature of work to be performed under the Contract, the successful tenderer's previous performance of Defence Contracts, and the cost to the Commonwealth of obtaining compliance with additional Commonwealth requirements.

The Project Authority should also determine the reporting level of the CWBS that Cost Performance Reports are produced to. Clause 3.2.5.5 specifies a default of CWBS Level 3; however, the reporting level should be determined to permit visibility of items of significant risk and need not be the same level throughout the CWBS.

**Drafter's Action:**

Drafters are required to select the appropriate DEF(AUST) standard for the Contract based on the expected value of the Contract and the nature of the work under the Contract. Drafters are also required to insert the appropriate timeframe into the relevant clauses for the Contractor to achieve a validated EVMS, if applicable, based on the requirement for CSSR or CSCSC.

Clauses must be included to specify the method for determining the thresholds for CPR variance reporting that suits the project's risk profile. Two options are provided; however, further options may be developed in consultation with PM-EVM.

**Related Clauses:** TDR E-7 of the conditions of tender elicits details from tenderers in relation to their EVMS.

Clause 3.2.3 of the draft SOW sets out the requirement for the establishment, use and maintenance of a CMS.

Clause 3.2.4 of the draft SOW sets out the requirement for the establishment, use and maintenance of a CWBS.

Clause 7.3 of the conditions of contract sets out the requirements associated with Earned Value Payments.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Project Planning*

### 3.2.6 - CHANGE CONTROL

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to ensure that its Performance Measurement Baseline (PMB) under earned-value management continues to accord with the Contract, as changes to the Contract are Approved.

**Policy:** See Section 3.2.

**Guidance:** One of the challenging aspects of Contract management is to ensure that the PMB is maintained at the same status as the Contract. If Contract Change Proposals (CCPs) are Approved without corollary changes to the PMB, the EVMS begins to lose utility. As such, it is imperative that the PMB and the Contract baseline remain aligned. This clause establishes the obligation for the Contractor to maintain the PMB and defines timeframes within which the PMB must be updated after Approval of a CCP.

**Drafter's Action:** Clause 3.2.6 is to be included in the RFT without alteration.

**Related Clauses:** Clause 3.2.5 of the draft SOW sets out the requirement for the establishment, use and maintenance of an EVMS, including the PMB.

**Further Reading:** Nil

### 3.2.7 - MEASUREMENT AND ANALYSIS

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to collect, analyse and report objective information using an agreed set of measures regarding issues of joint concern.

**Policy:** DMOKS 2.2.9, "Measurement & Analysis"

**Guidance:** Clause 3.2.7 imposes a contractual obligation on the Contractor to submit a Measurement Plan and to conduct the measurement program in accordance with that plan.

Project and technical managers need objective information to make day-to-day decisions, identify project information needs, correct problems, and manage prospective risks. Measurement based on information needs provides objective information to address project needs by integrating measurement with existing risk-management and performance-management disciplines such as earned value management.

Under previous measurement regimes, Contractors were tasked with providing measurement data which could be misrepresented or misinterpreted and was rarely used by the Project Authority or the Contractor to actively manage the project.

The Measurement and analysis program is designed to address the information needs essential for informed decision-making and the active management of the project. Software-intensive projects, in particular, should benefit from a measurement program that supports the project information needs. Eg. The measurement program should provide visibility and insight into the software development activities and allows these measures to be correlated and integrated with other measurement programs, such as EVM, to provide an accurate assessment of progress and status.

The DMO-preferred method for implementing a measurement program is Practical Software and Systems Measurement (PSM) This methodology uses workshops with relevant parties to identify information needs and agree measures as well as the techniques for collection, reporting and analysis of the measurement data. Commonwealth access to raw measurement data provides for Contractor-independent analysis to be performed to confirm the Contractor-provided analysis. For this (and other) reasons, Access Provisions have been included in the conditions of contract. These provisions are extended to Subcontractors either through the conditions of contract or additionally through a tri-partite deed so that the Commonwealth has access to Subcontractor data. Access to Subcontractor measurement data is often required in software-intensive projects where the Subcontractor, and not the Contractor, is developing the software.

The collection, reporting and analysis of measurement data does come at a cost and therefore the scope of the measurement program needs to be defined and agreed prior to finalising the Contract. This can be done with one or more tenderers (including significant Subcontractors) by conducting a Measurement Workshop/s, either separately or as part of the Risk Workshop, with each tenderer during Offer Definition. Additional workshops should be planned at key stages (eg. major technical reviews) of the project as part of the measurement program to revise the measures being collected and to assess the effectiveness of the measurement program. This requirement has been included in the exit criteria of the DMO Checklists for the Mandated System Reviews identified in the SOW. The tenderer documents the measurement program agreed during the workshop in a Measurement Plan (see DID-PM-MEAS-MEASP), which is then reviewed and agreed prior to Contract.

In accordance with the measurement plan collected measurement data must be converted into relevant indicators that relates directly to project information needs for it to be useful for effective decision-making. Analysis of data from diverse areas of interest needs to be integrated with risk management and financial performance management to form coherent, fused information from which conclusions can be drawn, recommendations prepared and decisions made. Therefore the Project Authority needs to allocate sufficient resources (staff, tools, budget and schedule) in their acquisition plans to perform the required analysis.

**Drafter's Action:** Clause 3.2.7 is to be included in the RFT without alteration.

Drafters are to assess the requirement for a tripartite deed – refer to the Note to drafters in conditions of contract clause 10.7.

Measurement workshops are to be facilitated by a qualified PSM trainer and facilitator. Contact the Director of Software Engineering, Materiel Policy & Services Branch for advice and assistance with regard to the planning and conducting of a Measurement Workshop.

**Related Clauses:** TDR E-6 of the conditions of tender elicits details from tenderers in relation to measurement and analysis.

Clause 3.2.5 of the draft SOW sets out the requirement for the establishment, use and maintenance of an EVMS.

Clause 10.7 of the conditions of contract provides the provisions relating to Commonwealth access to Contractor and Subcontractor premises and to documentation in relation to the work under the Contract.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Measurement and Analysis*

Practical Software  
Measurement – Objective  
Information for decision  
Makers

Provides guidance for implementing a measurement  
program.

**3.3 Project Monitoring and Control**

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to submit regular status reports.

Policy: Nil

Guidance: Contract progress or status reports provide the primary mechanism for the Commonwealth to monitor Contractor performance. The Project Start Up Progress Reports enable the Commonwealth to monitor Contractor progress in the crucial establishment of the project team and infrastructure. Project Status Reports enable the Commonwealth to monitor Contractor progress throughout the project.

Where unsatisfactory progress under the contract is notified to the Contractor by the Commonwealth, the Contractor is obligated to advise corrective measures and results in future progress reports.

Drafter's Action: Clause 3.3 is to be included in the RFT without alteration.

Related Clauses: Clause 3.5.2 of the draft SOW sets out the requirements for the monitoring and control of subcontractors.

Further Reading: Nil



### 3.4 Key Persons Management

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that Contractor project positions that are critical to the success of the project are filled with staff having the necessary skills and experience throughout the lifecycle of the project.

Policy: Nil

Guidance: No single factor will affect the outcome of a project more than the skills and experience of the people working on that project. Having people with the appropriate skills and experience will minimise the number of 'unknown unknowns' and hence risk to the project.

Key Staff Positions are those positions that require staff with significant capability, highly specialised skills, or capabilities that are crucial to the success of the project. This would especially apply to those capabilities for which there is an industry-wide shortage. Key Staff Positions would normally include the Project Manager, the Systems Engineering Manager, the Software Development Manager (for projects containing a significant software component), the ILS Manager, and key Domain Experts such as Radar Design Engineers, IT System Design Engineers, Safety Experts etc.

Key Persons are those personnel filling Key Staff Positions.

The Contractor should identify:

- a. those project staff positions that are critical to the success of the project (Key Staff Positions);
- b. the duties and responsibilities of those staff positions; and
- c. the skills and experience needed for the person filling each of those staff positions.

The Contractor should identify for each Key Staff Position:

- a. the person proposed to fill that staff position (Key Persons),
- b. the availability of that person,
- c. the skills and experience of the proposed person,
- d. any deficiencies in skills and/or experience of the nominated person, and
- e. measures to fill those shortfalls in skills and experience.

The Contractor should immediately notify the Project Authority of the impending loss to the project of any nominated Key Persons at the time when the Contractor becomes aware of such a situation. The Contractor should identify for that Key Staff Position:

- a. the person proposed to fill that staff position,
- b. the availability of that person,
- c. the skills and experience of the proposed person,
- d. any deficiencies in skills and/or experience of the nominated person, and
- e. measures to fill those shortfalls in skills and experience.

As specified in clause 3.4.1.1, the Contractor will document the Key Staff Positions and the Key Persons in accordance with the DID for the Project Management Plan (PMP). As such, the Commonwealth's Approval rights over the PMP provide some measure of influence over the Contractor's selection of Key Persons. Nevertheless, the Commonwealth's rights in this regards should be applied cautiously and judiciously. Issues in relation to personnel (even Key Persons) are rarely black and white, and it may not make good project sense for the

Commonwealth to exercise its rights over Key Persons because of the repercussions back onto the Commonwealth should the project turn sour at some time in the future. As an alternative approach, it may be more appropriate for the Commonwealth to express any concerns in a contractual letter to the Contractor. In this way, the Commonwealth has a formal record of its concerns, and it is not “buying into” the Contractor’s management practices. Guidance from CPO should be sought in addressing significant issues with respect to Key Persons.

Commonwealth project offices should plan to discuss Key Persons and Key Staff Positions during contract negotiations to ensure that any Commonwealth issues in this regard can be taken into consideration by the Contractor prior to Contract signature. Following Approval of the PMP under the Contract, any change to Key Persons would result in an amendment to the PMP. Once again, the Commonwealth’s Approval rights over amendments to the PMP (refer clause 2.3.6 of the draft SOW) provide some measure of influence over any changes to Key Persons. Nevertheless, the same cautionary advice as previously provided should apply here.

Commonwealth project offices should expect that the Key Staff Positions and the requisite skills and experience of the Key Persons will change over the period of the Contract. For example, the early phases of the design process are critical, and the Contractor should be employing Key Persons of greater experience in these phases than it would be employing during the production phase.

Drafter’s Action: Clause 3.4 is to be included in the RFT without alteration.

Related Clauses: TDR E-4 of the conditions of tender elicits details from tenderers in relation to Key Staff Positions and their ability to fill those positions.

Clause 2.3.6 of the draft SOW addresses the processes for data item updates.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Key Personnel Management*

### 3.5 Subcontractor Management

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that effective Subcontract management practices are implemented.

Policy: Effective Subcontractor management and the provision of insight into Subcontractor activities and management practices is one of the philosophies underpinning ASDEFCON (Strategic Materiel). This approach is consistent with international standards, and is explained in Section 10.3 of the Philosophy volume of the Handbook.

Guidance: To enable the planning and reporting requirements, which have been imposed on the Contractor in other sections of the draft SOW, to be satisfied, it is necessary that the Contractor flows similar requirements to Approved Subcontractors to meet contractual reporting requirements.

To enable the Contractor to meet its earned value management and reporting requirements, appropriate planning and reporting requirements need to be flowed to Approved Subcontractors.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

#### 3.5.1 - SUBCONTRACTOR PLANNING

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to flow requirements to Approved Subcontractors to develop a Project Management Plan and manage the Subcontract in accordance with that plan. To impose a requirement for a Subcontract EVMS to be developed and maintained, where the value of the Subcontract is appropriate.

Policy: Defence policy is to require an EVMS complying with DEF(AUST) 5655 on all Subcontracts worth over \$200 million, regardless of the nature of work being performed. Furthermore, an EVMS complying with DEF(AUST) 5655 should also be required on Subcontracts worth over \$60 million that involve a significant developmental component and/or a high level of risk.

An EVMS complying with DEF(AUST) 5658 should be required on all Subcontracts worth between \$20 million and \$60 million, which involve a significant developmental component, or between \$20 million and \$200 million for all other Subcontracts.

DMOKS 2.36, "Earned Value Management"

DPPM – Section 3, Chapter 3.4, "Earned Value Management"

DEF(AUST) 5655, "Australian Cost/Schedule Control Systems Criteria; Standard"

DEF(AUST) 5657, "Australian Cost Schedule Control Systems Criteria; Implementation Guide" (ACSIG)

DEF(AUST) 5658, "Cost Schedule Status Reporting (CSSR) Specification and Implementation Guide; Standard"

Guidance: Subcontractor project planning is just as important as detailed planning of each WBS element for the Contractor. This planning will generally extend to the development of a Subcontract Project Management Plan, a Subcontract Master Schedule and a Subcontract WBS. In some cases, the Contractor may require a Subcontract Start Up Plan.

The Contractor is required to ensure that the Approved Subcontractors execute their Subcontracts in accordance with their Project Management Plans.

Where a Subcontractor is required to develop an EVMS, the Contractor is responsible for the acceptance and surveillance of the Subcontract Performance Measurement Baseline, allowing Commonwealth participation if requested.

**Drafter's Action:** Clause 3.5.1 is to be included in the RFT without alteration.

**Related Clauses:** Clause 3.2.5 of the draft SOW sets out the requirement for the establishment, use and maintenance of an EVMS.

**Further Reading:** Nil

### 3.5.2 - SUBCONTRACTOR MONITORING AND CONTROL

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to ensure that Approved Subcontractors perform monitoring and control activities and implement corrective actions if required.

**Policy:** Nil

**Guidance:** It is important that the burden of monitoring Approved Subcontractor performance is not left to the Commonwealth. The Contractor must ensure that Approved Subcontractors have appropriate progress monitoring processes in place. This may include the Approved Subcontractor reporting data identified in the Approved Measurement Plan.

Where Approved Subcontractor performance deviates from plans, the Contractor is required to react and ensure that the Approved Subcontractor implements corrective actions as required.

**Drafter's Action:** Clause 3.5.2 is to be included in the RFT without alteration.

**Related Clauses:** Clause 3.3 of the draft SOW sets out the requirement for the Contractor to report corrective action measures to the Commonwealth.

**Further Reading:** Nil

### 3.5.3 - SUBCONTRACT STATUS REPORTING

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to ensure that Approved Subcontractors produce status reports and report that status to the Commonwealth.

**Policy:** Nil

**Guidance:** Subcontract status reports provide the primary mechanism for the Contractor to monitor Approved Subcontractor performance. The Contractor is required to include Subcontractor Status Reports in Project Status Reports to give the Commonwealth visibility of Approved Subcontractor performance.

**Drafter's Action:** Clause 3.5.3 is to be included in the RFT without alteration.

**Related Clauses:** Clause 3.3 of the draft SOW sets out the requirement for the preparation and delivery of Project Status Reports.

**Further Reading:** Nil

### 3.6 Risk Management

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to submit a Risk Management Plan (RMP) for agreement by the Project Authority and to manage the project risks in accordance with the agreed RMP.

Policy: DPPM – Section 3, Chapter 3.2 “Risk Management in Procurement”

Guidance: Risk management is defined as “minimising the uncertainty in any outcome”, although this definition can lead to a lack of appropriate focus at times. Uncertainty is controlled by a number of different processes and factors, not just through the risk management process as such.

In minimising the uncertainty in a project, it is necessary to find out what is under control in the project and what is not under control. The answers to these questions will be a function of the project type, the procedures used and the experience of the project team conducting the work.

In conducting an independent review of a project, the initial view would look something like the diagram below. That is, with no visibility of what is under control and what is not, the whole project seems to be full of uncertainties.



Figure 3-1 – Uncertainty without Control Mechanisms

Putting standard processes and controls in place, with experienced team members will reduce uncertainties. Thus once the project is examined and it is discovered that there are sound project-management and systems-engineering controls in place much of the uncertainty is removed or reduced. The use of a measurement program will further reduce the uncertainties in the project as shown in the diagram below. The grey area of cloud remaining outside of the controls represents the remaining uncertainties.

It is important to note that the degree of control achievable in any domain such as project management or systems engineering will depend on the talent and experience of the staff members exercising that control. The more experienced the staff is, the less will be the number of ‘unknown unknowns’ and hence risk. Thus if it is known that the project manager is not greatly experienced, then the higher the risk will be to the project and the greater will be the burden on risk management. Thus the risk management approach will need to be tailored to the experience of the Contractor’s project team.

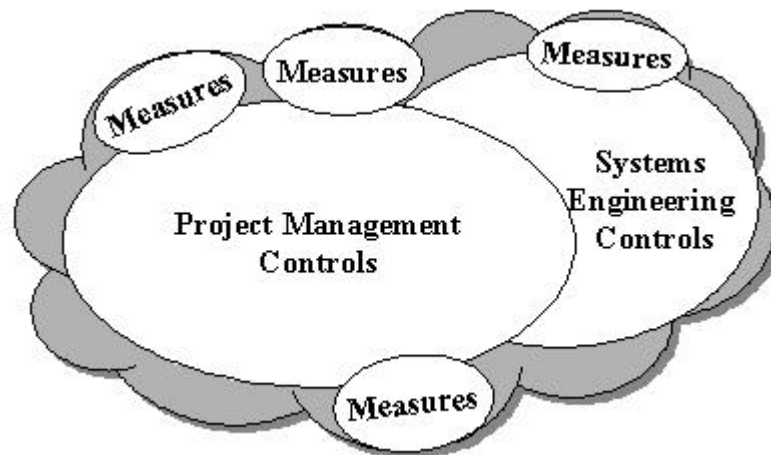


Figure 3-2 – Bringing Uncertainty Under Control

### 3.6.1 - RISK MANAGEMENT PLAN

The Risk Management Plan (RMP) identifies how the Contractor will manage risks for the project and describes the control mechanisms that the Contractor will put in place. Although the RMP may identify generic risk areas such as software development, it does not contain risks in itself, which are documented in the Risk Register or Log.

Although the Contractor produces the RMP, the Project Authority must be able to review that plan to ensure that it satisfies the objectives of the Commonwealth in minimising the uncertainties associated with the project.

The RMP must be tailored to the type of project and the experience of the Contractor's team who are conducting the work.

The Contractor's RMP and Risk Register or Log should provide input to the project risk management process managed by the Commonwealth. The project RMP and Risk Register or Log should provide links to the Contractor's documents.

**Drafter's Action:** Clause 3.6 is to be included in the RFT without alteration.

**Related Clauses:** TDR E-8 of the conditions of tender requests a detailed risk assessment from each tenderer.

**Further Reading:** Nil

**3.7 Issue Management**

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that the many day-to-day project issues are being managed.

Policy: Nil

Guidance: In this context, 'issues' are items whose progress needs to be monitored, but are not included in the EVM plans as they are either too short-term or too insignificant. They do not appear in the Risk Register, as they are technically not risk, as they do not represent any cost or schedule threat to the project at this point in time.

The PMP shall describe the Contractor's processes and tools used for managing issues for this project. Typical issues include:

- a. action items from meetings;
- b. corrective actions;
- c. issues arising from the metrics collection and analysis;
- d. issues arising from deviation of progress against plan;
- e. issues arising from reviews of process application; and
- f. issues arising from correspondence.

The Project Authority does not wish to have visibility of all project issues, but it does need to know that there is a rigorous process in place to ensure that issues will be addressed in a timely manner.

It is most likely that the Contractor will use some sort of database to track issues and to allocate Action Items to various team members.

Drafter's Action: Clause 3.7 is to be included in the RFT without alteration.

Related Clauses: Nil

Further Reading: Nil

### 3.8 Maintenance of Contractual Documents

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to apply strict configuration control to contract and subcontract documents.

Policy: DPPM – Section 5, Chapter 5.9 “Contract Management”

Guidance: There is always a need to be able to produce an up-to-date, readable version of ‘today’s Contract’. There is also a need to be able to produce a clean, readable version of the Contract as it was at any point in time in the past.

There have been a number of instances in which it has not been possible to produce a copy of the required version of a Contract because the approach to Contract amendment has been to simply attach the Contract change notices to the original Contract. This has ultimately led to later changes unknowingly affecting previous changes because it was not possible to read the Contract as it stood when the later change was proposed.

DPPM – Section 5, Chapter 5.9 “Contract Management” discusses contract variations in general.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

#### 3.8.1 - CONFIGURATION MANAGEMENT OF THE CONTRACT

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that a clean copy of any version of the Contract, now or at any previous time, can be produced as needed.

Policy: DPPM – Section 5, Chapter 5.9 “Contract Management”

Guidance: This clause obligates the Contractor to maintain a configured copy of the Contract, which incorporates all approved Contract Change Proposals, and maintain an archive of all superseded versions of the Contract. It is imperative that the Commonwealth Project Authority does the same.

It should be noted that the requirement for the Contractor to maintain the configuration of the Contract does not remove the need for the Commonwealth to do the same. It is imperative that the Commonwealth maintains copies of the current and past versions of the Contract as described in this clause.

Drafter's Action: Clause 3.8.1 is to be included in the RFT without alteration.

Related Clauses: Nil

Further Reading: Nil

#### 3.8.2 - SUBCONTRACT CONFIGURATION MANAGEMENT

---

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that a clean copy of any version of any Subcontracts, now or at any previous time, can be produced as needed.

Policy: DPPM – Section 5, Chapter 5.9 “Contract Management”

Guidance: The same reasons for maintaining the configuration of the Contract apply to Subcontracts. This clause ensures that the Contractor maintains subcontract documents with the same rigour as maintaining Contract documents.



Drafter's Action: Clause 3.8.2 is to be included in the RFT without alteration.

Related Clauses: Nil

Further Reading: Nil

**3.9 Customer Liaison**

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose contractual obligations on the Contractor for the conduct of regular progress meetings, extraordinary meetings and contract performance reviews.

Policy: Nil

Guidance: Regular, formally conducted meetings between the Commonwealth and the Contractor are extremely important to the success of the project as they enable issues to be discussed face-to-face and enable the Commonwealth to monitor Contractor progress.

Commonwealth project officers attending meetings should be wary of making any commitments that could estop the Commonwealth or should, in fact, be contract variations. DPPM – Section 5, Chapter 5.9 “Contract Management” discusses estoppel.

As the Contractor is required to produce agendas for meetings, it is important that any Commonwealth agenda items are advised to the Contractor such that these items are given the necessary time at the meeting.

Similarly, as the Contractor is required to produce the minutes for meetings it is important that the Commonwealth thoroughly review the minutes before Approval to ensure that the outcomes of the meeting are correctly recorded. This may require Commonwealth representatives to take detailed notes during the meetings for subsequent comparison with the Contractor’s minutes.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

**3.9.1 - PROGRESS MEETINGS**

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to conduct regular progress meetings and establishes the process for the conduct of the meetings.

Policy: Nil

Guidance: It is important that regular progress meetings are held with the Contractor. The interval at which the meetings are held should be determined based on a trade off between the cost of holding the meetings and the risk of reduced reaction speed to issues that develop between meetings. Progress meetings should be held every 3 months at a minimum and more often if necessary, particularly at the start of a project.

The location of progress meetings should generally be at the Contractor’s premises, as this will most likely keep the travel costs to a minimum and allow “side meetings” to be held with members of the Contractor team on other issues, if required.

Drafter's Action: Clause 3.9.1 is to be included in the RFT without alteration.

Related Clauses: Nil

Further Reading: See also – *Philosophy, Section 3.3 – Integrated Management Framework*

**3.9.2 - EXTRAORDINARY MEETINGS**

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Sponsor: Materiel Policy & Services

Status: Core

<u>Purpose:</u>	To establish the process for the conduct of extraordinary meetings.
<u>Policy:</u>	Nil
<u>Guidance:</u>	An extraordinary meeting is one not scheduled in the Contract and may be called by either the Commonwealth or the Contractor. When agreeing to the location for an extraordinary meeting, the nature of the issue to be discussed and Contractor and Commonwealth travel budgets need to be taken into account.
<u>Drafter's Action:</u>	Clause 3.9.2 is to be included in the RFT without alteration.
<u>Related Clauses:</u>	Nil
<u>Further Reading:</u>	See also – <i>Philosophy, Section 3.3 – Integrated Management Framework</i>

### 3.9.3 - CONTRACT PERFORMANCE REVIEWS

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<u>Sponsor:</u>	Materiel Policy & Services
<u>Status:</u>	Core
<u>Purpose:</u>	To impose a contractual obligation on the Contractor to conduct regular Contract performance reviews and establishes the process for the conduct of the reviews.
<u>Policy:</u>	DPPM – Section 3, Chapter 3.8 “Defence Company Scorecards” provides policy on the administration of the Company Scorecard system and the assessment of Contractor performance.
<u>Guidance:</u>	<p>Contract performance reviews provide the opportunity for both the Commonwealth and the Contractor organisations to step back from the day-to-day issues of the Contract and assess how the Contract is progressing and how well both parties are performing their roles. The inclusion of this review in the SOW recognises that a successful outcome is dependent on the performance and behaviour of all parties to the Contract. The review should identify the strengths and weakness (i.e. what is working well and what could be improved) of the individual parties as well as both parties as a team. It should also address the working relationship between the parties and therefore may involve senior management from each organisation not involved in the Contract. The discussion should examine areas where changes can be implemented to the benefit of both parties and the project.</p> <p>With the introduction of the Defence Company Score Card, the review provides a forum for frank and open discussion between the Commonwealth and the Contractor. The review can be used to discuss the proposed scoring of the Contractor and to hear any explanations or rebuttals from the Contractor. DPPM – Section 3, Chapter 3.8 “Defence Company Scorecards” provides policy on the compilation of scorecard assessments.</p> <p>Contract performance reviews should be conducted with the aim of improving Contract performance. Where poor performance is an issue the Contract performance review should not be used as an opportunity to berate the Contractor and further erode an already tenuous relationship. If this is the situation, then Contract Performance Reviews should be only be attended by senior management not directly involved in the Contract until the relationship improves.</p>
<u>Drafter's Action:</u>	Clause 3.9.3 is to be included in the RFT without alteration.
<u>Related Clauses:</u>	Nil
<u>Further Reading:</u>	Nil

### 3.10 Independent Verification and Validation (IV&V)

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to provide support to any Independent Verification and Validation (IV&V) agent appointed by the Commonwealth.

Policy: DMOKS 2.7.3.1.3, 'Verification and Validation'

Guidance: Independent Verification & Validation (IV&V) involves the use of an independent party (referred to as an IV&V agent) to perform particular verification activities in addition to or instead of the Contractor. The IV&V agent may be a separate Commonwealth agency such as the intended support agency or an IV&V Contractor. The IV&V agent is usually Contracted to perform activities selected by the Project Authority based on the nature of the project, the capability of the Contractor and the required integrity of the system. The IV&V activities may vary from the review of Contractor work products (e.g. specifications, designs, analysis, test results) through to, in extreme cases, totally independent testing of the system.

Depending on the complexity of the project and the level of involvement of Subcontractors, in order for the IV&V agent to gain access to all of the information needed, it may be necessary for appropriate levels of access to be provided to Approved Subcontractors. For this (and other) reasons, Access Provisions have been included in the conditions of contract (refer clause 10.7). These provisions are extended to Subcontractors either through the conditions of contract or additionally through a tri-partite deed so that the Project Authority or any person authorised by the Project Authority can have access to the Approved Subcontractors' premises and records relating to the performance of work. Nevertheless, clause 10.7 has not been drafted from the perspective of the (often) extensive and intrusive access required to undertake IV&V. As such, drafters should consider the use of a tri-partite deed if significant Subcontractor IV&V is envisaged or, perhaps, should include appropriate flow-down provisions within clause 3.10 itself. Guidance should be sought from CPO if either of these options is being considered.

IV&V, while expensive, increases confidence in a system's integrity. It should be used for large, complex, software-intensive projects and those projects where specific skills or project aspects warrant independent expert attention.

For the Contractor, having to deal with an IV&V agent can result in additional costs although these should not be excessive and largely involve the provision of access to technical data and staff for the IV&V agent. In order to accurately cost the support to be provided, the Contractor will need to understand the scope of the IV&V agent's work, where, when and how often access to Contractor data and staff will be required and any other effort or support required by the Contractor such as the provision of office accommodation and business utilities. It is also very important to define the issue resolution process to be applied when addressing issues raised by the IV&V agent.

Drafter's Action: Drafters are to specify the scope of IV&V activities, either in the SOW or by reference to another document if necessary. As discussed in the SOW Note to drafters, if the scope is unknown then a fixed level of effort for IV&V should be stated in order to establish a cost baseline.

Drafters are to assess the requirement for a tripartite deed (refer to the Note to drafters in conditions of contract clause 10.7) or for flow-down requirements to be included within clause 3.10.

Related Clauses: Clause 10.7 of the conditions of contract provides the provisions relating to Commonwealth access to Contractor and Subcontractor premises and to documentation in relation to the work under the Contract.

Further Reading: Nil

### 3.11 Life Cycle Cost (LCC)

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose an obligation on the Contractor to undertake LCC Analysis (LCCA) and to integrate this analysis into the Contractor's developmental processes for both the Mission System and Support System. To enhance the likelihood that the Contractor's combined solution for the Mission System and Support System will minimise LCC.

Policy: Defence policy requires LCCA principles and practices to be applied to the acquisition process and to management decision-support activities in order to achieve the best value-for-money outcomes for Defence.

DPPM – Section 5, Chapter 5.6 “Evaluation of Whole Of Life Costs”

DI(G) LOG 03-4 “Defence Policy on Life Cycle Costing Analysis”

Through Life Support Manual Volume 6, “Life Cycle Costing Analysis”

Guidance: The LCC clauses in the ASDEFCON (Strategic Materiel) RFT Template (which include the LCC requirements in the conditions of tender) explicitly acknowledge the complexities associated with applying LCCA under a firm or variable price Contract. As many LCC-reduction opportunities only arise in the context of a Contractor's developmental activities, there are only limited opportunities for a Contractor to determine the scope of these opportunities as part of its tender response and to incorporate these opportunities into its proposal (remembering that, under a firm/variable contract, the scope is fixed for the agreed price). The majority of LCC-reduction opportunities that arise under the Contract, therefore, are likely to be subject to CCP action (and this will almost certainly be the case for significant LCC-reduction opportunities).

Many of the costs associated with the operation and support of the Mission System and Support System will not be within the purview of the Contractor. For example, any existing elements of either of these systems (e.g. Government Furnished Equipment (GFE) or Government Furnished Services (GFS)) are likely to be operated or supported by parties other than the Contractors(LS) or Subcontractors(LS). Additionally, deployed assets (e.g. ships at sea) will have the front-line levels of maintenance performed by ADF personnel. Project Authority staff need to ensure that all relevant costs are included in the scope of the Contractor's LCCA (refer definition of LCC in the Glossary), so that the LCCA can aim to minimise the total cost to the Commonwealth. This approach will require Project Authority staff to provide LCC-related data to the Contractor when required. The Project Authority should ensure that these data requirements are included in the lists of Government Furnished Information (GFI) and Government Furnished Data (GFD) that are attached to the Contract.

The RFT template recognises that a well-managed LCC program, which is integrated into the Contractor's developmental activities for the Mission System and Support System, requires trade-off decisions:

- a. between the Mission System and the Support System;
- b. between the acquisition Contract and any support Contract(s);
- c. between the costs to be borne by the Commonwealth, the Contractor, the Contractors(LS) and the Subcontractors(LS); and
- d. involving the disciplines of Systems Engineering and Integrated Logistics Support.

The level and significance of possible trade-off decisions mean that these decisions need to be addressed at the project-management level. For this reason and for the fact that LCC relates to the Total Cost of Ownership (TCO) of a Capability, the LCC program has been located within the project-management section of the draft SOW.

### 3.11.1 - LIFE CYCLE COST PROGRAM MANAGEMENT

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Clause 3.11.1 of the draft SOW places an obligation on the Contractor to develop and maintain an LCC Management Plan (LCCMP) for the management of the LCC program, and to conduct the program in accordance with the LCCMP. Clause 2 of Annex I to Attachment A of the conditions of tender has an optional requirement for each tenderer to provide a Draft LCCMP as part of its tender response. This option would be invoked if:

- a. offer definition activities were not programmed, and the scope of, and risks associated with, the LCC activities warranted the submission of a Draft LCCMP as part of the tender responses; or
- b. offer definition activities were programmed, but the scope of, and risks associated with, the LCC activities were considered to be of sufficient magnitude that submission of a Draft LCCMP was warranted as part of the tender responses (i.e. before the offer definition activities would be enacted).

If offer definition activities are programmed, then the finalisation of the LCCMP should be included in the planned scope of work, so that an agreed plan can be placed on Contract (using the process defined in the Note to Drafters under clause 2.4 of the draft SOW). If offer definition activities are not programmed and a Draft LCCMP is sought as part of the tender responses, then the processes outlined under clause 2.4 of the draft SOW should be followed.

While the DID for the LCCMP (DID-PM-LCC-LCCMP) is a reasonably standard DID for a Contract plan, there are a number of specific elements of this plan that are critical to the success of the LCC program, including:

- a. integration of the LCC activities into the SE and ILS programs;
- b. integration of Subcontractors into the LCC program (which is particularly important when the majority of ILS and related activities are to be Subcontracted);
- c. the suite of LCC tools and models that will be used, and the access to these tools and models that will be provided to the Commonwealth;
- d. the scope of extant LCC-related data, and the scope of, and risks associated with, the development of the LCC model(s);
- e. the scope of LCC-related data that may have to be provided by the Commonwealth;
- f. the scope of LCCA activities that are planned to be undertaken by the Contractor; and
- g. the planned use of the LCC model(s) and associated analyses in the design and development of both the Mission System and Support System to minimise LCC across both of these systems, while meeting the other requirements of the Contract.

Specific note should be made of clause 6.2.5, 'LCC Model Usage', of the DID for the LCCMP and clause 6.2.4, 'Integration of the LCC Analysis Outcomes into the Developmental Program', of the DID for the LCC Report and Model (LCCRM) (DID-PM-LCC-LCCRM). These two clauses work hand-in-hand, as required under clauses 3.11.2.2f and 3.11.3.1a of the draft SOW, to define the scope of the Contractor's LCCA activities that are additional to the specific activities defined in the SOW.

Minimisation of LCC has the potential to be an unbounded process, which can quickly become subject to the law of diminishing returns. As such, the LCCMP needs to document the agreed bounds within which the Contractor will demonstrate that LCC has been minimised. These bounds could be defined by limiting the scope of the Contractor's activities to only include:

- a. the top ten LCC drivers;

- b. those LCC drivers that have the potential to reduce LCC by more than \$'x'm or 'y'% of the assessed LCC;
- c. some combination of the above; or
- d. some other approach proposed by the Contractor and agreed by the Commonwealth.

As stated above, the DID for the LCCMP requires the Contractor to document how the results of LCCA will be fed back into the design-and-development processes for both the Mission System and the Support System. LCCA is not an end in itself, and there is no purpose in undertaking LCCA if the outcomes of these analyses are not used in the design and development of the two systems, including undertaking trade-off analyses between the systems.

Another challenge with LCCA is to determine those design changes, which arise out of the Contractor's LCCA and related activities that can reasonably be considered to be within the scope of the Contract and those that should be subject to CCP action, as defined in clause 3.11.3.5 of the draft SOW. The Contractor's LCCMP should include the agreed boundaries of this scope (probably in terms of certain defined characteristics or parameters), noting that these boundaries are likely to be affected by the Contractor's tender response, any offer definition activities, and Contract negotiations.

### 3.11.2 - LIFE CYCLE COST MODELLING AND ANALYSIS

Clause 3.11.2 of the draft SOW places an obligation on the Contractor to develop an LCC model of the Mission System and Support System in accordance with the Approved LCCMP. Furthermore, the Contractor is required to analyse the model to identify design solutions for these systems that minimise LCC. Under clause 3.11.3.2 of the draft SOW, the Contractor is required to document both the model and the outcomes of its analyses in the LCCRM. This Data Item has multiple deliveries, as defined in the CDRL, which provide for increasing levels of definition as the designs for the Mission System and Support System mature.

Clause 9 of Annex D to Attachment A of the conditions of tender requires each tenderer to submit a Tender LCC Model (TLCCM). Clause 6.2.3 of the TLCCM DID requests the tenderer to describe any proposed alternatives for either the Mission System or Support System (or both) that impact upon LCC. This clause envisages that these alternatives will be investigated further, in conjunction with the Commonwealth (e.g. as part of offer definition activities or during Contract negotiations (or both)), to determine which alternatives should be included in the resultant Contract. The LCCMP (which is either Approved prior to Contract under the offer definition phase or is attached to the Contract as a draft plan) provides an ideal location for documenting the Contractor's offer in this regard.

Clause 3.11.2.1 of the draft SOW specifies the Commonwealth's preferred LCC software package. Attention is drawn to DI(G) LOG 03-4, which provides further information on Approved LCC software packages. If a tenderer proposes an alternative LCC software package, the Project Authority should liaise with the applicable Defence SME (refer to sponsor identified above) before agreeing to this alternative package.

### 3.11.3 - LIFE CYCLE COST PROGRAM REVIEWS AND REPORTS

Clause 3.11.3 of the draft SOW places an obligation on the Contractor to utilise the LCC model to demonstrate to the Commonwealth that the Contractor's developmental activities will result in a combined Mission System and Support System that minimises LCC. The operational and support concepts documented in the OCD provide the frame of reference within which the Contractor must demonstrate that LCC is being minimised. The OCD documents the purpose of the Capability, and LCC needs to be minimised within the context of 'fitness for purpose'. As discussed earlier, the Approved LCCMP provides the agreed methodology for the Contractor to undertake this demonstration.

Clause 3.11.3.3 of the draft SOW directly interacts with clause 6.2.4.2 of the LCCRM DID. These clauses are intended to capture design alternatives that transfer costs between acquisition and support. As many of the support costs may not be within the Contractor's design scope, the Commonwealth requires visibility into any cost-transfer proposals or options. Furthermore, the Commonwealth has an obligation to ensure that these 'external' costs are incorporated into the LCC analyses and design trade-off decisions. These requirements can be quite subtle. For example, a communications solution that does not address bandwidth requirements is likely to drive costs onto the Commonwealth in areas such as satellite, landline and spectrum-management fees (if the Commonwealth is responsible for these costs).

Clauses 3.11.3.2 – 3.11.3.5 describe the process for reviewing and approving any proposals to minimise LCC. In general, the timeframes for approving any proposal have been deliberately set tight to prevent schedule slippage due to extended review deliberations. Nevertheless, certain proposals could require a significant change in scope and, therefore, could require higher-level Committee (or even Government) consideration. In these situations, clause 3.11.3.4c provides the ability of the parties to agree to an alternative timeframe. Nevertheless, these timeframes must still be kept tight to enable cost-effective decision-making while there is still flexibility in the Contractor's design process.

**Drafter's Action:** Clause 3.11.2 of the draft SOW requires an assessment to be made of any alternative LCC software packages that have been proffered for use by a tenderer and, if acceptable to the Commonwealth, for these alternative packages to be incorporated into clause 3.11.2.1. Other than this, clause 3.11 is to be included in the RFT without alteration.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft SOW describes the process for Draft Data Items included as Contract Annexes.

TDR D-9 of the conditions of tender requires each tenderer to submit a tendered LCC Model.

TDR I-2 of the conditions of tender has an optional requirement for each tenderer to submit a Draft Life Cycle Cost Management Plan (LCCMP) as part of its tender.

'Life Cycle Cost or LCC', 'Life-of-Type or LOT', 'Mission System' and 'Support System' are defined in Attachment M of the conditions of contract.

Clause 2.6 of the draft SOW, 'Commonwealth-Directed Trade Studies', places an optional obligation on the Contractor to undertake those trade studies that have been directed by the Commonwealth. A primary evaluation criterion associated with these trade studies is the LCC or partial LCC related to the scope of the trade study.

Clause 4.6.1 of the draft SOW, 'Growth, Evolution and Obsolescence Program', places an obligation on the Contractor to consider growth, evolution and obsolescence issues in the design of the Mission System and Support System within the context of LCC.

Clause 5.1.1 of the draft SOW, 'ILS Program Objectives', requires the Contractor to explicitly acknowledge that minimisation of LCC is a design objective.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Life Cycle Cost (LCC)*



### 3.12 Transition into Operational Service

Sponsor: Materiel Policy & Services

Status: Core with optional clauses

Purpose: To impose an obligation on the Contractor to manage its own transition activities and to participate in the Commonwealth's transition activities. To enhance the likelihood that Transition into Operational Service will proceed smoothly and efficiently.

Policy: DMOKS 2.38 "Transition of Equipment"

Guidance: Transition is a typical area of risk in Defence acquisition projects, and the clauses in the ASDEFCON (Strategic Materiel) RFT Template provide a minimum set of requirements to ensure that the Contractor will be an integral part of the Transition process.

The scope of the Contractor's transition activities will be dependent upon the Contractor's (and Subcontractors') involvement in support activities. Even if the Contractor is not being Contracted by the Commonwealth to provide support (e.g. under a Contract(LS)), the Contractor (and Subcontractors) will nevertheless have to transition the products that have been produced under this Contract from an acquisition, project-based environment to a support environment.

#### 3.12.1 - CONTRACTOR TRANSITION PLAN

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Clause 3.12.1 of the draft SOW places an obligation on the Contractor to develop a Contractor Transition Plan (CTXP) for the management of its Transition activities, and to conduct these activities in accordance with the CTXP. TDR 12 of the conditions of tender has an optional requirement for each tenderer to provide a Draft CTXP as part of its tender response. This option would be invoked if:

- a. offer definition activities were not programmed, and the scope of, and risks associated with, the Transition activities warranted the submission of a Draft CTXP as part of the tender responses; or
- b. offer definition activities were programmed, but the scope of, and risks associated with, the Transition activities were considered to be of sufficient magnitude that submission of a Draft CTXP was warranted as part of the tender responses (i.e. before the offer definition activities would be enacted).

If offer definition activities are programmed, then the finalisation of the first iteration of the CTXP should be included in the planned scope of work, so that an agreed plan can be placed on Contract (using the process defined in the Note to Drafters under clause 2.4 of the draft SOW). If offer definition activities are not programmed and a Draft CTXP is sought as part of the tender responses, then the processes outlined under clause 2.4 of the draft SOW should be followed.

Many aspects of the CTXP will not be able to be fully defined at the time of tender or by Contract award (e.g. refer clause 6.2.5 of DID-PM-TRANS-CTXP) because the detailed information will not be known at these times. As such, it is recommended that the pre-Contract delivery of the Draft CTXP be appropriately scoped to capture the higher-risk or more significant elements of the Contractor's Transition activities.

While most DIDs under ASDEFCON (Strategic Materiel) are not intended to be tailored, the CTXP DID will need to be tailored to align with the envisaged scope of involvement by the Contractor and Subcontractors in future support activities. The OCD, which documents the agreed concept for logistics support, should have documented the division of support responsibilities between the Commonwealth and industry. Furthermore, if either interim support arrangements are included under this Contract or a separate Contract(LS) will be enacted with the Contractor, then these documents will further define the Contractor's and Subcontractors' involvement in support. In conjunction with the FPS, these documents provide the

framework within which the design of the Support System will occur. This design will define the full scope of each party's support responsibilities, which will, in turn, determine the scope of the Contractor's own Transition activities as well as its involvement in the Commonwealth's Transition activities.

The Project Authority should be aware that the CTXP will be a significant source of information for the Project Authority's own Transition Plan. In particular, the CTXP will provide a consolidated description of support responsibilities under each of the Support System Constituent Capabilities.

Of note, DID-PM-TRANS-CTXP embraces the requirements for a Software Transition Plan (by incorporating DI-IPSC-81429A), which is often included as a separate requirement under the SE section of the SOW. Drafters should ensure that any potential overlaps in this area are addressed prior to RFT release.

### 3.12.2 - TRANSITION MEETING (OPTIONAL)

Clause 3.12.2 of the draft SOW is an optional requirement, which places an obligation on the Contractor to attend a Pre-Transition Meeting. Tentatively, the timeframe for this Pre-Transition Meeting has been set at 120 days before the first Test Readiness Review (TRR) for the Mission System (or other time to be agreed between the parties). This timeframe was selected because it represented a suitable balance between the developmental maturity of both the Mission and Support Systems and the likely date for Acceptance into Operational Service. Nevertheless, the Project Authority may select an alternative timeframe if the nature and scope of, and the risks associated with, the Transition activities warrant the selection of an alternative date.

Attention is drawn to clause 3.12.2.1d, which addresses the requirement for any Transition Meetings subsequent to the initial Pre-Transition Meeting. It is recommended that this issue be addressed either during the offer definition phase or during Contract negotiations to ensure that this requirement is bounded and agreed by both parties. Clause 6.2.3.1h of DID-PM-TRANS-CTXP addresses this requirement, and the Draft CTXP would provide an ideal location to document this agreement.

As highlighted in the Notes to drafters under this clause, the location for the Pre-Transition Meeting (or any subsequent Transition Meeting) needs to be determined (and the clauses may also require amending accordingly if this issue is not addressed in the Draft CTXP). Given the nature of many Transition activities, it may be appropriate to conduct these meetings at the address of the In-Service support agency, which, in general, would be the Commonwealth agency having responsibility for the provision of In-Service support.

### 3.12.3 - TRANSITION REGISTER (OPTIONAL)

Clause 3.12.3 of the draft SOW is an optional requirement, which places an obligation on the Contractor to develop, deliver and update a Transition Register in accordance with the Approved CTXP. Transition normally involves a significant number of small activities, and the obligation to provide a Transition Register has been included in the RFT Template to provide a mechanism by which this large number of activities can be managed (without cluttering the Contract Master Schedule (CMS)). Of note, the draft CDRL currently defines a weekly delivery schedule for the Transition Register after the initial Pre-Transition Meeting under clause 3.12.2 of the draft SOW; however, the Project Authority may wish to define a differing delivery schedule (perhaps linked to the phase of the project, increasing in frequency as the date for Transition into Operational Service approaches).

**Drafter's Action:** Drafters must determine the applicability of the optional clauses. Additionally, drafters should be aware that the LSA Task associated with Early Fielding Analysis (Transition Analysis) may have applicability in this context for the transition of support resources.

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 2.4 of the draft SOW describes the process for Draft Data Items included as Contract Annexes.

TDR 1 - 2 of the conditions of tender has an optional requirement for each tenderer to submit a Draft Contractor Transition Plan (CTXP) as part of its tender.

Further Reading: Nil

**3.13 Government Furnished Material (GFM) Management**

Sponsor: Materiel Policy & Services

Status: Optional. To be used when GFM is to be supplied to the Contractor. Clauses 3.13.1 to 3.13.3 are optional but interdependent and must be inserted, amended or omitted as a package.

Purpose: To impose contractual obligations on the Contractor for the delivery, receipt, use and care of GFM.

Policy: The preferred Departmental position is to minimise the provision of GFM to contractors. However, in some circumstances it will not be possible for a contractor to perform the work required under a Contract without GFM.

DI(G) LOG 07-4 "Provision of Material to Contractors"

Guidance: GFM is any equipment, information or data listed in Annex A of conditions of contract Attachment E that is provided to the Contractor by the Commonwealth to assist in the performance of the Contract.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

**3.13.1 - DELIVERY AND RECEIPT OF GFM (OPTIONAL)**

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Sponsor: Materiel Policy & Services

Status: Optional. To be used when GFM is to be supplied to the Contractor. Clauses 3.13.1 to 3.13.3 are optional but interdependent and must be inserted, amended or omitted as a package.

Purpose: To impose contractual obligations on the Contractor for the receipt, inspection and functional testing of GFM.

Policy: DI(G) LOG 07-4 "Provision of Material to Contractors"

Guidance: Under clause 3.13.1, the Commonwealth must deliver or provide the Contractor with access to GFM at the places and times stated in Annex A of conditions of contract Attachment E. Where the Commonwealth fails to deliver or provide access to GFM at the places and times stated in Annex A of conditions of contract Attachment E, COC Clause 3.6.2 states that the Contractor will be entitled to claim a postponement of the date for delivery of Supplies and/or a Milestone date and to recover postponement costs unless the failure to deliver or provide access was caused by a default or an unlawful or negligent act or omission of the Contractor, its officers, employees, agents or Subcontractors. It is important, therefore, to ensure that all GFM can be supplied by the Commonwealth at the time and place specified in Annex A of conditions of contract Attachment E.

On receipt of the GFM, the Contractor must inspect the GFM for physical damage, defects and deficiencies within the timeframes specified in Annex A of conditions of contract Attachment E and report its satisfaction or dissatisfaction with the GFM to the Project Authority in writing. Clause 3.13.1.6 places an additional requirement on the Contractor to carry out appropriate functional testing of GFE. It is important that these inspections and tests are carried out so that the parties are able to determine who is responsible for any later defect in GFM.

Clause 3.13.1.6 requires that GFE is tested by the Contractor at least 21 days prior to the date that work is to be commenced in relation to the GFE to determine that the GFE is serviceable for use as required by the Contract. The words "to the extent feasible" have been included so that the Contractor will not be rendered in breach of contract where it is not feasible for the GFE to be functionally tested, for example, where the GFE must operate with Supplies which have not yet been completed. However, it is important that the Contractor functionally tests GFE as early as possible to ensure that the project schedule is not affected. Where a

Contractor submits a postponement claim under clause 6.2 in relation to deficient GFE, the Contractor's actions, including in relation to the functional testing of the deficient GFE, will be taken into account in determining whether the postponement claim should be granted. Where the Contractor fails to inspect the GFM as required by clause 3.13.1.4 or carry out the functional tests on GFE as required by clause 3.13.1.6 the Contractor will be in breach of Contract. The Commonwealth's remedy in respect of such a breach will depend upon the circumstances and effect of the breach. In accordance with clause 3.6.4, the Commonwealth's warranty in relation to the fitness for purpose of Commonwealth Mandated GFM will also not apply where the Contractor fails to inspect and test the GFM as required by clause 3.13.1.

Where the GFM provided by the Commonwealth is damaged, deficient or defective, clauses 6.2 and 6.3 of the conditions of contract will apply to determine whether the Contractor will be entitled to claim a postponement of the date for delivery of Supplies and/or a Milestone date and to recover postponement costs. It is important, therefore, to ensure that all GFM provided by the Commonwealth is not damaged, defective nor deficient and is serviceable for its intended use. However, if the Contractor fails to inspect GFM as required by clause 3.13.1.4 or functionally test GFE as required by clause 3.13.1.6, the Contractor's entitlement to a postponement claim may be affected.

**Drafter's Action:** If clause 3.13 is required, clause 3.13.1 is to be included in the RFT without alteration.

Prior to Contract signature, drafters must include details at Annex A of conditions of contract Attachment E of all GFM to be provided under the Contract including the quantity, date required, location, time period for inspection and intended purpose of the GFM.

**Related Clauses:** TDR E-12 of the conditions of tender requests tenderers to provide details of the GFM that they require to perform the Contract, including the quantity, date required, location and intended purpose. Tenderers must also identify in TDR D-2 of the conditions of tender the additional cost to be added to the tendered price should any GFM not be made available.

Attachment M to the conditions of contract contains definitions of GFD, GFE, GFI, GFM and Commonwealth Mandated GFM.

Clauses 3.5 to 3.7 of the conditions of contract contain additional GFM provisions.

Clauses 6.2 and 6.3 of the conditions of contract detail when the Contractor is entitled to claim a postponement of the date for delivery of the Supplies and/or a Milestone date and to recover postponement costs.

**Further Reading:** Nil

### 3.13.2 - USE OF GFM (OPTIONAL)

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**Sponsor:** Materiel Policy & Services

**Status:** Optional. To be used when GFM is to be supplied to the Contractor. Clauses 3.13.1 to 3.13.3 are optional but interdependent and must be inserted, amended or omitted as a package.

**Purpose:** To outline how the Contractor is to use the GFM, including the standard of care that will apply.

**Policy:** DI(G) LOG 07-4 "Provision of Material to Contractors"

**Guidance:** Under clause 3.13.2 the Contractor must incorporate GFM into the Supplies and use GFM in the production of the Supplies with a high degree of professional skill and care and in accordance with the Contract. This aligns with the standard of care required of the Contractor in clause 3.2 of the conditions of contract.

Clause 3.13.2.2 places an obligation on the Contractor to return GFM that has not been incorporated into the Supplies or consumed in the production of the Supplies

to the Commonwealth as directed by the Project Authority. Requirements for the return of GFM may be incorporated in the Contract or provided in writing to the Contractor during the performance of the Contract.

**Drafter's Action:** If clause 3.13 is required, clause 3.13.2 is to be included in the RFT without alteration.

**Related Clauses:** TDR E-12 of the conditions of tender requests tenderers to provide details of the GFM that they require to perform the Contract, including the quantity, date required, location and intended purpose. Tenderers must also identify in TDR D-2 of the conditions of tender the additional cost to be added to the tendered price should any GFM not be made available.

Attachment M to the conditions of contract contains definitions of GFD, GFE, GFI, GFM and Commonwealth Mandated GFM.

Clauses 3.5 to 3.7 of the conditions of contract contain additional GFM provisions.

**Further Reading:** Nil

### 3.13.3 - CARE OF GFM (OPTIONAL)

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**Sponsor:** Materiel Policy & Services

**Status:** Optional. To be used when GFM is to be supplied to the Contractor. Clauses 3.13.1 to 3.13.3 are optional but interdependent and must be inserted, amended or omitted as a package.

**Purpose:** To impose a contractual obligation on the Contractor in relation to the care of GFM in its care, custody or control.

**Policy:** DI(G) LOG 07-4 "Provision of Material to Contractors"

**Guidance:** Clause 3.13.3.1 places a contractual obligation on the Contractor to take all reasonable care of GFM that is in its care, custody or control. GFM will be in the Contractor's care, custody or control where the Contractor has received delivery of, or access to, the GFM and the GFM is in the Contractor's or its officer's, agent's, employee's or Subcontractor's custody or control.

Clause 3.13.3.3 requires the Contractor to institute, maintain and apply a system for managing GFM. Clause 3.13.3.4 requires the Contractor to carry out physical stocktakes of GFM when requested by the Project Authority in writing.

**Drafter's Action:** If clause 3.13 is required, clause 3.13.3 is to be included in the RFT without alteration.

**Related Clauses:** TDR E-12 of the conditions of tender requests tenderers to provide details of the GFM that they require to perform the Contract, including the quantity, date required, location and intended purpose. Tenderers must also identify in TDR D-2 of the conditions of tender the additional cost to be added to the tendered price should any GFM not be made available.

Attachment M to the conditions of contract contains definitions of GFD, GFE, GFI, GFM and Commonwealth Mandated GFM.

Clauses 3.5 to 3.7 of the conditions of contract contain additional GFM provisions.

**Further Reading:** Nil

**3.14 Australian Industry Involvement (All) Management**

Sponsor: Industry Policy

Status: Core

Purpose: To place a contractual obligation on the Contractor to comply with the Australian Industry Involvement (All) management requirements.

Policy: All Manual

DPPM - Section 3, Chapter 3.12 "Industry Development and Australian Industry Involvement"

Guidance: Clause 3.14 places a contractual obligation on the Contractor to:

- a. implement the contracted All Plan;
- b. enhance the All Plan where possible, and amend as necessary as a consequence of contract change proposals; and
- c. deliver All Reports in accordance with CDRL Line Number MGT-710 and the agreed format.

Clause 3.14 also advises the Contractor of two reviews that may be carried out by the Commonwealth. Firstly, an All Review may be carried out prior to or following the delivery of the first All Report. This review seeks to assess and verify that the Contractor has:

- a. implemented the contracted All Plan satisfactorily; and
- b. that the methodologies for capturing, recording and reporting the All data are appropriate.

In addition, to validate activities and the achievement of Industry Requirements claimed in the All Reports, All Performance Reviews are carried out annually. These All Performance Reviews are an in-depth review to ensure:

- a. activities claimed to be carried out have been actually performed;
- b. capabilities set in place can be demonstrated; and
- c. Industry Requirements claimed can be verified.

Note: These reviews are arranged through, and only carried out with, the authority of the Project Director.

Reviews also aim to promote a working relationship with the Contractor, with the intention that both parties will work together, as a team, to ensure the Industry Requirements and other industry objectives are achieved.

Drafter's Action: Clause 3.14 is to be included in the RFT without alteration.

Related Clauses: TDR H-1 of the conditions of tender requests tenderers to provide their All proposal for the Contract.

Clause 4 of the conditions of contract places an obligation on the Contractor to achieve the stated levels of Local Content and Strategic Industry Development Activities. Clause 4 also details the liquidated damages that may be claimed by the Commonwealth for failure to achieve the Industry Requirements in the All Plan by Final Acceptance.

The All Plan must be included at Attachment F prior to Contract signature.

Further Reading: See also – *Defence Needs of Australian Industry – June 2001*

**3.15 Intellectual Property (IP) Management**

Sponsor: Contract Policy & Operations

Status: Core

Purpose: To impose an obligation on the Contractor to comply with the IP Management requirements.

Policy: Defence IP management will be clear, consistent and traceable.

DPPM – Section 3, Chapter 3.6 “Intellectual Property”

*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy; 2003.*

Guidance:

**3.15.1 – INTELLECTUAL PROPERTY PLAN**

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Clause 3.15.1.1 and 2 places a contractual obligation on the Contractor to:

- a. comply with the IP Plan; and
- b. further develop, deliver and update the IP Plan.

Clause 3.15.1.3 obligates the Contractor where they have proposed a change to the IP Plan to raise a Contract change proposal in accordance with clause 10.1 of the conditions of contract.

It is important to note that, where the Contractor cannot fulfil its IP obligations under the Contract, the Contractor will be in breach of Contract. The Project Authority is under no obligation to accept any remedies proposed by the Contractor; however, the Project Authority should act reasonably when rejecting corrective actions. Where the Contractor fails to propose a correction action agreeable to the Project Authority or fails to implement the corrective action in accordance with the Contract change proposal, the Contractor will be in breach of Contract and the Commonwealth will be entitled to claim damages where it has suffered loss as a result of the breach. The Commonwealth may also be entitled to terminate the Contract for default as provided for by clause 12.2 of the conditions of contract. Advice should be sought from CPO branch prior to any action being taken to claim damages or terminate the Contract for default.

**3.15.2 - IP RECORDS, PROGRESS REPORTS AND REVIEWS**

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Clause 3.15.2 places a contractual obligation on the Contractor to develop, deliver and update IP records. It also places a contractual obligation on the Contractor to facilitate Commonwealth reviews at the Contractor's or Approved Subcontractor's premises to assess and verify the implementation of the IP Plan.

Clause 3.15.2.1 places a contractual obligation on the Contractor to develop, deliver and update relevant IP records in accordance with the CDRL MGT-810. The IP Records complement the detail in the IP Plan and enable relevant information to be delineated and identified in greater detail. For further guidance on the information to be included in the IP Records, reference should be made to the guidance provided in relation to the IP Plan at Attachment G.

Clause 3.15.2.2 places a contractual obligation on the Contractor to provide IP Progress Reports to the Commonwealth in accordance with CDRL MGT-300.

Clause 3.15.2.3 states that the Commonwealth may conduct a review at the Contractor's or any Approved Subcontractor's premises to assess and verify implementation of the IP Plan. Such reviews may be undertaken annually at the Contractor's or any Approved Subcontractor's premises. This Clause requires the Contractor or Approved Subcontractor to facilitate the reviews.

Drafter's Action: Clause 3.15 is to be included in the RFT without alteration.



Prior to Contract signature, drafters must insert the negotiated IP Plan at Attachment G. The IP Schedule proposed in TDR C-5 will form part of the IP Plan.

Related Clauses: TDR C-5 of the conditions of tender requires each tenderer to submit a draft IP Plan.

Clause 5 of the conditions of contract contains the IP clauses for the Contract. In particular, clause 5.3 details the Intellectual Property licences that must be provided by the Contractor to the Commonwealth and clause 5.4 details the Technical Data to be provided under the Contract.

Clause 5.3.3 of the draft SOW contains clauses dealing with Technical Data and escrow.

Further Reading: Nil

**3.16 Defence Security Compliance**

Sponsor: Defence Security Authority

Status: Optional

Purpose: To impose a contractual obligation on the Contractor to ensure that all security procedures, training, facilities and clearance requests are established and maintained to meet the requirements of clause 10.10 of the conditions of contract.

Policy: Defence Industrial Security Manual - SECMAN 2.  
DPPM – Section 3, Chapter 3.9 “Defence Security Requirements”

Guidance: The security requirements of the Contract are specified in clause 10.10 of the conditions of contract. This clause requires the Contractor to undertake the work required to comply with clause 10.10 of the conditions of contract.

Drafter’s Action: If required, clause 3.16 is to be included in the RFT without alteration.

Related Clauses: Paragraph 11 of Annex E to Attachment A of the conditions of tender requires each tenderer to provide details of the type and level of facility clearances held by the tenderer and proposed Subcontractors.

Clause 10.10 of the draft conditions of contract details the security requirements of the Contract and the security classification of work to be performed under the Contract.

Further Reading: Nil

**3.17 Resident Project Personnel**

**Sponsor:** Materiel Policy & Services

**Status:** Optional

**Purpose:** To impose a contractual obligation on the Contractor to provide support to any Resident Project Personnel (RPP), who will be collocated at the Contractor's premises during the Contract.

**Policy:** Drafters should be aware that Commonwealth policy prohibits the inclusion within the Contract Price of travel or accommodation costs associated with the movement of Commonwealth personnel. Any such costs must be separately programmed and funded by the Project Authority from the appropriate element of project funding. This prohibition does not extend to the allocation of facilities at the Contractor's premises.

**Guidance:** The inclusion of RPP at the Contractor's premises is strongly recommended for projects that involve design and development. RPP can assist with activities, such as:

- a. requirements interpretation;
- b. human engineering issues (particularly issues relating to the human machine interface and human workload analysis);
- c. the monitoring of the Contractor's activities under the Contract;
- d. representing the Commonwealth at Contractor meetings; and
- e. representing the Commonwealth during Acceptance Verification and Validation activities.

In selecting RPP, the Project Authority should ensure that staff are selected that have appropriate qualifications, experience, and understanding of the requirements of the project. A minimal team should embrace the core disciplines of PM, SE and ILS, whereas, a larger team, should consider the inclusion of more specialist staff, such as software, configuration management, quality assurance, Australian Industry Involvement, etc, commensurate with the assessment of project risks.

The Project Authority needs to ensure that the exact scope of authority of the RPP is evident to all parties to ensure that the requirements of the Contract are not inadvertently compromised by the RPP. This scope of authority should be documented in the Contract at Attachment L, with any additional terms of reference provided to the RPP in writing by the Project Authority.

The Project Authority needs to closely monitor the activities of the RPP to ensure that the RPP do not become overly aligned to the Contractor and, subsequently, cease to represent the best interests of the Commonwealth.

The Commonwealth has a statutory duty to provide its employees with a safe workplace, whether that workplace is located on Commonwealth premises or elsewhere. Under clause 3.17.3 the Contractor is obliged to provide Commonwealth personnel with facilities of an equal standard to those provided for Contractor's personnel of a similar status which take into account requirements for health, safety and comfort. Where drafters are concerned that the obligation placed on the Contractor under clause 3.17.3 will not be sufficient for the Commonwealth to meet its statutory obligations to provide its employees with a safe workplace, drafters must set out in clause 3.17.3 the appropriate standard for the facilities to be provided. Generally, this will be necessary only in the case of an overseas Contractor in a jurisdiction that imposes a lower standard for occupational health and safety matters than is imposed on Australian employers.

Clause 3.17.5 places an obligation on the Commonwealth to comply with and require Commonwealth officers to comply with safety and security arrangements, regulations and codes of behaviour that apply to the Contractor's premises. Where Commonwealth officers require security clearances to enter the Contractor's premises, clause 3.17.4 places an obligation on the Contractor to provide all

reasonable assistance to facilitate the arranging of such clearances where the Contractor's premises are located outside of Australia.

**Drafter's Action:** If required, clause 3.17 is to be included in the RFT without alteration.

Drafters need to identify, in Attachment L to the Contract, the numbers of RPP, terms of reference, and duration of their collocation with the Contractor.

**Related Clauses:** Clause 2.1 of the conditions of contract relates to the authority of Commonwealth staff under the Contract, including 'Authorised Persons'.

Attachment L to the conditions of contract details all of the requirements associated with RPP.

**Further Reading:** Nil



## 4. SYSTEMS ENGINEERING

### 4.1 Systems Engineering Management

Sponsor: Materiel Policy & Services

Status: Core with optional clauses.

Purpose: To require the contractor to undertake adequate and effective systems engineering processes in the management of engineering development work under the Contract and to allow the Commonwealth appropriate insight into these processes.

Policy: It is DMO policy for a systems engineering approach in to be taken in requirements definition, systems development and design and engineering processes for developmental systems. This requirement is underpinned in the Capability Systems Lifecycle Management Guide 2001. Specific policy for systems engineering is outlined in relevant Process Reference Pages of the DMO's Standard Acquisition Management System and can be accessed through the DMO Knowledge System. The DMO uses EIA-632 "Processes for Engineering a System" as its systems engineering standard.

In the ensuing sub-sections, where no specific policy is identified, the above mentioned overarching policy is relevant.

Guidance: See guidance on subclauses.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

#### 4.1.1 - ENGINEERING ORGANISATION AND PLAN

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require the Contractor to develop, deliver, maintain and implement a Systems Engineering Management Plan and subordinate plans called for under the Contract and for Subcontractors to also develop, deliver, maintain and implement appropriate technical plans commensurate with their scope of work.

Policy: See Section 4.1

Guidance: Clause 4.1.1 ensures that the Contractor adequately plans the engineering activities for the project and conducts the activities in accordance with the plan. This should include adequate planning and oversight of Subcontractor activities.

The engineering aspects of the draft SOW have been aligned with EIA-632, which specifies 33 high-level process requirements for engineering a system. EIA-632 specifies these requirements in abstract terms and does not mandate particular methods to satisfy them. As such, the SEMP is expected to capture the Contractor's tailoring of EIA-632, as applicable for the Contract and the Contractor's internal procedures.

The requirements of this clause of the draft SOW should apply to the design and development of the Mission System as well as to significant end items of technical equipment that form part of the Support System. These elements should be clearly defined in Clause 2.1, 'Scope of Work'.

Note that, although the SOW is based upon the EIA-632, that standard does not provide specific guidance for a SEMP or its contents. The required information content of the SEMP (though not the precise format) is defined by DID-ENG-MGT-SEMP, and is based on the earlier EIA/IS-632 standard.

The SEMP is intended to be the highest level document that defines the engineering processes for the program, with other plans such as the Systems Safety Program Plan (SSPP), Human Engineering Program Plan (HEPP),

Integrated RM&T Plan (IRMTP), Project Process Improvement Plan (PPIP), System Review Plan (SRP) and Growth Plan being subordinate to the SEMP. The SEMP needs to define the interrelationship and use of these subordinate plans.

**Drafter's Action:** Clause 4.1.1 is to be included in the RFT without alteration.

Depending upon whether or not the Project Authority intends to obtain a Contract-ready SEMP prior to Contract (i.e. through offer definition activities or contract negotiations), the CDRL delivery times for the SEMP may need to be adjusted.

**Related Clauses:** Clause 3.5 of the conditions of tender addresses the offer definition phase.

TDR G-1 of the conditions of tender requests tenderers to provide a draft SEMP.

Clause 2.1 of the draft SOW outlines the scope of work under the Contract.

Clause 3.2.3 of the draft SOW specifies the requirements relating to the Contract Master Schedule.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Engineering Management*

#### 4.1.2 - ENGINEERING SCHEDULE

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to include a time-based schedule of engineering activities, technical milestones, System Reviews and key dependencies in the Contract Master Schedule.

**Policy:** See Section 4.1

**Guidance:** Clause 4.1.2 ensures that the project schedule adequately reflects the engineering activities and reflects the key program technical events.

There are two types of relevant engineering schedule, known in earlier standards as the systems engineering master schedule (SEMS) and the system engineering detailed schedule (SEDS). The SEMS was intended to reflect the required program sequence of activities and milestones and their inter-relationships, providing the logical basis for a time-based schedule. This time-based schedule, or SEDS, showed durations of activities and could include 'artificial' dependencies generated by limited resources (i.e. activities that would therefore need to be conducted as a series rather than in parallel).

The ASDEFCON (Strategic Materiel) RFT Template does not use these terms but captures the time-based engineering schedule in the overall project schedule (CMS) required under SOW clause 3.2.3 and captures the relevant events and relationships in the System Review Plan required under SOW clause 4.1.4.

**Drafter's Action:** Clause 4.1.2.2 may need elaboration to identify project-specific milestones of interest that should be addressed in the CMS.

**Related Clauses:** Clause 3.2.3 of the draft SOW specifies the requirements relating to the Contract Master Schedule.

Clause 4.1.4 of the draft SOW specifies the requirements relating to the Conduct of System Reviews.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Engineering Management*

#### 4.1.3 - AUTHORISED ENGINEERING ORGANISATION

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**Sponsor:** Materiel Policy & Services

**Status:** Optional (Core for Aerospace and Land materiel projects)

**Purpose:** To require the Contractor to institute systems that establish confidence in the processes by which the requisite levels of safety and fitness for service of materiel are achieved. In particular, this section provides that a Contractor, which is

undertaking design of technical equipment with a technical or functional interface with ADF aircraft, must be an Authorised Engineering Organisation (AEO).

**Policy:** DI(G) LOG 08-15 Regulation of Technical Integrity of Australian Defence Force Materiel

DI(G) OPS 02-02 Australian Defence Force Airworthiness Management

AAP 7001.053, Technical Airworthiness Management Manual (TAMM)

**Guidance:** The objective of this clause is to ensure an appropriate design framework is in place to enable the continued technical and operational airworthiness of aircraft.

All Contracts that include design of technical equipment that has a technical or functional interface with ADF aircraft MUST invoke a contractual requirement to become an AEO and comply with AAP 7001.053, Technical Airworthiness Management Manual (TAMM) Regulation 3.

**Drafter's Action:** The ASD Chief Engineer (Acquisition) is the point of contact for advice regarding the applicability of the technical airworthiness regulations to acquisition. For other environments, refer to the Regulation of Technical Integrity of Australian Defence Force Materiel (and further reading).

**Related Clauses:** Clause 4.1.1 of the draft SOW specifies the requirements relating to Engineering Management.

Clause 4.6.4 of the draft SOW specifies the requirements relating to Human Engineering.

Clause 4.6.5 of the draft SOW specifies the requirements relating to Electromagnetic Environmental Effects.

Clause 4.6.6 of the draft SOW specifies the requirements relating to Safety.

Clause 4.6.8 of the draft SOW specifies the requirements relating to Aircraft Type Certification.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Airworthiness Regulatory Requirements*

See also - *DI(A) LOG 12-1 Regulation of the Technical Integrity of Land Materiel*

See also - *DI(N) LOG 47-3 Technical Regulation of Navy Materiel*

#### 4.1.4 - AUTHORISED MAINTENANCE ORGANISATION

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**Sponsor:** Materiel Policy & Services

**Status:** Optional (Core for Aerospace projects)

**Purpose:** To require the Contractor to institute systems that establish confidence in the processes by which the minimum technical airworthiness criteria for maintenance of ADF aircraft and / or aeronautical product are met. In particular, this section provides that a Contractor becomes an Authorised Maintenance Organisation (AMO) and complies with AAP 7001.053, Technical Airworthiness Management Manual (TAAM) which defines the baseline regulatory requirements to be applied to AMO's and Aircraft Maintenance and Management procedures.

**Policy:** DI(G) LOG 08-15 Regulation of Technical Integrity of Australian Defence Force Materiel

DI(G) OPS 02-02 Australian Defence Force Airworthiness Management

AAP 7001.053, Technical Airworthiness Management Manual (TAMM)

**Guidance:** The objective of this clause is to ensure an appropriate design framework is in place to enable the continued technical and operational airworthiness of aircraft.

All Contracts that include maintenance of ADF aircraft or technical equipment that has a technical or functional interface with ADF aircraft MUST invoke a contractual



requirement to become an AMO and comply with AAP 7001.053, Technical Airworthiness Management Manual (TAMM) Regulation 4 and Regulation 5.

**Drafter's Action:** Director General Technical Airworthiness – Directorate of Aircraft Maintenance (DGTA-AMNTREG) is the primary point of contact for Maintenance regulatory issues. The ASD Chief Engineer (Acquisition) can provide advice regarding the applicability of the technical airworthiness regulations to acquisition. For other environments refer to the Regulation of Technical Integrity of Australian Defence Force Materiel (and further reading).

**Related Clauses:** Clause 4.1.1 of the draft SOW specifies the requirements relating to Engineering Management.

Clause 4.6.4 of the draft SOW specifies the requirements relating to Human Engineering.

Clause 4.6.5 of the draft SOW specifies the requirements relating to Electromagnetic Environmental Effects.

Clause 4.6.6 of the draft SOW specifies the requirements relating to Safety.

Clause 4.6.8 of the draft SOW specifies the requirements relating to Aircraft Type Certification.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Airworthiness Regulatory Requirements*

See also – *Philosophy Paragraph 8.2 Hooks for Regulatory Authorities*

See also - *DI(A) LOG 12-1 Regulation of the Technical Integrity of Land Materiel*

See also - *DI(N) LOG 47-3 Technical Regulation of Navy Materiel*

#### 4.1.5 - CONDUCT OF SYSTEM REVIEWS

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to conduct Mandated System Reviews and other Internal System Reviews in accordance with an Approved System Review Plan that involves the participation of the Project Authority. Project Authority participation is essential for all Mandated System Review and at the discretion of the Project Authority for Internal System Reviews.

**Policy:** See Section 4.1

**Guidance:** Clause 4.1.5 defines the expected program and conduct of System Reviews.

A System Review means, in accordance with the Glossary, “an event at which the progress of the technical effort (including that of engineering and integrated logistics support) is assessed relative to its governing plans and technical and contractual requirements”.

A *Mandated* System Review means a System Review that is mandated by the Commonwealth in the Contract.

An *Internal* System Review means a System Review, other than a Mandated System Review, that the Contractor or Subcontractor conducts as part of the program of activities for the Contract.

The intent, where possible, is to encourage progressive development and Commonwealth review of products associated with a particular development phase. The formal System Review meeting should be a checkpoint that ensures all activities have been addressed.

The System Review Plan (SRP) describes the Contractor's organisation, responsibilities and procedures for the conduct of the System Review Program. The SRP also describes the reviews to be carried out under the program; the

scheduling, sequencing and interrelationship of these reviews; and the relationship of the System Review program to key milestones of the engineering program.

Note that the term “System Review” replaces the earlier terms such as “Technical Review” and the SRP replaces the earlier Technical Review Plan or Technical Review and Audit Plan.

System Reviews include system engineering reviews, configuration audits and ILS reviews. Accordingly, project offices should ensure that personnel from each of the relevant disciplines are involved in the review of the SRP.

ILS participation from both Commonwealth and Contractor teams at Mandated System Reviews ensures coordination between the ILS and SE Programs. Supportability characteristics of the Mission System design are addressed in these reviews, and the impact of the Mission System design on the Support System can be evaluated under whole-of-capability terms. Attention is also drawn to clause 3.11 of the draft SOW (LCC), which brings together the Mission System and Support System within a LCC framework, and which defines one of the Contractor’s primary obligations at the Mandated System Reviews.

Note that the SRP also addresses the Internal System Reviews and that the SOW allows for optional clauses to ensure that the Commonwealth is invited to Internal System Reviews and is provided with documented feedback. This should be considered based on the program risk areas and the value of Commonwealth insight into such areas. These clauses are relevant and should be invoked where the Contractor may be conducting additional reviews (e.g. such as formal requirements reviews with major subcontractors or reviews associated with each build of a multiple-build development strategy). They are not intended to apply to lower level design review processes such as individual document reviews; however, they may have applicability during the lower level development processes, for example in respect to formal inspections or design walkthroughs for a critical software element. The key element in these clauses is that the Commonwealth involvement is optional - the Commonwealth may be invited but should assess its attendance on an as-available and component criticality / risk basis.

The SOW template defines a default set of mandated reviews:

- a. SRR – System Requirements Review (for both Mission and Support Systems);
- b. SDR – System Definition Review (for both Mission and Support Systems);
- c. PDR – Preliminary Design Review;
- d. DDR – Detailed Design Review;
- e. SSDDR - Support System Detailed Design Review;
- f. TARR - Task Analysis Requirements Review;
- g. LLIR - Long Lead Time Items Review(s);
- h. PPR - Provisioning Preparedness Reviews for Spares, Support and Test Equipment, and Training Equipment;
- i. FACRR - Facilities Readiness Review;
- j. TNGRR Training Readiness Review;
- k. TRR – Test Readiness Review;
- l. FCA – Functional Configuration Audit (for both Mission System and Support System Components);
- m. PCA – Physical Configuration Audit (for both Mission and Support System Components);

Depending on the particular program, other reviews may also need to be considered. For example, a Production Readiness Review (PRR) may be needed for a program that has a significant production element, and Ground Test Readiness Reviews and Flight Test Readiness Reviews may need to be conducted for acquisitions involving aircraft. The most important issue is to consider the set of Mandated System Reviews that gives the Commonwealth sufficient insight into the development of the Contractor's solution. The Mandated System Reviews need to occur often enough to ensure that the Commonwealth has appropriate insight before the Contractor has committed significant effort and is unable to modify its activities. This needs to be balanced by appropriate intervals between Mandated System Reviews to ensure that the Contractor has made useful progress towards defining or implementing the solution.

Checklists are to be used to define entry and exit criteria for each review, which helps to ensure that both parties have a clear understanding of review requirements and achievement of the review milestones. Where checklists have not been provided as part of the standard ASDEFCON (Strategic Materiel) templates, they should be prepared by the project team using the format of the existing DMO Checklists as a template. MIL-STD-1521B, although cancelled, may provide useful information to help develop applicable checklists for any additional reviews (e.g. for a PRR).

Additionally, the standard checklists may require tailoring to suit the specific requirements of particular projects. Where the entry and exit criteria for more than one review can be met at the same time, the reviews may be conducted simultaneously.

Each Mandated System Review should normally be identified as a Stop Payment Milestone in accordance with the provisions of clause 7.11 of the conditions of contract. It may also be a Schedule Compression Milestone as described in clause 7.11, particularly for the earlier to mid-project reviews such as PDR or DDR. The Mandated System Reviews should also be formally identified in the Schedule of Milestone Entry and Exit Criteria, Annex C to Attachment B of the Contract.

**Drafter's Action:** If work on the Contract is being undertaken at a number of locations, consideration should be given to the most suitable location to meet the review objectives of the Mandated Reviews (e.g. Contractor or Subcontractor premises). This should be reflected in a tailoring of clause 4.1.4.3 and should not necessarily be chosen based on the lowest cost of travel for personnel. The location should consider the best setting with access to the appropriate people and equipment to ensure the success of the review, but at acceptable cost to the Commonwealth.

Drafters are to ensure that the appropriate versions of the DMO Checklists for all of the Mandated System Reviews are inserted into Annex D of the draft SOW.

Drafters are to ensure that the DMO Checklists for the reviews in the project address the project needs for both development and support. Checklists may need to be developed for new reviews where no checklist is available. Where possible, these checklists should be written in a generic form so that they may be reused within DMO, forming part of the DMO asset pool for later projects with similar needs.

Drafters are to identify whether or not the Mandated System Reviews should be identified as Stop Payment Milestones or Schedule Compression Milestones in accordance with clause 7.11 of the conditions of contract.

The drafter also needs to consider the optional attendance and visibility of Internal System Reviews (i.e. as reflected in clauses 4.1.4.11 and 4.1.4.12). Refer to the discussion of this in the guidance above.

**Related Clauses:** Clause 4.2.3 of the draft SOW addresses the System Requirements Review.

Clause 4.2.4 of the draft SOW addresses the System Definition Review.

Clause 4.3.1 of the draft SOW addresses the Preliminary Design Review.

Clause 4.3.2 of the draft SOW addresses the Detailed Design Review.

Clause 5.1.2 of the draft SOW addresses the ILS Mandated System Reviews.

Clause 6.7 of the draft SOW addresses Configuration Audits, which include FCA/PCA for the Support System and for Support System Components.

Clause 7.1.4 of the draft SOW addresses Test Readiness Reviews, which include Supportability and Support System testing.

Clause 7.11 of the draft conditions of contract provides the provisions relating to Stop Payment Milestones and Schedule Compression Milestones.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

Annex C to Attachment B of the draft Contract provides the Schedule of Milestone Entry and Exit Criteria.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Design Solution*

See also – *Philosophy Annex A, Lifecycle Thread - System Reviews*

See also – *MIL-STD-1521B Technical Reviews and Audits for Systems, Equipments, and Computer Software*

See also – *Guidance on the draft conditions of contract, clause 7.11, Failure to Achieve Certain Milestones*

#### 4.1.6 - INDEPENDENT REVIEW TEAM

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**Sponsor:** Materiel Policy & Services

**Status:** Optional. To be included where the Commonwealth requires the Contractor to appoint an independent review team.

**Purpose:** To require the Contractor to appoint an independent review team of appropriately qualified subject matter experts, who have not contributed to the elements under review, to participate in each Mandated System Review.

**Policy:** See Section 4.1.

**Guidance:** Clause 4.1.6 ensures an appropriate level of review for high risk projects.

The use of an in-house peer review team enhances company-level visibility and encourages the Contractor to make use of other expertise in the company. This approach may be warranted when, for example:

- a. the project's risk profile is high;
- b. the project needs a particularly broad range of expertise or requires teams that are difficult to assemble and maintain; or
- c. the system has safety or mission criticality coupled to significant complexity or the specialist domain areas are exceptionally narrow.

Of course, the contractor's organisation must have the ability to support an independent review for this approach to be viable.

This approach may be used in conjunction with, or independently from, the IV&V under SOW 3.10, and may be less expensive than an IV&V program, though perhaps not as effective. This approach is also related to the independent review called up as part of the AEO requirements under SOW 4.1.3.

**Drafter's Action:** The drafter needs to decide if these clauses are warranted based on the risk profile of the project as discussed above.

**Related Clauses:** Clause 3.10 of the draft SOW specifies the requirements relating to IV&V.

Clause 4.1.3 of the draft SOW specifies the requirements relating to AEO.

Further Reading: Nil

#### 4.1.7 - TECHNICAL PERFORMANCE MEASURES

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require the Contractor to establish a set of Measures of Effectiveness (MOEs) to ensure that user needs are traceable to measurable design criteria through the System Specification.

Policy: See Section 4.1.

Guidance: Clause 4.1.7 identifies the Technical Performance Measures (TPMs) that will be used to determine the success of the system.

A TPM program provides an early warning of the adequacy of a design in terms of its ability to satisfy selected critical performance parameter requirements of a system end product. Use of TPMs provides an analysis and control technique that is used to:

- a. project the probable performance of a selected technical parameter over a period of time;
- b. record the actual performance observed of the selected parameter; and
- c. through comparison of actual versus projected performance, assist the manager in decision making.

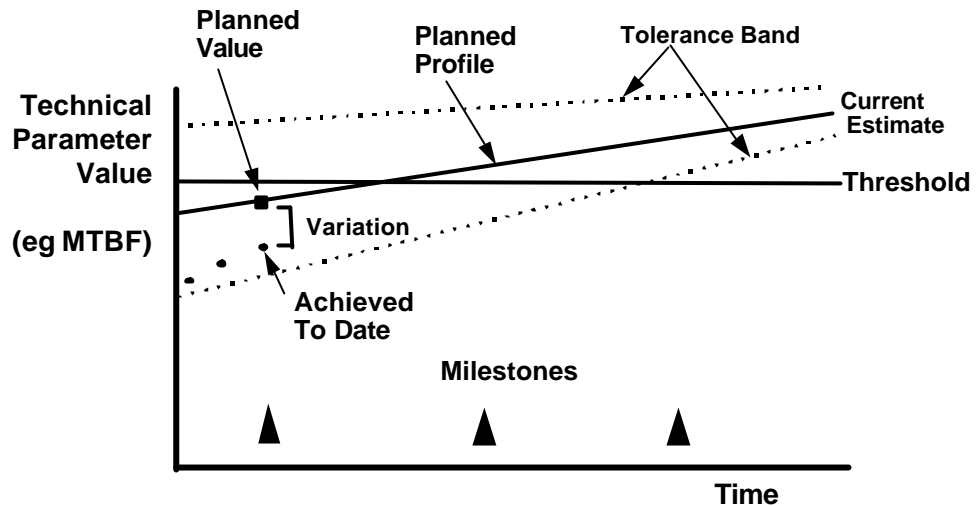
A well thought-out program of TPMs provides an early warning of technical problems and supports assessments of the extent to which operational requirements will be met, as well as assessments of the impacts of proposed changes in system performance.

Parameters to be tracked are typically based on the combined needs of the Commonwealth and Contractor. The Commonwealth will need a set of TPMs that:

- a. provides visibility into the technical performance of key elements of the work breakdown structure, especially those that are cost drivers on the program;
- b. lie on the critical path; and/or
- c. represent high risk items.

The TPMs selected for delivery to the Commonwealth are expected to be traceable to the needs of the operational user through the MOEs, which could be documented in the OCD, FPS, SS, SSSPEC and/or the Design Documents.

A typical TPM profile will take a form somewhat like that shown in **Figure 4-1** below. The actual form of the projected performance profile and whether or not tolerance bands are employed will be a function of the parameter selected and the needs of the project office.



**Figure 4-1 Conceptual Technical Performance Measure**

TPMs should include parameters that relate to both the Mission System and Support System, and may typically include items such as Mean Time Between Failure (MTBF) and Mean Time To Repair (MTTR). In general, TPMs should not merely reiterate SS requirements with which the Contractor is compliant, unless there is significant risk in the Contractor meeting that requirement and the requirement is critical to operational performance.

TPMs may often reflect design goals and may be linked to incentive payments (i.e. those described by conditions of contract 7.13). In this case, they should be precisely defined, directly related to specific measurable criteria (as opposed to estimates), and be of direct operational benefit to the ADF. Any assumptions or estimated values, such as those in a model to relate parameters to operational measures should be agreed in the Contract.

TPMs can also be useful to track when they address aggregated measures that can be estimated or accrued from a number of sub-measures. This could be true, for example, when SS parameters have been derived through the use of models and assumptions. A Contractor may meet or exceed each of these derived parameters, but the aggregated measure could be significantly better. For example, with low level measures of vehicle speed and carrying capacity, the aggregated MOE may be the time taken to deliver 100 m<sup>3</sup> of equipment to a site 10 km distant. This time would depend on both speed and carrying capacity and may more accurately reflect the operational need (time to deliver a given volume). Tradeoffs in the lower level specifications may be easier to consider in this “operational space” rather than in the “design space”.

**Drafter's Action:** This clause needs to be tailored depending upon the previous work conducted by the Commonwealth (i.e. work related to Critical Operational Issues (COIs) and Measures of Performance (MOPs) that may be documented in the OCD).

Particular TPMs may be mandated by the Commonwealth or developed in conjunction with the Contractor, usually based on an evaluation of risk. Where TPMs are mandated, they should be specified here.

TPMs may also need to be monitored more frequently than at each design review—this need should be tailored to suit the requirements of the project and defined in additional clauses in this section.

Management of TPMs may be documented in the Measurement Plan, CDRL Line Number MGT 200, as an alternative to the SEMP.

**Related Clauses:** Clause 7.13 of the draft conditions of contract provides the provisions relating to Incentive Payments.

Further Reading: See also – *Capability Definition Documents Guide*

See also - [www.acq.osd.mil/pm/tpm/index.htm](http://www.acq.osd.mil/pm/tpm/index.htm)

#### 4.1.8 - PROCESS IMPROVEMENT

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to address identified process weaknesses in accordance with an approved plan.

Policy: See Section 4.1.

Guidance: Clause 4.1.8 imposes a contractual obligation on the Contractor to apply process improvements to processes determined to represent risk to project success. The activities to be performed are documented in an Approved Project Process Improvement Plan (PPIP).

Predictable product quality is largely dependent on the processes used to produce the product. The Capability Maturity Model Integrated (CMMI) provides a useful benchmark to assess the process capability of Contract consortia (i.e. DMO Project Authority, Contractor and Subcontractors) and to identify risks to a predictable and successful Contract outcome, particularly for software-intensive projects.

DMO policy requires that process capability be assessed against the needed process capability and that identified weaknesses be addressed through corrective action. Therefore, during development of the Acquisition Strategy and acquisition planning, consideration should be given to employing CMMI Appraisals to assess the process capability of tenderer consortia in selecting a preferred tenderer. Where a tenderer consortium is involved, it may be beneficial to conduct appraisals of the various organisations involved in the consortium in the process areas key to their role within the consortium.

The cost of performing CMMI Appraisals is high and so the need to apply them on multiple tenderer consortia will be reserved for only very high value/high risk software-intensive projects. Where process capability is not a discriminator in selecting a tenderer consortium, but the project is software-intensive, CMMI Appraisals should still be performed prior to Contract signature.

This clause may be deleted where a process assessment (i.e. CMMI Appraisal or other assessment technique) is not intended, given a low project risk/value. It may also be deleted or tailored where no significant process weaknesses are identified.

The Director of Software Engineering, Materiel Policy & Services should be consulted for assistance in evaluating tender responses against the process capability criteria, as some tenderers may have recently completed CMMI appraisals and another appraisal may not be necessary, providing their response provides adequate details of the prior assessment, findings and improvement actions taken since. Identifying process weaknesses early allows corrective action to be taken in support of the project schedule. Where significant weaknesses are identified in a tenderer consortium's capability, either through tender response evaluation or through the conduct of CMMI Appraisals during offer definition, a process improvement program is defined and agreed with the tenderer to improve these processes before they are applied in earnest on the project. The tenderer documents the agreed process improvement program in a Project Process Improvement Plan (PPIP) (see DID-ENG-MGT-PPIP), which is then reviewed and agreed prior to Contract. The agreed process improvement program is then incorporated within the Contract as part of the Contractor's scope of work through the SOW.

During Contract surveillance, progress against the PPIP is monitored and verified in the same way as other Contractor activities. The PPIP should provide for follow-up CMMI appraisals to be conducted at set points in the process improvement program to verify the process capability achieved through the PPIP activities.

Consideration should be given to associating “penalties” or incentives under the Contract for non-performance against the PPIP to ensure the Contractor treats the process improvement program seriously and responsibly.

Given the project is also dependent on the acquisition processes applied by the Project Authority, consideration should also be given to including the Project Authority as part of the preferred tenderer consortium appraisal. This will provide an objective assessment of the ability of the overall project organisation (i.e. the Project Authority, Contractor and Subcontractors) to predictably deliver the project outcomes successfully.

CMMI appraisals require competencies not normally found in a Commonwealth project office and, therefore, their planning and scheduling needs to be done in collaboration with the Director of Software Engineering, Materiel Policy & Services.

**Drafter's Action:** Clause 4.1.8 is to be included in the RFT without amendment. Drafters are to review the clause in light of the information obtained in response to TDR G-9, “Systems and Software Process Capability”. Amendments to the clause are to be undertaken in consultation with the Director of Software Engineering, Materiel Policy & Services.

**Related Clauses:** TDR G-9 addresses the tender requirements relating to systems and software process capability.

Clause 3.5 of the conditions of tender describes the offer definition process.

**Further Reading:** Nil



## 4.2 System Definition

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To establish the Contractor's requirements for System Definition during the system definition phase of the Contract. This includes management and use of the Operational Concept Document (OCD), the validation of system requirements, and the requirements for System Reviews in this phase.

Policy: See Section 4.1.

Guidance: See guidance on subclauses.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

### 4.2.1 - OPERATIONAL CONCEPT DOCUMENT

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To define the Contractor's responsibilities with respect to the management of the Operational Concept Document (OCD) for either of two options (i.e. either the Commonwealth or the Contractor develops the OCD).

Policy: *Capability Systems Life Cycle Management Guide, 2001*

Guidance: Clause 4.2.1 defines the management of the OCD in the Contract. The expected situation is that a project will have an existing OCD that has been developed throughout the capability definition phase, prior to the DMO acquisition. This OCD would then be placed on Contract and would only change through CCP action and with the agreement of the project sponsor / end user. These changes may need to occur as implementation details require clarification (e.g. limitations in n-dimensional system parameter space, given that, in practice, it is likely that not all parameters can simultaneously be at their extreme values, and an appropriate operational region within this space needs to be defined).

If an OCD for the system has not been produced by the Commonwealth, then draft clauses are proposed to provide for Contractor development of the OCD. These are only seen to be transitional clauses in the ASDEFCON (Strategic Materiel) RFT Template until the framework is in place that has an OCD for every project before commencing the acquisition phase.

These clauses, and their equivalent for the Support System in clause 5.2.2, highlight that the OCD, the SS and the SSSPEC are to remain in lockstep over the life of the Contract. This approach has been adopted because the OCD is a significant determinant of the fitness for purpose of the resulting Mission and Support Systems.

Drafter's Action: Drafters are to choose the appropriate clauses dependent upon the prior existence of an OCD. If Option B is chosen, the Option A clauses need to be retained (as any changes to the OCD still need to be formally managed) but reworded to reflect a Contractor-developed OCD.

Related Clauses: Clause 5.2.2 of the draft SOW addresses the system definition phase for the Support System, including the relationship with the OCD.

Further Reading: See also – *Capability Definition Documents Guide*

#### 4.2.2 - SYSTEM REQUIREMENTS VALIDATION

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require the Contractor to develop and validate a System Specification (SS) for the Mission System, with a formal framework of requirements traceability to the OCD and FPS. This also addresses the establishment of the SS as the Functional Baseline for the Mission System and the use of approved change control methods to address inconsistencies.

Policy: *Capability Systems Life Cycle Management Guide, 2001*

Guidance: Clause 4.2.2 requires the Contractor to develop a System Specification, which encapsulates a clear, unambiguous set of requirements that define the Mission System and that can be used as a basis for further development and verification.

The Contractor is expected to develop and validate a set of requirements for the Mission System (i.e. the System Specification (SS)) and for the Support System (i.e. the Support System Specification (SSSPEC)) based on the Function and Performance Specification (FPS) at Annex A to the SOW and the OCD at Annex B to the SOW. The activities associated with requirements development and requirements validation are described in more detail in EIA-632.

Drafters and users of the ASDEFCON (Strategic Materiel) RFT Template are advised to also review the requirements-validation sections of EIA-632, including Sections 4.3 and 4.5.2 and the sub-elements of Annex C that help to clarify each of the relevant requirements in that standard (i.e. Requirements 14, 15, 16, 19, 25, 26, 27 and 28). The requirements-validation processes for the Mission System will be conducted in accordance with the Contractor's SEMP and those for the Support System in accordance with the Contractor's ISP (refer to discussion in 5.2.2). SE and ILS staff in Commonwealth project offices should liaise with each other when reviewing the Contractor's SEMP and ISP to ensure that a viable and integrated requirements-validation program is being planned.

The requirements-validation process is one of the most significant elements of the design process for the Mission System. Inadequate requirements are a well-known cause of project failure, and the requirements-validation process is intended to ensure that both the individual requirements and the set of requirements are valid and understood by all parties. There are likely to be new and modified requirements arising out of the requirements-validation phase, as well as requirements that need to be deleted. These changes could also result in changes to the Contract Price (through Contract Change Proposals (CCPs)), and the Commonwealth project teams should view any such changes with diligence and maturity. Of note, there is likely to be considerable benefit in conducting the requirements-validation phase as part of an offer definition phase and, therefore, it is strongly recommended that Commonwealth project teams consider this approach.

In developing the SS and SSSPEC, the Contractor is required to maintain traceability to the input documents (refer **Figure 4-2**). Every requirement in the FPS must trace to either the SS or the SSSPEC ("downward traceability") with accompanying rationale for any changes of refinements. The SS and SSSPEC should contain more detail than the FPS, much of which may come from appropriate interpretation of the OCD. Hence the SS and the SSSPEC traceability should be to either the FPS or OCD (or both – "upward traceability"), again with appropriate rationale for any interpretations. The traceability is expected to be captured in the Requirements Traceability Matrix (RTM) of SOW clause 4.5.2.

The FPS and OCD represent DMO's agreement with Defence Capability staff on the Capability to be delivered. As such, they are not normally expected to change over the life of the Contract. However, during the Contractor's development activities, it may be necessary for the Contractor to propose SS or SSSPEC requirements that would be in conflict with, or limit the generality of, the FPS or

OCD (typically due to the feasibility of implementations). Although this is ideally done through pre-Contract activities (including contract negotiations) in all cases the Project Authority needs to gain internal Defence approval. The SOW template allows for this process through clause 4.2.2.4, which asks the Contractor to submit a deviation for Project Authority approval.

As part of the requirements-validation process, the Contractor will be updating, and providing more detail in, the Verification Cross Reference Matrix (VCRM) that accompanies the SS (refer clause 7.1.3 of the draft SOW). Commonwealth Project Offices should ensure that the updated VCRM:

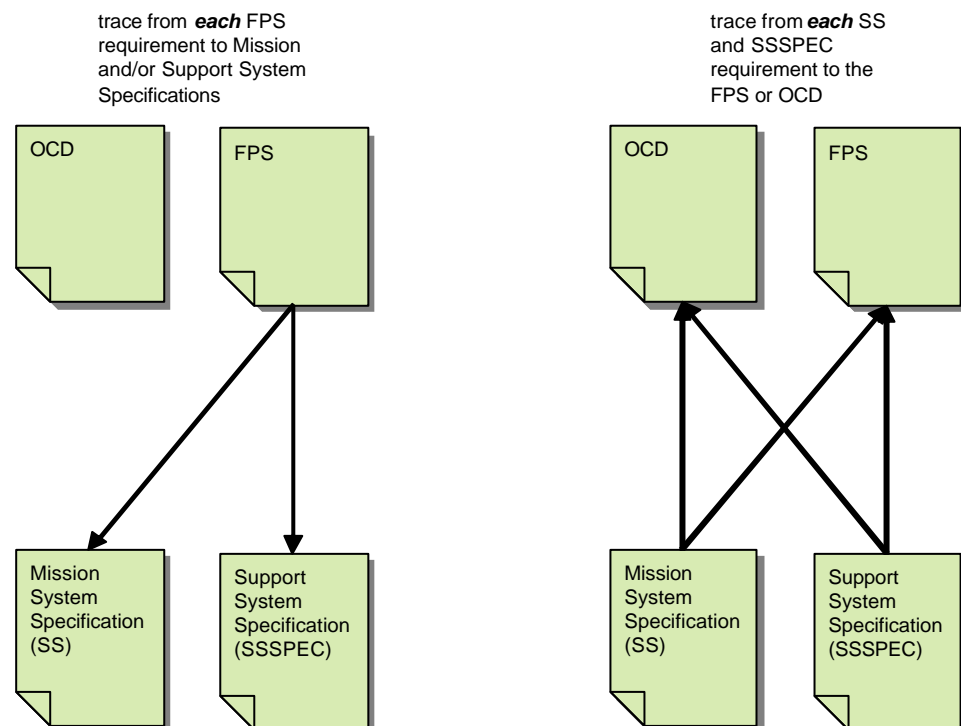
- a. is consistent with the VCRM that was placed on Contract; and
- b. will result in adequate Verification of the Mission System.

For further information on Verification and Validation (V&V), refer to the V&V section of this Handbook.

The Contractor is required to raise a CCP in accordance with clause 10.1 of the conditions of contract to establish the SS as the Functional Baseline for the Mission System and hence the basis for development and Verification of the Mission System. Note that, as the FPS provides the basis of DMO's internal contract with Capability Systems, the FPS is expected to remain on Contract and any future changes to the SS or SSSPEC should modify the corresponding traceability (which is addressed in clause 4.2.2.3).

Note that, through the requirements validation process, deficiencies may also be identified in the FPS. As stated earlier, the FPS is not normally expected to change over the life of the Contract. Clause 4.2.2.4 specifies that any proposed requirements in the SS or SSSPEC that conflict with the FPS need to be addressed through the mechanism of a deviation (through clause 8.4 of the draft SOW) to resolve such deficiencies. These deviations would undergo an approval process and, if ratified, form part of the rationale for traceability required under clause 4.2.2.3.

The SOW defines a similar process for the SSSPEC in clause 5.2.2.1.



**Figure 4-2- Traceability from FPS and OCD to SS and SSSPEC**

**Drafter's Action:** The drafter needs to define the expected time-frames for CCP approval of the SS and SSSPEC in 4.2.2.5. Otherwise, clause 4.2.2 is to be included in the RFT without alteration.

**Related Clauses:** Clause 4.5.3 of the draft SOW addresses the requirements associated with Design Traceability.

Clause 5.2.2 of the draft SOW addresses the requirements-validation activities for the Support System.

Clause 7.1.3 of the draft SOW addresses the requirement for a Verification Cross Reference Matrix.

Clause 8.4 of the draft SOW addresses the processing of Applications for Deviation.

Clause 10.1 of the draft conditions of contract includes the provisions associated with the processing of Contract change proposals.

**Further Reading:** See also – *Capability Definition Documents Guide*

*See also - EIA-632 Processes for Engineering a System*

#### 4.2.3 - SYSTEM REQUIREMENTS REVIEW

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to undertake a System Requirements Review as a Mandated System Review.

**Policy:** See Section 4.1.

**Guidance:** A System Requirements Review (SRR) is intended to validate that the set of stakeholder requirements is complete, consistent with the Commonwealth's intent and is understood by the supplier/developer of the system. The SRR should cover the requirements for both the Mission System and Support System (refer clause 5.1.2.2).

For each review, the Commonwealth must (from EIA-632):

- a. ensure that the technical review objectives and requirements have been adequately defined (noting that these objectives and requirements should be captured in the standard review checklists and may require project-specific tailoring);
- b. determine progress against the event-based plan, noting that:
  - (1) the relevant events and review dependencies should be captured in the System Review Plan (SRP) (refer DID-ENG-RVW-SRP); and
  - (2) SOW clause 4.1.4 requires all the entry criteria to be met before the review may be held;
- c. establish the technical review board, agenda and speakers, which is captured in the review agenda, as defined in SOW clause 4.1.4;
- d. prepare technical review package and presentation material, which is captured in the review package as defined in SOW clause 4.1.4;
- e. facilitate resolution of emerging issues, noting that Commonwealth insight through regular project meetings (SOW clause 3.9.1) should provide visibility of issues and allow appropriate preparatory work before the review;
- f. conduct the review as per SOW clause 4.1.4; and
- g. close out the review in accordance with SOW clause 4.1.4, in particular ensuring that all exit criteria as defined in the SRP have been met (noting

that the SRP (refer DID-ENG-RVW-SRP) contains the exit criteria from the relevant DMO Checklist.

**Drafter's Action:** Drafters are to ensure that the checklist, DMO-CHECKLIST-SRR, meets the requirements of the project.

Drafters are to ensure that the appropriate version of the DMO Checklist for SRR is inserted into Annex D of the draft SOW.

**Related Clauses:** Clause 3.11 of the draft SOW addresses the requirements associated with Life Cycle Cost.

Clause 4.1.4 of the draft SOW addresses the requirements associated with the conduct of System Reviews.

Clause 5.1.2 of the draft SOW addresses the requirements associated with the ILS System Reviews.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – System Reviews*

See also – *EIA-632, Processes for Engineering a System*

#### 4.2.4 - SYSTEM DEFINITION REVIEW

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to undertake a System Definition Review as a Mandated System Review.

**Policy:** See Section 4.1.

**Guidance:** The System Design Review (SDR) is conducted to evaluate the optimisation, traceability, correlation, completeness, and the risk of the allocated requirements, including the corresponding test and support requirements in fulfilling the system/subsystem requirements (the functional baseline) for the Mission System and the Support System (refer clause 5.1.2.2). The review encompasses the total system requirements (i.e. operations/maintenance/test/training hardware, computer software, facilities, personnel, and preliminary logistics-support considerations). Also included is a summary review of the Systems Engineering Management Activities (e.g. mission and requirements analysis, functional analysis, requirements allocation, manufacturing methods/process selection, program risk analysis, system/cost effectiveness analysis, logistics support analysis, trade studies, intra- and inter-system interface studies, integrated test planning, specialty discipline studies, and Configuration Management) which produced the above system definition products. A technical understanding shall be reached on the validity and the degree of completeness of the following information:

- a. the operational concept as captured in the OCD, including a consideration of any proposed changes or inconsistencies identified through the Contractor's activities;
- b. the Mission System Specification;
- c. all external interfaces to the system;
- d. the engineering design/cost of the system;
- e. as appropriate, requirements for component subsystems and developmental elements (e.g. in the form of Prime Item Development Specification(s), Critical Item Development Specification(s), Software Requirements Specification(s) and Interface Requirements Specification(s)).

Refer to the SRR discussion for more details on the general conduct of reviews.

Drafter's Action: Drafters are to ensure that the checklist, DMO-CHECKLIST-SDR, meets the requirements of the project.

Drafters are to ensure that the appropriate version of the DMO Checklist for SDR is inserted into Annex D of the draft SOW.

Related Clauses: Clause 3.11 of the draft SOW addresses the requirements associated with Life Cycle Cost.

Clause 4.1.4 of the draft SOW addresses the requirements associated with the conduct of System Reviews.

Clause 5.1.2 of the draft SOW addresses the requirements associated with the ILS System Reviews.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – System Reviews*

See also – *EIA-632, Processes for Engineering a System*

### 4.3 System Design

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that the Contractor undertakes appropriate design reviews during their system design phase as Mandated System Reviews and that the entry and exit criteria for these reviews meet agreed DMO objectives.

Policy: See Section 4.1.

Guidance: See guidance on subclauses.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

#### 4.3.1 - PRELIMINARY DESIGN REVIEW

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require the Contractor to undertake a Preliminary Design Review as a Mandated System Review.

Policy: See Section 4.1.

Guidance: The Preliminary Design Review (PDR) is conducted to evaluate the basic design approach for a configuration item or for a functionally related group of configuration items. The PDR is used to ensure that all sub-system and enabling product building blocks have been defined appropriately and that all sub-system building block designs satisfy their parent requirements. It also ensures that approaches to the next level of design have been appropriately planned and that risks are identified with appropriate mitigation strategies in place.

For each configuration item, the actions described below may be accomplished as a single event, or they may be spread over several events, depending on the nature and the extent of the development of the configuration item, and on provisions specified in the Contract Statement of Work. A collective PDR for a group of configuration items, treating each configuration item individually, may be held when such an approach is advantageous to the Project Authority; such a collective PDR may also be spread over several events, as for a single configuration item. The overall technical program risks associated with each configuration item shall also be reviewed on a technical, cost, and schedule basis. For software, a technical understanding shall be reached on the validity and the degree of completeness of the software architecture, software test approach and the preliminary software support and transition plans.

While a PDR for the Support System is not programmed under ASDEFCON (Strategic Materiel), the PDR for the Mission System addresses a number of issues that have significant implications for the Support System (e.g. reliability and maintainability of the Mission System, outcomes of FMECA, and, if specified through an appropriate DID, delivery of updates to the LSAR). Additionally, the PDR must also be able to address the design of the Mission System in the context of the global Life Cycle Cost requirements under clause 3.11.

Refer to SRR discussion for more details on general conduct of reviews.

Drafter's Action: Drafters are to define how the PDR will be used for this project (e.g. a single PDR at system level or a PDR for each relevant system element). Regardless of how the reviews are defined, at least one element of the review should be addressing the entire Mission System and Support System in a holistic sense.

Drafters are to ensure that the checklist, DMO-CHECKLIST-PDR, meets the requirements of the project.

Drafters are to ensure that the appropriate version of the DMO Checklist for PDR is inserted into Annex D of the draft SOW.

**Related Clauses:** Clause 3.11 of the draft SOW addresses the requirements associated with Life Cycle Cost.

Clause 4.1.4 of the draft SOW addresses the requirements associated with the conduct of System Reviews.

Clause 5.1.2 of the draft SOW addresses the requirements associated with the ILS System Reviews.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – System Reviews*

See also – *EIA-632, Processes for Engineering a System*

#### 4.3.2 - DETAILED DESIGN REVIEW

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to undertake a Detailed Design Review as a Mandated System Review.

**Policy:** See Section 4.1.

**Guidance:** The Detailed Design Review (DDR) is conducted to ensure that specifications, drawings and software development documentation have been appropriately defined; that building block end product designs satisfy parent requirements; and that the building blocks are either ready for further development, adequately defined for procurement, or adequately defined for fabrication.

The DDR shall be conducted on each configuration item prior to fabrication/production/coding release to insure that the detail design solutions, as reflected in the Draft Hardware Product Specification, detailed design section of the Software Design Description (SDD), Data Base Design Document(s) (DBDD(s)), Interface Design Document(s) (IDD(s)), and engineering drawings satisfy requirements established by the hardware Development Specification and architectural design section of the Software Design Description. For complex/large configuration items the DDR may be conducted on an incremental basis (i.e. progressive reviews are conducted versus a single DDR). The overall technical program risks associated with each configuration item shall also be reviewed on a technical (design and manufacturing), cost and schedule basis. For software, a technical understanding shall be reached on the validity and the degree of completeness of the software architecture, software test approach and the software support and transition plans.

Additional In-Progress Reviews may be scheduled post- DDR to address:

- a. response to outstanding action items;
- b. modifications to design necessitated by approved ECPs or design/program errors;
- c. updating sizing and timing data; and
- d. updated design information, as applicable.

Results obtained during in-house testing, including problems encountered and solutions implemented or proposed.

While Support System is not explicitly addressed at the Mission System DDR, this review addresses a number of issues that have significant implications for the Support System (e.g. reliability and maintainability of the Mission System, outcomes of FMECA, and, if specified through an appropriate DID, delivery of updates to the LSAR). Additionally, the DDR must also be able to address the



design of the Mission System in the context of the global Life Cycle Cost (LCC) requirements under clause 3.11. In particular, the DDR must demonstrate that, with respect to the design of the Mission System, all of the implications for the Support System have been addressed so that a minimised LCC solution will be provided across both systems.

Refer to SRR discussion for more details on general conduct of reviews.

**Drafter's Action:** Drafters are to define how the DDR will be used for this project (e.g. a single DDR at system level or a DDR for each relevant system element). Regardless of how the reviews are defined, at least one element of the review should be addressing the entire Mission System and Support System in a holistic sense.

Ensure that the checklist, DMO-CHECKLIST-DDR, meets the requirements of the project.

**Related Clauses:** Clause 3.11 of the draft SOW addresses the requirements associated with Life Cycle Cost.

Clause 4.1.4 of the draft SOW addresses the requirements associated with the conduct of System Reviews.

Clause 5.1.2 of the draft SOW addresses the requirements associated with the ILS System Reviews.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – System Reviews*

See also – *EIA-632, Processes for Engineering a System*

#### 4.4 System Implementation

Sponsor: Materiel Policy & Services

Status: Core with optional clauses.

Purpose: To require that the Contractor conforms to specific requirements during the implementation and integration of their design solution. These requirements relate to software and hardware development and project-specific activities such as the interaction with the Commonwealth during integration or the use of GFE.

Policy: See Section 4.1.

Guidance: See guidance on subclauses.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

##### 4.4.1 - GENERAL

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require the Contractor to address any Contract-specific requirements relating to system implementation and integration.

Policy: See Section 4.1.

Guidance: This clause, which is to be developed for the project's particular circumstances, is to address any Contract-specific requirements relating to system implementation and integration, including interfaces with specific Commonwealth, Contractor or Subcontractor facilities and GFE/GFM.

Many major projects involve the integration of a new or modified mission system with an existing or modified support system. These existing system elements may include facilities and resources controlled by the Commonwealth or other parties, such as military bases, airfields, test ranges, equipment and personnel. This situation makes the Contractor highly dependent on the Commonwealth and hence places the Project Authority in a difficult situation as these facilities, equipment and personnel are rarely under the control of the Project Authority. Examples include systems being installed and set to work at military bases where often the records and details of access, power conditioning, physical and electrical interfaces, noise etc. are not always what they need to be or as reflected in available documentation.

These situations can give rise to claims for excusable delay and/or additional costs due to claimed deficiencies in Commonwealth data, equipment or facilities. These items are generally not listed as GFE/GFM/GFD/GFI etc. under the Contract and yet this is essentially what they comprise. Much care is required to plan the availability of these resources and for the Project Authority to verify the adequacy and accuracy of data describing attributes of the facilities and equipment prior to providing it to the Contractor for use.

This situation can also arise where multiple requirements are placed on facilities and equipment such as when an integration facility is also required as a training facility. Both needs are legitimate and careful consideration needs to be given as to how to manage such as arrangement with the Contractor particularly when the need arises to increase integration and test access to resolve problems and to test corrections while maintaining progress. Careful planning and a close working relationship with the Contractor and other stakeholders is required to quickly resolve issues such as these with a minimum of potential for adverse claims or excusable delay.

This section may need to address the relationship of site activities and access to the sites or parts of the sites, the relationship of access and test phases, the need

for associated planning documents and the ability for the Commonwealth to interact with the site activities, e.g. to maximise operational capability during an intrusive installation period. The broad terms of the interaction, the “ground rules” should be defined in this section. Given the likely time duration until installation though, there needs to be a way of capturing the detailed interactions that will develop in conjunction with the Contractor’s design.

One way of capturing interactions is to add new plan to the CDRL, a “Site Installation Plan” or equivalent that could address these issues and provide a vehicle for Commonwealth-Contractor agreement later in the program when the specifics of installation may be better defined. Such a plan may contain (as suggested guidance):

- a. the major activities associated with the installation of the system;
- b. the party responsible for each major installation activity;
- c. the duration of time required for each major installation activity;
- d. any work required to relocate or remove any existing systems at a site, whether it be from a legacy system or an earlier installation of a system element as part of the contract;
- e. an installation schedule detailing the sequence of installation activities, start time, hours of work, duration and scheduled finish time of the activity;
- f. a list of personnel undertaking the installation and their security clearance;
- g. a reference to or include all detailed site installation drawings and procedures to be used in installing the system;
- h. detail the support required from the Commonwealth; and
- i. any equipment required from the Commonwealth.

For a contract with only minor interactions, this plan could be combined into the Facilities Plan (FACP, described in section 5.2 of the draft SOW). However the focus of the FACP is more on the static nature and specification for the facilities rather than the detailed interactions with the facilities during integration.

The Integration of large complex software-intensive systems is a difficult activity and problems should be expected. The Project Authority should consider gaining visibility into the nature of the problems encountered and how they are analysed and resolved. One avenue for visibility is ensuring that appropriate measures are reported under the measurement program (see Measurement and Analysis). This information can be useful in preparing for In-Service support particularly where the Contractor uses the support system to collect, analyse and monitor these activities. The information can also provide insight into the maturity of both the mission system and support system before it moves into a formal test phase.

**Drafter's Action:** The drafter should consider the need for clauses relating to:

- a. the interaction of the Contractor with Commonwealth facilities and the need to carefully manage such interaction;
- b. the relationship of program phases, including V&V phases, and Contractor access to facilities;
- c. issues relating to GFM other than that discussed in SOW 3.13; and
- d. the need for site-based installation plans.

**Related Clauses:** Clause 3.13 of the draft SOW addresses GFM management.

Clause 5.2 of the draft SOW addresses the LSA Program, including those elements relating to facilities.

Clause 7 of the draft SOW addresses Verification and Validation.

Clause 3.5 of the draft conditions of contract addresses the provision and management of GFM.

Clause 3.6 of the draft conditions of contract addresses liability for GFM.

Clause 3.7 of the draft conditions of contract addresses GFM ownership and restrictions.

Attachment E to the draft conditions of contract provides the list of Government Furnished Material and Government Furnished Facilities.

Further Reading: Nil

#### 4.4.2 - SOFTWARE DEVELOPMENT

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to plan and manage the acquisition, supply, development, operation and maintenance of software in accordance with an approved plan.

Policy: See Section 4.1.

Guidance: To define the minimum standards for the management of the software development program.

The development and acquisition of software-intensive systems is inherently risky. It brings with it a new dimension to the management complexity of materiel systems acquisition. Being invisible, software is very difficult to assess in size, comprehend in complexity of function, or determine progress in development. Unlike hardware, the project manager is unable to walk down to a software production line and determine how much of the product has been built knowing before hand how big it will be and what it will look like when it is complete. The invisibility of software also makes it very difficult for developers to estimate the effort and time to construct it. The inherent complexity in the functions software must perform are not directly relatable to how much software must be written. While a body of knowledge now exists, including various modelling techniques for estimating software effort and schedule, these are general in nature and the best input into software estimates is still past experience in developing similar software functionality in a similar domain with the same people, programming language and other processes.

The maturing of software engineering has been occurring for the last four decades and still software-intensive systems predominate the project failures of the world. Industry as well as acquisition agencies are still learning and still coming to terms with the difficulties of software engineering and, in particular, software project management. The DMO has started to adopt a number of acquisition reforms specifically targeted to improve the success rate in acquiring software-intensive systems. These reforms have been incorporated into the ASDEFCON (Strategic Materiel) RFT Template.

Several previous practises increased the risk in software-intensive projects. Simply placing the latest software standard on contract was not sufficient to give rise to good software process. Low-capability contractors easily found ways to meet the letter but not the intent of the standards. DOD-STD-2167A didn't help this situation as it attempted to use documentation to monitor software progress. Low-capability contractors readily produced documentation that fulfilled the documentation requirement of the standard, but this documentation was not a natural output of the contractor's developmental processes and, hence, was of little value to the Commonwealth in determining progress under a contract, and less useful in supporting the software once in service. Projects with multiple Technical Regulatory Authorities (TRAs) often resulted in multiple software standards being placed on contract; each favoured by an individual regulator. These multiple standards were often placed on contract with no rationalisation of requirements to

resolve conflicts. This left both the Project Authority and the contractor not knowing exactly what was required, and the contractor could comply with one and argue that the other was not applicable. Even where a single standard was placed on contract, it was done so without tailoring it to the needs of the project. This was contrary to the guidance in such standards as DOD-STD-2167A, and successive standards have stated, upfront, that the standard needs to be tailored by the acquirer.

The lack of tailoring and other issues highlighted the lack of skilled software practitioners in the DMO and the shortage of applicable training and assistance. DMO was not the only organisation with a lack of skilled software practitioners. It has only been within the last two decades that large software-intensive systems have been developed in Australia. Australian Defence Industry has had to learn and gain experience in developing these systems and mistakes have been made as part of this learning process. This is still the case with many prime Contractors still unable and unwilling to manage the software development activities performed by Subcontractors. This has been a major issue for the DMO as they have little commercial leverage over software Subcontractors.

Software, apart from being invisible, is also highly malleable. We all know how easy it is to change a line of code: simply open the file, edit and recompile. Sadly, this experience is not scaleable. Simple changes when performed in a large system can be catastrophic and result in a working system behaving totally unpredictably if the “simple mod” is not applied, reviewed, tested and managed in a disciplined way (i.e. performed according to a process). Due to the perceived ease in writing and modifying software, systems engineers have allocated requirements to software without understanding how much effort was required or how difficult it might be to implement and test. Systems engineers assuming software engineers understood what the system had to do in a real world sense and the tendency for software engineers not to care have aggravated this situation. Requirements for software were often not analysed well enough or fully derived to allow developers to code without making many, often incorrect, assumptions. Customers also shared the view that software was easy to change and so changes to requirements late in the project often eventuated, especially as functionality began to become visible. This was akin to commissioning the building of bridge and then two weeks before opening the bridge the customer wanting the bridge moved 100m upstream.

Large software-intensive systems involve software engineering in the large. They require a systems engineering approach to software or “software systems engineering”. They require the application of mature processes and sound planning to manage the complexity involved. This planning needs to start with the acquirer.

While ASDEFCON (Strategic Materiel) was borne out of the need to better deliver software-intensive systems projects, there appears very little that is software specific from a casual review of the SOW. For improved software delivery, the principles behind ASDEFCON (Strategic Materiel) rely on extensive software acquisition planning and much more work and thought from the Project Authority. Many of these principles are being incorporated in policy, procedure and guidance to facilitate the use of ASDEFCON (Strategic Materiel). The following paragraphs describe these principles:

Before planning the acquisition management of software, it is first necessary to develop a software profile to understand the extent and role of software in a project. The software profile identifies the software in both the Mission System and Support System, and characterises it based on the role it plays in these systems, its type (e.g. newly developed, modified, re-used or COTS), and its size and distribution/location within the systems. From this characterisation, initial support requirements (e.g. data, environments) can be determined and the risk posed by the software assessed.

Software acquisition management planning can then proceed based on the software profile. This planning covers all Project Authority activities for the

acquisition life cycle. This includes the preparation of the solicitation package, the evaluation of responses, and the refinement of offers to get to Contract.

Planning the solicitation requires the development of requirements for inclusion in the solicitation package. The planning will centre on selection and tailoring of applicable software standards to form a consistent set of requirements that address the needs of various project stakeholders including TRAs. It will also need to address the activities to be undertaken during solicitation response evaluation (e.g. CMMI Capability Appraisals), offer definition activities to reduce risk prior to Contract signature (e.g. risk/measurement workshops and safety workshops), and Contract surveillance activities. These need to be addressed at this stage as they need to be incorporated into the Solicitation Response Evaluation Plan (or Tender Evaluation Plan), conditions of tender, and the draft Contract Statement of Work. Additionally, software acquisition planning has to address the integration of software with a number of other aspects within the project, including earned value management, measurement and analysis, safety, system reviews and deliverable data items to mention a few. The following list provides an indication of the activities to be planned, scheduled and resourced during acquisition planning of the project:

- a. determine the acquisition strategy and select a compatible strategy for the software, based on the software risks and profile;
- b. select appropriate software standards in accordance with TRA requirements;
- c. make initial tailoring decisions for the selected software standards with TRA concurrence for each software category in the software profile;
- d. plan to perform detailed tailoring of the selected software standards with TRA concurrence, ensuring that, where more than one standard is selected, the requirements from each have been rationalised and integrated to form a consistent Contract requirement;
- e. plan to select and tailor required work products based on Contract surveillance and support needs for the software;
- f. plan to select and tailor Data Item Descriptions for the deliverable work products;
- g. plan to develop Statement Of Work clauses to reflect the tailoring decisions;
- h. plan to address references from the standards back to the Contract in the Contract and SOW;
- i. plan to reflect the delivery requirements of deliverable data items in the Contract Data Requirements List (CDRL);
- j. plan to determine the required tender deliverables and associated instructions;
- k. plan to develop selection criteria for inclusion in the conditions of tender, such as experience, process capability, and achievability of cost and schedule estimates;
- l. plan to validate the tendered software size, cost and schedule estimates; and
- m. plan the Contract surveillance activities for software, including:
  - (1) the review of Contract deliverables relating to software, ensuring that sufficient resources (including any specialists such as TRAs, IV&V agents, etc) will be available to review them at the time;
  - (2) the conduct and attendance at system and software reviews, ensuring sufficient resources are available to review data packs prior to the review meetings;

- (3) the involvement in reviews, audits and appraisals, such as CMMI Appraisals, quality audits and EVM Surveillance Reviews; and
- (4) the use of measurement and analysis to provide visibility into software activities.

ISO 12207: Software Life Cycle Processes was selected as the default software standard under ASDEFCON (Strategic Materiel) because it covers the entire life cycle. This allows requirements to be placed on Contractors acquiring and supplying software under a Contract without developing it, as well as placing requirements on their Subcontractors developing software. ASDEFCON (Strategic Materiel) looks for the tailoring of 12207 to be reflected in the Contractor's Software Management Plan. The Project Authority should perform an initial tailoring of the standard and include this in the RFT requirements or obtain industry feedback and involvement earlier. Where additional standards, such as RTCA/DO-178B, are required by the TRA, the Project Authority should tailor these requirements into ISO 12207 through a tailoring instruction to avoid duplication and conflict of requirements. ISO 12207 does not have a set of associated DIDs (the USA's national tailoring of ISO 12207, IEEE 12207, has a large number of potential data products defined as part of the standard). The ASDEFCON (Strategic Materiel) approach involves relying on Contractor data products and, where these are unsuitable, using the DIDs associated with MIL-STD-498, with additional tailoring instructions, if required, for project specifics.

Where a minimal RFT is used as part of the acquisition strategy, only the information required to make the source-selection decision is requested. For software, this involves a partial Software Management Plan and a Software List.

The Software Management Plan DID (DID-ENG-SW-SMP) is based on the industry accepted DI-IPSC-81427A with a tailoring instruction designed to gain visibility into the management capability and intentions of the tenderer. This will apply equally to a Contractor who will not perform any software development but will Subcontract it and to a Contractor who will perform software development activities. This concept is further supported by the use of 12207.

DI-IPSC-8147A is called "Software Development Plan", but has been intentionally re-titled to emphasise the management of software irrespective of whether it is being developed. The content of this DID generally covers the areas of interest and it can be tailored for both DMO and project-specific requirements through the use of additional tailoring instructions applied to DID-ENG-SW-SMP.

The elements of DID-ENG-SW-SMP not requested in response to the RFT still need to be agreed before Contract signature for a software-intensive project. This is so that the required level of insight provided through the detail of the plan is agreed prior to Contract. The completed SMP should be agreed and ready for approval at ED+0 (check the CDRL), as the SOW relies on the SMP to elaborate the detailed work requirements to be adhered to by the Contractor. This should be confirmed through Contract surveillance activities including audits and reviews.

The Software List (DID-ENG-SW-SWLIST) requires the Contractor to perform some software profiling and provides further detail for incorporation and consideration within the project's Software Profile. This detail will greatly assist the project's software acquisition management planning and will serve as a tracking mechanism for where the original Contractor intentions or assumptions with respect to software alter part way through a Contract potentially adding risk. Refer to DMOKS for guidance on Software Profiling.

The benefits of ASDEFCON (Strategic Materiel) for software come from the integration of software with other areas within the SOW. Not all of these links are visible but they are intentional nevertheless and are discussed below.

The first of these is to Earned Value Management (EVM). In the past, visibility of software problems have been masked because EVM reporting has been at a level in the Work Breakdown Structure (WBS) above that of the software component of a subsystem or the Earned Value Technique (EVT) selected by the Contractor

has not been appropriate for managing software. When agreeing the reporting levels for EVM, ensure that, for software items of interest, the reporting level will provide visibility into software progress and ensure that the EVT applied is a useful measure of software progress. Discrete milestones with well-defined exit criteria are the best indicators of progress. A percentage complete EVT based on Source Lines of Code (SLOC) or similar should not be used, as this measure has little relationship to actual progress. This should be discussed and agreed prior to Contract signature. The Software List should be used to identify high-risk elements of software within the WBS.

Process capability can be used as a discriminator to short list tenderers or as a risk identification tool to identify process weaknesses in a tenderer consortium (i.e. Contractor and relevant Subcontractors). Where a Capability Appraisal is performed on the preferred tenderer prior to Contract, a Project Process Improvement Plan (PPIP) should be agreed and placed on Contract so as to address the risk before these processes are required in the project (See Process Improvement).

Measurement and analysis are particularly crucial to successful software projects. Measurement provides the required visibility and insight into the development of software and provides management (both project and Contractor) with the information needed to make informed decisions and to detect adverse trends and act upon them before problems start to impact project progress. The integration of software-specific measures with other measures such as EVM measures provides a holistic view of the project status (See Measurement and Analysis). The conditions of contract include access provisions to Contractor and Subcontractor premises and data to ensure that required measurement, software and other technical data can be accessed if required.

Use of Independent Verification & Validation (IV&V) is another useful link for software, although not one which is often applied. IV&V can be a highly effective surveillance technique for software-intensive projects, providing the IV&V agent is adequately skilled. An alternative, again overlooked by most projects, is the use of support agency staff in an IV&V role. This approach has the benefit of equipping these staff with the knowledge and background into a system, enabling them to better support it. (See Independent Verification & Validation).

While safety is treated under its own management plan (i.e. the System Safety Program Plan), the Software Management Plan needs to reflect the additional process rigor required for safety critical software and to address the integration of safety critical software development into the wider system safety program. This aspect needs special attention during solicitation response evaluation and Contract surveillance to ensure that a co-ordinated approach is being applied. (See Safety)

Software support planning needs be co-ordinated with ILS planning. Consideration needs to be given to the environments and associated processes that will be required to support the software. An initial analysis within the Software Profile should assist define software support requirements for inclusion in the RFT (see ILS Planning and Engineering Support).

Key persons management also supports software, as the software manager and architect are key roles in a software-intensive project (see Key Persons).

**Drafter's Action:** Clause 4.4.2 is to be included in the RFT without amendment.

**Related Clauses:** Clause 3.5 of the conditions of tender addresses the offer definition phase.

TDR E-6 of the conditions of tender elicits details from tenderers in relation to measurement and analysis.

TDR G-6 of the conditions of tender requests each tenderer to provide a draft SMP.

TDR G-7 of the conditions of tender requests each tenderer to provide a draft software list.



TDR G-8 of the conditions of tender elicits details from tenderers in relation to systems and software experience.

TDR G-9 of the conditions of tender elicits details from tenderers in relation to systems and software process capability.

TDR G-10 addresses the tender requirements relating to system safety.

Clause 3.2.5 of the draft SOW sets out the requirement for the establishment, use and maintenance of an EVMS.

Clause 3.2.7 of the draft SOW sets out the requirements associated with measurement and analysis.

Clause 3.10 of the draft SOW addresses Independent Verification and Validation.

Clause 4.1.7 of the draft SOW sets out the requirements associated with process improvement.

Clause 4.6.6 of the draft SOW sets out the requirements associated with safety.

Clause 5.2.4 of the draft SOW sets out the requirements for the design of Engineering Support, which includes software support.

Clause 10.7 of the conditions of contract provides the provisions relating to Commonwealth access to Contractor and Subcontractor premises and to documentation in relation to the work under the Contract.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread - Software Management*

#### 4.4.3 - HARDWARE DEVELOPMENT

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Sponsor: Materiel Policy & Services

Status: Optional

Purpose: To require the Contractor to develop, update and implement hardware development processes and procedures and to document these in the SEMP.

Policy: See Section 4.1.

Guidance: Clause 4.4.3 defines the requirements for hardware development.

Specifying hardware development techniques and standards should be avoided unless absolutely necessary as mandating process may require the Contractor to deviate from their own proven processes adding cost and risk. The preferred approach is to review, understand and align hardware requirements where possible with the Contractor's proven processes and practices. The Contractor's Systems Engineering Management Plan or where necessary a separate Hardware Engineering Plan or equivalent should be used to document the practices and standards to be applied. The template SOW clauses will need to be modified to reflect the adopted approach.

Hardware development plans, practices, and processes can be an invaluable element of the support system particularly where Original Equipment Manufacturer (OEM) independence is a desirable option for In-Service support Contracts. The extent to which this data is required will depend on the support concept, the extent of hardware development, the domain of the project and the technologies involved. Consideration should be given to the capital investment of specialised equipment to support the required hardware development and the number of companies who have such a capability or would be interested in acquiring it when formulating the support strategy as it may not be an effective strategy to acquire the required data only to find that future hardware support will be limited to the OEM.

The level of visibility into processes and practices and the extent of deliverable hardware development data will relate directly to the support concept. Engineering drawing detail should also be considered and consistent with the support system needs. The level of detail required needs to be tempered with the cost and future usefulness of the data. A well considered support concept is essential to ensure

appropriate data is acquired as the technical data pack required for OEM-independent maintenance can be very different to that required for OEM-independent manufacture of additional or replacement items which may be different again if significant future modification is anticipated.

Drafter's Action: The drafter should rarely need to tailor these clauses. Most of the hardware-specific aspects should be addressed as constraints in the System Specification. Tailoring may be necessary if the Commonwealth specifically need to meet some hardware process requirements that are specific to the Contract, e.g. use of a common development tool or format.

Related Clauses: Nil

Further Reading: Nil

#### 4.5 System Analysis, Design and Development

Sponsor: Materiel Policy & Services

Status: Core with optional clauses.

Purpose: To require the Contractor establishes a suitable technical infrastructure for their development program, with visibility to the Commonwealth. This includes establishment of a suitable design documentation strategy, design traceability, an engineering information system, and a system of engineering drawings.

Policy: See Section 4.1.

Guidance: Nil

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

##### 4.5.1 - TECHNICAL DOCUMENTATION TREE

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require that the Contractor develops, documents and maintains a Technical Documentation Tree defining the hierarchy of specifications and design documentation for the Contract, reflecting the hierarchy of System Design products, and identifying the documentation that will be delivered to the Commonwealth.

Policy: See Section 4.1.

Guidance: The Technical Documentation Tree (TDT) defines the structure and content of the Contractor's design documentation. This documentation:

- a. provides assurance to the Commonwealth that the Contractor is undertaking the design process in a manner that will ensure the technical integrity of the design;
- b. should enable the system to be supported over its life of type; and
- c. provides a means of communication of the design within the Contractor's organisation and between the Contractor and the Commonwealth during the development of the system

The TDT shows the specification and design documentation produced at each level of the design hierarchy, the standards to which they will be produced, their schedule for production or amendment, and the Commonwealth visibility and approval rights. This tree will be used during the tender evaluation process as part of the assessment of the tenderer's development capability.

Note that the TDT should also contain reference to the key top level technical documents (i.e. the OCD, FPS, SS and SSSPEC).

In reviewing the contents of the TDT, the Commonwealth should ensure that they have appropriate data rights (e.g. Approval, Review). This aspect is discussed in more detail in the guidance on the CDRL (SOW Annexes).

In addressing the content of the TDT, the principle of Clear Accountability in Design (CAID) is important. The CAID approach (discussed in more detail in the SOW Philosophy) is based on two key elements:

- a. the Commonwealth controls requirements at the highest practicable level (i.e. the FPS, Mission and Support System Specifications) to manage risk and ensures all needed verifications (in accordance with the VCRM and test program) have been accomplished, and

- b. the Contractor controls lower level requirements and the design in order to implement cost, schedule, performance, and risk-based business decisions, unless until the Commonwealth has a specific need to control them.

The use of the TDT allows each Contractor to use their internal processes to define the design data for a system, whilst maintaining appropriate Commonwealth visibility and access. The resulting documentation should be cost effective to produce and is likely to minimise unnecessary paperwork.

The Contractor must maintain the TDT, revising it as the design solution is refined. By example, if the system components (e.g. subsystems) or lower level configuration items change, then the TDT should be modified to reflect the change to the product breakdown structure. In effect, the TDT allows the normally static CDRL, to cope with the natural changes that can occur during the design process.

As it defines a major interface with the Commonwealth and the quality of the documentation affects the system supportability, the Commonwealth should always approve the TDT and any updates to the TDT (although it does not necessarily have approval rights over the individual documents that the TDT defines).

The Contractor shall provide the documentation defined by the TDT in accordance with the TDT. All TDT contents are Technical Data and should be considered as part of clause 5.2.8.5 and 5.3.3.

**Drafter's Action:** If a TDT was provided in the Contractor's response to tender, an agreed copy of this document should be placed on contract (Attachment K to the conditions of contract). This section should reference that attachment and identify how it relates to the CDRL item.

**Related Clauses:** Attachment K to the draft conditions of contract provides the repository of draft Data Items included as Contract annexes.

Clause 2.4 of the draft SOW addresses draft Data Items included as Contract Annexes.

Clause 5.2.8 of the draft SOW addresses the synthesis of the Technical Data requirements.

Clause 5.3.3 of the draft SOW addresses the implementation of the Technical Data requirements.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Design Documentation*

#### 4.5.2 - DESIGN TRACEABILITY

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to develop, document and maintain a Requirements Traceability Matrix (RTM) that captures traceability of all specifications in the Technical Documentation Tree (TDT).

**Policy:** See Section 4.1.

**Guidance:** Clause 4.5.2 provides a mechanism that allows the Commonwealth visibility of the Contractor's design traceability and to ensure that the design is traceable to the end-user requirements.

Design traceability is normally captured through the use of an appropriate requirements management tool (e.g. DOORST<sup>TM</sup> and RDT<sup>TM</sup> are two examples in use within DMO). Ideally the traceability should be provided through on-line access or delivery of regular snapshots of the native database.

It is possible to view the traceability through static reports; however, such a format does not allow the use of powerful filtering and display tools available in the commercially available tools and significantly reduces the ability of the Commonwealth to review the traceability.

Note that the TDT should also contain reference to the key top level technical documents (i.e. the OCD, FPS, SS and SSSPEC) and, therefore, the traceability in the RTM shows the traceability to and from the SS and SSSPEC to higher and lower level documents (as discussed in SOW 4.2.2.3). It is essential that the Commonwealth is able to carefully review this traceability and assess its integrity and associated justification for any deviations before accepting the SS and SSSPEC as the basis for the remaining work under the Contract.

**Drafter's Action:** The drafter needs to address the particular requirements of the project. Ideally this clause should be made more project-specific (i.e. specify the tool, method of data exchange, frequency of access, etc).

**Related Clauses:** Clause 4.2.2 of the draft SOW provides the provisions regarding traceability between FPS, OCD, SS and SSSPEC.

**Further Reading:** Nil

#### 4.5.3 - ENGINEERING INFORMATION SYSTEM

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to establish an Engineering Information System to maintain and control relevant technical information including digital repositories.

**Policy:** See Section 4.1.

**Guidance:** Clause 4.5.3 ensure that the Commonwealth has a means of obtaining insight into the development processes at a finer level of detail than that provide by the formal review program.

The intent of the Engineering Information System (EIS) is to maintain ready access for the Commonwealth to relevant project technical information and digital databases that include data from inputs and outputs of process tasks and rationale for decisions and assumptions. The access should include consideration of the relevant technical information produced by the Contractor and Subcontractors.

The EIS should include logistics engineering data (e.g. reliability block diagrams or FMECA analysis) and would, accordingly, be related to the LSAR. As such, the EIS would be used by both development and logistic engineers. As a key support resource needed to provide engineering support, the EIS is ultimately expected to transition and become an element of the Support System.

**Drafter's Action:** SOW clause 4.5.3.2 needs to be tailored to more clearly define what is intended as "access" for the particular Contract. This may take the form of day-to-day access by resident Commonwealth staff (i.e. the RPP) or on-line access to a remote Project Authority.

In any on-line system, access rights, training, handling of classified data and maintenance should be considered. MIL-STD-974, Contractor Integrated Technical Information Service (CITIS), may provide a useful source of guidance.

These clauses need to be progressively tailored and refined throughout the tendering and negotiation stages.

**Related Clauses:** Clause 4.6 of the draft SOW addresses the requirements relating to Specialty Engineering.

Clause 5.2.4 of the draft SOW addresses the design of the Engineering Support Constituent Capability, of which the EIS would form a part.

Clause 5.3.3 of the draft SOW addresses the (optional) requirement for an LSAR.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Design Documentation*

#### 4.5.4 - ENGINEERING DRAWINGS

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<b><u>Sponsor:</u></b>	Materiel Policy & Services
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To require the Contractor to develop, deliver and keep updated a complete set of Engineering Drawings at the appropriate level of detail.
<b><u>Policy:</u></b>	DI(G) TECH 05-1 Management of Technical Data Packages DEF(AUST) 5085B Engineering Drawing - Acquisition and Preparation for Defence Equipments is mandatory for use by the Navy, Army and RAAF.
<b><u>Guidance:</u></b>	Clause 4.5.4 defines the expected scope and standards for engineering drawings to be delivered under the Contract.

'DEF (AUST) 5085B Parts 1 & 2 prescribes the requirements for the acquisition of drawings and associated lists, henceforth referred to as drawings, to support Department of Defence materiel. The requirements are applicable to drawings regardless of their method of preparation. The drawings will be acquired in one or more of the following levels:

- a. **Level 1. Conceptual and Developmental.** Design drawings at Level 1 disclose information sufficient to enable the feasibility of a conceptual design to be evaluated as meeting stated military requirements. These drawings may provide information sufficient to manufacture hardware for experimental testing and analytical evaluation of the design to attain the required performance. Drawings shall be legible and include those types most amenable to the mode of presentation.
- b. **Level 2. Production Prototype and Limited Production.** Drawings at Level 2 disclose a design that approaches the final form, employs standard parts (or non-standard parts approved by the authority concerned) and, takes into account full military requirements with respect to performance. These drawings shall support the manufacture of prototype and limited production models in final form suitable for field test; and may not require production tools, jigs, fixtures or production methods to produce the end item. Drawings include, as applicable, parts lists, detail and assembly drawings, interface control data, diagrams, performance characteristics, critical manufacturing limits and details of new materials and processes. Special inspection and test requirements for the item are defined on the drawings or referenced to a document acceptable to the Commonwealth.
- c. **Level 3. Production.** Drawings at Level 3 provide engineering definition sufficiently complete to enable a competent manufacturer to produce and maintain quality control of items to the degree that physical and performance characteristics interchangeable with those of the original design are obtained without resorting to additional product design effort, additional design data, or recourse to the original design authority. These drawings reflect the end product, provide the engineering data for the support of quantity production; and, in conjunction with other related re-procurement data, provide the necessary data to permit competitive procurement of items substantially identical to the original items.

Levels 1, 2 and 3 provide for natural progression of design from its inception to production. Combinations of levels may be specified in the contract.

Drawings form part of the Technical Data addressed under SOW 5.2.8.5.

<b><u>Drafter's Action:</u></b>	This clause may mandate or recommend particular standards as guidance: most projects should mandate DEF(AUST) 5085B with appropriate tailoring. The requirements need to address both the level (e.g. Level 2) and the scope (e.g. installation, wiring and rack layout) of engineering drawings.
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The SOW shall identify the level(s) of drawings to be acquired for each item or group of items for which a requirement varies, and include all tailoring

requirements. Refer to DEF (AUST) 5085B for additional information that may need consideration and single-Service instructions as required.

**Related Clauses:** Clause 5.2.8 of the draft SOW addresses the synthesis of the Technical Data requirements.

Clause 5.3.3 of the draft SOW addresses the implementation of the Technical Data requirements.

**Further Reading:** Nil

#### 4.5.5 - SYSTEM MODELS

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**Sponsor:** Materiel Policy & Services

**Status:** Optional

**Purpose:** To require the Contractor to provide access by the Commonwealth to engineering models proposed for use in formal System Verification and Validation or necessary for supportability over the LOT of the system.

**Guidance:** Clause 4.5.5 identifies particular models of interest to the Commonwealth, which are expected to be delivered under the Contract.

This clause may specify the level of access required by the Commonwealth into particular models developed for the program (i.e. the Commonwealth may wish to identify specific models that would be created and maintained by the Contractor during the program). There are likely to be many system and lower level models developed at various levels of abstraction and fidelity. These models may include functional models, performance models, interaction models, architecture models, environment models, and operational scenarios. Most of the models should be documented in the EIS; however, the models addressed here are those of special significance to the Commonwealth. For example, the Commonwealth may wish to retain as part of its acquisition:

- a. a detection performance model for a radar surveillance system;
- b. models of flight dynamics for an aircraft;
- c. a propagation and predicted quality of service model for a radio communication system; or
- d. a load and latency model for a command and control system.

These models would normally only be relevant if they are significant in V&V activities or offered the Commonwealth some benefit during the systems operational life (i.e. the ability to predict critical Mission System or Support System performance in some future scenario). The models may be of use to the operational user or be of benefit in the longer term for parallel research activities (e.g. by DSTO).

Note that the Contractor has to demonstrate the system will meet the Functional Baseline as part of the V&V program; it would therefore need to present specific models as part of a V&V analysis. Even though the onus of proof would be on the supplier, the Commonwealth may need to expend a significant effort to gain sufficient insight and ensure that these models are valid. If such models are expected to take a significant Commonwealth time to validate, then they may be candidates for identifying in this section.

This section is *not* intended to replace other models that may be developed as part of the contractor's standard processes or are otherwise required by the contract, such as analysis models (e.g. SASD, OOAD, UML models), reliability prediction models and reliability block diagrams, and failure models (e.g. from FMECA).

**Drafter's Action:** The drafter needs to determine if, as part of the system being acquired, the Commonwealth will need to access and use specific models that would otherwise not be provided. If there are no such models, and the use of models in V&V is unlikely, then this section may be tailored out (i.e. by replacing with "Not Used.").

If models are required, then the drafter will need to define what is meant by “access” to the models and where possible reword the clause to be more specific (e.g. addressing specific document and/or software data or executable deliverables). Access may consist of Commonwealth access to a Contractor’s support facility or Contractor delivery of specific models to the Commonwealth. If the models are significant, section 2.1, Scope of Work, should identify them and reference further detail in this section.

Related Clauses: Clause 2.1 of the draft SOW addresses the scope of work under the Contract.

Clause 7 of the draft SOW addresses Verification and Validation.

Further Reading: Rechtin E & Maier M, The Art of Systems Architecting, 1997, CRC Press



#### 4.6 Specialty Engineering

**Sponsor:** Refer to Sponsor for each clause within clause 4.6 where applicable

**Status:** Core with optional clauses.

**Purpose:** To require the Contractor to plan and implement a range of Specialty Engineering activities and programs, as appropriate to particular subclauses, for Growth, Evolution and Obsolescence; Integrated Reliability, Maintainability and Testability; Logistics Engineering; Human Engineering; Electromagnetic Environmental Effects; Safety; System Security; and where applicable Aircraft Type Certification.

**Policy:** See Section 4.1.

**Guidance:** See guidance on subclauses.

**Drafter's Action:** Nil

**Related Clauses:** Nil

**Further Reading:** Nil

##### 4.6.1 - GROWTH, EVOLUTION AND OBSOLESCENCE PROGRAM

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To ensure that:

- a. technology evolution and obsolescence issues are appropriately considered in the design of the Mission System and Support System;
- b. the Contractor's design, development and production programs will not deliver equipment that has obsolescence problems at the time of delivery; and
- c. the Contractor's solutions for the Mission System and Support System minimise LCC when technology evolution and obsolescence issues are taken into consideration.

**Policy:** See Section 4.1.

**Guidance:** Defence's ability to take advantage of commercial product development cycles in dynamic industries has been hindered by cumbersome, time-consuming acquisition process. For instance, the commercial computer and electronics sectors now introduce "next generation" products every few years. By contrast, Defence typically takes five to ten years to develop and upgrade new systems. As a result, military technology in fielded systems has grown increasingly expensive and distant from the commercial leading edge in many areas.

Recognising the rapid commercial development cycles, Technology Insertion (TI) is the ability to replace COTS system components, both hardware and software, in a Defence system as that commercial component product is updated.

TI is important in that, over the system Life-of-Type (LOT), it:

- a. allows for system growth, especially as new threats are identified; and
- b. minimises wasted or obsolescent parts.

Designing for TI encompasses a number of concepts such as commonality and standardisation of parts, the use of fewer parts, modularity, flexibility, adaptability, and open architecture. Since a significant percentage of a product's life cycle cost is established during initial systems engineering design, Defence will need to perform early, integrated assessments of the "cradle to grave" life cycle cost, thereby enabling technology insertion to occur in the most cost effective manner.

**Drafter's Action:** Drafters should review the OCD to ensure that any expected areas of system growth and evolution are identified, particularly from the operational viewpoint.

**Related Clauses:** Clause 4.6.3 of the draft SOW addresses Logistics Engineering, including Technological Opportunities, which, as a Logistic Support Analysis (LSA) process, has an interaction with the processes required here.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Technology Insertion*

#### 4.6.2 - INTEGRATED RELIABILITY, MAINTAINABILITY AND TESTABILITY ENGINEERING PROGRAM

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to implement an Integrated Reliability, Maintainability and Testability Program.

**Policy:** DI(G) LOG 08-6, Defence Policy on Reliability, Availability and Maintainability

**Guidance:** Program Objectives

The Reliability, Maintainability & Testability (RMT) Engineering Program objectives provide the high-level outcomes required as a result of implementing RMT as part of the acquisition program, and as the basis behind the RMT requirements in this SOW. The RMT Program objectives listed in the SOW are generic and relate to achieving an optimal balance between preparedness, support and Life Cycle Cost (LCC). The default objectives for the RMT program are to:

- a. maximise the operational readiness and mission success of the Mission System;
- b. minimise the demand for maintenance personnel and logistic support;
- c. provide essential management information; and
- d. minimise the impacts of the IRMT engineering program on overall program cost and schedule.

Some programs will have overriding requirements for the RMT program not adequately covered by the generic RMT Program objectives listed in the SOW. In these instances, the sub-clauses should be amended to suit the project's specific RMT Program objectives.

Acknowledgement and understanding, by the Contractor, of the RMT Program objectives, is intended to ensure that the Contractor's RMT programs will be planned and undertaken in a manner to achieve these objectives. The objectives should be apparent in, and influence, the Contractor's Integrated Reliability, Maintainability and Testability Engineering Program Plan. In one respect, these objectives provide the "purpose" underpinning the Contractor's RMT Program and, therefore, provide the frame of reference within which the "fitness for purpose" of the program can be assessed by the Project Authority.

#### Planning

Following the approach of ASDEFCON (Strategic Materiel) not to prescribe process to the Contractor but to seek the outcomes, the actual process followed will be defined in the Contractor's planning documents. This encourages tenderers to propose their own best practice methods for achieving the required results. Plans which are delivered, as TDIDs, should be closely evaluated to provide the Commonwealth with the confidence that a potential Contractor has in place well-structured and effective processes to achieve the required outcomes.

The IRMT Plan, defined by DID-ENG-MGT-IRMTP, is the most important in the role of describing processes for the IRMT Program and is required for all programs.

The approach to RMT requirements in the Statement of Work is to focus on a number of key high-value areas (e.g. management of the program, design reviews, acceptance testing) and to solicit the Contractor's approach to these, together with the detailed work requirements for the design and development of the system. This information would be provided in an IRMT Plan, which would be subject to the

Commonwealth's review and endorsement. The plan would also be expected to detail such things as the relevant standards, internal Contractor procedures, and tools to be used in the Contractor efforts.

Note that, if circumstances arose where either the RMT programs were split or an additional specialist domain, such as a testability program, was required, then the same form of the program plan would be used but the scope would be modified depending on the circumstance (e.g. if it were to be decided that two separate plans were required, then the plan would follow the same form but refer to only each of Reliability or Maintainability in the plans; alternatively, if it were to be decided that testability was to be integrated into the plan, then the words would need to reflect the combination of Reliability, Maintainability and Testability). In these instances, the Project Authority would be required to amend DID-ENG-MGT-IRMTTP accordingly.

### Program Activities

There are a number of interactions between activities conducted as part of the RMT Engineering Program and other programs such as the LSA program, and System Safety program. As number of activities typically conducted by the RMT program provide information for use in these other programs, drafters should ensure that the requirements of these programs are addressed in drafting clauses relating to the RMT Engineering program. As an example of the interaction between the RMT and LSA programs, consider the following examples:

- a. the FMECA process conducted by the RMT Engineering program is used by the LSA program in defining the maintenance tasks that need to be conducted;
- b. Reliability and Maintainability Modelling and prediction activities provide Reliability and Maintainability data (e.g. Mean Time Between Failure, Mean Corrective Maintenance Time) that should be used in LSA program determinations and LCC calculations; and
- c. Maintainability accounting tests (proving that the system meets the specified maintainability performance requirements) is normally conducted concurrently with any supportability test and evaluation (ST&E) activities conducted by the LSA program.

Drafters should note that program activities for the IRMT program will vary depending upon the requirements of the project, and drafters should seek specialist advice from the relevant RAM Centre Of Expertise (COE) prior to drafting these clauses.

Additional guidance is available in the ADO RAM Manual.

Drafter's Action: Clauses 4.6.2.1 and 4.6.2.2 are to be included in the RFT without amendment.

Clause 4.6.2.3 is to be drafted in conjunction with the relevant RAM COE.

Related Clauses: Clause 5.2.5 of the draft SOW provides the LSA Program Clauses for the design of Maintenance Support.

Clause 7.1.6 of the draft SOW addresses the requirement for Failure Reporting and Analysis.

Clause 7.2.3 of the draft SOW addresses the requirement for a Maintenance Support Effectiveness Demonstration.

Further Reading: See also - *ADO RAM Manual*

4.6.3 - LOGISTICS ENGINEERING

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Sponsor: Materiel Policy & Services

Status: Core

**Purpose:** To require the Contractor to implement a Logistics Engineering program that ensures that supportability considerations are considered in the design of the Mission System.

**Policy:** DI(G) LOG 03-6 Integrated Logistic Support

**Guidance:** The objective of Logistics Engineering is to ensure that supportability factors influence the design of the Mission System. This objective is primarily addressed through:

- a. conducting, and applying the results of, analyses for Standardisation and Technological Opportunities to the hardware and software components of the Mission System; and
- b. specifying Supportability-Related Design Factors (some of which will be identified through the analysis of Technological and Standardisation Opportunities).

Note that analyses for Standardisation or Technological Opportunities are closely related to, and will often require tradeoffs against, similar analyses for the Support System (refer clause 5.2.2). For specific design analyses, the Project Authority may require Commonwealth-directed supportability trade studies to address specific design opportunities (refer clause 2.6 of the draft SOW).

For additional guidance on how to ensure that supportability factors may be specified for the Mission System, refer to DEF(AUST)5691 and the ADO LSA Manual.

#### Mission System Standardisation Opportunities

In many cases, utilisation of existing logistic support resources, which is enabled through standardisation in Mission System design, can substantially reduce LCC, enhance readiness, minimise the impact of introduction of the new system/equipment, and increase the mobility of the operational unit using the new system/equipment. This can be facilitated through standardisation of elements of the Mission System design. Factors that support these potential benefits are:

- a. the use of existing items avoids the developmental costs that would be incurred to develop new items;
- b. the cost to develop new training programs may be avoided;
- c. the probability that resources will be available for use may be greater;
- d. common items and subsystems can be supported through existing processes of maintenance and support organisations, thus avoiding the cost of establishing new support elements and enabling savings through economies of scale;
- e. commonality of support items (spares, consumables, and operational support equipment) between end items in an operational unit may require fewer items to be moved in times of mobilisation, thereby increasing the operational units' readiness while reducing cost.
- f. personnel proficiency in using the same support and test equipment, procedures, software, etc, can be improved through an increase in frequency of use, rather than having to learn how to use different items, procedures, use of software, etc.

The potential benefits may also apply through Mission System standardisation to enable the common use of resources under development. In this case, the cost of development may be spread over a number of projects. However, the risk involved is likely to be increased because:

- a. the Contractor may not be willing to accept the standardised item into its design process;

- b. it becomes more difficult to hold a Contractor accountable for system performance when significant elements of the design are GFE; and
- c. developmental items may be unproven in an operational environment and may be subject to the other program's delays or cancellation.

The purpose of Mission System Standardisation Opportunities, therefore, is to define supportability and supportability-related design constraints for the new Mission System based on common spares and existing or planned logistic support resources that have benefits due to cost, personnel, readiness, or support policy considerations. Analysis results provide standardisation input into Mission System supportability aspects of the design process.

The ability to identify Mission System Standardisation Opportunities must consider the nature of the acquisition being undertaken. In the case of an acquisition being Commercial-Off-The-Shelf (COTS) or Military-Off-The-Shelf (MOTS) or a minor modification of a COTS or MOTS solution, the value in conducting this analysis is limited by the ability to influence the system design and may come at an increase in acquisition cost, which must be traded off against In-Service cost savings and improvements in readiness. For Strategic Materiel acquisitions, involving some development or integration effort, Standardisation Opportunities will usually have the most benefit in the developmental areas and through the selection of common subsystems/items/consumables for integration into the design of the Mission System.

Standardisation Opportunities for improved supportability of the Mission System design should be analysed and evaluated during the design process. This may be in response to specific Commonwealth-directed trade studies or conducted as a part of the normal design process. Results should be presented to the Commonwealth for PDR and DDR to ensure that recommended changes, requiring approval and possible CCP action, can be incorporated before lower-level design specifications are locked down. Incorporating the recommended changes is conducted under the Supportability and Supportability Related Design Factors, clause 4.6.3.3. Early analysis also avoids more expensive rework of the design if Standardisation Opportunities were to be analysed later.

#### Mission System Technological Opportunities

The purpose of Mission System Technological Opportunities is to identify technological advancements or the new application of existing technologies, which can be exploited in the development of the Mission System and which have the potential for reducing logistic support resource requirements, reducing LCC, or enhancing system readiness. Normally, this activity is performed by design personnel supported by RAM and supportability specialists.

Technological Opportunities normally produce results in improved RMT characteristics of the Mission System or by enabling alternative support concepts. Reliability is often improved through changes in materials or advanced components (e.g. advances from transistor to integrated circuit technology improved reliability as well as performance) and the use of redundancy (where mission and logistics reliability are traded off). Maintainability and testability are often improved through advances in diagnostics, health and usage monitoring systems, computer-aided system management (to shut down systems or apply compensating provisions that avoid further damage) and provision of on-board maintenance support (via on-line technical manuals, procedures, and maintenance data). The opportunities available will be dependent on the advances in technology and their applicability to the Mission System being developed or integrated. Sometimes Mission System Technological Opportunities will enable changes to support concepts and requirements, resulting in substantial cost savings. These savings can come from reducing the skill level required by maintenance personnel or downsizing the maintenance effort by replacing maintenance-intensive spares with lower cost, throw-away items.

The ability to identify Mission System Technological Opportunities must consider the nature of the acquisition being undertaken. In the case of an acquisition being COTS or MOTS or minor modification of a COTS or MOTS solution, the value in conducting this analysis is limited by the ability to influence the system design and may come at an increase in acquisition cost, which must be traded off against In-Service cost savings and improvements in readiness. For Strategic Materiel acquisitions, involving some development or integration effort, technological opportunities will usually have the most benefit in the developmental areas and through the selection of subsystems applying new technologies for integration into the design of the Mission System.

In the case where there is an opportunity to influence the design, a value judgment needs to be made based on the risk of using state-of-practice technology versus state-of-art technology. To support the Commonwealth decision process it may be warranted to get the Contractor to identify the stage of the technology evolution cycle the identified technological opportunities are at, in order to appreciate the maturity and risks with the technologies being considered. This should be a normal part of the risk evaluation conducted during a trade study, and if the technology is considered too immature it may still identify areas for planned system upgrades or evolutionary acquisition.

Technological Opportunities for improved supportability of the Mission System design should be analysed and evaluated during the design process. This may be in response to specific Commonwealth directed trade studies or conducted as a part of the normal design process. Results should be presented to the Commonwealth for PDR and DDR to ensure that recommended changes, requiring approval and possible CCP action, can be incorporated prior to the design specification being locked down. Incorporating the recommended changes is conducted under the Supportability and Supportability Related Design Factors, clause 4.6.3.3. Early analysis also avoids more expensive rework of the design if technological opportunities were analysed later.

#### Mission System Supportability-Related Design Factors

**Warning: This analysis activity should only be invoked in the Contract when supportability-related design factors have not been specified in the Mission System specification or where a developmental or integration project needs to document additional supportability design factors as a result of the analysis of RMT, Standardisation Opportunities, or Technological Opportunities.** Any additional supportability design factors should be incorporated into the Contract specification for the Mission System through ECP action.

*“The degree of flexibility in the total system hardware, software, and support system designs is a basic consideration in deciding what supportability analyses can and should be performed. The objective of most support system design activities is to identify support considerations (e.g., constraints) which may influence selection of system hardware and software design and support alternatives to improve readiness, supportability, and cost. If the hardware design is fixed, as it would largely be in a commercial or NDI acquisition, these early analyses might seem to have little benefit. In the case of product improvement programs, the scope of proposed improvements might limit design flexibility to specific subsystems and may or may not open non-affected areas of the design to redesign opportunities that would address changes to reduce the anticipated support burdens. Flexibility may exist for the design of the support system but not in the hardware system. Commercial items for which maintenance support plans have not been developed are typical examples of this situation. Integrating supportability requirements into system and equipment design requires that designers be oriented toward supportability objectives from the outset. Technical information generated during the design process must be disseminated among designers and members of the supportability disciplines to surface interface problems. Technical design information—diagnostic features, electromechanical interfaces, reliability estimates, item functions, adjustment requirements, and connector and pin assignments—that determines supportability should be an*

*integral part of design documentation. When design flexibility exists, the performing activity's plan should describe the generation, control, and approval of this type of design documentation.”* (Sourced from MIL-HDK-502)

Supportability factors include a wide range of considerations including:

- a. those associated with design such as accessibility, functional partitioning, testability/diagnostics, system interfaces, technological and standardisation opportunities etc.;
- b. those associated with production activities such as design for manufacturing, statistical process control, etc.; and
- c. those associated with postproduction support such as tech data, training, spares, diagnostic maturation, etc.

Supportability-Related Design Factors are those supportability considerations that drive the Mission System's design in a manner that assures improved supportability of the Mission System based on factors inherent in the design of the Mission System. Where Supportability-Related Design Factors are specified in the Specification (SOW Annex A) by the Commonwealth, the Contractor's specification of these requirements (through DID-ENG-DEF-SS) will normally be developed to a deeper level for developmental and integration projects. For COTS and MOTS projects (most likely complex procurements instead of Strategic Materiel projects), the inability to influence design will restrict analyses for improving Mission System supportability, the existing system characteristics will be adopted, and this clause would not be required.

MIL-HDBK-502 indicates that the following design factors are measurable indicators for system supportability (not an exhaustive list):

- a. System Reliability – Mean Time Between Failure;
- b. System Maintainability – Mean Time To Repair;
- c. Maintenance burden – Maintenance Man-hours per Operating Hour;
- d. Built in Fault Isolation – Percent successful isolation; and
- e. Transportability Requirements – Method of transportation.

Other examples of Supportability-Related Design Factors (some of which are qualitative) include:

- a. accessibility for ease of maintenance;
- b. functional partitioning for ease of diagnostics and maintenance;
- c. parts selection (e.g. common parts to maximise interchangeability);
- d. an adaptable open system architecture;
- e. technology maturity (e.g. use of technology that is not near the end of its life cycle); and
- f. standardisation and interoperability considerations.

Note that, although Reliability and Maintainability characteristics of a design impact on the supportability of the Mission System, these performance measures are to be established prior to tendering and agreed at time of Contract signature. (Refer to the ADO RAM Manual for further guidance.)

In the case where the Contractor is required to undertake this activity, the agreed Supportability-Related Design Factors and the associated characteristics of these factors should be rolled back into the Contract specification for the Mission System via an ECP (and an appropriate covering CCP) if they represent changed or new system-level supportability information not documented by the Commonwealth. Where the Supportability-Related Design Factors comply with (but provide additional detail to) specified supportability factors, they are simply included in the System Specification prepared in accordance with DID-ENG-DEF-SS.

Where the project is using a LSAR, the supportability characteristics related to the predicted RMT figures are recorded in the B Tables. This information is used during the conduct and review of FMECA and RCM analyses and in the eventual calculation of logistics resource requirements (if not replaced by measured values). For existing systems, the measured RMT values would be used in resource calculations and entered IAW DID-ILS-TDATA-LSAR, and the optional LSAR clause would not be required.

**Drafter's Action:** If specific standardisation opportunities are to be pursued (e.g. a common fit radio), these are to be either inserted into clause 4.6.3.1 or, if significant enough, included as stand-alone Commonwealth-directed trade studies under clause 2.6 of the draft SOW.

If there are no specific standardisation requirements, clause 4.6.3.1 is to be included in the RFT without alteration.

Drafters are to consider the requirement for clause 4.6.3.2 of the draft SOW in light of the Note to drafters and the guidance provided herein. If required, clause 4.6.3.2 is to be included in the RFT without alteration.

Drafters are to consider the requirement for clause 4.6.3.3 of the draft SOW in light of the Note to drafters and the guidance provided herein. If required, clause 4.6.3.3 is to be included in the RFT, with appropriate tailoring depending upon whether or not an LSAR is required under the Contract.

**Related Clauses:** Clause 2.6 of the draft SOW provides a repository for documenting specific Commonwealth-directed trade studies.

Clause 4.2.2 of the draft SOW addresses the requirements associated with the System Specification.

Clause 4.6.1 of the draft SOW addresses the requirements relating to growth, evolution and obsolescence.

Clause 4.6.2 of the draft SOW addresses the RMT requirements under the draft Contract.

Clause 5.3.3 of the draft SOW addresses the (optional) requirement for an LSAR.

**Further Reading:** See also – *ADO LSA Manual*

See also – *DEF(AUST) 5691 Logistic Support Analysis*

See also – *ADO RAM Manual*

See also – *MIL-HDBK-502 Acquisition Logistics*

#### 4.6.4 - HUMAN ENGINEERING

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To ensure that the interfaces between human and system are appropriately addressed during the design process and to ensure that the Commonwealth has appropriate mechanisms to allow the end-system user community to influence the design.

**Policy:** See Section 4.1.

**Guidance:** This clause may mandate or recommend particular Human Engineering (HE) standards as guidance, such as MIL-HDBK-46855A and MIL-STD-1472F. Consideration should be given to:

- a. aligning the choice of these standards with the Contractor's work practices; and
- b. establishing an HE Working Group to develop the relevant system aspects in a joint Commonwealth-Contractor environment as the design progresses. Where a working group is used, the timing, frequency and



- c. roles and authority (with respect to the design) of Commonwealth participants need to be considered.

In the case of aircraft projects, AAP7001.054 provides relevant guidance.

Work load issues and operator task analysis are also addressed as part of the logistics activities in SOW 5.1.2 and 5.2.3. Additionally, human engineering has implications for the design of both Maintenance Support and Supply Support under clauses 5.2.5 and 5.2.6, respectively, of the draft SOW.

Often, the high-risk nature of HE and human-computer interaction in particular warrants a more-detailed statement of the Commonwealth's involvement in the HE process. This clause of the draft SOW may need to address:

- a. how the HE requirements may be specified (i.e. what documentation may need to be developed);
- b. the Commonwealth approval rights over HE documentation;
- c. Commonwealth visibility of intermediate stages of developing HE solutions to enable wider end-user review and feedback.

**Drafter's Action:** See guidance.

**Related Clauses:** Clause 4.6.2 of the draft SOW addresses the requirement to address Maintainability.

Clause 5.1.2 of the draft SOW addresses the requirement for a Task Analysis Requirements Review (TARR).

Clause 5.2.3 of the draft SOW addresses the requirements associated with the design of Operational Support.

Clause 5.2.5 of the draft SOW addresses the requirements associated with the design of Maintenance Support.

Clause 5.2.6 of the draft SOW addresses the requirements associated with the design of Supply Support.

**Further Reading:** Nil

#### 4.6.5 - ELECTROMAGNETIC ENVIRONMENTAL EFFECTS

**Sponsor:** Directorate of Spectrum and Communications Regulation, Director General Technical Airworthiness – Australian Defence Force

**Status:** Core

**Purpose:** To ensure that the Contractor and Commonwealth are able to appropriately address the system impact on the Electromagnetic Environment (E2) and effect of the E2 on the system.

**Policy:** DI(G) ADMIN 05-9, Projects Involving the Provision/Utilisation of Communications-Electronics Equipment – Approval Process

DI(G) OPS 07-14, Management of the Defence Use of the Radiofrequency Spectrum

DI(G) OPS 07-16, Coordination of Use of the Radiofrequency Spectrum Shared by Defence Telemetry and Other Equipment and Deep Space Tracking Stations in the Radiofrequency Band 2200-2300 MHz.

DI(G) OPS 16-2, The Management of Electromagnetic Environmental Effects

DI(G) OPS 16-3, Electromagnetic Compatibility Compliance

DI(G) OPS 16-4, Management of Electromagnetic Environmental Effects in Airborne Systems

**Guidance:** Personnel health, electrical and electronic equipment, explosive ordnance and flammable atmospheres may be adversely affected by Electromagnetic (EM) radiation. These effects are known collectively as Electromagnetic Environmental

Effects (E3). The results of these effects can be significant, and may result in adverse health effects to exposed personnel, malfunction of equipment, compromising emanations, or unintentional detonation. Expertise in specific aspects of E3 is distributed throughout the Defence. DI(G) OPS 16-3 states Defence policy for adherence to the ACA EMC compliance framework. Further advice in these areas should be sought from the Directorate of Communications and Regulatory Affairs (DCRA-CI).

DI(G) OPS 16-4 addresses E3 in Airborne Systems. Further advice in this area should be sought from DGTA-ADF.

E3 effects should be considered in both the Mission System and Support System.

This clause also includes the management of Defence use of the Radio Frequency Spectrum (RFS) to ensure that the RFS can be used by all who require it without harmful interference.

Projects requiring access to the RFS can seek assistance from DCRA-CI staff. This could include advice on:

- a. compliance with current 'Australian Radiofrequency Spectrum Plan',
- b. compliance with any relevant band and channel plans,
- c. compliance with future planned regulatory changes,
- d. operational restrictions that may apply due to equipment using an inappropriate frequency band,
- e. cost implications (in accordance with DIMPI 9/99) of equipment not operating in 'defence bands',
- f. interoperability issues with other In-Service defence systems, and
- g. compliance with Australian or International radio frequency bands to either establish or maintain interoperability with allied systems.

Note that this section should not call up specific equipment requirements related to E2, these should be captured in the FPS. This section should be concerned with the Contractor's process and work activities related to E2 and the Contractor's interaction with the Commonwealth in these areas.

**Drafter's Action:** If there is a requirement for procured Defence equipment to access the RFS, then the drafter needs to address:

- a. the responsibilities for spectrum licences for integration, testing and operation;
- b. definition of any specific activities needed to provide evidence of transmission equipment compliance with relevant ITU technical standards.

This section also needs to address any specific work requirements to conduct electromagnetic surveys or particular studies to be conducted such as those related to interoperability or estimation of potential interference impact.

**Related Clauses:** Nil

**Further Reading:** Nil

#### 4.6.6 - SAFETY

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To ensure that all projects have an adequate safety program.

**Policy:** DMOKS 2.8.1.10

Defence Safety Manual (SAFETYMAN)

## ABR 6303, Navy Safety Manual

Guidance:

DMO policy is that all projects are considered safety critical until proven otherwise. Therefore all projects shall at least have a minimal safety program. The scope of the safety program will depend on the size of the project and the potential for accidents. This potential is determined through the conduct of a Safety Assessment that needs to be performed early in the project's life cycle to ensure adequate funding is available for the conduct of an adequate a safety program. Specialist support may be required to perform this activity and the project needs to consider the legal ramifications of all of its safety related decisions.

Safety should be considered in both the Mission System and Support System.

It is critically important to identify and engage early in the lifecycle the applicable Technical Regulatory Authority (TRA) who will perform the safety certification role for the system or a safety critical component of the system. This TRA needs to review the preliminary Safety Assessment and confirm the findings that will determine the scope of the project's safety program. Part of this scope definition will involve the identification of the safety related standards to be applied by the project. Care needs to be taken when multiple TRAs are involved in a project as to clearly resolving the jurisdiction of each and which TRA will be the lead TRA for the project (see Hooks for TRAs in the Philosophy section of this Handbook). The TRA(s) will form part of the project's Safety Management Group (SMG). This group will monitor the project's safety program and endorse the Acquirer and System Safety Program Plans as well as review and approve the project's Safety Case.

The Safety Case may be developed immediately after the initial Safety Assessment if the system is deemed to not be safety critical. The SMG/TRA will review and endorse this assessment. In this case the safety program will be limited to TRA review of on-going safety assessments made as part of Mandated System Reviews (see applicable DMO Checklists) but if during these activities, the degree of safety criticality changes the safety program will require expanding with associated budget and schedule implications.

Technical regulation is only part of the safety related activity. Single-Service safety managers (DNAVSAFE, DSM-Land, DAFGS) need to be engaged for Service-specific advice and DSMA needs to be consulted for cross-ADO issues.

Clearly, responsibility for safety management does not rest solely with the Contractor. While the Contractor is required to deliver a safe system, the Project Authority is also required to ensure that a safe system is specified and delivered. In order to meet this responsibility, it is necessary to establish an Acquirer Safety Program with appropriate planning and staffing. At the very least, the Acquirer Safety Program Plan will be contained in the Acquisition Project Management Plan and reflect the continued safety assessment performed as part of system reviews throughout the acquisition. For safety critical systems, the Acquirer Safety Program Plan will most likely be a separate document subordinate to the Acquisition Project Management Plan. If there is more than one Contractor, or the Commonwealth acts as a systems integrator, then there are additional responsibilities on the Project Authority to ensure that safety is addressed at the system level, and co-ordinate subordinate safety programs. To ensure that the Project Authority has the necessary contractual tools to properly monitor and ensure compliance of the Contractor's safety program, an Acquirer Safety Program should be established as early as possible in the project lifecycle. At the very latest, the safety program should be established in time for safety planning outputs to be included in the solicitation package (i.e. SOW, CDRL and DIDs).

Where a project cannot prove that it is not safety critical at the outset, an assessment of the safety criticality of a tendered solution is required. Safety workshops are an effective mechanism to discuss, define and agree a tenderer's safety program and obtain a mutual understanding of expectations. For this reason, Safety Workshops should be held with each competitive tenderer or as a minimum with the preferred tenderer prior to Contract signature to ensure the safety program is included in the contact scope. The understandings and

agreements reached during a Safety Workshop are documented in the tenderer's System Safety Program Plan (DID-ENG-MGT-SSPP), which is agreed after SMG/TRA endorsement prior to Contract signature and then becomes part of the Contract scope via the SOW. Contact the Director of Software Engineering, Materiel Policy & Services for assistance in scoping and performing Safety Workshops.

During the Contract, the Contractor should develop a Safety Case documented in the Safety Case Report (see DID-ENG-SOL-SCR), which summarises and pulls together all of the assumptions, actions (undertaken and planned), results and analysis used to argue that the system is acceptably safe. It will be developed to record the initial Safety Assessment results and updated throughout the life of the system. The Safety Management Group will use the Safety Case to determine that the system is acceptably safe prior to commencement of verification and validation or operation of the system prior to system acceptance. The Safety Case documents and demonstrates how the system satisfies its safety requirements and how the hazards identified for the system have been reduced to an acceptable level. The SMG/TRA must endorse the Safety Case as it develops throughout the project and endorse the final Safety Case Report prior to system acceptance.

**Drafter's Action:** If required, clause 4.6.6 is to be amended to insert the mandated or recommended safety standards into the RFT. Prior to Contract signature, consideration should be given to aligning the safety standards with the Contractor's work practices and, if acceptable to the Commonwealth, clause 4.6.6 should be amended accordingly.

Drafters are also to define the key interaction points in the program with respect to safety.

**Related Clauses:** TDR G-10 addresses the tender requirements relating to system safety.

Clause 3.5 of the conditions of tender describes the offer definition process.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Safety*

See also – *Philosophy Annex A, Lifecycle Thread – Safety Engineering*

#### 4.6.7 - SYSTEM SECURITY

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**Sponsor:** Defence Security Authority

**Status:** Core

**Purpose:** To ensure adequate processes are in place to address the security requirements of the technical design. Note that issues associated with the Contractor's facility and personnel clearance are addressed separately in SOW clause 3.16.

**Policy:** Departmental Security Instruction 18/2000, Release of the Commonwealth Protective Security Manual.

DI(G) OPS 41-2, Projects Involving the Provision / Utilisation of High-Grade Cryptographic Equipment Encryption Devices

**Guidance:** This clause is intended to address the design of appropriate security features of the Mission System and Support System. It should include a security program in accordance with SECMAN 3 or equivalent, development of a security architecture plan, an accreditation plan, issues of timing and Commonwealth involvement.

Maintenance and support issues related to security also need to be carefully considered (e.g. the need to appropriately sanitise storage media in classified equipment (e.g. cryptographic equipment and electronic warfare equipment) before a failed item can be sent for repair).

**Drafter's Action:** Refer to DSB / DSD for advice in these areas.

**Related Clauses:** Paragraph 11 of Annex E to Attachment A of the conditions of tender requires each tenderer to provide details of the type and level of facility clearances held by the tenderer and proposed Subcontractors.

Clause 10.10 of the draft conditions of contract details the security requirements of the Contract and the security classification of work to be performed under the Contract.

Clause 3.16 of the draft SOW details the work-related requirements relating to Defence security compliance.

**Further Reading:** Nil

#### 4.6.8 - AIRCRAFT TYPE CERTIFICATION

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**Sponsor:** Project Airworthiness Regulation

**Status:** Optional

**Purpose:** To ensure that the airworthiness regulatory requirements are met.

**Policy:** DI(G) OPS 02-02 Australian Defence Force Airworthiness Management

**Guidance:** This clause needs to address the contents of the Type Certification Program and associated plan. The Type Certification Plan must present a comprehensive proposal for the aircraft Certification Basis Description (CBD) that allows certification risk to be assessed. This CBD must be prepared in accordance with AAP7001.054.

In the case of aircraft projects, DGTA-SCI must be consulted to establish airworthiness certification requirements. AAP7001.054 provides relevant guidance.

The following areas must be considered:

- a. Aircraft Structural Integrity;
- b. Engine Structural Integrity;
- c. Aircraft Electrical Loads Analysis;
- d. Stores Clearance; and
- e. Environmental Control Systems Analysis.

**Drafter's Action:** refer to DGTA-SCI

**Related Clauses:** Clause 4.1.3 of the draft SOW details the requirements relating to Authorised Engineering Organisations.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread - Airworthiness Regulatory Requirements*

See also – <http://scaweb.defence.gov.au/dgta/>

#### 4.6.9 - ACCESS TO THE RADIO FREQUENCY SPECTRUM

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**Sponsor:** Directorate of Spectrum and Communications Regulation

**Status:** Core

**Purpose:** To ensure that equipment, systems, sub-systems, Configuration Items (CIs), or end products are compliant with the *Radiocommunications Act 1992* and their in-service spectrum use can be managed to meet intended operational capability.

**Policy:** DI(G) ADMIN 05-9, Projects Involving the Provision/Utilisation of Communications-Electronics Equipment – Approval Process. (under review)

DI(G) OPS 07-14, Management of the Defence Use of the Radiofrequency Spectrum.

DI(G) OPS 07-16, Coordination of Use of the Radiofrequency Spectrum Shared by Defence Telemetry and Other Equipment and Deep Space Tracking Stations in the Radiofrequency Band 2200-2300 MHz.

Guidance: This section provides for the management of Defence use of the Radiofrequency Spectrum to ensure that all who require access to this spectrum can do so without harmful interference. The section provides for the submission of an Equipment Certification to Access Radiofrequency Spectrum (ECARS), which is evaluated by the Directorate of Spectrum and Communications Regulation (DCSR) to ensure that, when delivered, systems and equipment will:

- a. be compliant with Australian regulatory and Defence-specific requirements; and
- b. meet operational requirements.

An initial delivery of the ECARS should be included in the conditions of tender to enable evaluation of RF spectrum issues during the tender phase and for any identified issues to be discussed with the preferred tenderer(s) pre-Contract. Of note, the CDRL specifies multiple deliveries of the ECARS under the Contract to align with the developmental status of the systems and equipment. Discussion of RF spectrum issues should also occur at each of the Mandated System Reviews to ensure that these issues are addressed at the earliest possible time in the Contractor's developmental processes.

DSCR must be advised when projects, systems or equipment require access to the radio frequency spectrum. This advice is submitted using the form AA763 as specified in the ADFP 561.

This includes advice on:

- a. compliance with current 'Australian Radiofrequency Spectrum Plan';
- b. compliance with any relevant band and channel plans;
- c. compliance with future planned regulatory changes;
- d. operational restrictions that may apply due to equipment using an inappropriate frequency band;
- e. cost implications (in accordance with DIMPI 9/99) of equipment not operating in 'defence bands';
- f. interoperability issues with other In-Service defence systems; and
- g. compliance with Australian or International radio frequency bands to either establish or maintain interoperability with allied systems.

DSCR should be contacted where any doubt exists as to the inclusion of these requirements.

For the ECARS processes to be effective, RF spectrum requirements must be included in the documentation that defines the requirements for the Mission System and Support System, including:

- a. the Function and Performance Specification (FPS) must include the specification requirements for access to the RF spectrum, including interoperability requirements;
- b. the Verification Cross Reference Matrix (VCRM) that accompanies the FPS must include the Verification requirements associated with access to the RF spectrum;
- c. the Operational Concept Document (OCD) must capture the operational (and support) concepts and scenarios associated with access to the RF spectrum, including the identification of those other systems and equipment with which the new systems and equipment must be able to interoperate (e.g. work together and/or not interfere with);
- d. the Test Concept Document (TCD) must include the Verification requirements, where these requirements are likely to be significant cost and schedule drivers.

Guidance should be sought from DCSR for generic clauses and requirements that can assist with the development of project-specific requirements associated with access to the RF spectrum.

The acquisition planning processes must also address the requirements associated with addressing issues associated with access to the RF spectrum. For example, the Test and Evaluation Master Plan (TEMP) and the Project Design Acceptance Strategy (PDAS) should explicitly address these issues when they are relevant to the specific acquisition.

Additional work requirements, such as the requirements for RF site surveys by the Contractor, should be included in the SOW where Radiofrequency Spectrum issues are likely to be significant.

**Drafter's Action:** The requirement for submission of the ECARS is to be reflected in the CDRL.

As highlighted in the Note to drafters, consideration should be given to including requirements for site surveys and associated survey reports if these requirements are not addressed elsewhere in the SOW or have not been otherwise addressed (e.g. through pre-Contract activities).

**Related Clauses:** Clause 4.6.9 of the Statement of Work addresses the work requirements associated with Electromagnetic Environmental Effects.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Defence Radiocommunications* for further detail and suggested texts for inclusion in Contract documents.

## 5. INTEGRATED LOGISTICS SUPPORT

**Warning: Clause 5 should never be deleted in toto! In those situations where total contractor support is envisaged, most of clause 5 will still be required for a number of reasons, including the following:**

- a. The ILS clauses include the design of those elements of the Support System that will be provided by the In-Service Support contractors and subcontractors. As such, clause 5 is required to provide insight into whether or not a valid Support System, which meets the Commonwealth's preparedness objectives at a minimised Life Cycle Cost (LCC), will be provided.
- b. Even when the Commonwealth will not be undertaking maintenance, the operators of the Mission System will still require training, publications, and (possibly) equipment and facilities. These aspects are covered under the Support System Constituent Capabilities of Operational Support and Training Support.
- c. The Technical Data clauses are inextricably linked with the Intellectual Property (IP) clauses under the Contract. As such, the Technical Data clauses will always be required to ensure that the Commonwealth's IP objectives and rights under the Contract are realised.

**Guidance should be sought from the appropriate Subject Matter Experts (SMEs) before tailoring of clause 5 is commenced.**

### 5.1 Integrated Logistics Support Program

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To require the Contractor to undertake Integrated Logistics Support (ILS) practices and supporting processes in undertaking the Supportability-related elements of the work under the Contract.

**Policy:** DI(G) LOG 03-6 Integrated Logistic Support

**Guidance:** See guidance on subclauses.

**Drafter's Action:** Nil

**Related Clauses:** Nil

**Further Reading:** For a complete overview of the ILS aspects of the SOW, including the philosophy and concepts underpinning the ILS aspects, users of the ASDEFCON (Strategic Materiel) RFT Template are advised to read the Philosophy volume of this Handbook, particularly the ILS chapter of that volume.

#### 5.1.1 - ILS PROGRAM OBJECTIVES

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To convey to the Contractor the ILS objectives that have led to the tailoring of the SOW and the focus of the individual project's requirements for the ILS Program.

**Policy:** DI(G) LOG 03-6 Integrated Logistic Support

**Guidance:** The ILS Program Objectives provide the high-level outcomes required as a result of implementing ILS as part of the acquisition program, and as the basis behind the ILS requirements in this SOW. The ILS Program Objectives listed are generic and are related to achieving an optimal balance between preparedness, support and Life Cycle Cost (LCC). The default terminal objectives for the application of ILS are:



- a. A Mission System designed for supportability. This first objective is to deliver to the Commonwealth a Mission System, which is designed in a way that enables a high level of availability with a minimal support burden. This objective should be interpreted appropriate to the level of design activity. For example, if off-the-shelf subsystems are being integrated into a Mission System, then subsystems that exhibit high reliability and minimise the need for special-to-type S&TE or unique trade skills would be preferable over other subsystems that are less supportable.
- b. A Support System designed for Mission System support requirements, while minimising LCC to the Commonwealth. The second objective is to deliver a Support System solution that:
  - (1) from the combination of delivered and available In-Service support components, is most effective in providing support to the Mission System in all its roles,
  - (2) minimises the LCC incurred by the Commonwealth,
  - (3) enables the required level of availability, and
  - (4) complies with any other program requirements and constraints.
- c. Implementation of the Support System. The third objective, in following the achievement of the previous two, is to realise the implementation of the Support System. Implementation requires:
  - (1) the timely identification of the appropriate range and quantities of all support components, including those physical products delivered by the Contractor;
  - (2) the timely identification of all necessary information and skills transfer, required by the Commonwealth to enable transition into service; and
  - (3) the implementation of all of the elements required by the Contractors and Subcontractors that will be providing In-Service support (i.e. Contractors(LS) and Subcontractors(LS)).

Additionally, some programs will have overriding requirements for the ILS program not adequately covered by the generic ILS Program Objectives listed. Examples include: a requirement to reduce Defence personnel numbers to a predetermined level, or to be constrained within a defined maximum LCC or annual cost. Additional, overriding program objectives, such as these, will need to be added to clause 5.1.1.

Acknowledgement and understanding, by the Contractor, of the ILS Program Objectives, is intended to ensure that the Contractor's ILS and LSA programs will be planned and undertaken in a manner to achieve these objectives. The objectives should be apparent in, and influence, the Contractor's Integrated Support Plan (ISP) and subordinate ILS plans. In one respect, these objectives provide the "purpose" underpinning the Contractor's ILS program and, therefore, provide the frame of reference within which the "fitness for purpose" of the program can be assessed by the Project Authority.

**Drafter's Action:** Clause 5.1.1 may need to be tailored to specify the high-level objectives for the ILS Program (including LSA) and any key constraints within which these objectives must be achieved. If there are no additional objectives, or the objectives and constraints are adequately specified in the Function and Performance Specification (FPS), drafters should not amend the default objectives. Guidance should be sought from DLSE in amending the default objectives for the ILS Program.

**Related Clauses:** All other clauses within clause 5 of the draft SOW.

Clause 4.6 of the draft SOW details the requirements for the Contractor to undertake a range of Specialty Engineering activities, many of which directly relate to the Supportability characteristics of the Mission System.

Clause 3.11 of the draft SOW describes the Contractor's obligations with respect to LCC.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – ILS/LSA Management*

#### 5.1.2 - ILS PROGRAM MANAGEMENT

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure the ILS Program is managed in an integrated manner to deliver an integrated and effective Supportability solution. To ensure that the various organisational structures, processes, and procedures (identified in the various plans) that the Contractor adopts are consistent with the achievement of the required ILS Program outcomes.

Policy: DI(G) LOG 03-6 Integrated Logistic Support

Guidance: Planning

Following the approach of the ASDEFCON (Strategic Materiel) SOW, not to prescribe process to the Contractor but to seek the outcomes, the actual process followed will be defined in the Contractor's planning documents. This encourages tenderers to propose their own best practice methods for achieving the required results. Plans that are delivered as Tender deliverables should be closely evaluated to provide the Commonwealth with the confidence that a potential Contractor has in place well-structured and effective processes to achieve the required outcomes. More details on this subject are discussed under the sections related to each plan.

As explained in the Philosophy volume of this guide, ASDEFCON (Strategic Materiel) has introduced an offer definition phase as part of the standard acquisition process. This approach helps to achieve the objective, which is consistent with acquisition best practice, of ensuring that agreed products and product-evaluation criteria and processes and process-evaluation criteria are placed on Contract. With respect to plans, the offer definition phase should be used to ensure that agreed plans are placed on Contract at the Effective Date. Clause 3.5 of the conditions of tender provides further guidance on the offer definition process.

The ISP is the most important plan in the role of describing the processes for the ILS Program and, therefore, an ISP is required for all programs. As the "Note to drafters" states, if other plans are not required as stand-alone documents, due to the size of the effort in that particular area, the ISP must address those issues that would otherwise have been contained in the individual plan. For example, if there were potentially few items of S&TE and all were off-the-shelf, then a separate S&TE Plan would not be warranted; however, the ISP must still address issues such as determining the number to be bought and the on-going support for the S&TE.

Drafters should note that the set of ILS management plans in ASDEFCON (Strategic Materiel) represents a complete set for a project, and additional ILS management plans should not be required. The default set of plans covers all of the ILS processes, products and services, as follows:

- a. The ISP provides the plan for the design and development of the Support System and the Support System Constituent Capabilities.
- b. The other ILS plans provide the plans for the design, development and procurement (as applicable) of the products and services that are the responsibility of the Contractor the Contractor, such as Spares,

Packaging, Training, Technical Data, Support and Test Equipment (S&TE), and Facilities.

For a mapping and discussion of the relationships between the ten ILS elements and the process/product approach underpinning ASDEFCON (Strategic Materiel), drafters are referred to Section 11 of the Philosophy Volume.

The plans, which are used to plan and manage the ILS program, are:

- a. Integrated Support Plan (ISP). The top-level plan for management of the ILS Program. This plan details the standards that the Contractor will be employing for conducting the ILS program, as well as the Contractor's tailoring of these standards to achieve the requirements of the Contract. This plan also includes the processes for the development of Support Resources if not included in specific plans below. The ISP incorporates an LSA Plan for the management of related analyses. Refer DID-ILS-MGT-ISP.
- b. Supply Support Development Plan (SSDP). The SSDP details the standards, methodology and processes for the identification, development and procurement, as applicable, of the unique products within the Supply Support Constituent Capability (i.e. Spares and packaging). The development of this Constituent Capability is covered under the ISP. The SSDP must take into consideration the Commonwealth's requirements for Supply Support, including deployed elements, and consider relevant existing and new In-Service Supply Support functions to be implemented. Refer DID-ILS-SUP-SSDP.
- c. Training Support Plan (TSP). The TSP details the standards, methodology and processes for the training development program, including the process to guide the Training Needs Analysis. The TSP integrates with the ISP for the development of the Training Support Constituent Capability. This plan must consider integration with relevant In-Service training. Refer DID-ILS-TNG-TSP.
- d. Technical Data Plan (TDP). The TDP details the standards, methodology and processes for identifying and developing Technical Data. The plan must describe a process consistent with meeting the requirements for Technical Data and the various issues related to data access, incorporating existing data, IP, escrow, etc. Refer DID-ILS-TDATA-TDP.
- e. Support and Test Equipment Plan (S&TEP). The S&TEP details the standards, methodology and processes for identifying S&TE and for procuring or developing S&TE as required. The process requires consideration of standardisation and offsetting with existing S&TE and establishing In-Service support for S&TE. Refer DID-ILS-S&TE-S&TEP.
- f. Facilities Plan (FACP). The FACP details the standards, methodology and processes for defining and implementing facilities requirements. This includes modifications to existing facilities and the requirements for new facilities. Due to the lead-time and approvals for most facilities work, early implementation is important. Refer DID-ILS-FAC-FACP.
- g. Software Support Plan (SWSP). The SWSP DID establishes the obligation for the Contractor to document the software-support components of the Support System in the Software Support Plan (DID-ILS-SW-SWSP). Software support is a significant issue during the In-Service Phase of the equipment life-cycle (particularly for Australian Industry Involvement); hence, the documentation of this requirement in a separate plan is warranted.

Many of the above plans will require coordination with other program plans, the SEMP in particular. Software support for a Mission System (or for key elements of the Support System) is a significant issue that must be coordinated with the SE and software-development programs to ensure Supportability. Furthermore,

software support may be an expensive undertaking and a risk analysis needs to be performed in the early phases of a project (i.e. prior to Contract) to determine the strategy for software support. This risk analysis may be conducted as part of software profiling, which addresses issues of software supportability and associated considerations. The concept for software support, particularly any in-country support, should be documented in the OCD, with any performance requirements documented in the FPS.

There is a range of factors that might affect software supportability, including the attributes of the software item itself, the associated development process, or the environment within which the software is operated or supported. The factors are not all unique to software, and in some cases will be linked to system-level considerations. Some of the factors of key significance are:

- a. change traffic,
- b. safety integrity,
- c. expansion capability,
- d. fleet size and disposition,
- e. modularity,
- f. size,
- g. security,
- h. skills,
- i. standardisation,
- j. technology,
- k. tools and methods,
- l. documentation, and
- m. platform independence.

For additional information, refer to DEF(AUST)5691 or DEF-STAN-60, which discuss these issues. Note that this list of factors is not all-inclusive and specialist advice needs to be sought from an appropriate SME.

In all of the above plans, the Commonwealth does not specify the processes to be followed, but requires them to be defined in the Contractor's plans. As such, the Commonwealth ILSM must approve the Contractor's plans before they can be implemented. The Contractor must then conduct the program in accordance with those plans. In selecting or deselecting any of the above plans, the drafter should be aware that, under ASDEFCON (Strategic Materiel) principles, these are the mechanisms for identifying the processes to be followed by the program.

Scheduling is an important part of planning the ILS Program. For consistency across the entire program, ASDEFCON (Strategic Materiel) requires all subordinate schedules, including the ILS schedule, to be incorporated into the Contract Master Schedule (CMS). Any scheduling described within the above plans should be derived from, and described in terms of the milestones from, the CMS.

#### Mandated System Reviews

The Commonwealth requires Mandated System Reviews to provide oversight of the progress and management of the Contractor's activities under the Contract, which includes the ILS program. The reviews are a combination of System Reviews, detailed in the Systems Engineering section, and specific reviews of the ILS Program. Conduct of the Mandated System Reviews is covered under clause 4.1.4 of the draft SOW and by the Contractor's System Review Plan (SRP) (DID-SE-RVW-SRP refers). ILS staff should be involved in the review of this plan to ensure that ILS requirements are adequately catered for in the SRP.

The list of applicable reviews may need to be amended to suit the requirements of the individual program. For example, if there is no need for provisioning of Long Lead-Time Items, the LLTIR would not be required, and text in the later LLTIR clause (5.1.2.5) would be deleted and replaced with "Not Used". Given that the main coverage for the System Reviews is contained within the SE section of the draft SOW, the deletion of any System Reviews listed should be initiated through the SE program (e.g. if SRR is not required under the Contract because it was held during an offer definition phase).

ILS involvement in Mandated System Reviews ensures coordination between the ILS and SE Programs. Supportability characteristics of the Mission System design are addressed in these reviews, and the impact of the Mission System design on the Support System can be evaluated under whole-of-capability terms. Attention is also drawn to clause 3.11 of the draft SOW (LCC), which brings together the Mission System and Support System within a LCC framework, and which defines one of the Contractor's primary obligations at the Mandated System Reviews.

System Reviews that are specific to the ILS program, including provisioning reviews (also known as procurement conferences), are detailed in clauses 5.1.2.3 to 5.1.2.10.

Checklists are to be used to define entry and exit criteria for each review, which helps to ensure that both parties have a clear understanding of review requirements and achievement of critical milestones. Where standard checklists have not been provided as part of the standard ASDEFCON (Strategic Materiel) templates, they should be prepared by the project team. Additionally, the standard checklists may require tailoring to suit the specific requirements of particular projects. Where the entry and exit criteria for more than one review can be met at the same time, the reviews may be conducted simultaneously.

Each Mandated System Review should normally be identified as a Stop Payment Milestone in accordance with the provisions of clause 7.11 of the conditions of contract. It may also be a Schedule Compression Milestone as described in clause 7.11, particularly for the earlier to mid-project reviews such as PDR or DDR. The Mandated System Reviews should also be formally identified in the Schedule of Milestone Entry and Exit Criteria, Annex C to Attachment B of the Contract.

System Requirements Review (SRR) and System Definition Review (SDR). Clause 5.1.2.2.1 highlights that there will be a System Requirements Review (SRR) and a System Definition Review (SDR) to address both the Mission System and the Support System. The clauses relating to these reviews are contained at clauses 4.2.3 and 4.2.4 of the draft SOW, respectively. In essence, the objectives of these two reviews for the Support System are almost identical to the objectives for the Mission System, with the differing emphases between the two systems at each of the reviews arising because the two systems are conceptually quite different (refer to the Philosophy Volume of the Handbook). The SRR and SDR for the Mission System may be held independently of the SRR and the SDR for the Support System; however, this approach is not recommended for reasons of efficiency and effectiveness and because of the strong relationship between the requirements and design of the two systems.

Preliminary Design Review (PDR) and Detailed Design Review (DDR). The ILS section of the draft SOW does not include a Preliminary Design Review (PDR) for the Support System and the requirements of a Detailed Design Review (DDR) have been met by a specific Support System Detailed Design Review (SSDDR). Nevertheless, ILS staff should expect to be involved in the PDR and DDR for the Mission System because there are numerous issues addressed at these reviews that have significant implications for the Support System (e.g. reliability and maintainability of the Mission System, outcomes of FMECA, and, if specified through an appropriate DID, delivery of updates to the LSAR). Additionally, ILS staff should ensure that ILS is included in the agenda for both PDR and DDR to enable status updates of these programs to be addressed. Finally, these reviews

provide an ideal opportunity for ILS staff from both the Contractor and the Commonwealth to discuss issues relating to the ILS program.

#### Support System Detailed Design Review (SSDDR)

To avoid nugatory rework, the design of the Support System will almost always lag behind the design of the Mission System, even during concurrent development. For this reason, the Support System Detailed Design Review (SSDDR) was introduced to provide the functionality of a DDR to the Support System, while enabling the results of the Mission System DDR to update the requirements and design of the Support System prior to the SSDDR. This also allows any final updates to the Support System Specification (DID-ILS-DES-SSSPEC) for SSDDR (albeit noting that there should only be minimal changes at this time and that any changes will require CCP action). If the requirements of both the DDR and SSDDR can be met at the same time, the SSDDR may be held consecutively after the DDR.

The SSDDR demonstrates the physical design of the Support System. This does not require the exact numbers of resources to be known or the maintenance plans for individual items to be prepared. For example, it is sufficient to define the maintenance levels, their locations, capabilities and the types of maintenance to be performed at each location, but it is not necessary to know the Level of Repair Analysis (LORA) results for individual lower-level repairable items or exactly how many spares of each are needed.

Specific areas of the SSDDR include:

- a. Support System Components to meet requirements. Support System Components are the physical resources required to support the Mission System, or support other elements of the Support System (e.g. S&TE, packaging, facilities, tools, materials, data, etc). These items should be identified against the specified Mission System and Support System requirements (even if exact quantities are unknown). This is a verification of physical support components (components of the Support System design) against support requirements.
- b. Support System Component development. Where Support System Components have a design requirement, design documentation that is suitable to enable production/implementation should be presented (e.g. designs for S&TE, facilities modifications, IETM hardware selection and software design, etc).
- c. Software development documentation. All new and existing software should be classified into the relevant categories being used (e.g. embedded, operating system, application, data library). Software supportability characteristics should be defined (e.g. size/expansion capability, change traffic, modularisation, security segregation, development and support tools, etc) and the resulting design of the various software support processes and resources for each software category, or program, should be defined accordingly.
- d. Support System Constituent Capabilities. ASDEFCON (Strategic Materiel) defines five Support System Constituent Capabilities, including operational support, engineering support, maintenance support, Supply Support, and training support. These In-Service process domains involve the management and organisation of resources. For example, the design of operational support defines direct support of the Mission System, including; deployment requirements for fuel, transport, and operational support equipment; armaments; operator training; operator technical data; etc. At the SSDDR, the designs of each of these Constituent Capabilities should be defined to the level that the Contractor can demonstrate that its combined solution for the Mission System and Support System will meet the requirements of the Contract at a

minimised LCC when these systems are operated and supported in accordance with the OCD.

- e. Life Cycle Cost. The preceding point highlighted the role of LCC at the SSDDR, and attention is drawn to the requirements of clause 3.11 of the draft SOW with respect to LCC at each of the Mandated System Reviews.

The checklist defining entry and exit criteria for the SSDDR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

#### Task Analysis Requirements Review (TARR)

The analysis of tasks forms the foundation for all resource calculations and the development of various ILS products, including technical manuals and training materials. Prior to the production of provisioning lists and other ILS products, the task inventory is reviewed to ensure: correct allocation of tasks by maintenance level to Defence and/or Contractor, resource requirements and procedures are valid, and tasks have been allocated to personnel with appropriate skills. Although much of this verification will occur through desktop review over a period of time, the purpose of the Task Analysis Requirements Review (TARR) is to consolidate and conclude the review process. Alternatively, a number of TARRs could be held, with each TARR addressing a different Support System Constituent Capability.

The inventory of tasks, including resources, procedures, and skill competencies, is built up over time and documented in accordance with DID-ILS-DES-TAR. This DID depicts four stages in the development of task data, including developing the task inventory, task resource requirements, task procedures, and task competencies. These four stages are applied to each of the Support System Constituent Capabilities included in the LSA Program discussed in the next section.

Entry criteria for the TARR include the availability of all relevant task data through the DID-ILS-DES-TAR, with the successful conclusion of the TARR allowing the ILS/LSA program to progress to the development and production of ILS products. If not included in the Technical Data Plan, the ISP should have also defined the process by which existing data for tasks on existing systems and subsystems will be validated and integrated into the task analysis process and presented for review.

The checklist defining entry and exit criteria for the TARR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

#### Long Lead Time Items Review (LLTIR)

Long Lead Time Items (LLTIs) include spares, S&TE, Training Equipment and any other resources that must be procured in advance to enable delivery of those items in time for production or In-Service support. Items may become LLTIs due to the time taken to obtain approvals through foreign military sales (e.g. GFE), have long production times (e.g. custom built test equipment), or necessary to establish new in-country repair facilities that will take a length period to become fully functional. Although facilities have long lead times for construction, they are usually managed separately and not as LLTIs.

The purpose of the LLTIR is to review the LLTIs recommended by the Contractor, which are proposed to be purchased from the Contractor or other sources, ahead of the more thorough analysis afforded to (for example) Spares and S&TE Provisioning Preparedness Reviews. The emphasis of this review is to balance the risk of purchase, based on limited information, against the risk to the development and implementation schedule. Accordingly, for entry to the LLTIR, each recommended LLTI should be justified in terms of lead-time (exceeding that allowed by later provisioning) and risk analysis.

The checklist defining entry and exit criteria for the LLTIR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

### Spares Provisioning Preparedness Review (SPPR)

The purpose of the Spares Provisioning Preparedness Review (SPPR) is to review the Recommended Spares Provisioning List (RSPL) to enable the Commonwealth to approve the recommended spares list and proceed with spares procurement. The Commonwealth should have been presented with the results of Task Analysis in the Task Resources Report (DID-ILS-DES-TAR), LORA (DID-ILS-DES-LORAR), and spares optimisation modelling, in preparation for the SPPR. The use of existing (common) spares from other Capabilities or other sources of supply (e.g. direct from local Subcontractor) should also be identified.

The SPPR is applicable even when the Contractor is providing spares for the initial support period. This ensures there will be adequate numbers of spares for the initial support period and indicates the likely increase required for hand over from initial to longer term In-Service support. In this instance, a second SPPR would also be scheduled at a later time, in preparation for the hand over.

The checklist defining entry and exit criteria for the SPPR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

### S&TE Provisioning Preparedness Review (S&TEPPR)

The purpose of the S&TE Provisioning Preparedness Review (S&TEPPR) is to review the S&TE Provisioning List (S&TEPL) to enable the Commonwealth to approve the recommended S&TE list and proceed with S&TE procurement. The Commonwealth should have been presented with the Task Resources Report (DID-ILS-DES-TAR) and LORA results (DID-ILS-DES-LORAR) in preparation for the S&TEPPR. By confirming tasks performed by location, LORA identifies the location of S&TE and enables S&TE utilisation to be calculated through mechanisms such as the LSAR.

The use of existing S&TE required for operations, or from within maintenance, support, and training facilities, should also be identified. Also important is the identification of modifications and software development requirements for existing Automated Test Equipment (ATE). Considerations of standardisation and offsetting with existing items of S&TE already in service would also be a subject of discussion at the S&TEPPR.

The scheduling of the S&TEPPR for an individual program can be dependant upon whether S&TE can be procured off-the-shelf or if development is required.

The checklist defining entry and exit criteria for the S&TEPPR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

### Training Equipment Provisioning Preparedness Review (TEPPR)

The purpose of the Training Equipment Provisioning Preparedness Review (TEPPR) is to review the Training Equipment Materials List (TEML) to enable the Commonwealth to approve the recommended TEML items for procurement. The Commonwealth should have been presented with the Training Support Plan (DID-ILS-TNG-TSP), Training Needs Analysis Report (DID-ILS-DES-TNAR), TEML (DID-ILS-TNG-TEML), and, if applicable CBT requirements (DID-ILS-TNG-CBT). Note that the Task Personnel Competency Reports (from DID-ILS-DES-TAR) should have fed into the TNAR to ensure consistency.

In preparing the TEML, the requirement for and utilisation levels of existing training resources should have been identified. Considerations of standardisation and offsetting with existing items of Training Equipment already in service would also be a subject of discussion at the TEPPR.

The scheduling of the TEPPR for an individual program can be dependant on whether training equipment can be procured off-the-shelf or if development is required. Development includes production of maintenance rigs, part task trainers, simulators, and software to be placed on existing CBT systems.



The checklist defining entry and exit criteria for the TEPPR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

#### Training Readiness Review (TNGRR)

The objective of the Training Readiness Review (TNGRR) is to enable the Commonwealth and the Contractor to review the state of training syllabi, materials, equipment, classrooms, etc, to confirm that all necessary elements are ready to enable Training to commence. Accordingly, the Commonwealth must be given the opportunity to review all training syllabi and course materials prior to the review, and to confirm delivery to the training facility (even if temporarily at the Contractor's facility) and set up of training equipment. Review of training materials includes paper-based training, video-based training and CBT products, as applicable. The TNGRR must be a coordinated part of the Verification and Validation (V&V) program for the Acceptance of the Training Support elements from the Contractor.

The TNGRR provides the Commonwealth and the Contractor with the opportunity to review the status of the Training Support Constituent Capability and to determine whether it is ready for the commencement of training, as required under the Contract. The TNGRR also assists the Commonwealth with ensuring that all necessary measures for the future support, development and upkeep of training courses have been appropriately planned for (e.g. through in-house support arrangements or via appropriate support contracts)..

The TNGRR is one of the steps leading to Acceptance of the Training Support requirements of the Contract. In general, the determination as to whether or not Training and Training Support are fit for purpose will not be able to occur until the delivered training courses are assessed through other V&V activities (e.g. through Mission System validation, maintenance support effectiveness demonstrations, supply support effectiveness demonstrations, etc). The TNGRR, therefore, provides an initial check that the delivery of the training courses is ready to proceed, with the Acceptance of the Training Support elements occurring after the training has been validated.

The checklist defining entry and exit criteria for the TNGRR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

#### Facilities Readiness Review (FACRR)

The objective of the Facilities Readiness Review (FACRR) is to review the state of facilities that are new, refurbished, fitted-out, or otherwise modified by the Contractor to confirm that the facilities are complete and ready for the Commonwealth or other agencies (including the Contractor), as applicable, to occupy. The FACRR must be a coordinated part of the Verification and Validation (V&V) program, leading to the Acceptance of facilities from the Contractor.

The FACRR provides the Commonwealth and the Contractor with the opportunity to review the implementation of new, refurbished, fitted-out, or otherwise modified facilities as required under the Contract. The FACRR also assists the Commonwealth with ensuring that all necessary measures for the future support and upkeep of facilities have been appropriately planned for (e.g. through in-house support arrangements or via support contracts).

The FACRR is one of the steps leading to the Acceptance of facilities by the Commonwealth. In general, the determination as to whether or not a facility is fit for purpose will not be able to occur until the facility is occupied and the actual activities to be undertaken within that facility are performed. The FACRR, therefore, provides an initial check that facilities are ready for occupation, with the Acceptance of those facilities occurring after the facilities have been validated (e.g. through maintenance support effectiveness demonstrations, supply support effectiveness demonstrations, etc).

In preparation for the FACRR, the Commonwealth should have previously been provided with the Facilities Plan (DID-ILS-FAC-FACP), Facilities Requirements Analysis Report (DID-ILS-FAC-FRAR) and copies of the relevant building

specifications, environmental reports, plans, approvals and certificates. Note that the FRAR should have been based on other DIDs, such as the Task Resource Report and Training Needs Analysis Report, to identify facilities requirements and ensure consistency across the ILS program.

The checklist defining entry and exit criteria for the FACRR should be reviewed and amended, if necessary, to meet the individual requirements of the program.

**Drafter's Action:** Clause 5.1.2 may need to be tailored, in the context of an individual project's requirements, to determine which plans will be required to describe how the Contractor will implement a program that is likely to achieve all requirements, including the need for visibility to satisfy Defence's Corporate Governance obligations. The drafter must determine if plans listed are suitable, should they be amalgamated or further broken down, and the need for any additional plans. DIDs for each applicable plan should be reviewed and scheduled in the CDRL, as applicable.

Cognisant of the plans selected and the project's requirements, the drafter must then also select the applicable review requirements and tailor the selection from the standard clauses, or add additional reviews if essential.

Drafters are to also review the DMO Checklists for the selected Mandated System Reviews to ensure that these checklists are aligned to the requirements of the project. If no checklist exists, drafters are to develop checklists for these additional reviews.

Drafters are to ensure that the appropriate versions of the DMO Checklists for the ILS-related Mandated System Reviews are inserted into Annex D of the draft SOW.

Drafters are to identify whether or not the ILS Mandated System Reviews should be identified as Stop Payment Milestones or Schedule Compression Milestones in accordance with clause 7.11 of the conditions of contract.

Depending upon whether or not the Project Authority intends to obtain Contract-ready ILS plans prior to Contract (i.e. through offer definition activities or contract negotiations), the CDRL delivery times for ILS plans will need to be adjusted.

**Related Clauses:** Clause 3.5 of the conditions of tender addresses the offer definition phase.

Clause 2.4 of the draft SOW describes the process for draft Data Items included as Contract Annexes.

Clause 4.1.1 of the draft SOW addresses the SEMP, which is the major SE plan to be coordinated with the ILS plans.

Clause 4.1.4 of the draft SOW addresses the conduct of System Reviews.

Clause 4.2.3 of the draft SOW addresses the System Requirements Review.

Clause 4.2.4 of the draft SOW addresses the System Definition Review.

Clause 4.3.1 of the draft SOW addresses the Preliminary Design Review.

Clause 4.3.2 of the draft SOW addresses the Detailed Design Review.

Clause 6.7 of the draft SOW addresses Configuration Audits, which include FCA/PCA for the Support System and for Support System Components.

Clause 7.1.4 of the draft SOW addresses Test Readiness Reviews, which include Supportability and Support System testing.

Clause 7.11 of the draft conditions of contract provide the provisions relating to Stop Payment Milestones and Schedule Compression Milestones.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

Annex C to Attachment B of the draft Contract provides the Schedule of Milestone Entry and Exit Criteria.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – ILS/LSA Management*  
See also – *Philosophy Annex A, Lifecycle Thread – System Reviews*  
See also – *Philosophy Annex A, Lifecycle Thread – Supply Support*  
See also – *Philosophy Annex A, Lifecycle Thread – Technical Data*  
See also – *Philosophy Annex A, Lifecycle Thread – Training and Training Support*  
See also – *Philosophy Annex A, Lifecycle Thread – Facilities*  
See also – *Philosophy Annex A, Lifecycle Thread – Support and Test Equipment (S&TE)*

## 5.2 Logistics Support Analysis (LSA) Program

Sponsor: Materiel Policy & Services

Purpose: To impose an obligation on the Contractor to define, through a verifiable systems approach, the full extent of Support System design and resource requirements that will enable the successful implementation of the Support System, including those Support Resources that are to be provided by the Contractor and those that must be provided by the Commonwealth.

To require the Contractor to identify the outcomes necessary to implement the Support System, as well as the processes necessary to achieve the requirements identification, definition and synthesis of the Support System.

Policy: DMO policy requires LSA to be undertaken during requirements definition, system development and design of Support Systems. This requirement is underpinned in the Capability Systems Life Cycle Management Guide 2001. Specific policy for LSA is outlined in relevant Process Reference Pages of the DMO's Standard Acquisition Management System and can be accessed through the DMO Knowledge System. In the ensuing sub-sections, where no specific policy is identified, this overarching policy is relevant.

Guidance: Logistic Support Analysis is a discipline based on the conduct of analysis to achieve Supportability and other ILS goals. Details of the processes involved in LSA can be found in:

- a. DEF(AUST) 5691;
- b. AAP 5102.003 or MIL-STD-1388-1A;
- c. DEF STAN 00-60;
- d. ADO LSA Manual; and
- e. LOGMAN.

LSA has been developed from Systems Engineering analysis processes, adapted to address Mission System supportability and supportability achieved through the design of an effective Support System. Additional activities are associated with the analysis and development of ILS products that are, or define, physical resource requirements for the Support System. ILS Products include provisioning lists, workforce and personnel plans, technical manuals, and training materials. Physical resources, for which requirements are defined, include all Support Resources (i.e. Mission System and Support System spares, Support and Test Equipment (S&TE), packaging, facilities, training equipment, etc).

LSA, as defined by the available standards, is not applied exclusively in this clause 5.2. Mission System supportability aspects are covered under Logistics Engineering within the Specialty Engineering clause of Systems Engineering, while Supportability Test and Evaluation is included in the Verification and Validation clause of the draft SOW.

Clause 5.3, "Support System Implementation", which follows this clause 5.2, should produce cost-effective and consistent results based on the integrated approach to analysis required by this section of the draft SOW.

For further guidance, refer to Guidance for each clause within clause 5.2.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: See also – *ADO LSA Manual*

See also – *Lifecycle Thread – ILS/LSA Management*

For a complete mapping from LSA tasks/activities in the LSA standards to the relevant clauses of the draft SOW, users of the ASDEFCON (Strategic Materiel) RFT Template are referred to Annex B to the Philosophy Volume of the Handbook.

### 5.2.1 - LSA PROGRAM MANAGEMENT

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<u>Sponsor:</u>	Materiel Policy & Services
<u>Status:</u>	Core
<u>Purpose:</u>	To impose an obligation on the Contractor to conduct the LSA Program in accordance with the Approved Integrated Support Plan (ISP).
<u>Policy:</u>	See Section 5.2.
<u>Guidance:</u>	LSA is an analysis discipline supporting ILS but, due to the interrelated nature of the Mission System and Support System, LSA must also be managed in the context of certain SE and V&V activities. Management of the LSA program, therefore, should be undertaken through the ILS program in pursuit of ILS goals and in the context of broader program requirements. In practice, management of the LSA program is documented and controlled through ILS management plans and ILS management/review meetings

The ASDEFCON (Strategic Materiel) SOW is outcome based; hence, the application of LSA processes in accordance with either DEF(AUST) 5691, MIL-STD-1388-1A, AAP 5102.003 or other LSA standard, is not mandatory. However, any alternative process would need to be approved by the Commonwealth. Suitable alternatives may be obtained through Contractor's internal processes for applying Systems Engineering, Concurrent Engineering, or other programs, provided that the process will achieve the desired outcomes through a robust, fully integrated, and traceable manner. For this reason, the SOW does not refer explicitly to LSA standards for managing these processes; however, the application of alternative processes must be clearly defined in the ISP.

The ISP (DID-ILS-MGT-ISP) is the principal management plan for directing and controlling LSA as part of the ILS Program. The clause on "Standards" in this DID (i.e. clause 6.2.5.2) is used to define which activities are to be conducted in accordance with recognised or other agreed standards. This clause requires the Contractor to define why activities were selected or not selected, modifications to processes, expected outcomes, responsibilities, required information, tools, etc. The response to this clause in the ISP DID, therefore, should include references to MIL-STD-1388-1A, DEF(AUST) 5691, IEEE1220, and any other standards being applied to the ILS/LSA Program, and how, if applicable, the processes are modified to suit the project. A sound ISP is critical to the success of the ILS and LSA Programs, and every effort should be made to ensure that agreement on this plan is reached prior to Contract award (e.g. through offer definition activities or Contract negotiations). Drafters should note that the ISP is the only essential Data Item deliverable for the ILS Program when the minimal RFT approach is selected, and this paragraph helps explain why the ISP is considered essential.

For ease of management, plans subordinate to the ISP are used to address the more detailed aspects explaining how each standard is applied. These subordinate plans should summarise and refer to, but not duplicate, details that are submitted in response to other DIDs. For example, in explaining the application of processes for determining the S&TE aspects of the ILS Program, the ISP need not be too detailed because the detailed information will be included in response to DID-ILS-S&TE-S&TEP. Accordingly, the Commonwealth should avoid overlaps if considering amendment of DID-ILS-MGT-ISP and other ILS DIDs.

The ISP also defines the conduct of ILS Management reviews and subordinate LSA reviews, and the involvement of LSA (and ILS) in the Mandated System Reviews. This forms the second element in managing the LSA Program. The use of on-going ILS reviews, LSA reviews, and one or more LSA Guidance Conferences may be required. In the Project Management Plan (PMP), meetings are covered generically in the clause titled "Meetings" and also "Project Communications Management". In the ISP, the process for conducting suitable reviews should be covered in the response to the "Standards" clause where this refers to an LSA standard, such as MIL-STD-1388-1A, which includes ILS Reviews, LSA Reviews, and LSA Guidance Conferences. Scheduling of reviews

should be included in the "ILS Program Schedule" clause of the ISP. Note that an LSA Guidance Conference would ideally be held during an offer definition phase and, therefore, may not be included in a post-Contract signature ISP.

**Drafter's Action:** Clause 5.2.1 is to be included in the RFT without alteration.

After having completed the tailoring and any amendments to the rest of clauses 5.2 and 5.3 of the draft SOW, drafters should review the DIDs for the ISP and subordinate plans to ensure that these plans comprehensively address the LSA requirements for the project.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 3.5 of the conditions of tender describes the offer definition process.

Clause 5.1.2 of the draft SOW addresses the requirement for an ISP and related plans.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – ILS/LSA Management*

#### 5.2.2 - SUPPORT SYSTEM DEFINITION

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to undertake the design of the Support System so that the Contractor and Commonwealth can determine that the resulting Support System will achieve the preparedness, LCC, and other program objectives and constraints, for the new Capability.

**Policy:** See Section 5.2.

**Guidance:** Support System Requirements Validation

Clause 5.2.2.1 establishes the obligation for the Contractor to undertake a requirements-validation process, taking into consideration all of the inputs that have an impact upon the requirements for the Support System, including:

- a. the FPS (which documents the Commonwealth's statement of the functions, performance requirements and constraints associated with the Support System);
- b. the OCD (which is a significant interpretive document in the requirements-validation process (i.e. it helps the Contractor to interpret and understand the Commonwealth's requirements statements in the FPS));
- c. the SOW (including the DIDs);
- d. the Contract (LS) (noting that this document sets the contractual framework within which a portion of the Support System will operate);
- e. the requirements of government regulatory organisations (e.g. with respect to the environment, occupational health and safety, spectrum management, etc);
- f. other Defence stakeholders (e.g. In-Service agencies, regulatory agencies, etc); and
- g. the Contractor's domain experience (which is likely to bring issues of feasibility onto the agenda).

The requirements-validation process for the Support System parallels, and will be conducted in conjunction with, the equivalent requirements-validation process for the Mission System. Clause 4.2.2 of the draft SOW defines this latter requirements-validation process, and specific attention is drawn to clauses 4.2.2.3 and 4.2.2.4, which contain additional requirements pertaining to the requirements-

validation process for the Support System and to the management of the Support System Specification (SSSPEC). The elements of the Handbook that relate to these clauses should be read in conjunction with this section of the Handbook.

Drafters and users of the ASDEFCON (Strategic Materiel) RFT Template are advised to also review the requirements-validation sections of EIA-632, including Sections 4.3 and 4.5.2 and the sub-elements of Annex C that help to clarify each of the relevant requirements in that standard (i.e. Requirements 14, 15, 16, 19, 25, 26, 27 and 28).

The requirements-validation process is one of the most significant elements of the design process for the Support System. Inadequate requirements are a well-known cause of project failure, and the requirements-validation process is intended to ensure that both the individual requirements and the set of requirements are valid and understood by all parties. There are likely to be new and modified requirements arising out of the requirements-validation phase, as well as requirements that need to be deleted. These changes could also result in changes to the Contract Price (through Contract Change Proposals (CCPs)), and the Commonwealth project teams should view any such changes with diligence and maturity. Of note, there is likely to be considerable benefit in conducting the requirements-validation phase as part of an offer definition phase and, therefore, it is strongly recommended that Commonwealth project teams consider this approach.

Clause 5.2.2.1.1 requires the requirements-validation process to be conducted in accordance with the Approved ISP. Clause 6.2.5.4 of the ISP DID (DID-ILS-MGT-ISP) explicitly requires the Contractor to detail its requirements-validation processes. Of note, the requirements-validation processes for the Mission System will be conducted in accordance with the Contractor's SEMP. ILS and SE staff in Commonwealth project offices should liaise with each other when reviewing the Contractor's ISP and SEMP to ensure that a viable and integrated requirements-validation program is being planned. In particular, the issue of requirements traceability (refer clauses 4.2.2.3 and 4.5.2 of the draft SOW and clause 6.2.2.25 of DID-ILS-DEF-SSSPEC) and access to the Requirements Traceability Matrix (RTM) for ILS staff should be addressed.

As explained in the Philosophy volume of this Handbook, the exact division between the Mission System and Support System may not be known until relatively late in the design process. Project Authority staff should ensure that the Contractor's processes for allocating requirements between the Mission System and the Support System (and the trade-off analysis processes associated with this allocation) is enunciated clearly in both the SEMP and the ISP (or cross-referred between these documents).

As part of the requirements-validation process, the Contractor will be updating, and providing more detail in, the Verification Cross Reference Matrix (VCRM) that accompanies the SSSPEC (refer clause 6.2.2.24 of DID-ILS-DEF-SSSPEC and clause 7.1.3 of the draft SOW). Commonwealth Project Authorities should ensure that the updated VCRM:

- a. is consistent with the VCRM that was placed on Contract;
- b. will result in adequate Verification of the Support System and the Support System Components; and
- c. does not compromise the ability of the Commonwealth to ensure that the Support System, as a whole, meets requirements (i.e. by defining Acceptance Verification requirements at too low a level in the specification hierarchy).

For further information on Verification and Validation (V&V), refer to the V&V section in Part 3 of the Handbook, as well as the V&V Philosophy in Section 13 of the Philosophy Volume.

Clause 5.2.2.1.3 defines the states of the Support System in terms of a hierarchy of escalating conflict requirements. It is likely that these states will be detailed in the FPS and OCD; hence, this clause may not be required. Notwithstanding, the Project Authority should consider how the detailed requirements for each of these states should be captured as the Contractor's design processes progress (e.g. in multiple LSARs?). The operational tempo, maintenance policies, supply-support arrangements, turn-around times, and engineering policies are all likely to change as these states change. If too many differing states are specified, the ongoing documentation requirements may be very large. As such, the Project Authority should consider the best way of specifying these differing states to ensure that the impact of the differing states are captured without overly increasing the acquisition cost.

The Note to drafters below clause 5.2.2.1.3 indicates that the Commonwealth generally expects that the SSSPEC will only be placed on Contract after the System Definition Review (SDR) is completed. Attention is drawn to clause 4.2.3 of the draft SOW, which relates to the System Requirements Review (SRR), and clause 4.2.4 of the draft SOW, which relates to the SDR, and the associated entry and exit criteria for each of these reviews. The SSSPEC will generally not be placed on Contract until after the SDR because the feasibility of the requirements is normally unable to be properly judged until the system definition activities have occurred.

Clause 5.2.2.1.4 highlights that, the Contractor is required to raise a CCP for Commonwealth approval to establish the SSSPEC as the Functional Baseline for the Support System. There is a parallel process for the System Specification (SS) for the Mission System, and it is expected that both of these specifications would be incorporated onto the Contract at the same time, thereby replacing the FPS as the Functional Baseline through a single process. Of note, the FPS would remain on Contract after this CCP is agreed. Attention is drawn to clause 4.2.2.4 of the draft SOW and the accompanying Note to tenderers, which details the process for actioning any conflicts between the FPS and the SS or SSSPEC that may occur as the Contract progresses.

Clauses 5.2.2.1.5 and 5.2.2.1.6 highlight that the OCD and the SSSPEC are to remain in lockstep over the life of the Contract. This approach has been adopted because the OCD is a significant determinant of the fitness for purpose of the resulting Support System. Once again, a parallel process exists for the Mission System.

A number of requirements in the SSSPEC may be established as targets, with either accompanying minima or maxima as the case may be. Performance measures, such as spares availability, spares-outage response times or average waiting time for spares, are examples of requirements that could fall into this category. These requirements will be refined as the Contractor's design for the Support System progresses. Where these performance measures are key performance measures under the Contract(LS), the measures will need to be incorporated into the Contract(LS) at a suitable point in the process (generally before the commencement date for the Contract(LS)). Drafters should be aware of these requirements, and appropriate provisions should be incorporated into the Contract(LS). To ensure that the specified performance measures are achieved, consideration should also be given to linking the payment schedule for the Contract(LS) to the achievement of the specified performance measures.

#### Support System Logical Solution Representations

The Glossary defines Logical Solution Representations as having the same meaning as given by EIA-632. Drafters and users of the ASDEFCON (Strategic Materiel) RFT Template are advised to review the relevant sections of EIA-632, including Sections 4.3.2 and 4.5.2 and the sub-elements of Annex C that help to clarify each of the relevant requirements in that standard (i.e. Requirements 17 and 29). All of the Support System diagrams in the Philosophy section of the Handbook are examples of Logical Solution Representations. A flowchart of (for



example) the supply process provides another example. In general terms, a Logical Solution Representation provides a representation of the solution in the logic domain, as opposed to the physical domain. The Note detailed within Requirement 17 of EIA-632 provides a number of approaches that could be used to provide Logical Solution Representations. Wherever possible, simple and readily-understandable approaches for defining the scope of particular elements of the solution should be utilised.

The Note above Requirement 17 in EIA-632 provides valuable insight into the purpose in defining Logical Solution Representations for the Support System. In general terms, the purpose behind this process is to assist with:

- a. determining the validity of the requirements for the Support System (e.g. in terms of feasibility, completeness, etc);
- b. identifying issues and risks associated with the requirements for the Support System; and
- c. determining whether or not the proposed solution for the Support System will result in the requirements being met.

Clauses 5.2.2.2.1 and 5.2.2.2.2 require the processes for defining and documenting the Logical Solution Representations to be conducted in accordance with the Approved ISP. Clause 6.2.5.5 of the ISP DID (DID-ILS-MGT-ISP) explicitly requires the Contractor to detail its methodology and processes for developing, documenting and validating Logical Solution Representations of the Support System. Of note, the Contractor is likely to be undertaking a similar set of processes for the Mission System, and these processes will be conducted in accordance with the Contractor's SEMP. ILS and SE staff in Commonwealth Project Authorities should liaise with each other when reviewing the Contractor's ISP and SEMP to ensure that a viable and integrated program is being planned.

Given that one of the main purposes in defining Logical Solution Representations is to identify issues and risks, the main focus of activity in this area should be on those areas of the Support System where issues and risks are more likely to arise. Interfaces are classic areas of risk in any project and, for the Support System, the higher-level interfaces are organisational (e.g. between the Commonwealth, the Contractors(LS) and the Subcontractors(LS)). As such, these interfaces would be likely candidates for definition and documentation through Logical Solution Representations. Interfaces across key Constituent Capabilities (such as Supply Support, Maintenance Support and Engineering Support) would be likely to benefit from this process, particularly when addressing such issues as supply chain management, asset visibility, configuration management, design management, etc.

#### Support System Analysis

When implemented, the Support System will combine an interrelated set of significantly different products and processes, which are all used and implemented by personnel. Products and processes can be interrelated through both physical and organisational interfaces, which can add a level of complexity to their development. Unlike many Mission Systems (with the exception of Information Systems), the development of Support Systems is shaped not only by defined tasks and functions to be performed, but also by the relationships between organisations in the ADF. Therefore, significant Commonwealth input will be required in the actual design of the Support System to ensure that the Contractor understands the requirements and implications associated with these relationships.

The supportability related design factors for the Mission System (i.e. reliability, maintainability, mobility, deployability, standardisation, accessibility, etc) are important in achieving both preparedness and LCC goals. Likewise, the design of the Support System affects how well the Support System will respond to the needs of the Mission System and the efficiency in the use of resources to do so, thus affecting both preparedness and LCC. Accordingly, analysis of the Support System, which has often been associated with achieving minimum costs, must always consider the impact on long-term Mission System preparedness.

Support System alternatives may include large segments of the Support System or individual Support System Components. For example, an alternative Support System may consider full Contractor support versus a baseline of only depot support by the Contractor, the use of IETMs versus traditional paper-based manuals, environmentally controlled versus standard warehousing, in-country support versus a baseline of overseas OEMs, etc. The Commonwealth will have analysed certain Support System alternatives as part of documenting the support concepts in the OCD and the support requirements and constraints in the FPS. Significant issues could also be reserved for more detailed analysis during an offer definition phase. Nevertheless, the Contractor will still be required to define and analyse particular Support System alternatives as part of the System Definition phase for the Support System. For more details on analysis of Support System Alternatives refer to the ADO LSA Manual.

Any Support System alternatives proposed must be evaluated against a baseline to determine the benefit of the alternative. During the System Definition phase, this baseline would be the FPS, which would gradually be refined and updated during the development of the SSSPEC and following incorporation of previous analysis recommendations.

The Contractor's process for analysis and development of the Support System is required to be detailed under the "Synthesis" clause of the ISP (noting that the "Standards" clause of the ISP will also play a major role here). Individual trade studies into Support System alternatives may be described under the "Trade Studies" clause or as an annex. Where a study is undertaken into different Support System alternatives, the results should provide sufficient detail to justify the recommended alternative (or for retaining the baseline), including details of:

- a. the study objective and its contribution to achieving program goals;
- b. analysis undertaken and any significant evaluations or tradeoffs;
- c. the results of the study; and
- d. recommendations, including any changes to specified requirements if necessary.

Results and recommendations must consider the impact on preparedness as well as on LCC. Implementation of some alternatives may also require Contract changes to enable the longer-term benefits to be achieved through the delivery of the recommended Support System or component. Clause 3.11 of the draft SOW provides the methodology for any Contract changes that arise out of considerations of LCC.

The format for a study into Support System alternatives may be a simple presentation of findings at a review meeting, or for more extensive studies, an appropriate format as used for directed trade studies.

At the end of the Support System analysis phase (which will occur at the System Definition Review (SDR)), the system-level design for the Support System should be relatively complete (noting that this design will be subject to a certain level of modification as the designs for each of the Support System Constituent Capabilities progress). The Project Authority should ensure that the outcomes of the Support System analysis phase have addressed each of the Support System Constituent Capabilities and that these outcomes will logically feed into the next phase of the developmental processes for the Support System.

**Drafter's Action:** Drafters are to ensure that the OCD adequately captures the baseline logistic support concepts, and that the OCD and FPS adequately address Supportability, ADO infrastructure, and logistic support constraints. If the information in the OCD (including the FPS is not sufficiently detailed), then the drafter / project ILS team should determine now whether a separate Use Study Report, including logistic support concepts, needs to be drafted as a separate document and attached as an annex to the OCD.

With respect to Clause 5.2.2.3, Support System Analysis, the drafter / project ILS team need to determine whether or not any requirements exist for Commonwealth-directed trade studies for the Support System. This should be apparent from the Commonwealth's LSA Strategy document. Commonwealth-directed trade studies might relate to improvements in standardisation, technology or restructuring the Support System. If directed trade studies are required, then the appropriate annexes identifying trade study requirements should be drafted. Clause 2.6 provides further guidance in this regard.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 2.6 of the draft SOW addresses Commonwealth-directed trade studies.

Clause 4.1 of the draft SOW details the requirement for Systems Engineering management.

Clause 4.2 of the draft SOW details the system definition processes for the Mission System, which parallel those for the Support System.

Clause 4.6.3 of the draft SOW addresses the Logistics Engineering requirements for the Mission System.

**Further Reading:** See also – *ADO LSA Manual*

See also – *EIA-632, Processes for Engineering a System*

See also – *IEEE Std 1220-1998, IEEE Standard for Application and Management of the Systems Engineering Process*

#### 5.2.3 - OPERATIONAL SUPPORT DESIGN

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to identify and document the requirements for operational tasks, resources, procedures and personnel competencies. These details are used through later clauses to determine optimal operational support resources and operator training requirements.

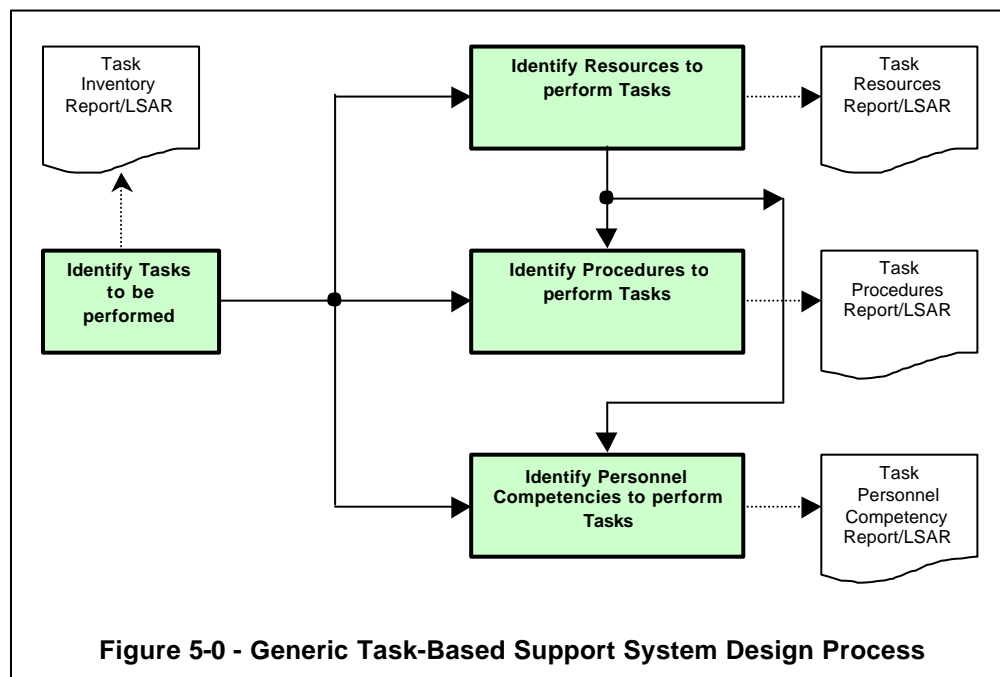
**Policy:** See Section 5.2.

**Guidance:** The Operational Support Design clause is the first of five similarly constructed clauses in the ASDEFCON (Strategic Materiel) RFT Template, each aligned to a Support System Constituent Capability. Each of the five clauses seeks outputs from a task based analysis process to determine the physical resource requirements for the Support System and operation of the Mission System. The focus in these clauses is to define the required outcomes and require the tenderer to detail the process and the applicable standards to be used in the ISP.

There are essentially four sets of outputs for each Support System Constituent Capability, which are the:

- a. list of identified tasks;
- b. resources required to perform each task;
- c. procedures for performing each task; and
- d. personnel competencies (skills) required for each task.

These four sets of outputs are reported through four different submissions of the Task Analysis Report (DID-ILS-DES-TAR), or operations, maintenance, and support task data in a LSAR or similar data source. The generic process is outlined in Figure 5-0.



Following Task Analysis, the process of synthesizing the Support System resource requirements is then a function of aggregating the resource requirements for each individual task into a set of system-level requirements. Task procedures form the basis to operator, maintenance and support manuals and the content of training courses. The identification of the required competencies aids in planning personnel requirements and for conducting Training Needs Analysis.

The Operational Support Design clause analyses the operator tasks performed on the Mission System.

#### Operational Tasks

This clause requires the Contractor to identify all tasks associated with operating the Mission System. Operational tasks to be identified include all operator tasks where there will potentially be a resource requirement, documented procedure, or training requirement. Note that tasks performed to support the Mission System, in its operational environment and role, are included under the Maintenance Support Design and Supply Support Design clauses of the draft SOW (i.e. clauses 5.2.5 and 5.2.6).

Task Identification performed early enough in the Mission System design process enables the operation of the Mission System and its operability to be improved through re-design. There is considerable interaction between this task identification activity and the Human Engineering activities required under clause 4.6.4 of the draft SOW. Under the systems-engineering process, Mission System functions should be allocated to personnel, as well as to software and hardware, with this functional allocation process forming much of the basis of the task identification activities. To enable re-design while avoiding expensive post-design rework, the task inventory of operational tasks should be scheduled before DDR, preferably at PDR.

There are a number of options to the delivery of the Task Inventory Report. The task inventory for Option A, where the project does not have a LSAR, is described in DID-ILS-DES-TAR as requiring an verb (action to be undertaken), object, and qualifying phrase, recorded against the Mission System or applicable component of the Mission System. In Option B, where the project has a LSAR, the task inventory is recorded in the CA table and can be accessed via ad hoc queries or standard reports such as LSA-016 Part I, or partial population of LSA-018. If applying Option B and the task inventory is required at a time other than PDR, then DID-ILS-TDATA-LSAR will need to be amended.

The Contractor should explain in the ISP how tasks for off-the shelf subsystems, which have already been incorporated into existing operator manuals, will be integrated into task identification process while minimising cost. Sufficient information is required to enable later calculations of resource requirements (where fleet sizes may be different from previous operators), where manuals must be redrafted, or where training will need to be developed. This may result in summary tasks, in the task inventory, referring to existing documents.

#### Resource Requirements for Operation of the Mission System

For each task identified in the task inventory, the Contractor must identify the resource requirements. Resources include the operators performing the task, identified by their relevant skill and estimated time required. Other resources can include fuel, electrical power, technical data and checklists, operational support equipment, and facilities. The addition of resources usually requires the task to be broken down into subtasks with resources allocated to each relevant subtask.

Activities, such as operator workload analyses, will be undertaken as part of the Human Engineering program under the SE clauses. Nevertheless, task resource information, for operational tasks, should be complete prior to DDR. This allows identification of any minor Mission System design changes necessary to improve operability.

Like the Task Inventory Report, delivery of task resource requirements may be made two ways. Option A is through the Task Resources Report (Option 2 of DID-ILS-DES-TAR), while Option B is an update of the LSAR with various standard reports available to present resource data. If applying Option B at a time other than DDR, then DID-ILS-TDATA-LSAR may need to be amended.

The Contractor should explain, in the ISP, how existing task resource requirements from off-the shelf subsystems will be integrated into the preparation of resource details for the current project while minimising the amount of rework necessary. Resources will always need to be recalculated, as the ADF will usually operate a different number of Mission Systems under different conditions to previous operators.

#### Procedures for Operation of the Mission System

Documenting the procedures for operating the Mission System provides the source material for operator/operation manuals, IETMs, on-line checklists, and some training course content. The purpose of reviewing procedures, either as a delivery or through joint review, is to avoid the more expensive changes to fully completed and published documents (paper or electronic). For example, reviewing procedures should show that procedures are technically correct, written using terms with defined meanings, and written to suit the education level of the intended user, before full scale authoring and document layout occurs.

Details of task procedures should be delivered, or reviewed jointly by the Commonwealth and Contractor, as entry criteria for the Task Analysis Requirements Review. On completion of this review the development of manuals and training materials can commence with minimal risk of re-work.

The procedures for operation of the Mission System may be delivered through either of two options. Option A is through the Task Procedures Report (Option 3 of DID-ILS-DES-TAR). Option B is as an update to the LSAR by population of the CC table. The Task Analysis Summary report, LSA-019, is designed for the review of task procedures.

The Contractor should explain, in the ISP, how existing task procedures from off-the-shelf subsystems will be integrated into the preparation of procedures for the current project, while minimising the amount of rework necessary.

#### Personnel Competency Requirements for Operation of the Mission System

Following the identification of tasks, task resources and procedures, the personnel competencies required to perform each task, using the identified resources and

procedures, need to be determined. This determination will have a two-fold function of aiding workforce planning and of identifying those tasks that will require an element of training.

Skills types and levels required to perform each task, associated with the Mission System operation, define the size and scope of the operator workforce that the Commonwealth must plan for; including requirements for recruitment, relocations, and retraining of personnel working on the outgoing Capability.

A comparison of existing skills and skill levels against those required for the new Mission System will identify training requirements. This will effect internal courses, conducted by the ADO, as well as being the initial input into the Training Needs Analysis process for new training courses.

In both instances, workforce planning and training, considerable planning by the Commonwealth may be required; hence, this information is required as a deliverable. Again there are two options for delivery of this information, Option A, through a Task Personnel Competency Report (Option 4 of DID-ILS-DES-TAR), or Option B, as an update to the LSAR including CA, CD, GB and GC tables. LSAR summary report LSA-001 identifies personnel requirements for workforce planning. LSA-014, Training Task List, is designed for the presentation and review of tasks with training requirements.

The Training Task List, or Task Personnel Competency Report, can also satisfy the task inventory required in the initial stages of the Training Needs Analysis as required by DID-ILS-DES-TNAR.

**Drafter's Action:** Drafters are to tailor the optional clauses depending on whether an LSAR is required and if it will be used instead of, or in support of, the applicable DIDs. Drafters should consider approaches acceptable to the Commonwealth should tenderers seek to integrate existing operator manuals and task data.

Drafters are to ensure that any editing of this section and editing in Sections 5.2.8 and 5.3, for Operational Support and related resources, are coordinated.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Annex A to the draft SOW incorporates the specifications for the Contract.

Annex B to the draft SOW incorporates the OCD for the Contract.

Clause 4.6.4 of the draft SOW addresses Human Engineering.

Clauses 5.2.7, 5.2.8 and 5.3.4 of the draft SOW address the training design processes.

Clause 5.2.8 of the draft SOW addresses the synthesis of the Support System.

Clause 5.3.3 of the draft SOW addresses the requirements for a Logistic Support Analysis Record.

**Further Reading:** See also – *ADO LSA Manual*

#### 5.2.4 - ENGINEERING SUPPORT DESIGN

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to identify and document the requirements for Engineering Support tasks, resources, procedures and personnel competencies. These details are used through later clauses to determine the optimal integration of the Engineering Support activities into the ADO.

**Policy:** See Section 5.2.

**Guidance:** Engineering Support encompasses all considerations necessary to provide supportability input into the design process and to manage and maintain the design

integrity throughout the life cycle of the capability. Engineering Support includes any software support of the Mission System. As any changes made to software will change the baseline of the Mission System they are considered to be design changes and should be managed as part of the design change management process within the Engineering Support System Constituent Capability. The term software maintenance should not be used because the term maintenance means to restore an item to a predefined level of performance, which does not occur in the case of software changes, where changes or modifications to the functionality of the system are actually made.

During the In-Service Phase, Engineering Support is associated with the In-Service management required to maintain the integrity of the design. This is a responsibility of the SPO, maintenance control organisations, and Contractor(LS)/Subcontractor(LS) involved in these activities. The function involves the conduct of configuration management, processing of engineering and software change proposals, processing modifications and special technical instructions, repairable item management, maintenance control, failure monitoring and reporting, auditing of practices to ensure design integrity (e.g. airworthiness), etc.

Engineering Support tasks, requirements, and procedures will be derived from two major influencing factors. The first factor is the design of the Mission System and its Support System, and the obligations of the ADO to manage those systems to maintain design integrity. The second factor is Defence Policy and the activities derived from that policy to be undertaken by SPOs, regardless of the individual design of the Mission and Support System involved.

The Contractor is only in a position to advise the Project Authority on the first set of Engineering Support requirements; those associated with the design of the Mission and Support System. The purpose behind Engineering Support Design is for the Contractor to define the tasks, resources, procedures and personnel competencies needed to enable all parties to undertake the Engineering Support and related design integrity functions.

Any Engineering Support requirements should be consistent with In-Service regulatory requirements for the ongoing management of design integrity and should reflect any Service-specific regulatory requirements (e.g. Airworthiness, Platform Certification, Naval Certification, etc).

Aerospace projects should note that, if the Engineering Support of the capability being procured is to be supported by the Contractor, then this area will need to be consistent with the Contractor's Authorised Engineering Organisation (AEO) submission.

#### Engineering Support Tasks

This clause requires the Contractor to identify the tasks that must be performed by the SPO, maintenance control, and related Contractor(LS)/Subcontractor(LS) and ADO organisations, for In-Service class, fleet or weapon system management and the maintenance of the Mission and Support System's supportability and design integrity. Depending on the systems involved, this can include tasks for recording In-Service usage, failure monitoring and reporting, configuration management, etc, as discussed above.

The Project Authority needs to review the inventory of these tasks to enable the Commonwealth to plan and prepare for the In-Service management, by the SPO and maintenance control organisations, of the new systems. The Contractor must also identify where these functions are to be performed by a Contractor(LS)/Subcontractor(LS) and the requirements for their implementation and interface with Commonwealth functions.

A Task Inventory Report (Option 1 of DID-ILS-DES-TAR) is required to list Engineering Support tasks. Engineering Support tasks, and the following related details for resources, procedures, and competencies, are not directly influenced by the Mission and Support System design and, hence, are not normally required prior

to DDR except where any in-country support requirements might be affected by the Mission System design. Depending on the duration of the project, scheduling delivery by SSDDR is appropriate to allow the ADO and Contractor(LS)/Subcontractor(LS) time to plan for transition. The ISP should state the process used to identify Engineering Support tasks and the schedule for delivery of task information.

The LSAR was only designed for recording "on-equipment" tasks (i.e. involving physical operation, maintenance and support tasks performed on the Mission System and Support System and their components). Accordingly, the LSAR is not suitable for recording Engineering Support tasks and a response IAW DID-ILS-DES-TAR is required.

#### Resource Requirements for Engineering Support

Against each Engineering Support task, the Contractor should identify the necessary resources needed to perform the task. Many tasks will be of an administrative nature and it is not necessary to identify basic administrative tools such as personal computers, photocopiers, etc. The Contractor should identify the need for specific software applications, special computing equipment, file servers, access to databases, configuration management systems, drawing sets (electronic, film or paper based), data connectivity with the Contractor, or between Commonwealth and Contractor(LS)/Subcontractor(LS), and security requirements for computing equipment. Personnel competency requirements are another resource addressed in detail below.

Like the listing of Engineering Support tasks, the Project Authority, other ADO areas, and the Contractor(LS)/Subcontractor(LS) will need to review and act on the task resource information for the planning and implementation of SPO, maintenance control and Contractor(LS)/Subcontractor(LS) organisations.

A Task Resources Report (Option 2 of DID-ILS-DES-TAR) is required to list the resources required for Engineering Support tasks. Delivery should enable sufficient time to plan and implement transition requirements. The ISP should state the process used to identify Engineering Support resources and the schedule for delivery of the resource related information.

#### Procedures for Engineering Support

Engineering Support will usually involve a number procedures that are internal to the ADO and others that involve external parties such as the Contractor, Contractor(LS)/Subcontractor(LS), and OEMs. Procedures that are driven by Defence policy need not be documented by the Contractor, other than to identify the existing Defence procedure should be followed. The Contractor should document all other procedures involving the Commonwealth and Contractor(LS)/Subcontractor(LS) and where these interface with the Contractor and OEMs. For example, this may include the processing of ECPs and modification orders, where engineering authority or approval is required from the Contractor or other OEM. Another example is failure reporting back to the Contractor.

The Commonwealth and Contractor(LS)/Subcontractor(LS) require these procedures to establish their own operating procedures. For the ADO organisations involved, these procedures will usually be combined with other policy-based procedures.

A Task Procedures Report (Option 3 of DID-ILS-DES-TAR) is required to document the procedures for Engineering Support tasks. Delivery of this information should enable sufficient time to prepare operating procedures by the ADO and Contractor(LS)/Subcontractor(LS) organisations involved, prior to handover of responsibility. The ISP should state the process used to identify Engineering Support procedures and the scheduled date for their delivery.



### Personnel Competency Requirements for Engineering Support

Following the identification of Engineering Support tasks, task resources and procedures, any specialised personnel competencies must be identified. These may include engineering, ILS, Contracting or other competencies. For example, an aviation or aerospace SPO will usually require a Chief Engineer with prescribed qualifications and experience. Other competencies may require certain ordnance or explosives qualifications, computing skills or expertise in a particular field or discipline.

The identification of personnel competencies enables two functions, aiding workforce planning and identifying those tasks that require an element of education or training. By reviewing the required competencies, the ADO and relevant Contractor(LS)/Subcontractor(LS) organisations can plan and establish personnel for Engineering Support, including the requirements for recruitment, relocations, and retraining of personnel working on other systems. The ADO and Contractor(LS)/Subcontractor(LS) can use the information to identify internal education and training requirements, while the competency requirements also provide justification to related training provided through the Contractor. In both instances, workforce planning and training, considerable planning by the Commonwealth may be required; hence this information is required as a deliverable.

A Task Personnel Competency Report (Option 4 of DID-ILS-DES-TAR) is required to document the personnel competency requirements for Engineering Support. Delivery should enable sufficient time for formal workforce planning and establishment of related positions, prior to the hand over of responsibility. The ISP should state the scheduled date for delivery. Due to the long lead-time associated with developing a workforce, initial planning would be required before this formal delivery of personnel requirements.

**Drafter's Action:** Drafters are to ensure that adequate details of the applicable SPO, their Engineering Support concept and their processes are included in the OCD (or, perhaps, in a separate Use Study).

Drafters are to ensure that any editing of this section and editing in Sections 5.2.8 and 5.3, for Engineering Support and related resources, are coordinated.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Annex A to the draft SOW incorporates the specifications for the Contract.

Annex B to the draft SOW incorporates the OCD for the Contract.

Clauses 5.2.7, 5.2.8 and 5.3.4 of the draft SOW address the training design processes.

Clause 5.2.8 of the draft SOW addresses the synthesis of the Support System.

**Further Reading:** See also – *ADO LSA Manual*

See also – *Philosophy Annex A, Lifecycle Thread – Engineering Support*

See also – *Philosophy Annex A, Lifecycle Thread – Computer Support*

#### 5.2.5 - MAINTENANCE SUPPORT DESIGN

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to identify and document the requirements for Maintenance Support tasks, resources, procedures and personnel competencies. These details are used through later clauses to determine optimal Maintenance Support resources and maintainer training requirements.

**Policy:** See Section 5.2.

- Guidance:** Like the other Support System Constituent Components, Maintenance Support design is derived through a process of task based analysis with four key outputs:
- a. the list of identified tasks;
  - b. the resources required to perform each task;
  - c. procedures for performing each task; and
  - d. personnel competencies (skills) required for each task.

Due to the varied types and complexity of maintenance tasks these four key outputs have been broken down into six clauses in the SOW template, covering:

- a. a list of Corrective Maintenance tasks;
- b. a list of Preventive Maintenance tasks;
- c. the level of repair and location where tasks are to be performed;
- d. the resources required to perform each task;
- e. procedures for performing each task; and
- f. personnel competencies (skills) required for each task.

The first two lists of Corrective Maintenance and Preventive Maintenance tasks are identified through the results of Failure Modes Effects and Criticality Analysis (FMECA), Failure Modes Effects Analysis (FMEA), and Reliability Centred Maintenance (RCM) analysis processes. These both contribute to the single output of a list of identified tasks. The identification of level of repair and resources are closely linked, with resources often only available at certain levels of repair. These two areas contribute to the identification of required resources, including facilities. Procedures and personnel competencies then follow, although certain personnel competencies should also be viewed as a resource that may only be available at certain levels of repair.

These four sets of outputs are reported through four different submissions of the Task Analysis Report (DID-ILS-DES-TAR), or through maintenance task data in a LSAR or similar data source.

Following Task Analysis, formal assignment of maintenance tasks to repair levels, and eventually repair facilities must be determined through the Level of Repair Analysis (LORA) process. The synthesis of resource requirements for Maintenance Support is then a function of aggregating the resource requirements for each maintenance task into a set of system level requirements. Procedures form the basis to maintenance manuals and training courses. Identification of the required competencies aids in planning maintenance personnel requirements and conducting Training Needs Analysis.

Aerospace projects should note that, if the Maintenance Support of the capability being procured is to be supported by the Contractor, then this area will need to be consistent with the Contractor's Authorised Maintenance Organisation (AMO) submission.

Drafters and users of ASDEFCON (Strategic Materiel) should note that there are interactions between this clause 5.2.5 and the SE clauses relating to human engineering (clause 4.6.4) and reliability, maintainability and testability (clause 4.6.2).

#### Corrective Maintenance Tasks

The normal process for identifying Corrective Maintenance tasks is to use the results of the FMECA process (which includes FMEA) conducted as part of the Reliability Engineering program for the project. For each Failure Mode identified as part of the FMECA process, a Corrective Maintenance action or set of corrective actions should be identified – Failure Modes are potential system failures that may require Corrective Maintenance during the life of the item. FMECA is a detailed and methodical analysis process that should be carried out as part of the Reliability

Engineering program in accordance with an appropriate standard, defined by the Contractor in the Integrated Reliability, Maintainability & Testability Plan (IRMT) (refer to clause 4.6.2 of the draft SOW). Care should be taken that the performance of FMECA (or FMEA) is not replicated as part of the LSA program – the LSA program uses the results of the FMECA effort, it does not necessarily conduct it. The relationship between this activity in the IRMT program and the use of the outputs as part of the LSA program should be clearly enunciated in the ISP. Note that, if the standard to be employed for conducting FMECA is MIL-STD-1629A, the FMECA Maintainability Worksheets used by the standard will list basic maintenance actions (tasks) and task frequencies (based on MTBF), as results of the FMECA process. These are transferred to the task inventory as identified Corrective Maintenance tasks and reported via DID-ILS-DES-TAR. For further information refer to MIL-STD-1629A, or for a brief overview, refer to the ADO LSA Manual, Part 3.

If using a software package that assists and records the results of FMECA, and links to an LSAR, the tasks may be entered directly into the CA table task list with linkage to failure modes in the BF table via the BH table (refer DID-ILS-TDATA-LSAR).

Tasks identified as a result of FMECA and the initial LSA Task Identification process will have additional estimates of basic information, such as task frequency and the preliminary allocation to a maintenance level. This maintenance level allocation may be as simple as operational level, Defence maintenance facility, and Contractor(LS)/Subcontractor(LS), and will be the result of a basic interpretation of the ADO's maintenance concept. These are also reported in response to DID-ILS-DES-TAR or the task codes on an LSAR as per DID-ILS-TDATA-LSAR. The assignment to maintenance levels may be changed as a result of later Level Of Repair Analysis (LORA).

The results of the Task Identification process should indicate that the analysis and resulting maintenance plan would be based on the Maintenance Concept in the OCD, in terms of the level of indentured items in the WBS that tasks are allocated against. For example, maintenance tasks for circuit card repairs (e.g. replacing failed components or repairing damaged tracks on the circuit cards) should not be identified if neither the ADO or Contractor(LS)/Subcontractor(LS) intend to undertake circuit card repairs; hence these tasks should not be included in the inventory and the replacement of the card would be the lowest level task identified.

Corrective Maintenance tasks also need to be identified for components of the Support System. This includes Corrective Maintenance tasks for components of the Support System that are a new design, and Corrective Maintenance for existing Support System Components being procured off-the shelf. A FMECA, or equivalent process defined in the ISP, will be applicable to new design components. Although tasks for off-the-shelf components should already be transferred into maintenance manuals, these tasks (or tasks summarising collections of these tasks) will need to be added to the task inventory to enable the later calculation of the total support resource and personnel competency requirements.

The task inventory should be delivered to the Commonwealth and relevant Contractor(LS)/Subcontractor(LS) organisations to achieve a number of results. Firstly, verification is provided that the Mission System design is fundamentally maintainable, which gives the Project Authority confidence that the Mission System will achieve supportability requirements. Although the emphasis on achieving supportability requirements is placed on the Contractor, supportability is also dependent on the Defence operational and support environment and elements of the infrastructure provided by the ADO. Hence, the Project Authority needs to ensure these ADO aspects of support have been correctly understood by the Contractor. Secondly and closely related, the Project Authority should have confidence that the Contractor has correctly applied the Maintenance Concept in the identification and preliminary maintenance level allocation of tasks, and in the level of indentured items to which the tasks were identified. Thirdly, the Project

Authority will gain early insight into the adequacy of maintenance facilities, within the ADO and Contractor(LS)/Subcontractor(LS) organisations, to undertake the maintenance. Finally, the FMECA and task inventory results, when combined, enable the Project Authority to target specific areas (failure modes and tasks) for assessment by methods to be undertaken during later Verification and Validation activities.

The results of FMECA and the Corrective Maintenance task list for the Mission System should be delivered prior to the PDR. This enables the supportability of the Mission System design to be reviewed and modified, at minimal expense, if it is found to have unacceptable failure modes or Corrective Maintenance tasks that cannot be realistically achieved unless the system is modification (e.g. improved layout for accessibility). This should be updated and finalised by DDR. Similarly, FMECA results and Corrective Maintenance tasks for new design items of the Support System (e.g. S&TE and Training Equipment) should be finalised by SSDDR.

As a major activity on many projects, preparation and review of maintenance task data can require significant effort by specialists from the Contractor, ADO and relevant Contractor(LS)/Subcontractor(LS) organisations. To focus the task inventory review effort, the results of FMECA should be reviewed as a preceding step. In reviewing FMECA results, attention should be placed on the correct assessment of criticality, and then criticality used to focus the sampling of the task inventory review on higher risk (critical) areas.

The task inventory may be delivered in either of two ways: Option A, as a Task Inventory Report (Option 1 of DID-ILS-DES-TAR), or Option B, as a LSAR delivery. In Option B, the task inventory is recorded in the CA table and can be accessed via ad hoc queries or standard reports, such as LSA-016 Part I, or partial population of LSA-018. FMECA analysis results can be reviewed via the LSA-056 FMECA summary. DID-ILS-TDATA-LSAR should be reviewed in terms of scheduling of data deliveries and amended if required. The ISP should define the Contractor's approach to the timing of data deliveries, including any difference in timings for Mission System and Support System task inventories.

#### Preventive Maintenance Tasks

An output of FMECA is a list of Corrective Maintenance tasks. In many cases, for Mission Systems with structurally significant and mechanical components, Preventive Maintenance will provide improved safety and/or economic benefits when compared to Corrective Maintenance. RCM is the preferred process and MIL-STD-2173, Reliability-Centered<sup>1</sup> Maintenance Requirements for Naval Aircraft, Weapon Systems and Support Equipment, MIL-STD-1843, Maintenance Steering Group III logic, or other accepted standard process should be used, as defined by the Contractor in the ISP. For further information refer to the selected standard, or for a brief overview, refer to the ADO LSA Manual, Part 3.

In some exceptional circumstances, the exact approach and the appropriate standards to be used will need to be specified in the SOW - specialist regulatory requirements may dictate that certain standards must be employed. If this is the case, then these specific standards should be identified clearly in any tender documentation so that the tenderers know that a specific type of program is required (e.g. regulatory requirements may require MSG-2 in lieu of the more general MIL-STD-2173 approach). This approach enables the Project Authority to negotiate on the applicable standards from a position of certainty to help to ensure that appropriate standards are placed on Contract. Nevertheless, in keeping with the outcomes-based approach underpinning ASDEFCON (Strategic Materiel), the inclusion of these standards should be avoided unless the regulatory requirements dictate otherwise.

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<sup>1</sup> US spelling as per title of military standard.

RCM is used to develop the list of various types of Preventive Maintenance tasks, to establish task intervals, and to undertake activities to package those tasks into scheduled servicings. RCM may also make redesign recommendations, particularly where safety critical structures and components cannot be adequately maintained. By following the RCM process, preliminary maintenance level allocations are also made and, similarly to the FMECA maintenance level allocations discussed above, these may change following LORA.

If using a software package that assists the RCM process and links to an LSAR, the RCM results can be directly recorded into the BF and BG tables, with linkages to the task inventory in the CA table, via failure modes in table BH (refer DID-ILS-TDATA-LSAR).

Many issues regarding Preventive Maintenance that the Project Authority should consider, and the reason for reviewing the inventory of Preventive Maintenance tasks, are equivalent to considerations for Corrective Maintenance tasks. (Refer to the Corrective Maintenance support task discussion above.) Preventive Maintenance, such as depot/shipyard servicings, will often involve Contractor(LS)/Subcontractor(LS) organisations and they will need to be actively involved in the review process.

As RCM analysis must follow FMECA, the results of RCM may not be available by PDR but should be completed before DDR for the Mission System. For any new design elements of the Support System that have Preventive Maintenance requirements, RCM (or equivalent) should be completed by SSDDR. Like FMECA and the Corrective Maintenance task inventory, RCM and Preventive Maintenance tasks can take considerable effort by the Contractor to prepare, and for the Contractor(LS)/Subcontractor(LS) and the Commonwealth to review on major projects. Again, the results of criticality analysis during FMECA can focus the review effort on higher risk and safety critical areas. Corrective Maintenance and Preventive Maintenance tasks should be reviewed as a complete package before proceeding to analyse levels of repair.

The task inventory may be delivered in either of two ways, Option A, as a Task Inventory Report (Option 1 of DID-ILS-DES-TAR), or Option B, as a LSAR delivery. In Option B, the task inventory is recorded in the CA table and can be accessed via ad hoc queries or standard reports such as LSA-016 Part I, or partial population of LSA-018. RCM analysis results can be reviewed via the LSA-050 RCM summary, designed for this purpose, or the RCM Report, DID-ILS-DES-RCMR. DID-ILS-TDATA-LSAR should be reviewed in terms of scheduling of data deliveries and amended if required. The ISP should define the Contractor's approach to the timing of data deliveries including any difference in timings for Mission System and Support System task inventories.

#### Maintenance Levels and Repair Policies for Maintenance Tasks

The allocation of maintenance tasks to relevant maintenance levels and the determination of repair by discard and replacement, results in the maintenance and repair policy for the Mission System and its components. A similar analysis is performed for repairable items of the Support System. Maintenance levels and repair policies are usually derived through the process of LORA, also referred to as Repair Level Analysis.

Note that, although MIL-STD-1390D (Level of Repair Analysis) may be used as a source of guidance materiel for the LORA process, the formulae and models contained within this standard relate to specific agreed models for US DoD entities (such as the USAF, USN, Marine Corps, etc) and are not necessarily appropriate for use by the ADO. The exact details of the approach and any models used should be documented in the ISP and, subsequently, in the LORA Report.

A brief summary of the LORA process is contained in the ADO LSA Manual, Part 3. The Contractor should define, in the ISP, the process of LORA to be applied and the applicable assumptions and the model that will be used to implement LORA in accordance with MIL-STD-1390D, or other approved standard.

Application should be described in more detail in the LORA Report (defined by DID-ILS-DES-LORAR).

There are four main components to LORA:

- a. non-economic LORA, usually defined by specified Commonwealth requirements, policy and maintenance concepts;
- b. preliminary maintenance allocations, derived as an outcome of FMECA and RCM, usually with the aid of a maintenance allocation flowchart based on non-economic criteria;
- c. repair versus discard decisions, determined through non-economic LORA policy and LORA modelling software; and
- d. economic LORA modelling, performed using a LORA modelling software package that is suited to the complexity of the Mission System, its Support System, and the available data.

The LORA Report requested by the SOW and delivered to the Project Authority, enables the Commonwealth to confirm:

- a. that specified requirements, policy and maintenance concepts related to ADO maintenance have been correctly applied to the development of maintenance and repair policies;
- b. that maintenance and repair policies will comply with Contractor(LS) and Subcontractor(LS) Australian Industry Involvement (All) requirements;
- c. the LORA candidate items selected and evaluated were consistent with the level of item indenture for Preventive Maintenance and Corrective Maintenance tasks identified previously; and
- d. that the maintenance and repair policies represent a minimal contribution to LCC, while achieving required levels of Mission System preparedness. The Project Authority will require LORA data, provided with the LORA Report, for the Commonwealth to conduct their own modelling to confirm this outcome. If LORA modelling is required, delivery of the LORA data sets (if not included in the LSAR) will need to be added to DID-ILS-DES-LORAR, as well as access to any non-ADF owned LORA tools.

To produce cost-effective results in complex and strategic materiel projects, the LORA model should consider the collocation of tasks that require the same support resources and similarly skilled personnel. This can result in maintenance tasks initially allocated to one level being re-allocated to another, for example to access an expensive item of S&TE common to several tasks. An effective LORA model will need consider many tasks at once in performing these calculations, and models that use item-by-item calculations will not be able to achieve this. The less capable models may be adequate for simple projects.

An additional output of LORA is the allocation of S&TE, personnel skills, specialised repair facilities, Technical Data, and types of spares, to maintenance levels within the ADO and Contractor(LS)/Subcontractor(LS) organisations. These can be easily extracted from the LSAR following an update of LORA results.

If using an LSAR, the results of LORA should be used to update preliminary maintenance allocations. If the LORA model used interfaces with the LSAR, this should be capable of being performed automatically. The update will allow accurate maintenance support resource requirements to be calculated for each maintenance level and facility in later analysis.

#### Maintenance Resource Requirements

Against each task identified in the task inventory, the Contractor must identify the resource requirements. Resources include all maintenance-related logistic products of spares, facilities, S&TE, technical manuals and data, tools, and the maintenance personnel performing the task, identified by their relevant skills and

estimated time required. This process requires most tasks to be broken down into subtasks with resources allocated to each relevant subtask. These resource requirements translate to cost elements for LORA; hence, the initial allocation of resources must be performed prior to the LORA activities described above.

Following LORA, resources for each maintenance task are allocated to a maintenance level. The number of resources and the utilisation rates of key resources, such as unique Support and Test Equipment (S&TE), can then be determined for each maintenance level.

Task resource information for maintenance tasks performed on the Mission System at the operational level of maintenance should be complete prior to DDR. This allows identification of any minor Mission System design changes necessary to improve deployed and operational level maintenance effecting availability. Task resource information for all Mission System maintenance tasks and Support System maintenance tasks should be completed by SSDDR.

The Commonwealth and relevant Contractor(LS)/Subcontractor(LS) organisations should review the recommended maintenance resource requirements. These resource requirements lead to the recommended procurement quantities of logistic products such as S&TE and technical data, the distribution of maintenance personnel, modifications to facilities, and they also influence the numbers of spares to be held at each maintenance level. Recommendations for resources to be purchased are formally delivered in response to CDRL items requested in the Support System Synthesis clause (5.2.8). The Project Authority should also review:

- a. standardisation of S&TE other tools;
- b. requirements for unique equipment; and
- c. required use of existing ADO resources.

Finally, the identified maintenance resource requirements provide the Project Authority and Contractor(LS)/Subcontractor(LS) with information to assist in planning the transition of internal resources for the support of the new Capability. This includes personnel, which are addressed in more detail under clause 5.2.5.6 of the draft SOW.

Like the task inventory, delivery of task resource requirements may be made two ways. Option A is through the Task Resources Report (Option 2 of DID-ILS-DES-TAR), while Option B is an update of the LSAR with the use of various standard reports to present and review resource data. If applying Option B and data is required at times other than described above, then DID-ILS-TDATA-LSAR may need to be amended.

The Contractor should explain in the ISP how existing task resource requirements, from off-the-shelf subsystems, will be integrated into the preparation of resource details for the current project while minimising the amount of rework necessary. Resources will always need to be recalculated, as the ADF will usually operate and support a different number of Mission Systems under different conditions to previous operators.

#### Maintenance Procedures

Documenting maintenance procedures provides the source material for maintenance manuals and some training course content. The purpose of reviewing procedures, either as a delivery or through joint review, is to avoid the more expensive changes to fully completed and published documents (paper or electronic). For example, reviewing procedures should show that procedures are technically correct, written using terms with defined meanings, and written to suit the trade skill and competency level of the intended maintainer, before full-scale authoring and document layout occurs.

Details of task procedures should be reviewed jointly by the Commonwealth, Contractor and relevant Contractor(LS)/Subcontractor(LS) organisations, as entry

criteria for the Task Analysis Requirements Review (TARR). On completion of this review, the development of manuals and training materials can commence with minimal risk of re-work.

The procedures for conducting maintenance tasks on the Mission System and Support System may be delivered through either of two options. Option A is through the Task Procedures Report (Option 3 of DID-ILS-DES-TAR). Option B is as an update to the LSAR by population of the CC table. The Task Analysis Summary report, LSA-019, is designed for the review of task procedures.

The Contractor should explain, in the ISP, how existing maintenance procedures for off-the-shelf Mission System and Support System subsystems and components will be integrated into the preparation of procedures for the current project, while minimising the amount of rework necessary.

#### Maintenance Support Personnel Competency Requirements

Following the identification of Maintenance Support tasks, task resources and procedures, the personnel competencies required to perform each Maintenance Support task, using the identified resources and procedures, need to be determined. This determination will aid in workforce planning and in identifying those tasks that will require an element of training.

Skills types and levels required to perform each maintenance task define the size and scope of the maintenance workforce that the Commonwealth must plan for, including requirements for recruitment, relocations, and retraining of personnel working on any outgoing materiel system. This will also identify the personnel requirements for Contractor(LS) and Subcontractor(LS), which is particularly important for establishing in-country support of foreign-sourced equipment.

A comparison of existing ADO skills and skill levels, against those required for the new Capability, will identify training requirements. This will affect internal courses conducted by the ADO, as well providing input into the Training Needs Analysis process for new maintenance training courses.

In both instances, workforce planning and training, considerable planning by the Commonwealth may be required and the personnel competency information delivered should be reviewed accordingly.

There are two options for delivery of this information: Option A, through a Task Personnel Competency Report (Option 4 of DID-ILS-DES-TAR), or Option B, as an update to the LSAR including CD, GB, and GC tables. LSAR summary report LSA-001 identifies personnel requirements for workforce planning. LSA-014, Training Task List, is designed for the presentation and review of tasks with training requirements.

The Training Task List, or Task Personnel Competency Report, can also satisfy the task inventory required in the initial stages of the Training Needs Analysis as required by DID-ILS-DES-TNAR.

**Drafter's Action:** Drafters are to tailor through the selection of optional clauses depending on whether an LSAR is required and if it will be used instead of, or in support of, the applicable DIDs. Drafters should consider approaches acceptable to the Commonwealth should tenderers seek to integrate existing technical / maintenance manuals and task data.

Drafters are to ensure that any editing of this clause and editing under clauses 5.2.8 and 5.3, for the Maintenance Support and related resources, are coordinated.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Annex A to the draft SOW incorporates the specifications for the Contract.

Annex B to the draft SOW incorporates the OCD for the Contract.



Clause 4.6.2 of the draft SOW addresses reliability, maintainability and testability.

Clause 4.6.4 of the draft SOW addresses human engineering.

Clauses 5.2.7, 5.2.8 and 5.3.4 of the draft SOW address the training design processes.

Clause 5.2.8 of the draft SOW addresses the synthesis of the Support System.

Clause 5.3.3 of the draft SOW addresses the implementation of Technical Data, including the LSAR.

Further Reading: See also – *ADO LSA Manual, Part 3, Chapter 4*

See also – *Philosophy Annex A, Lifecycle Thread – Maintenance Support*

See also – *MIL-STD-1629A Failure Modes Effects and Criticality Analysis*

See also – *MIL-STD-2173 Reliability Centered Maintenance (or alternate standard)*

See also – *MIL-STD-1390D Level Of Repair Analysis*

#### 5.2.6 - SUPPLY SUPPORT DESIGN

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose an obligation on the Contractor to identify and document the requirements for Supply Support tasks, resources, procedures and personnel competencies. These details are used through later clauses to determine optimal Supply Support resources and training requirements.

To impose an obligation on the Contractor to identify disposal requirements for the Mission System and Support System Components.

Policy: See Section 5.2.

Guidance: Like the other Support System Constituent Components, Supply Support design is derived through a process of task based analysis with four key outputs:

- a. the list of identified tasks;
- b. the resources required to perform each task;
- c. procedures for performing each task; and
- d. personnel competencies (skills) required for each task.

These four sets of outputs are reported through four different submissions of the Task Analysis Report (DID-ILS-DES-TAR), or as data in an LSAR or similar data source.

Following Task Analysis, the process of creating a consolidated set of Supply Support resource requirements is a function of aggregating the resource requirements for each task into a set of system level requirements. Procedures form the basis for support manuals and the content of training courses. Identification of the required competencies aids in planning personnel requirements and in conducting the Training Needs Analysis.

The Supply Support Design clause analyses the Supply Support tasks for the Mission System, the Support System and the components of the Mission System that move through the Support System.

#### Supply Support Tasks

This clause requires the Contractor to identify all ADO and Contractor(LS)/Subcontractor(LS) tasks associated with the supply-support activities for the Mission System and Support System. Supply Support tasks include tasks performed to support the Mission System in its operational environment, and tasks conducted to support the operation of the Support System. Supply Support tasks include operational support tasks, such as loading and

unloading of stores, refuelling, transportation, set-up and pack-up of transportable systems, etc. Non-operational Supply Support tasks include tasks such as providing spares, consumables and other resources to points of repair; packaging; preparation for, and removal from, storage; transportation and tracking of spares; inventory-management activities; purchase and management of fuels and disposable items; etc.

Task identification performed early enough in the Mission System design process enables the operation of the Mission System, and its supportability characteristics, to be improved through re-design. Improving supportability related to Supply Support tasks may include changes to improve transportability, reduce stores loading and unloading times, improve interoperability with operational support equipment, or to address obsolescence issues. To enable re-design while avoiding expensive post-design rework, the task inventory for operational support tasks should be scheduled before DDR, preferably at PDR. Drafters and users of ASDEFCON (Strategic Materiel) should note that interactions occur here between this clause and the SE clauses relating to Growth, Evolution and Obsolescence (clause 4.6.1); Reliability, Maintainability and Testability (clause 4.6.2); Logistics Engineering (clause 4.6.3); and Human Engineering (clause 4.6.4).

The Commonwealth should review Supply Support tasks to ensure that the Mission System can be supported by the Supply Support system, particularly for interoperability and the tasking of Supply Support elements to be provided from the existing Defence infrastructure. Likewise, the Contractor(LS)/Subcontractor(LS) organisations should review relevant Supply Support tasks that they are likely to perform.

There are a number of options to the delivery of the Task Inventory Report. The task inventory, where the project does not have a LSAR, is described in DID-ILS-DES-TAR. Where the project has an LSAR, the task inventory is recorded in the CA table and can be accessed via ad hoc queries or standard reports such as LSA-016 Part I, or partial population of LSA-018.

The Contractor should explain in the ISP how Supply Support tasks for off-the shelf Mission System and Support System components, which have already been incorporated into existing manuals, will be integrated into task identification processes while minimising cost. Sufficient information is required to enable later calculations of resource requirements (where fleet sizes may be different from previous operators), where manuals must be redrafted, or where training will need to be developed. This may result in summary tasks, in the task inventory, referring to existing documents.

#### Supply Support Resource Requirements

Against each Supply Support task identified in the task inventory, the Contractor must identify the resource requirements. Resources include all related logistic products of facilities (e.g. for storage), packaging, Supply Support manuals and data, tools, and the personnel performing the task identified by their relevant skills and estimated time required. Operators, maintainers or specific Supply Support staff from the ADO and Contractor(LS)/Subcontractor(LS) organisations may perform the various Supply Support tasks. This process requires each task to be broken down into subtasks, with resources allocated to each relevant subtask.

Task resource information for Supply Support tasks, which affect the Mission System at the operational level, should be complete prior to DDR. This allows any Mission System design changes, necessary to improve deployed and operational support, to be identified and implemented. Task resource information for all other Mission System and Support System Supply Support tasks should be completed by SDDR.

The Commonwealth and relevant Contractor(LS)/Subcontractor(LS) organisations should review the recommended Supply Support task resource requirements. These requirements lead to the recommended procurement quantities of logistic products, such as operational support and handling equipment, packaging,

transportation, fuel supplies, modifications to storage and other facilities, and the related distribution of ADO and Contractor(LS)/Subcontractor(LS) personnel. Recommendations for resources to be purchased are formally delivered in response to CDRL items requested in the Support System Synthesis clause (5.2.8). The Project Authority should also review:

- a. standardisation of operational support equipment and handling equipment;
- b. requirements for unique equipment; and
- c. required use of existing ADO resources.

Finally, the identified Supply Support resource requirements provide the Project Authority and the Contractor(LS)/Subcontractor(LS) organisations with information to assist in planning the internal support elements required for the transition into service of the new Capability.

Like the task inventory, delivery of task resource requirements may be made two ways. Option A is through the Task Resources Report (Option 2 of DID-ILS-DES-TAR), while Option B is an update of the LSAR with the use of various standard reports to present and review resource data. If applying Option B and data is required at times other than described above, then DID-ILS-TDATA-LSAR may need to be amended.

#### Supply Support Procedures

Documenting Supply Support procedures provides the source material for manuals and some training course content. The purpose of reviewing procedures, either as a delivery or through joint review, is to avoid more expensive changes to fully completed and published documents. For example, reviewing procedures should show that they are technically correct, written using terms with defined meanings, and written to suit the skill and competency level of the intended operator or support personnel, before full scale authoring and document layout occurs.

Details of task procedures should be reviewed jointly by the Commonwealth, Contractor and relevant Contractor(LS)/Subcontractor(LS) organisations, as entry criteria for the Task Analysis Requirements Review (TARR). On completion of this review, the development of manuals and training materials can commence with minimal risk of re-work.

The procedures for conducting Supply Support tasks on the Mission System and Support System may be delivered through either of two options. Option A is through the Task Procedures Report (Option 3 of DID-ILS-DES-TAR). Option B is as an update to the LSAR by population of the CC table. The Task Analysis Summary report, LSA-019, is designed for the review of task procedures.

The Contractor should explain, in the ISP, how existing procedures for off-the-shelf Mission System and Support System components will be integrated into the preparation of procedures for the current project, while minimising the amount of rework necessary.

#### Supply Support Personnel Competency Requirements

Following the identification of Supply Support tasks, task resources and procedures, the personnel competencies required to perform each Supply Support task, using the identified resources and procedures, need to be determined. This determination will aid in workforce planning and in identifying those tasks that will require an element of training.

Skills types and levels required to perform the Supply Support tasks will define the size and scope of the specialist Supply Support workforce that the Commonwealth must plan for, including requirements for recruitment, relocations, and retraining of personnel working on the outgoing materiel system. These tasks may also influence the number of operator and maintenance personnel required for the (part

time) performance of Supply Support tasks. This will also identify the personnel requirements for relevant Contractor(LS) and Subcontractor(LS) tasks.

A comparison of existing skills and skill levels, against those required for the new Capability, will identify training requirements. This will affect internal courses, conducted by the ADO, as well providing input into the Training Needs Analysis process for new training courses.

In both instances, workforce planning and training, considerable planning by the Commonwealth and Contractor(LS)/Subcontractor(LS) organisations may be required, and the personnel competency information delivered should be reviewed accordingly.

There are two options for delivery of this information, Option A, through a Task Personnel Competency Report (Option 4 of DID-ILS-DES-TAR), or Option B, as an update to the LSAR including CD, GB, and GC tables. LSAR summary report LSA-001 identifies personnel requirements for workforce planning. LSA-014, Training Task List, is designed for the presentation and review of tasks with training requirements.

The Training Task List, or Task Personnel Competency Report, can also satisfy the task inventory required in the initial stages of the Training Needs Analysis, as required by DID-ILS-DES-TNAR.

#### Disposal Requirements

Clause 5.2.6.5 establishes the obligation for the Contractor to develop, deliver, and update a Disposal Plan (DISP). Disposal requirements must consider both Mission and Support System elements. This is further broken down into two areas. Firstly, there are disposals required during the operation and support of the Mission System and Support System (e.g. the disposal of non-repairable maintenance items). Secondly, there is the eventual retirement and withdrawal of Mission System and Support System items at the end of their service lives. The Contractor is to document all disposal requirements in accordance with DID-ILS-SUP-DISP. Disposal requirements in the plan should address all delivered items, even where those items are disposed of through the performance of deeper level maintenance and support functions by the Contractors(LS) and Subcontractors(LS).

The DISP should consider pre-planned modifications and upgrade paths, whereby certain Mission System and Support System items will reach the end of their service life earlier than the life-of-type of the whole Capability. Disposal Analysis (as per DEF(AUST)5691) can provide input to the development of the plan.

The Disposal Plan should also consider disposals resulting from operations and support activities that can begin during the Acquisition Phase, particularly for Acceptance Verification and Validation. In these circumstances, the CDRL may be altered so that initial delivery of a Disposal Plan may be scheduled early to address hazardous materials or other special disposal requirements, with the complete Disposal Plan delivered later. The relevant safety management and regulatory authorities should be consulted at the outset of a project about the requirements for disposal of hazardous materiel.

Drafter's Action: Drafters are to tailor through the selection of optional clauses depending on whether an LSAR is required and if it will be used instead of, or in support of, the applicable DIDs. Drafters should consider approaches acceptable to the Commonwealth should tenderers seek to integrate existing Supply Support manuals and task data.

Drafters are to ensure that any editing of this clause and editing under clauses 5.2.8 and 5.3, for the Supply Support and related resources, are coordinated.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

Related Clauses: Annex A to the draft SOW incorporates the specifications for the Contract.

Annex B to the draft SOW incorporates the OCD for the Contract.

Clause 4.6.1 of the draft SOW addresses growth, evolution and obsolescence.

Clause 4.6.2 of the draft SOW addresses reliability, maintainability and testability.

Clause 4.6.3 of the draft SOW addresses logistics engineering.

Clause 4.6.4 of the draft SOW addresses human engineering.

Clauses 5.2.7, 5.2.8 and 5.3.4 of the draft SOW address the training design processes.

Clause 5.2.8 of the draft SOW addresses the synthesis of the Support System.

Clause 5.3.3 of the draft SOW addresses the implementation of Technical Data, including the LSAR.

**Further Reading:** See also – *ADO LSA Manual*

See also – *Philosophy Annex A, Lifecycle Thread – Supply Support*

#### 5.2.7 - TRAINING SUPPORT DESIGN

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose an obligation on the Contractor to identify and document the requirements for Training Support tasks, resources, procedures and personnel competencies. These details are used through later clauses to determine optimal Training Support resources and associated training requirements.

**Policy:** See Section 5.2.

**Guidance:** Training Support Design involves designing the Training Support Constituent Capability. The design of this Constituent Capability not only includes establishing a capability to train all personnel involved in operating or supporting the Mission System but, in some cases, also needs to be address the training of personnel who are part of the Training Support Constituent Capability (i.e. training staff, etc).

#### Training Needs Analysis

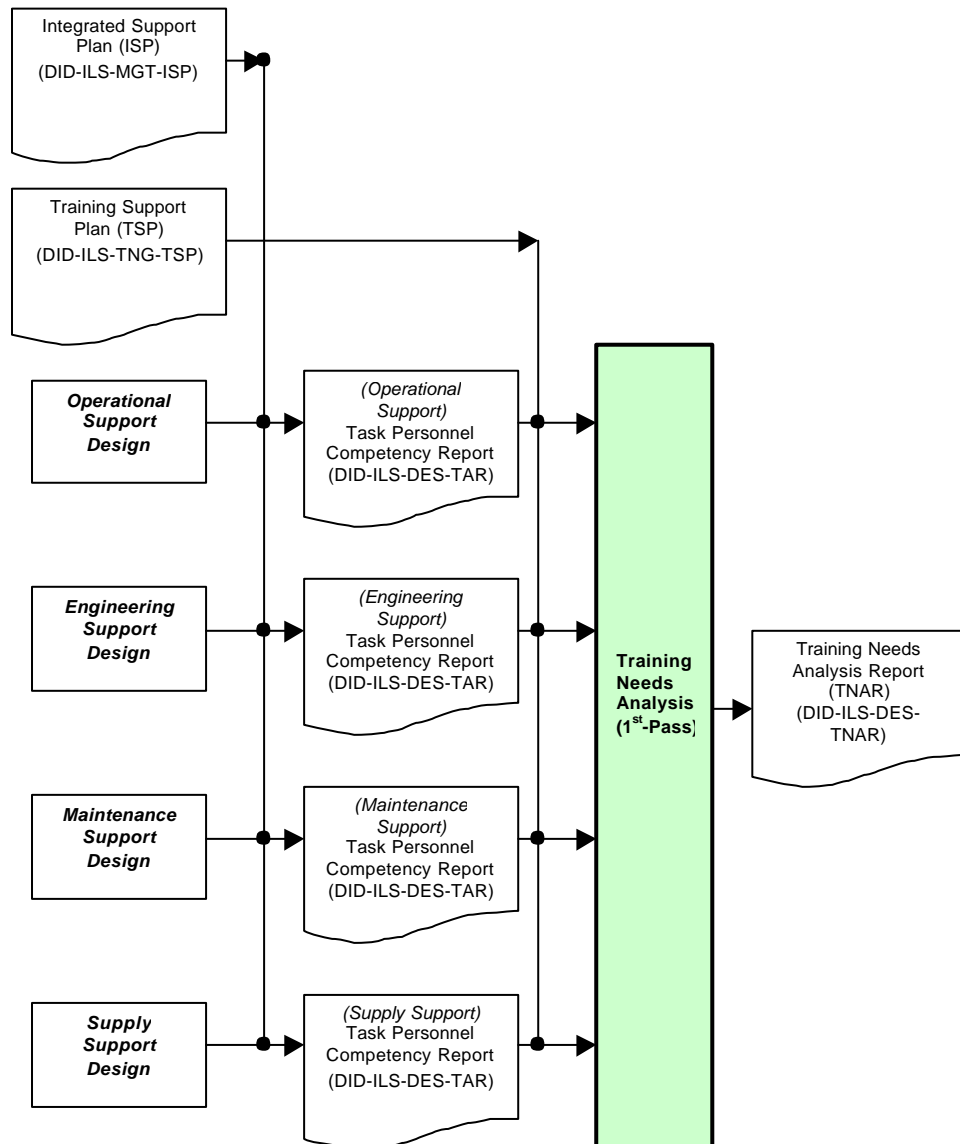
The process for designing the Training Support Constituent Capability commences with a Training Needs Analysis (TNA) of the Personnel competency requirements identified as a result of the activities associated with Operation Support Design, Engineering Support Design, Maintenance Support Design and Supply Support Design, and documented in Task Personnel Competency Reports or listed in the LSAR. The output of this analysis is normally documented in a Training Needs Analysis Report (TNAR), the requirements for which are defined in DID-ILS-DES-TNAR. In defining the training needs, consideration must be given to a range of potential training situations, including:

- a. Introduction into Service Training;
- b. Sustainment Training;
- c. Conversion Training;
- d. Continuation Training; and
- e. Train-the-trainer Training.

The range of situations to be considered should be documented as part of the Training Concept in the OCD developed prior to Contract.

Following the identification of training needs, the design of the Training Support Constituent Capability can commence. Note that, if training needs for personnel that form part of the Training Support Constituent Capability (i.e. training staff, etc) are required, the TNA for the Training Support Constituent Capability needs to be conducted after the initial TNA for the other Support System Constituent

Capabilities (i.e. there must be a second iteration of the TNA process). The rationale for this second pass is that, until the initial design of the Training Support Constituent Capability has been conducted, the competency requirements for training personnel will not be known. Figure 5-1 below illustrates the initial iteration for the design of the Training Support Constituent Capability.

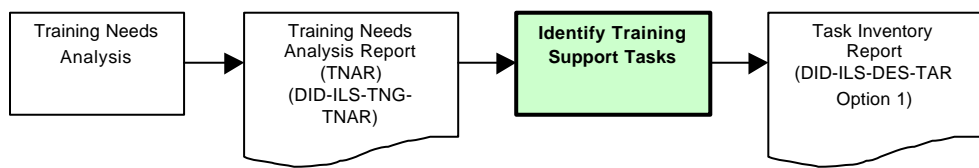


**Figure 5-1 - Training Needs Analysis (First Iteration)**

The TNA, which has been documented and delivered in accordance with DID-ILS-DES-TNAR, will include the personnel, material, training equipment and other resources necessary to conduct training of operational, maintenance support, Supply Support and Engineering Support personnel. This does not necessarily include the training tasks, resources, procedures, and personnel competencies needed to run the training system and perform activities such as the preparation of individual course materials, management of students, and on-going development and upkeep of training syllabi and materials. These latter activities are the province of the design processes for the Training Support Constituent Capability.

Training Support Tasks

Once the training needs for personnel involved in the other Support System Constituent Capabilities have been identified, the tasks required to satisfy the needs of the Training Support Constituent Capability need to be identified. Note that this clause seeks to identify “what” tasks need to be conducted to implement the training needs identified in the Approved TNAR, whereas Training Procedures are “how” the identified tasks need to be performed. Training Support tasks include preparation of individual course materials, management of students and reporting their performance, preparation of assessment (examination) materials, and on-going development and upkeep of training syllabi and materials. Following completion of this process, the identified Training Support Tasks should be documented and delivered in the Task Inventory Report in accordance with DID-ILS-DES-TAR (Option 1). Like Engineering Support, there is no facility to record training tasks within the LSAR, as these are not considered "on-equipment" tasks. Figure 5-2 illustrates this process.

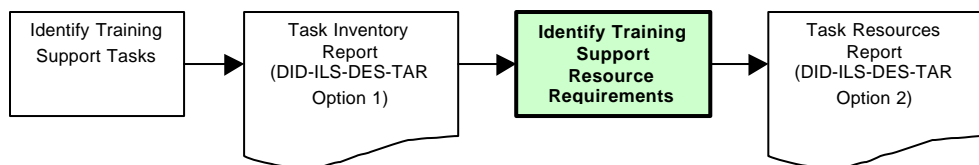


**Figure 5-2 - Training Support Design - Task Identification**

Training Resource Requirements

Training Support Resources are those Support Resources required to conduct the identified Training Support tasks and to implement the Training needs identified in the Approved TNAR, which enable the Support System Functional Baseline to be satisfied. Training resources in the TNAR include instructors, training materials, facilities and Training Support equipment. By contrast, the resources identified under this clause will include those resources necessary to produce course materials, continue development and update training materials, manage students, etc. For example, a personal computer with course delivery software may be identified for training delivery, but the development computer system and course authoring software would be identified as Support Resources that belong to the Training Support Constituent Capability.

Following completion of this process, the identified Training Support Resource requirements should be documented and delivered in accordance with DID-ILS-DES-TAR (Option 2) (refer Figure 5-2 below). Note that, through the synthesis processes associated with the training resources (refer clause 5.2.8.4), the resources identified here may be combined with results of the TNA as input to the Training Equipment Materials List (TEML) prepared in accordance with DID-ILS-TNG-TEML.

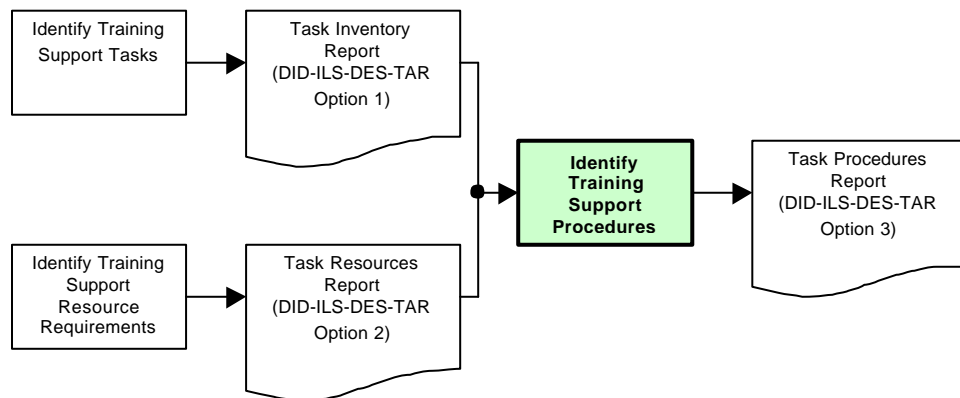


**Figure 5-2 - Training Support Design - Resource Identification**

### Training Support Procedures

Training Support Procedures are those procedures required to conduct the identified Training Support tasks and to implement the Training needs identified in the Approved TNAR. (Note: Training Tasks are “what” tasks need to be performed, whereas Training procedures are “how” the identified tasks need to be performed). As an example, Training Support Procedures may include approval processes for training material updates, particularly where safety critical operations and support procedures are to be taught. Other procedures will be required for the applicable Training Support tasks in the Task Inventory Report.

Following completion of this process, the identified Training Support Procedures should be documented and delivered in accordance with DID-ILS-DES-TAR (Option 3) (refer Figure 5-2 below).

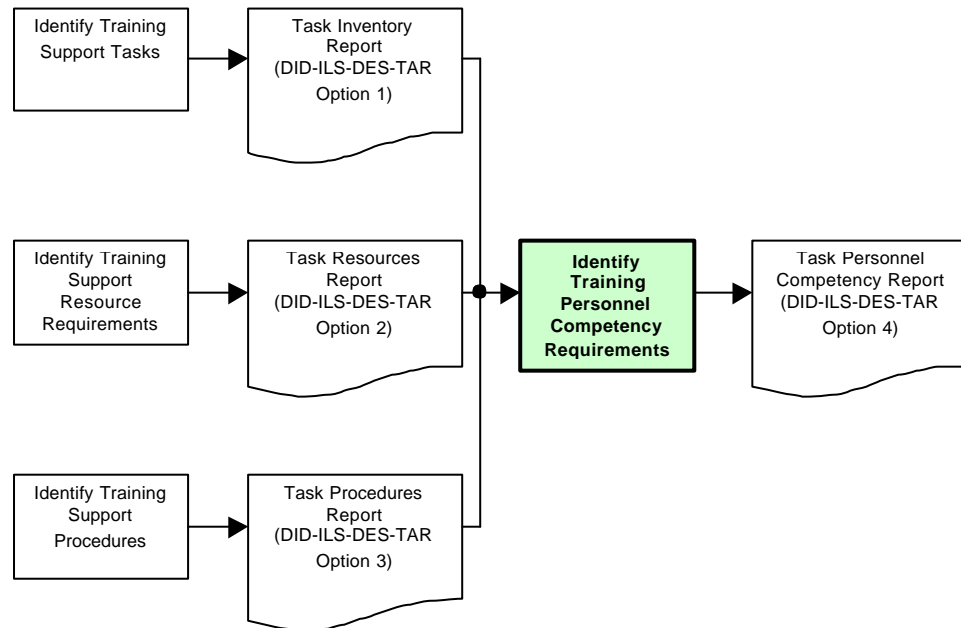


**Figure 5-2 - Training Support Design - Procedure Definition**

### Training Support Personnel Competency Requirements

Training Support Personnel Competency requirements are the Personnel Competency requirements of the training staff required to conduct the identified Training Support tasks and to implement the Training needs identified in the Approved TNAR (refer Figure 5-2 below).





**Figure 5-2 - Training Support Design - Personnel Competency Requirements**

Following the identification of Training Support tasks, task resources and procedures, the personnel competencies required to perform each Training Support task, using the identified resources and procedures, need to be determined. This determination will aid in workforce planning and in identifying those tasks that will require an element of training (i.e. training of training personnel).

**Drafter's Action:** Drafters are to ensure that the appropriate scope of training is identified in clause 5.2.7.1.2. Drafters are to ensure that any amendments to this clause also results in changes to the Glossary at Attachment M to the Contract.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 5.2.3 of the draft SOW identifies the personnel competencies for the Operational Support Constituent Capability.

Clause 5.2.4 of the draft SOW identifies the personnel competencies for the Engineering Support Constituent Capability.

Clause 5.2.5 of the draft SOW identifies the personnel competencies for the Maintenance Support Constituent Capability.

Clause 5.2.6 of the draft SOW identifies the personnel competencies for the Supply Support Constituent Capability.

Clause 5.2.8 of the draft SOW requires the Contractor to optimise the Training Support design.

Clause 5.3.4 of the draft SOW requires the Contractor to implement the Approved Training Support design.

Attachment M to the draft Contract lists the various Training-related definitions used in clause 5.2.7.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Training and Training Support*

See also – *RAN Training System Manual Vol 1*

See also – *Army Manual of Land Warfare*

See also – *AAP 2002.001*

#### 5.2.8 - SUPPORT SYSTEM SYNTHESIS

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<b><u>Sponsor:</u></b>	Materiel Policy & Services
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To impose an obligation on the Contractor to synthesise from the individual task requirements, documented as an outcome of clauses 5.2.3 to 5.2.7, completed listings of optimised Support Resources for the new Capability. These listings include provisioning lists and the requirements for resources from the ADO, such as personnel.
<b><u>Policy:</u></b>	See Section 5.2. DI(G) LOG 06-4, 'Australian Defence Force Reserve Stockholding Policy' DI(G) LOG 03-2, 'Defence Policy on Computer-aided Acquisition and Logistic Support'
<b><u>Guidance:</u></b>	<b><u>General</u></b> Support System Synthesis involves bringing together Support Resources identified for each of the Support System Constituent Capabilities and optimising each of the Support Resources using appropriate optimisation models to define a realisable implementation option associated with each of them. The Support Resources considered under this clause of the draft SOW include: <ol style="list-style-type: none"><li>Spares;</li><li>Packaging;</li><li>Training, Training Equipment and Training Materials;</li><li>Technical Data;</li><li>Support and Test Equipment (S&amp;TE);</li><li>Facilities (Optional); and</li><li>Personnel.</li></ol> The concept is illustrated below in Figure 5-. In the context of the following discussions in this section, the term Optimisation Model refers to a model which accurately describes a given system and which can be used, through sensitivity analysis, to determine the best operation of the system being modelled (definition sourced from MIL-HDBK-1388-1A). In general, the optimisation process is bound by clause 5.2.8.1.1, which defines the goals of this process. Minimisation of LCC is the primary goal, within the context that the other requirements of the Contract (e.g. performance requirements for the Support System and overarching requirements such as preparedness) must still be met.

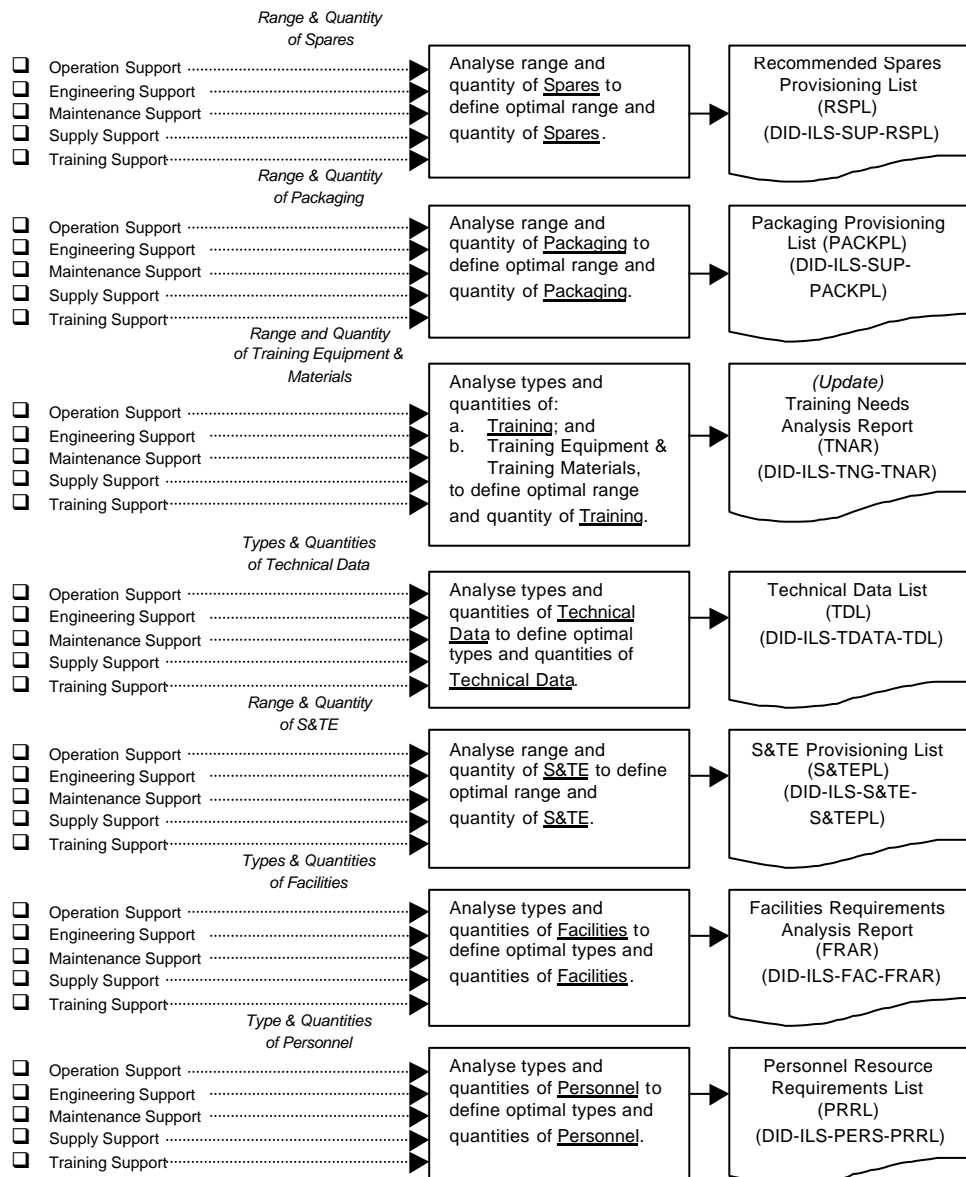


Figure 5-3 - Support System Synthesis Concept

Spares

The aim of this clause of the draft SOW is to require the Contractor to go through a *deliberate* process of analysing the range and quantity of spares identified for each Support System Constituent Capability to identify potential areas of optimisation, considering the totality of all of the spares requirements across all of the Support System Constituent Capabilities.

Note that the standard Spares Optimisation Model used within Defence is based on the spares optimisation software package OPUS 10, which is a multi-indenture, multi-echelon model. Clause 5.2.8.2.2 specifies this standard software package; however, if a tenderer offers an alternative software package or model, advice should be sought from the relevant SME. Generally, spreadsheet-based spares models and other models based on simple algorithms should be avoided because these simple models neither adequately model the support concepts nor provide optimisation functionality.

As highlighted in the DID for the Recommended Spares Provisioning List (RSPL), the spares-optimisation model developed by the Contractor must accord with the

build of the Mission System, the support concept contained in the OCD, and the Contractor's design for the Support System (particularly the Supply Support Constituent Capability and the Maintenance Support Constituent Capability). Furthermore, the model must be consistent with other models developed by the Contractor (e.g. the LORA model). The outcome of the spares-optimisation process is the RSPL; hence, Commonwealth Project Authoritys need to be convinced that the spares-optimisation model is valid before it can Approve the RSPL. In all likelihood, specialist support will be required to enable this assessment to be made.

The RSPL provides all of the information required for provisioning purposes; however, prior to any procurement action being initiated, the Contractor is required (under clause 5.1.2.6 of the draft SOW) to hold a Spares Provisioning Preparedness Review (SPPR) to enable a joint review of the RSPL and the spares-optimisation model to be conducted. Following approval of the RSPL, the Contractor is required (under clause 5.3.2.1 of the Support System Implementation clauses) to provide the Spares identified in the Approved RSPL. Drafters should note that, under ASDEFCON (Strategic Materiel), the price for Spares is not explicitly included in the Contract price, and is subject to a separate Not-To-Exceed (NTE) price (refer to Annex D and Annex I of the conditions of tender). After Approval of the RSPL and agreement on the price to be paid for the Spares, the Contractor will be required to generate a CCP to modify the Contract to incorporate the list of Spares and the associated price into the Contract. Project Authority staff should also be aware that this final list will be subject to adjustment if there has been an initial purchase of any Spares that were identified as Long Lead-Time Items (LLTIs).

### Packaging

The aim of this clause of the draft SOW is to require the Contractor to go through a *deliberate* process of analysing the range and quantity of packaging identified for each Support System Constituent Capability to identify potential areas of optimisation, considering the totality of all of the packaging requirements across all of the Support System Constituent Capabilities. The main focus here is placed on any special-to-type or other high-cost packaging that will be the focus when reviewing the Packaging Provisioning List (PACKPL), which the Contractor has prepared in accordance with DID-ILS-SUP-PACKPL. Standard packaging and packaging materials are likely to be procured through existing Defence procurement channels from local sources.

There are no Defence-endorsed, packaging-optimisation models or tools for this purpose. However, packaging requirements are directly related to the transportation outcomes of LORA, the design of the Supply Support Constituent Capability, movement of stores/munitions, and any requirements/policy for packaging of stored items (which should be documented in the FPS and, subsequently, in the SSSPEC). Hence, as part of the optimisation process, the Contractor would be expected to describe, in accordance with the DID for the SSDP, how packaging requirements would be derived and rationalised/optimised. The DID for the PACKPL requires the Contractor to justify the set of packaging that the Contractor is recommending should be provisioned.

The PACKPL provides all of the information required for provisioning purposes. Following approval of this list, the Contractor is required (under clause 5.3.2.2 of the Support System Implementation clauses) to provide the packaging identified in the Approved PACKPL. Drafters should note that the price for this packaging is included in the Contract price. If a separate arrangement is considered (e.g. under a Not-To-Exceed (NTE) price, similar to the arrangement for Spares and S&TE), then both Annex D (Financial Annex) and Annex I (ILS Annex) to the conditions of tender will need to be modified accordingly to enable the appropriate provisions to be captured at the time of tendering. Unless packaging is considered to be either a high-cost or high-risk item, the use of a separate arrangement is not recommended.

Specialist advice should be sought from the SME to assess the appropriateness of any model(s)/tool(s) used to undertake the process of rationalisation/optimisation. Advice on specialist packaging and pallets can be obtained from the Packaging Development Cell, LEA, Defence Plaza Melbourne, 661 Bourke St, Melbourne, Victoria.

### Training

The Contractor is required to design a training package that meets the defined training requirements, identified through the earlier TNAR (clause 5.2.7), to enable the Training Support Constituent Capability to satisfy the Support System Functional Baseline. This development should be consistent with the requirements of a single-service or other joint standard for training design and development identified by the Project Authority and referenced by the drafter in clause 5.2.8.4.1.

Drafters should note that the actual development or acquisition of individual items of Training Equipment and Training Materials (including courseware) is undertaken through clause 5.3.4.2. The clauses in this part of the draft SOW (under 5.2.8.4) refer to the design of the training package as a whole and the identification of the nature of the equipment and materials to be developed. For example, this clause should result in the Contractor defining what a course syllabus will contain, while clause 5.3.4.2 should result in the actual drafting of the courseware that meets that individual course syllabus.

The aim of this clause of the draft SOW is to require the Contractor to go through a *deliberate* process of analysing the range and quantity of Training, Training Equipment and Training Materials identified for each Support System Constituent Capability within the context of the Approved TNAR. The Contractor is to identify potential areas of optimisation, considering the totality of all of the requirements for Training, Training Equipment and Training Materials across all of the Support System Constituent Capabilities.

There are no Defence-endorsed, training-optimisation models or tools for this purpose. Hence, as part of the optimisation process, the Contractor would be expected to describe, in accordance with the DID for the TSP, the process by which training requirements would be rationalised / optimised in the development and update of the TNAR. Specialist advice should be sought from the SME to assess the appropriateness of the model(s) / tool(s) / process(es) used.

In accordance with clause 5.2.8.4.3, the Contractor is required to document the optimised types and quantities of Training in an update to the TNAR. Attention is drawn to DID-ILS-TNG-TNAR, which specifies differing requirements for the initial delivery of the TNAR and for subsequent deliveries of the TNAR.

In accordance with clause 5.2.8.4.4, the Contractor is required to document the optimised types and quantities of Training Equipment and Training Materials in the Training Equipment and Materials List (TEML) (DID-ILS-TNG-TEML). The DID for the TEML requires the Contractor to justify the range and extent of Training Equipment that the Contractor is recommending should be provisioned, including undertaking standardisation and offsetting of identified Training Equipment with Training Equipment that is already in service with the Commonwealth.

The TEML provides all of the information required for provisioning purposes; however, prior to any procurement action being initiated, the Contractor is required (under clause 5.1.2.8 of the draft SOW) to hold a Training Equipment Provisioning Preparedness Review (TEPPR) to enable a joint review of the TEML to be conducted. Following approval of the TEML, the Contractor is required (under clause 5.3.4.2 of the Support System Implementation clauses) to provide the Training Equipment and Materials identified in the Approved TEML. Drafters should note that, under ASDEFCON (Strategic Materiel), the price for Training Equipment is not explicitly included in the Contract price, and is subject to a separate Not-To-Exceed (NTE) price (refer to Annex D and Annex I of the conditions of tender). After Approval of the TEML and agreement on the price to be paid for the Training Equipment, the Contractor will be required to generate a

CCP to modify the Contract to incorporate the list of Training Equipment and the associated price into the Contract. Project Authority staff should also be aware that this final list will be subject to adjustment if there has been an initial purchase of any Training Equipment that was identified as a Long Lead-Time Item (LLTI). Drafters should also note that the price for Training Materials is included in the Contract price.

#### Technical Data

The aim of this clause of the draft SOW is to require the Contractor to go through a *deliberate* process of analysing the range and quantity of Technical Data identified for each Support System Constituent Capability to identify potential areas of optimisation, considering the totality of all of the Technical Data requirements across all of the Support System Constituent Capabilities.

There are no Defence-endorsed Technical Data optimisation models or tools for this purpose. Hence, as part of the optimisation process, the Contractor would be expected to describe, in accordance with the DID for the Technical Data Plan (TDP), the process by which Technical Data requirements would be derived and rationalised/optimised. Specialist advice should be sought from the appropriate SME to assess the appropriateness of any model(s)/tool(s) used to undertake the process of rationalisation/optimisation. In general terms, rationalisation and optimisation of Technical Data would include the re-use of existing Technical Data, the packaging of the Technical Data into (for example) differing manuals, as well as the scope and level of drawings that would be developed.

In accordance with clause 5.2.8.5.2, the Contractor is required to document the optimised types and quantities of Technical Data in the Technical Data List (TDL) (DID-ILS-TDATA-TDL). The DID for the TDL includes the Technical Data that the Contractor will be providing to the Commonwealth, as well as the Technical Data that will be placed into escrow, and the Technical Data that will be provided to, or utilised by, the Contractors(LS) and the Subcontractors(LS). It should be expected that the TDL will have multiple deliveries (as specified in the CDRL) as the developmental status of the Mission System and Support System matures, and the scope of Technical Data becomes clearer.

#### Support and Test Equipment

The aim of this clause of the draft SOW is to require the Contractor to go through a *deliberate* process of analysing the range and quantity of Support & Test Equipment (S&TE) identified for each Support System Constituent Capability to identify potential areas of optimisation, considering the totality of all of the S&TE requirements across all of the Support System Constituent Capabilities. S&TE includes such equipment as forklifts and mobile handling equipment, which are used inside warehouses (and, therefore, form a part of the Supply Support Constituent Capability).

There are no Defence-endorsed S&TE-optimisation models or tools for this purpose. However, the Project Authority should be aware that, in determining the optimum location for maintenance tasks to be conducted, S&TE for maintenance will need to be located where those tasks are performed. Comprehensive LORA models will also consider the collocation of maintenance tasks that utilise the same S&TE as part of the economic optimisation process performed by the model. S&TE utilisation by maintenance level can be extracted from the LSAR, following LORA, thus identifying quantities at each maintenance location. However, different LORA models have applicability to different projects and will have varying capability, and, while the models optimise maintenance S&TE, they do not optimise operational, handling or other Supply Support equipment. Hence, as part of the optimisation process, the Contractor would be expected to describe, in accordance with the DID for the S&TE Plan (S&TEP) (DID-ILS-S&TE-S&TEP), the process by which S&TE requirements would be rationalised/optimised, including undertaking standardisation and offsetting of identified S&TE with S&TE that is already in service with the Commonwealth. For specialist advice on this issue, guidance

should be sought from the appropriate SME. In addition to standardisation and offsetting, rationalisation and optimisation of S&TE could include undertaking trade-off analyses between manually operated S&TE and Automatic Test Equipment. Of note, any analysis of S&TE requirements must include any S&TE required to support other S&TE (e.g. calibration equipment).

In accordance with clause 5.2.8.6.2, the Contractor is required to document the optimised range and quantity of S&TE in the S&TE Provisioning List (S&TEPL) (DID-ILS-S&TE-S&TEPL). The DID for the S&TEPL requires the Contractor to justify the range and quantity of S&TE that the Contractor is recommending should be provisioned.

The S&TEPL provides all of the information required for provisioning purposes; however, prior to any procurement action being initiated, the Contractor is required (under clause 5.1.2.7 of the draft SOW) to hold a S&TE Provisioning Preparedness Review (S&TEPPR) to enable a joint review of the S&TEPL to be conducted. Following approval of the S&TEPL, the Contractor is required (under clause 5.3.5 of the Support System Implementation clauses) to provide the S&TE identified in the Approved S&TEPL. Drafters should note that, under ASDEFCON (Strategic Materiel), the price for S&TE is not explicitly included in the Contract price, and is subject to a separate Not-To-Exceed (NTE) price (refer to Annex D and Annex I of the conditions of tender). After Approval of the S&TEPL and agreement on the price to be paid for the S&TE, the Contractor will be required to generate a CCP to modify the Contract to incorporate the list of S&TE and the associated price into the Contract. Project Authority staff should also be aware that this final list will be subject to adjustment if there has been an initial purchase of any S&TE that was identified as a Long Lead-Time Item (LLTI).

#### Facilities (Optional)

Clause 5.2.8.7 is an optional clause, which has the aim of requiring the Contractor to go through a *deliberate* process of analysing the range and quantity of Facilities identified for each Support System Constituent Capability to identify potential areas of optimisation, considering the totality of all of the Facilities requirements across all of the Support System Constituent Capabilities.

Of note, if the Facilities elements of a project are being acquired separately from the major capital elements (which is generally the norm for most projects), details of the Facilities elements must be provided to the Contractor so that the Contractor's design processes for the Support System can take into consideration the constraints imposed by the extant Facilities designs. To help to ensure compatibility between these Facilities elements and the other elements of the Mission System and Support System, as applicable, it is recommended that Facilities issues be addressed as part of the offer definition phase.

There are no Defence-endorsed, facilities-optimisation models or tools for this purpose. However, like previous optimisation activities, the results from LORA and the LSAR can be used to determine tasks performed at different facilities and, therefore, the related facility-utilisation rates, requirements for utilities (power, water, air, etc) and, if populated, storage space requirements; however, this is only part of the total requirement. Hence, as part of the optimisation process, the Contractor would be expected to describe the process by which facilities requirements were rationalised/optimised. For specialist advice on this issue, guidance should be sought from the appropriate SME (e.g. CSIG). Rationalisation and optimisation in this context could simply involve reviewing the separate Facilities requirements identified under each of the Support System Constituent Capabilities and determining whether or not these separate requirements can be combined into a single Facility.

In accordance with clause 5.2.8.7.3, the Contractor is required to document the optimised range and quantity of Facilities in the Facilities Requirements Analysis Report (FRAR) (DID-ILS-FAC-FRAR). The DID for the FRAR requires the Contractor to provide detailed information with respect to the requirements and proposed scheduling for any new or modified Facilities.

The FRAR provides all of the information required to enable the FRAR to be translated into construction bid packages that will be compatible with the Mission System and Support System Components. Following approval of the FRAR, the Contractor is required (under clause 5.3.6 of the Support System Implementation clauses) to provide the Facilities identified in the Approved FRAR.

### Personnel

The aim of this clause of the draft SOW is to require the Contractor to go through a *deliberate* process of analysing the types and quantities of Personnel identified for each Support System Constituent Capability to identify potential areas of optimisation, considering the totality of all of the Personnel requirements across all of the Support System Constituent Capabilities.

Attention is drawn to the definition of Personnel, which is defined in the Glossary as, “all staff involved in the operation and support of the Mission System and Support System, including Commonwealth, Contractor(LS), and support Subcontractors”. This definition includes personnel who perform managerial and supervisory functions, and not just those personnel who are directly involved in the operation and support of the two systems.

There are no Defence-endorsed, personnel-optimisation models or tools for this purpose. Hence, as part of this process the Contractor would be expected to describe the process by which personnel requirements were rationalised/optimised. For specialist advice on this issue, guidance should be sought from the appropriate SME.

In accordance with clause 5.2.8.8.2, the Contractor is required to document the optimised range and quantity of Personnel in the Personnel Resource Requirements List (PRRL) (DID-ILS-PERS-PRRL). The DID for the PRRL requires the Contractor to justify the types and quantities of Personnel that the Contractor is recommending are required at each of the levels of operation, maintenance and support of the Mission System and Support System. Furthermore, the Personnel listed in the PRRL are required to be grouped into three categories: Commonwealth, Contractor(LS) and Subcontractor(LS).

Drafter's Action: Drafters are to review the optional clauses to determine their applicability to the project.

Drafters are to include the current Commonwealth-preferred Spares-optimisation software package into clause 5.2.8.2 prior to release of the RFT. Additionally, if the Contractor proposes an alternative package to the one proposed by the Commonwealth, drafters are to address the alternative with the appropriate SME and, if acceptable to the Commonwealth, to adjust the clause accordingly.

Drafters are to include the appropriate Training standard into clause 5.2.8.4 prior to release of the RFT.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

Related Clauses: Clause 5.1.2 of the draft SOW identifies:

- a. the plans under which the Support Resources are to be realised; and
- b. the Mandated System Reviews that apply to these Support Resources.

Clauses 5.2.3 to 5.2.7 of the draft SOW identifies the Support Resources for each of the Support System Constituent Capabilities, which are to be optimised under clause 5.2.8.

Clause 5.3 of the draft SOW requires the Contractor to implement (a subset of) the optimised set of Support Resources.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Life Cycle Cost (LCC)*

See also – *Philosophy Annex A, Lifecycle Thread – Supply Support*



See also – *Philosophy Annex A, Lifecycle Thread – Technical Data*

See also – *Philosophy Annex A, Lifecycle Thread – Personnel*

See also – *Philosophy Annex A, Lifecycle Thread – Training and Training Support*

See also – *Philosophy Annex A, Lifecycle Thread – Facilities*

See also – *Philosophy Annex A, Lifecycle Thread – Support and Test Equipment (S&TE)*

### 5.3 Support System Implementation

**Sponsor:** Materiel Policy & Services

**Purpose:** To impose an obligation on the Contractor to implement those elements of the Support System that are of interest to the Commonwealth.

**Policy:** Chief Executive Instructions (CEIs) define the management and recording requirements for goods that will be owned by the Commonwealth and that will be defined as an asset under the CEIs.

**Guidance:** Clause 5.2 of the draft SOW resulted in the finalisation of the design of the Support System and the identification of all of the Support Resources and services (e.g. training) required to implement the Support System (remembering that the Support System includes the Commonwealth and the In-Service Support Contractors and Subcontractors). As stated in the Note to drafters, this clause 5.3 of the draft SOW concentrates on the implementation of:

- a. those Support Resources and services that will be delivered to the Commonwealth as Supplies under the Contract; and
- b. those major Support Resources that will be implemented by the Contractor (or Subcontractors) but not delivered to the Commonwealth as Supplies under the Contract; however, the resources are considered to be of such significance to the Commonwealth that visibility into their development and implementation is required.

**Drafter's Action:** Nil

**Related Clauses:** Nil

**Further Reading:** Nil

#### 5.3.1 - GENERAL

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To ensure that the Contractor understands its responsibility to coordinate the delivery of Supplies in preparation for Support System Validation (in the Service environment) activities.

**Policy:** See Section 5.3.

**Guidance:** Clause 5.3.1.1 requires the Contractor to acknowledge that there is a lead-time associated with the Commonwealth's ability to receipt, distribute, and integrate (as applicable) particular Support Resources and Training into the Commonwealth's existing logistics-support infrastructure before Validation of the Support System can occur. For example, the uploading of Codification Data onto the Standard Defence Supply System (SDSS) can be a lengthy process if the scale of Codification Data is large. This clause acts to create an overarching intent beneath which the Contractor provides the deliverable Support Resources. The Contractor provides the schedule for the delivery of Support Resources in each of the Data Items that document the plans for these deliverables (e.g. Technical Data in DID-ILS-TDATA-TDP, spares in DID-ILS-SUP-SSDP, etc). For Technical Data, the delivery schedule is documented against each item of Technical Data in the Technical Data List (DID-ILS-TDATA-TDL). The Project Authority should negotiate each of these delivery schedules to ensure that sufficient lead-time is established to enable the Commonwealth to undertake its Support System integration activities. Nevertheless, this clause advises the Contractor that it needs to allow a certain period of time after delivery for the Commonwealth to undertake these integration activities. Attention is also drawn to clause 3.2.3.5c of the draft SOW, which relates to the Contract Master Schedule (CMS).

**Drafter's Action:** Clause 5.3.1 is to be included in the RFT without amendment.

Clause 5.3.1.2 will need to be amended or deleted depending upon the support arrangements planned under the project.

**Related Clauses:** Clause 5.2 of the draft SOW addresses the design of the Support System and the identification of the requisite Support Resources.

Clause 7.2.3 of the draft SOW addresses Acceptance Validation.

**Further Reading:** Nil

### 5.3.2 - IMPLEMENTATION OF SPARES AND PACKAGING REQUIREMENTS

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To establish the obligation for the Contractor to design and develop or acquire, as applicable, and deliver the Spares and Packaging identified for delivery to the Commonwealth in the respective provisioning lists.

**Policy:** See Section 5.3.

DI(G) LOG 06-4, 'Australian Defence Force Reserve Stockholding Policy'

**Guidance:** Spares

Clause 5.3.2.1 establishes the obligation for the Contractor to deliver the Spares that are identified for delivery to the Commonwealth in the Approved Recommended Spares Provisioning List (DID-ILS-SUP-RSPL). Attention is drawn to clauses 5.3.2.1.4 and 5.3.2.1.5, which highlight that the procurement of Spares under ASDEFCON (Strategic Materiel) is based on a Not To Exceed (NTE) price for these Spares, which should be established at Contract award. This NTE price should be sought from each tenderer in its tender response in TDR D-2 of the conditions of tender. If a different approach to Spares procurement is adopted, then these two clauses will require amendment.

Clause 5.3.2.1.3 provides the opportunity for the Commonwealth to own Spares, which are in addition to those Spares that are identified for delivery to the Commonwealth and which would otherwise be provided by the Contractor to the Logistics Support Contractor (Contractor (LS)) to enable the Contractor (LS) to meet its obligations under a Contract (LS). In other words, these additional Spares represent a part of the Support System, which would not otherwise be delivered to the Commonwealth except for the provisions of this clause. The Project Authority, in conjunction with the end-user support organisation, may consider that it is beneficial to own these Spares for risk-management reasons (e.g. such as a desire not to be locked into a sole-source arrangement).

#### Packaging

Clause 5.3.2.2 establishes the obligation for the Contractor to deliver the Packaging that is identified for delivery to the Commonwealth in the Approved Packaging Provisioning List (DID-ILS-SUP-PACKPL). Of particular note, this clause only applies to Packaging that, in itself, is delivered as a Supply under the Contract, and does not apply to packaging that is used to package other Supplies for delivery. Should the support concept (as document in the OCD) and/or the requirements for the Support System (as documented in the FPS) establish that certain Supplies (e.g. Spares, S&TE, etc) need to be transported to locations other than the main point of delivery or other than the home base or port, however, then these Supplies might require specific packaging to meet these requirements. Under this scenario, this packaging would also be considered to be a Supply and would fall under this clause (and the other Packaging clauses in the ILS clause of the draft SOW), even if the packaging were also utilised to deliver the Spares, S&TE, etc to the main point of delivery (or to the home base or port) in the first instance.

**Drafter's Action:** Drafters are to review the requirement for clause 5.3.2.1.3, using the guidance provided in the Note to drafters. If not required, the clause should be replaced with "Not Used".

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 5.1.2 of the draft SOW identifies the requirement for:

- a. a Supply Support Development Plan (SSDP); and
- b. a Spares Provisioning Preparedness Review (SPPR).

Clause 5.2.8 of the draft SOW provides the mechanism by which the Spares and Packaging requirements are determined.

Clause 6.7 of the draft SOW specifies the requirement for Functional and Physical Configuration Audits (FCA/PCA) for Mission System products and Support System Components.

Clause 7.2.2 of the draft SOW specifies the requirements associated with Acceptance Verification.

Clause 7.2.3 of the draft SOW specifies the requirements associated with Acceptance Validation.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Supply Support*

### 5.3.3 - IMPLEMENTATION OF TECHNICAL DATA REQUIREMENTS

**Sponsor:** Materiel Policy & Services

**Status:** Core (with Optional clauses)

**Purpose:** To establish the obligation for the Contractor to design and develop or acquire, as applicable, and deliver the Technical Data identified for delivery to the Commonwealth in the Approved Technical Data List (TDL).

**Policy:** See Section 5.3.

Defence IP management will be clear, consistent and traceable.

DPPM – Section 3, Chapter 3.6 "Intellectual Property"

*Developing and Sustaining Defence Capability - Defence Intellectual Property Policy, 2003.*

DI(G) LOG 03-2, 'Defence Policy on Computer-aided Acquisition and Logistic Support'

**Guidance:** Under ASDEFCON (Strategic Materiel), the logistics concept of Technical Data has been integrated with the Intellectual Property (IP) concept of Technical Information, with a unified definition, which embraces both concepts, being utilised (refer to the definition of Technical Data in Attachment M to the conditions of contract). As an outcome of this integration, a number of the clauses in this section of the draft SOW are linked to the IP clauses in the conditions of contract (with the genesis of these clauses coming from IP clauses utilised in previous Defence Contracting models). Annex C to the Philosophy Volume of the ASDEFCON (Strategic Materiel) Handbook provides an overview of Technical Data as the concept evolves throughout the Capability Development and Acquisition Phases.

Clause 5.3.3 also defines the meaning of "delivery" in the context of Technical Data.

#### General

Clause 5.3.3.1 establishes the obligation for the Contractor to deliver the Technical Data identified for delivery to the Commonwealth in the Approved Technical Data List (DID-ILS-TDATA-TDL). The TDL provides a list of all of the Technical

Data associated with the Contract, including any Technical Data required by Contractors(LS) and Subcontractors(LS) (and not just the Technical Data that will be delivered to the Commonwealth). Given the linkages to the IP provisions of the Contract, drafters should ensure that a draft TDL is obtained as part of the initial tender response.

In addition this clause identifies where the contractor shall deliver the items of Technical Data. This clause recognises that there is a specific delivery regime for Technical Data identified in the TDL and requires the Contractor to comply with it. Since there is a delivery regime for CDRL items, this clause ensures that for those items specified in the TDL, the TDL delivery process is the one followed. Clause 5.3.3.1.1 also provides a default delivery location in those circumstances where the TDL has not done so.

#### Data Accession List

Clause 5.3.3.2 establishes the obligation for the Contractor to develop, deliver and update a Data Accession List (DAL) (DID-ILS-TDATA-DAL), which is a subset of the TDL and intended to provide a listing of Technical Data being generated under the Contract that is not required to be delivered under the Contract. The DAL provides a mechanism for gaining insight into the Contractor's (and Subcontractors') developmental activities, without having formal CDRL items being delivered. The DAL enables the Commonwealth to gain access to those items of Technical Data that are the natural artefacts of the Contractor's developmental processes to assure itself that the design is progressing smoothly and in accordance with the Commonwealth's requirements.

As identified in the DIDs for the TDL and DAL, the Contractor is required to deliver these CDRL items "in database or spreadsheet format, with soft copy tabulated text documents generated as reports from the database or spreadsheet". This approach enables the Commonwealth to search the TDL or the DAL to identify items of interest (e.g. the Commonwealth could be interested, for Australian Industry Involvement (All) reasons, in knowing the set of Technical Data that would reside with a particular Australian Subcontractor(LS)).

Clause 5.3.3.2.3 establishes that the Commonwealth shall reimburse the Contractor for the reasonable costs of providing any items requested off the DAL. As this cost is not included in the Contract price, a Contract change proposal will be required in accordance with clause 10.1 of the conditions of contract. In addition to the cost, drafters should ensure that this Contract change proposal identifies the delivery location, delivery medium (e.g. if non-CALS), and any requirements for maintenance or updates.

#### Continuous Acquisition and Life Cycle Support (CALs) (Optional)

Clause 5.3.3.3 is an optional clause, which places an obligation on the Contractor to deliver certain items of Technical Data under the Contract in a CALs format in accordance with the Approved Technical Data Plan (TDP) (DID-ILS-TDATA-TDP). The list of items of Technical Data that would be provided in CALs format is contained in the TDL, while the TDP details how the information will be generated, integrated and delivered.

The current Defence CALs policy states that projects are to require the production of technical and support documentation to the CALs standards, unless it can be demonstrated that the likely cost of compliance with the CALs requirements will outweigh the life cycle benefits. This decision can only be made in the light of information provided by tenderers. As such, clause 5.3.3.3 is to be included in all RFTs, with prospective tenderers being asked to provide costing for Technical Data with and without CALs formats.

Following receipt of tenders, more information will be known about the costs associated with the CALs requirements and an informed decision can be made, during the offer definition phase or during Contract negotiations, whether to exclude clause 5.3.3.3 from the final Contract where the cost of the CALs

requirements outweigh the life cycle benefits. If an offer definition phase is programmed, it is recommended that Technical Data requirements, particularly those relating to CALS, be discussed during this phase. Of note, if this clause 5.3.3.3 is omitted from the Contract, then the DID for the TDP will also need to be amended (however, none of the other Technical Data DIDs will need to be amended). Drafters and users of ASDEFCON (Strategic Materiel) should note that the decision to adopt CALS standards is rarely a black-and-white decision, with a typical outcome being that certain types of data will be acquired in CALS formats while certain other types (e.g. off-the-shelf manuals) will not be acquired in CALS formats.

Annex A to the TDP contains a list of current Commonwealth CALS standards. This list may require amendment to incorporate the latest approved CALS standards, and guidance on this issue should be sought from the CALS SME in DLSE-MPS. Drafters should note that, in addressing CALS issues, recent Configuration Management (CM) standards, such as EIA-836 (Consensus Standards for Configuration Management Data Exchange), implement a CALS approach for the exchange of CM data.

For this clause 5.3.3.3 to have meaning, the Specification at Annex A needs to clearly indicate which types of information are to be supplied by the Contractor in CALS format (e.g. all engineering drawings, all new maintenance publications, etc).

Paragraph 2 of Annex D to Attachment A of the conditions of tender requests tenderers to provide the specific price payable for delivery of the specified Technical Data in CALS format.

#### Publications

Clause 5.3.3.4 establishes the obligation for the Contractor to identify the range of publications relating to the Mission System and Support System and to document the identified publications in the Publications Tree (DID-ILS-TDATA-PUBSTREE). The list of publications contained in the Publications Tree is a complete list of all publications (including Commonwealth, Contractor, Subcontractor, Contractors(LS) Subcontractors(LS) and Third Party), and is a specific subset of the list of Technical Data contained in the Technical Data List (TDL).

Clause 5.3.3.4.2 establishes the obligation for the Contractor to develop publications in accordance with the DID for Publications Packages (DID-ILS-TDATA-PUBPACK). The DID for Publications Packages is a specification for those publications that will be delivered to the Commonwealth and, while not explicitly stated, it is not intended that this DID be utilised for publications that would be placed into escrow. The DID for Publications Packages requires tailoring to address the Service-specific requirements relating to publications (e.g. for RAAF – AAP 5030.001). Additional guidance on this issue should be sought from the CALS/Technical Data SME in DLSA-MPS. Of note, DEF(AUST) 5629A is the base standard contained in this DID, which should be enhanced by the inclusion of the Service-specific requirements. DEF(AUST) 5629A should not be removed from this DID as part of any tailoring activity.

Clause 5.3.3.4.3 requires the Contractor to Verify and Validate that all publications are accurate, grammatically correct, technically correct, and suitable for use. While this clause may appear to be an overlap with the V&V clauses in the SOW, it has been explicitly included in this area because of the differing definitions of verification and validation included in DEF(AUST) 5629A (refer Note to drafters in clause 6.2.5.1 of DID-ILS-TDATA-TDP).

#### Interactive Electronic Technical Manuals (IETMs) (Optional)

Clause 5.3.3.5 is an optional clause, which places an obligation on the Contractor to provide Interactive Electronic Technical Manuals (IETMs) in accordance with DID-ILS-TDATA-IETM. The DID for IETMs has not been populated; however, drafters wishing to include this requirement should note that this DID is intended to be a specification for the IETMs and, therefore, should document the functions and

performance requirements of the IETMs. Functions and performance requirements of IETMs will depend on the level of technology and interactivity, and any standardised or other host hardware being sought, and the IETMs DID will need to be populated accordingly, either prior to RFT or in response to tendered IETM solutions.

The Note to drafters in this clause highlights that it is unlikely for the Commonwealth to issue an RFT that includes a requirement for IETMs; however, it is likely that a tenderer might offer IETMs as part of its tender response. The offer definition phase provides an opportunity to investigate the costs, benefits and risks associated with the use of IETMs. If analysis during the offer definition phase is inconclusive, the use of IETMs would be a candidate for a Commonwealth-directed trade study (refer clause 2.6 of the draft SOW) into the costs and benefits. Notwithstanding, if IETMs are proposed to be included under the Contract, then this optional clause and associated DID should be included in the SOW.

The DID for the Technical Data Plan (TDP) includes a specific clause with respect to the development of IETMs (clause 6.2.8 of DID-ILS-TDATA-TDP refers). The TDP also recognises that there are likely to be linkages with any Computer-Based Training (CBT) being produced by the Contractor under the Contract, and drafters are alerted to ensure that the implications of these linkages are captured in the Contract (e.g. perhaps through a joint IETM and CBT DID).

#### Codification Data (Optional)

Clause 5.3.3.6 is an optional clause, which places an obligation on the Contractor to provide Codification Data. This clause explains that the Codification Data will be used by the Commonwealth to establish codification for each item of Supplies (other than data, services or IP) of the essential characteristics that give each item of Supplies its unique character and differentiate it from any other item.

While the codification clauses may be optional, the Note to tenderers highlights that the clauses are mandatory for all items of equipment that will be owned by the Commonwealth and that are defined as an asset under the Chief Executive Instructions (CEIs). Under the CEIs, these items need to be registered on the Standard Defence Supply System (SDSS) for asset management and financial reporting purposes.

The Note to tenderers also highlights that the codification clauses, including the associated DID (i.e. DID-ILS-TDATA-CDATA), are based on a standardisation agreement to which Defence is a signatory (i.e. Appendix 1 to NATO Standardisation Agreement (STANAG) 4177) and, if included in the SOW, should not be changed without the agreement of the National Codification Bureau.

Paragraph 2 of Annex D to Attachment A of the conditions of tender requests tenderers to provide the specific price payable for delivery of Codification Data.

#### Logistics Support Analysis Record (LSAR) (Optional)

Clause 5.3.3.7 is an optional clause, which places an obligation on the Contractor to provide a Logistics Support Analysis Record (LSAR) in accordance with the option selected by the drafter. This clause addresses the approach to the collection of LSA data as well as the usage of the collected data within the program. An LSA objective, and a generic principle in the development of any system, is the use of a common and consistent information by all parties concerned; to a large extent, the LSAR is a data source intended to meet this purpose.

An LSAR may be either compliant with a Defence-approved standard (e.g. MIL-STD-1388-2B, AAP5102.003, or DEF(AUST)5692) or another custom or proprietary data management system Approved by the Project Authority. The optional clauses allow for:

- a. a fully compliant LSAR;

- b. a non-compliant LSAR, which produces a compliant transfer file for delivery to the Commonwealth; and
- c. a non-compliant data repository, where delivery to the Commonwealth is not required to be in a compliant format.

By default, a compliant LSAR would be sought by the RFT, with the acceptable use of non-compliant alternatives being determined either during an offer definition phase (if one is programmed) or during Contract negotiations, if a compliant solution proves infeasible. In those instances where a non-compliant solution is being included in the Contract, DID-ILS-TDATA-LSAR would need to be re-drafted to suit the unique requirements of the non-compliant solution. Optional clauses not required under this broader clause should be replaced with the words "Not Used".

Commonwealth Project Authority staff are advised that, while not explicitly highlighted in this clause 5.3.3.7, the DID for the ISP (DID-ILS-MGT-ISP) (specifically clause 6.2.6.2) requires the Contractor to define certain managerial aspects associated with the use of an LSAR.

In the ADO, compliant LSAR systems have been developed to support both the Acquisition Phase and the In-Service Phase. Where data collected is to be used in service, then one of the first two options will be necessary to avoid the ADO having to build a compliant LSAR at a later time. Alternatively, the Project Authority may consider a non-compliant system for use in service; however, this would incur its own additional burden for the support of a unique database system.

Delivery of LSAR data should support the analysis and review activity of both Contractor and Commonwealth organisations; hence, data should be delivered progressively during the acquisition period in accordance with DID-ILS-TDATA-LSAR. If a non-compliant system is used then equivalent information should be provided to support the analysis and review process. Under ASDEFCON (Strategic Materiel), an alternative DID – the Task Analysis Report (TAR) (DID-ILS-DES-TAR) – has been generated to facilitate the capture of LSAR-like data in those situations where an LSAR has not been specified or the LSAR is not applicable (e.g. for the Engineering Support Constituent Capability).

Quick feedback between the analysts entering LSAR data, and the Contractor and Commonwealth organisations using that data for further analysis, improves the quality of the data and resulting analysis outcomes, and therefore, on-line access to the LSAR is a significant advantage. This is one of the purposes behind clause 5.3.3.7.4, as well as providing the Commonwealth team with an insight mechanism into the Contractor's developmental activities and progress under the Contract. A teaming arrangement, whereby Commonwealth personnel work with the Contractor analysts in undertaking analysis and population of the LSAR, is another option not considered in the standard SOW for which on-line access to the LSAR would be required. If this approach were to be taken, then clause 5.3.3.7.4 would be likely to require modification.

If a compliant LSAR or a system that transfers data to a compliant LSAR is used, then the text of clause 5.3.3.7.7 may be replaced with "Not Used". Alternatively, if the Commonwealth requires the Contractor to train members of a resident project team in the use of the Contractor's LSAR system, then this clause would need to be re-worded.

Delivery of LSAR data is progressive, in accordance with the CDRL, and delivery should be consistent with the requirements and outputs of analysis regardless of whether a compliant or non-compliant LSAR solution is used. The ISP should detail how the LSAR data will be delivered in accordance with DID-ILS-TDATA-LSAR (either as standard or modified for non-compliant solutions). The ISP should also document how existing data, for off-the-shelf subsystems/items, will be reviewed for suitability and will be incorporated into the LSAR, while minimising any duplication of analysis.

DID-ILS-TDATA-LSAR provides considerable guidance on the scheduling of LSAR data to support Commonwealth review through key milestones of the ASDEFCON



(Strategic Materiel) acquisition process. This DID should be reviewed, and edited if necessary, to meet any individual project requirements. Final delivery of the completed LSAR is normally required at System Acceptance; however, this may be extended into an initial support period to update the LSAR with live data from the In-Service Phase (or, perhaps, during the Support System Endurance Demonstration). This approach, which would be subject to individual transition and support arrangements, enables reliability and maintainability data to be updated so that resource requirements can be recalculated in support of a final provisioning activity.

Drafters must fill in the Data Selection Sheet in DID-ILS-TDATA-LSAR, usually with input from SE and specialty stakeholders and disciplines, such as RAM. The Data Selection Sheet and focussing of data requirements will usually be a subject of the LSA Guidance Conference, or similar meeting, which would normally be held during the offer definition phase. If an offer definition phase is not programmed, then the Data Selection Sheet would need to be finalised during Contract negotiations.

#### Escrow (Optional)

Clause 5.3.3.8 is an optional clause, which imposes a contractual obligation on the Contractor, when it is specified in the TDL and/or IP Plan, to enter into an agreement with an escrow agent. The escrow agent, who must be approved by the Commonwealth, is required to enter into an agreement in the form of the deed at Annex C to Attachment I.

Before determining escrow arrangements the project authority and the agent should undertake an analysis of the Technical Data requirements to ascertain the precise Technical Data required. If an analysis is not undertaken, more Technical Data than necessary is likely to be placed in escrow. This will have management and cost implications.

When considering the acceptability of the proposed escrow agent, consideration should be given to the previous experience and financial viability of the escrow agent, the proposed escrow arrangements, including accessibility of Technical Data and the level of security offered and the cost associated with the proposed escrow arrangements. It is particularly important to ensure that the escrow agent will be able to store the Technical Data placed in escrow for the period required under the Contract and provide the Technical Data stored in escrow to the Commonwealth within a reasonable timeframe.

An escrow agent should be used where Technical Data is commercially sensitive at the time of Contract signature, such that the Contractor may be commercially disadvantaged by providing access immediately. In these circumstances, escrow allows either for the release of the Technical Data when it is less commercially valuable, or for the release of the Technical Data in the event that the Contractor has gone into liquidation or is otherwise unwilling or unable to fulfil its obligations under the Contract (or the Contract (LS)). The use of escrow in such situations is advantageous to the Commonwealth and is usually acceptable to the Contractor.

The use of an Australian-based escrow agent may be problematic for the Contractor (or governments in the country of origin). In these circumstances (or any other issues relating to escrow), advice should be sought from Contracting staff and the IP SME.

**Drafter's Action:** Drafters are to review the optional clauses to determine their applicability to the project. Certain of these clauses (e.g. CALS, escrow, LSAR) may not be able to be determined as optional until after the tender responses have been received and evaluated. Drafters are to retain these clauses in the RFT and subsequently remove the clauses that are no longer applicable prior to Contract signature.

Drafters are to ensure that a draft TDL is specified as a Tender Data Requirement (TDR) in Annex I to Attachment A to the conditions of tender.

Drafters are to ensure that the optional clauses throughout the draft SOW that relate to the LSAR are coordinated with clause 5.3.3.

Drafters are to coordinate any CALS requirements with any CM standards that are based upon CALS requirements (e.g. EIA-836).

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 5 of the conditions of contract contains the IP clauses for the Contract. In particular, clause 5.3 details the Intellectual Property licences that must be provided by the Contractor to the Commonwealth and clause 5.4 details the Technical Data to be provided under the Contract.

Clause 3.15 of the draft SOW identifies the work-related IP provisions for the Contract.

Clause 5.1.2 of the draft SOW identifies the requirement for a Technical Data Plan (TDP).

Clause 5.2.8 of the draft SOW provides the mechanism by which the Technical data requirements are determined.

The Note to drafters under clause 6.1 of the draft SOW states that the tenderer is expected to identify the standard(s) that will be used to define its CM practices for the project.

Clause 6.7 of the draft SOW specifies the requirement for Functional and Physical Configuration Audits (FCA/PCA) for Mission System products and Support System Components.

Clause 7.2.2 of the draft SOW specifies the requirements associated with Acceptance Verification.

Clause 7.2.3 of the draft SOW specifies the requirements associated with Acceptance Validation.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Technical Data*

See also – *ADO LSA Manual, Part 5, Chapter 1 – LSAR Tools*

#### 5.3.4 - IMPLEMENTATION OF TRAINING AND TRAINING SUPPORT REQUIREMENTS

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To establish the obligation for the Contractor to:

- a. design and develop or acquire, as applicable, and deliver the Courseware, Training Equipment and Training Materials identified for delivery to the Commonwealth in the Approved Training Equipment and Materials List (TEML) (DID-ILS-TNG-TEML); and
- b. conduct all Contractor-provided Training at the locations specified in clause 5.3.4.5.

**Policy:** See Section 5.3.

**Guidance:** In clause 5.3.4.1, the drafter should identify the standard that the Project Authority has determined will need to be followed for the development of Courseware materials. In most instances this reference will be the same as that entered at clause 5.2.8.4.1.

Clause 5.3.4.2 requires the Contractor to design, develop or acquire those training equipments and material identified in the approved TEML. The contents of the TEML were defined as a result of clause 5.2.8.4 and DID-ILS-TNG-TEML and approved via the Training Equipment Provisioning Preparedness Review (TEPPR)

(refer clause 5.1.2.8). Accordingly, if the drafter needs to edit this standard clause, then the impact of changes to the previous clauses (5.1.2.8 and 5.2.8.4) and scheduling of the TEPPR should be considered.

Clause 5.3.4.4 establishes the obligation for the Contractor to install any Training Equipment that needs to be installed in Commonwealth facilities. An additional clause may need to be added to this clause (similar to clause 5.3.6.3 under Facilities) if the Commonwealth were interested in obtaining visibility into the Contractor's and Subcontractors' activities relating to the installation of training equipment in their own premises. A clause of this nature would be relevant when these activities are considered to represent a reasonable risk to the successful implementation of the Support System (refer Note to drafters under clause 5.3 of the draft SOW).

The Note to tenderers above clause 5.3.4.3 also highlights that Verification and Validation (V&V) of Training Equipment and Materials is covered under the V&V clauses in the SOW (as part of V&V of Support System Components). At this point, it is worth highlighting that the Training Support Plan (DID-ILS-TNG-TSP) requires the Contractor to detail the systems and processes that will be utilised for the design and development or the procurement (as applicable) of Training Equipment, as well as for the V&V of Training Equipment.

The Note to drafters above clause 5.3.4.5 highlights that drafters must specify the locations for Contractor-provided Training. The cost-effectiveness of particular locations is a matter that could be addressed during the offer definition phase (if one is programmed) or during Contract negotiations. If this cannot be determined pre-Contract, the relevant training course details may be added to the TSP, requiring modification to this clause and an appropriate clause to be added to DID-ILS-TNG-TSP. The Approved TSP would then control the conduct of initial training.

Drafters are also advised that there are no specific Training clauses that refer to Computer-Based Training (CBT), which may need to be incorporated if CBT is offered by the Contractor (to ensure that the Contractor's offer is captured in the Contract). Additionally, the offer definition phase provides an opportunity to investigate the costs, benefits and risks associated with the use of CBT. Furthermore, the use of CBT would be a candidate for a Commonwealth-directed trade study (refer clause 2.6 of the draft SOW), albeit noting that CBT should be addressed as part of the methods and media analysis that would normally be conducted as part of the Training needs analysis (refer clause 5.2.7 of the draft SOW). Notwithstanding, if CBT is proposed to be included under the Contract, then a clause relating to this subject and an associated DID should be included in the SOW.

Drafters should note that the ASDEFCON (Strategic Materiel) Standard Assets includes a DID for CBT (DID-ILS-TNG-CBT); however, this DID has not been populated. Drafters wishing to include this requirement should note that the DID is intended to be a specification for the CBT and, therefore, should document the functions and performance requirements of the CBT. These specified requirements will vary based on the level of CBT sought or offered by the Contractor, and drafters will need to prepare the CBT DID accordingly. Drafters are further advised that there could be linkages between any CBT and any Interactive Electronic Technical Manuals (IETMs) being produced by the Contractor under the Contract, and drafters are alerted to ensure that the implications of these linkages are captured in the Contract (e.g. perhaps through a joint CBT and IETM DID).

After all of the Support Resources for the Training Support Constituent Capability have been delivered, installed and commissioned, as applicable, the Contractor is required, under clause 5.1.2.9 of the draft SOW, to conduct a Training Readiness Review (TNGRR). This review confirms that all of the training elements are in place and functional and that Training can now proceed effectively.

**Drafter's Action:** Drafters are to insert the relevant training standard in clause 5.3.4.1, which will usually be the same as that selected at clause 5.2.8.4.

Drafters are to insert locations for Contractor-provided training at clause 5.3.4.5. If different types of training are required at different locations, then this clause will require further expansion.

If CBT is a requirement of the project, then an appropriate clause is to be added and the outline DID populated accordingly. Alternately, if the inclusion of CBT requires a directed trade study first (e.g. as a Training Support system alternative), then requirements for a Commonwealth-directed trade study will need to be drafted.

Drafters are to review the DMO Checklists for the TEPPR and the TNGRR.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 5.1.2 of the draft SOW identifies the requirement for:

- a. a Training Support Plan (TSP); and
- b. a TEPPR and a TNGRR.

Clause 5.2.8 of the draft SOW provides the mechanism by which the Training and Training Support requirements are determined.

Clause 6.7 of the draft SOW specifies the requirement for Functional and Physical Configuration Audits (FCA/PCA) for Mission System products and Support System Components.

Clause 7.2.2 of the draft SOW specifies the requirements associated with Acceptance Verification.

Clause 7.2.3 of the draft SOW specifies the requirements associated with Acceptance Validation.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Training and Training Support*

#### 5.3.5 - IMPLEMENTATION OF SUPPORT AND TEST EQUIPMENT (S&TE) REQUIREMENTS

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To establish the obligation for the Contractor to design and develop or acquire, as applicable, and deliver the Support and Test Equipment (S&TE) identified for delivery to the Commonwealth in the Approved S&TE Provisioning List (S&TEPL).

**Policy:** See Section 5.3.

**Guidance:** Attention is drawn to clauses 5.3.5.5 and 5.3.5.6, which highlight that the procurement of S&TE under ASDEFCON (Strategic Materiel) is based on a Not To Exceed (NTE) price for the requisite S&TE, which should be established at Contract award. This NTE price should be sought from each tenderer in its tender response in TDR D-2 of the conditions of tender. If a different approach to S&TE procurement is adopted, then these two clauses will require amendment.

Clause 5.3.5.3 establishes the obligation for the Contractor to install any S&TE that needs to be installed in Commonwealth facilities. The Note to tenderers also highlights that Verification and Validation of S&TE is covered under the V&V clauses in the SOW (as part of V&V of Support System Components). At this point, it is worth highlighting that the S&TE Plan (DID-ILS-S&TE-S&TEP) requires the Contractor to detail the systems and processes that will be utilised for the

design and development or the procurement (as applicable) of S&TE, as well as for the V&V of S&TE.

Clause 5.3.5.4 provides the opportunity for the Commonwealth to own S&TE, which are in addition to those S&TE that are identified for delivery to the Commonwealth and which would otherwise be provided by the Contractor to the Contractor(LS) to enable the Contractor(LS) to meet its obligations under a Contract(LS). In other words, these additional S&TE represent a part of the Support System, which would not otherwise be delivered to the Commonwealth except for the provisions of this clause. The Project Authority, in conjunction with the end-user support organisation, may consider that it is beneficial to own these S&TE for risk-management reasons (e.g. such as a desire not to be locked into a sole-source arrangement).

**Drafter's Action:** Drafters are to review the requirement for clause 5.3.5.4, using the guidance provided in the Note to drafters. If not required, the clause should be replaced with "Not Used".

Drafters are to review the DMO Checklist for the S&TE Provisioning Preparedness Review (S&TEPPR).

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 5.1.2 of the draft SOW identifies the requirement for:

- a. a S&TE Plan (S&TEP); and
- b. a S&TEPPR.

Clause 5.2.8 of the draft SOW provides the mechanism by which the S&TE requirements are determined.

Clause 6.7 of the draft SOW specifies the requirement for Functional and Physical Configuration Audits (FCA/PCA) for Mission System products and Support System Components.

Clause 7.2.2 of the draft SOW specifies the requirements associated with Acceptance Verification.

Clause 7.2.3 of the draft SOW specifies the requirements associated with Acceptance Validation.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Support and Test Equipment (S&TE)*

#### 5.3.6 – IMPLEMENTATION OF FACILITIES REQUIREMENTS (OPTIONAL)

**Sponsor:** Materiel Policy & Services

**Status:** Optional

**Purpose:** To place an obligation on the Contractor to design, develop, construct, fit-out, and commission those facilities identified for delivery to the Commonwealth in the Approved Facilities Plan (FACP) (DID-ILS-FAC-FACP).

**Policy:** See Section 5.3.

**Guidance:** The Facilities Requirements Analysis Report (FRAR) (DID-ILS-FAC-FRAR) describes the detailed requirements for all of the facilities required in the life-cycle of the Mission System and the Support System to enable the Commonwealth to:

- a. understand the full scope of the facilities requirements under the Contract; and

- b. translate the FRAR into construction bid packages that will result in facilities that are compatible with the Mission System and other components of the Support System.

The FRAR is divided into two main sections: Commonwealth facilities and Contractor and Subcontractor facilities. The FACP describes the Contractor's systems, processes and procedures for designing, developing, constructing, fitting-out, and commissioning all facilities.

Clause 5.3.6.1 should be included in an RFT if it makes sense for the Contractor to provide facilities under the Contract (e.g. for reasons of risk). This matter should be discussed with the applicable agencies, including the Corporate Services Infrastructure Group (CSIG) who would normally be responsible for the provision of facilities.

Clause 5.3.6.2 establishes an obligation for the Contractor to support the Commonwealth in its facilities-related developmental activities. This clause helps to ensure that the facilities elements are compatible with the Mission System and the Support Resources. This clause should be included for those projects where there are facilities issues and the Contractor is not responsible for addressing these issues. Depending upon project-specific requirements, this clause may be tailored to more accurately define the scope of the obligation.

In this regard, facilities issues are prime candidates for the offer definition phase, and it is strongly recommended that these issues be included in any programmed offer definition phase.

Clause 5.3.6.3 establishes the obligation for the Contractor to design, develop, construct, fit-out, and commission those facilities required by the Contractor and Subcontractors, which do not form Supplies under the Contract. In part, this clause provides the Commonwealth with a level of visibility into the Contractor's and Subcontractors' facilities-related activities, and is relevant when these activities are considered to represent a reasonable risk to the successful implementation of the Support System (refer Note to drafters under clause 5.3 of the draft SOW). Of note, while clause 5.3.6, as a whole, is optional, it may be worthwhile retaining this clause 5.3.6.3 in any Contract to ensure that the obligation contained in the clause is placed on the Contract.

After the Facilities for each of the Support System Constituent Capabilities have been constructed, fitted-out, and commissioned, as required, the Contractor is required, under clause 5.1.2.10 of the draft SOW, to conduct a Facilities Readiness Review (FACRR). This review confirms that all of the Facilities elements are in place and functional and that the Facilities can now be handed over to the Commonwealth.

**Drafter's Action:** Drafters are to determine whether or not Facilities are a requirement of the Contract and, if not, to delete the clause and replace it with "Not Used".

Drafters are to review the DMO Checklist for the FACRR.

Drafters are to review the delivery times and review periods in the CDRL to ensure that these elements reflect the requirements of the project, including the project Milestones (and associated entry/exit criteria).

**Related Clauses:** Clause 5.1.2 of the draft SOW identifies the requirement for:

- a. a Facilities Plan (FACP); and
- b. a FACRR.

Clause 5.2.8 of the draft SOW provides the mechanism by which the Facilities requirements are determined.

Clause 6.7 of the draft SOW specifies the requirement for Functional and Physical Configuration Audits (FCA/PCA) for Mission System products and Support System Components.

Clause 7.2.2 of the draft SOW specifies the requirements associated with Acceptance Verification.

Clause 7.2.3 of the draft SOW specifies the requirements associated with Acceptance Validation.

Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Facilities*

### 5.3.7 - IMPLEMENTATION OF SOFTWARE SUPPORT

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Sponsor: Materiel Policy & Services

Status: Optional

Purpose: To establish the obligation for the Contractor to implement an in-country Software Support Facility (SSF).

Policy: See Section 5.3.

Guidance: Drafters will need to ensure that there is no overlap or conflict between this clause and the Australian Industry Involvement (All) requirements.

The scope of coverage of any in-country SSF should have been documented by the Commonwealth in the OCD, with specific performance requirements contained in the FPS. As part of the design process for the Engineering Support Constituent Capability, the Contractor should have designed the software-support elements of this Constituent Capability and documented the outcomes in the Software Support Plan (DID-ILS-SW-SWSP). As such, the exact scope of coverage of the in-country SSF will be predicated upon a number of inputs, including:

- a. the OCD and FPS (and, subsequently, the Support System Specification);
- b. the All requirements of the Contract;
- c. the Intellectual Property (IP) provisions of the Contract and any IP restrictions (including export restrictions); and
- d. the outcomes of the Contractor's design processes for the Engineering Support Constituent Capability and any subsequent synthesis processes.

Drafters may wish to modify clause 5.3.7 to include more specific project requirements (e.g. if the in-country SSF is to be a part of a larger facility, such as a weapon-system support facility). Drafters may also wish to include an additional clause under this broader clause (similar to clause 5.3.6.3 under Facilities) if the Commonwealth were interested in obtaining visibility into the Contractor's and Subcontractors' activities relating to the implementation of software support (e.g. when these activities are not to be located in-country). A clause of this nature would be relevant when these activities are considered to represent a reasonable risk to the successful implementation of the Support System (refer Note to drafters under clause 5.3 of the draft SOW).

Drafter's Action: Drafters are to determine whether or not an in-country SSF is a requirement of the Contract and, if not, to delete the clause and replace it with "Not Used".

If an in-country SSF is required, drafters are to further develop this clause in the context of the In-Service software support anticipated for this project. Policy on an in-country SSF will influence the further development of the clause, and software profiling techniques should be adopted to help predict the scope and nature of Software Support.

Related Clauses: Clause 4 of the draft conditions of contract contains the contractual requirements associated with the All Program.

Clause 3.14 of the draft SOW contains the work-related requirements associated with the All Program.

Clause 4.4.2 of the draft SOW details the provisions relating to software development under the Contract.

Clause 5.1.2 of the draft SOW establishes the requirement for a Software Support Plan, which documents the Contractor's planned software support approach.

Clause 6.7 of the draft SOW specifies the requirement for Functional and Physical Configuration Audits (FCA/PCA) for Mission System products and Support System Components.

Clause 7.2.2 of the draft SOW specifies the requirements associated with Acceptance Verification.

Clause 7.2.3 of the draft SOW specifies the requirements associated with Acceptance Validation.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Computer Support*





## 6. CONFIGURATION MANAGEMENT

### 6.1 Configuration Management Plan

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To impose a contractual obligation on the Contractor to submit a Configuration Management Plan (CMP) for agreement by the Project Authority and to manage the configuration-management aspects of the project in accordance with the agreed CMP. To require the Contractor to integrate Subcontractors into the Contractor's CM activities.

Policy: DI(G) LOG 08-4, Defence Policy on Configuration Management

Guidance: Current Defence CM policy states, "All projects for acquisition of ADF materiel shall include a requirement for precise definition and verification of the configuration at the point of acceptance". Furthermore, the current policy recognises that CM has implications for:

- a. technical integrity,
- b. operational effectiveness,
- c. the cost-effectiveness of logistic support, and
- d. safety.

In this light, it is imperative that sound and cost-effective CM practices be implemented by the Contractor.

One of the key issues in the CMP is for the Contractor to identify the standard(s) that will be used to define the CM practices for the project. In keeping with the ASDEFCON (Strategic Materiel) principle of utilising the Contractor's own processes where applicable, the RFT does not specify a particular CM standard (although acceptable standards could be highlighted). Any proposed standard should be one that the ADO has recognised in terms of providing guidance. DI(G) LOG 08-4 provides a list of CM standards and a brief description of their application, while the respective Technical Regulatory Authorities (TRAs) provide further direction through the technical regulatory frameworks. Advice on the applicability of CM standards should be sought from the relevant TRAs.

The agreed CM standard(s) needs to be reflected in the final Contract, either through direct specification in the SOW or through Approval of the Contractor's CMP. Depending upon the program, the Contractor may wish to mix aspects of different standards for various reasons, and while such flexibility should be allowed, Commonwealth project staff should ensure they have a clear understanding on which parts from which standards are being used and, more importantly, that the combination of all elements of the CM system are harmonised.

Drafters should note that tenderers are not required to deliver a draft CMP as part of their tender responses for the following reasons:

- a. tendered CMPs are rarely discriminators in the tender-evaluation process because the tenderers have usually undertaken previous Defence work, have relatively sound CM practices, and the tendered CMPs are typically "boiler-plate" documents;
- b. in light of the preceding point, the removal of the requirement for a draft CMP helps to reduce the cost of tendering; and
- c. alternative means exist to evaluate each tenderer's CM practices, such as through the capability maturity evaluations.

Nevertheless, if the likely tenderers have not previously undertaken work for the ADO or might not have sound CM practices, drafters should consider the inclusion

of a CMP as a tender deliverable. For the aforementioned reasons, however, this approach should only be considered in extreme circumstances.

In keeping with the ASDEFCON (Strategic Materiel) principle of having agreed processes and process-evaluation criteria on Contract, drafters should consider including the finalisation of the CMP as part of offer definition activities or during contract negotiations. Drafters should also be aware that the Technical Regulatory Authorities (TRAs) are likely to require a draft CMP, as a minimum, at the time of Contract award. Further advice in this regard should be sought from the relevant TRAs.

Clause 6.1.4 of the draft SOW requires Contractors to integrate Subcontractors into its CM activities, and for the Subcontractors to comply with the requirements of the Contractor's CMP. This requirement has been imposed to ensure that a coherent approach to CM is adopted across the entire project. Drafters should note that the clause requires the Contractor to flow down into its Subcontracts the requirements of the Contractor's CMP. Drafters should also note that the definition of Subcontractors in the Glossary (at Attachment M to the Contract) is recursive, and that clause 6.1.4 does not only apply to first tier Subcontractors.

Clause 6.1.4 does not require the Contractor and the Subcontractors to have the same CM practices; however, these practices must integrate to ensure that the precise definition of the configuration can be achieved and maintained cost-effectively, as required by current CM policy. The mechanisms for achieving the requisite integration should be documented in the CMP, which should explain how, at the Contract level, a coherent approach to CM will be obtained across the project, including for:

- a. configuration identification, to ensure that all parties will be using consistent terminology for all relevant items of equipment and documentation;
- b. configuration control, to ensure that appropriate configuration baselines are implemented and documented, and that changes to those configuration baselines are appropriately managed (noting that the baselines at the Contract level will generally not be the same baselines at the Subcontract level (e.g. a subset of the Contractor's Allocated Baseline is likely to be a Subcontractor's Functional Baseline));
- c. configuration status accounting, to ensure that the complete status of the system configuration can be determined at any time, including the state of any changes (e.g. pending, approved, being actioned, etc) enabling project-wide visibility of inconsistencies and areas of risk; and
- d. configuration audits, in conjunction with the V&V program, to provide assurance that the progressive integration of the system is delivering the expected functionality and corresponds to the documented system design.

Drafters and users of ASDEFCON (Strategic Materiel) should recognise that certain, recent CM standards, such as EIA-836 (Consensus Standards for Configuration Management Data Exchange), implement a CALS approach for the exchange of CM data. As such, drafters should ensure that the linkages between the CM clauses and the CALS requirements (under the Technical Data clauses) are coherently addressed.

**Drafter's Action:** Clause 6.1 is to be included in the RFT without alteration. Prior to Contract signature, drafters are to ensure that the agreed CM standards are reflected in the Contract, either through direct specification in the SOW or through Approval of the Contractor's CMP.

Drafters may need to tailor the DID for the CMP to reflect the requirements of the particular program and the policy requirements for standardisation of ADF CMPs, as promulgated in DI(G) LOG 8-4.

Depending upon whether or not the Project Authority intends to obtain a Contract-ready CMP prior to Contract (i.e. through offer definition activities or contract negotiations), the CDRL delivery times for the CMP may need to be adjusted.

Drafters are to address any interactions between the CM clauses and the CALS requirements under the Technical Data clauses.

**Related Clauses:** All other clauses within clause 6 of the draft SOW.

The SEMP, required under clause 4.1.1 of the draft SOW, should also address CM issues at a high level.

Clause 5.3.3 of the draft SOW addresses CALS requirements.

Clause 3.5 of the conditions of tender addresses the offer definition phase.

**Further Reading:** See also – *EIA-649, National Consensus Standard for Configuration Management*

See also – *MIL-STD-973, Configuration Management*

**6.2 Master Record Index**

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require the Contractor to develop a Master Record Index (MRI).

Policy: DI(G) LOG 08-4, Defence Policy on Configuration Management

Guidance: The MRI is a consolidated index of all design data and records that comprise a design. The concept of an MRI is typically employed on Aviation-related projects and is gradually being superseded with the use of a Configuration Status Accounting System. For non-aviation related projects, an MRI is not typically required.

Drafters and users of ASDEFCON (Strategic Materiel) should recognise that there are likely to be linkages between the requirement for an MRI and the requirement for a Technical Data List (TDL) under the Technical Data clauses. As such, drafters should ensure that the linkages between the MRI clauses and the TDL requirements are coherently addressed.

Drafter's Action: This clause may be tailored in conjunction with SOW 6.6 CSAR. The CSAR may provide a more complete framework for management of design baselines, and the MRI may be derived from the CSAR.

Related Clauses: All other clauses within clause 6 of the draft SOW.

Clauses 5.2.8 and 5.3.3 of the draft SOW address the TDL requirements.

Further Reading: Nil

### 6.3 Configuration Identification

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that the Contractor clearly identifies all of the Configuration Items (CIs) that constitute the Mission System and Support System.

Policy: DI(G) LOG 08-4, Defence Policy on Configuration Management

Guidance: The purpose of configuration identification is to incrementally establish and maintain a definitive basis for control and status accounting for a Configuration Item (CI) throughout its life cycle. The configuration identification process includes:

- a. selection of CIs (noting that the list of CIs should be documented in the CMP and, therefore, be subject to review and Approval by the Commonwealth);
- b. defining the configuration baselines for the CIs and the configuration documentation required for each CI (noting that clause 6.3 requires both the system components (6.3.1) as well as the documentation for those components (6.3.2) to be uniquely identified);
- c. assigning identifiers to CIs and their component parts and associated configuration documentation, and ensuring that the marking or labelling of items and documentation with their applicable identifiers enables correlation between the item, configuration documentation, and other associated data; and
- d. establishing a release system for configuration documentation.

The purpose of this clause in the SOW is to ensure that the contractor establishes a process for configuration identification, as this is the first essential step in the CM process.

Clause 6.3 provides the minimum set of requirements for configuration identification. Drafters should be aware that additional clauses may be required if the Commonwealth requires the Contractor to conform to an existing Commonwealth system of configuration identification. This situation is likely to occur for those projects that are providing modifications to existing platforms where the practices for configuration identification are already defined.

Drafter's Action: If existing practices for configuration identification exist and these practices need to be mandated on the Contractor, clause 6.3 is to be amended accordingly to reference these practices. If this situation does not exist, clause 6.3 is to be included in the RFT without alteration.

Related Clauses: All other clauses within clause 6 of the draft SOW.

Clause 4.5.1 of the draft SOW (Technical Documentation Tree) should identify the documents of clause 6.3.2.

Further Reading: Nil

## 6.4 Configuration Baselines

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To ensure that the Contractor clearly identifies the minimum required set of Configuration Baselines that define the design of the Mission System and Support System.

**Policy:** DI(G) LOG 08-4, Defence Policy on Configuration Management

**Guidance:** From EIA-649, “A baseline identifies an agreed-to description of the attributes of a product at a point in time and provides a known configuration to which changes are addressed”. CM normally employs three types of configuration baselines – the Functional Baseline (FBL), the allocated baseline (ABL), and product baseline (PBL) – to provide for the progressive definition and documentation of the requirements and design information describing the various configuration items (CIs) designated for a system (both Mission System and Support System).

The FBL, which specifies the functional requirements for an item, is defined by the approved functional configuration documentation (FCD). The FCD required for the FBL, typically takes the form of system specifications, plus other applicable documentation (for example, Interface Requirements Specifications and Interface Control Documents for the systems). The Contractor is responsible for generating the FCD required for the FBL for both the Mission System and Support System.

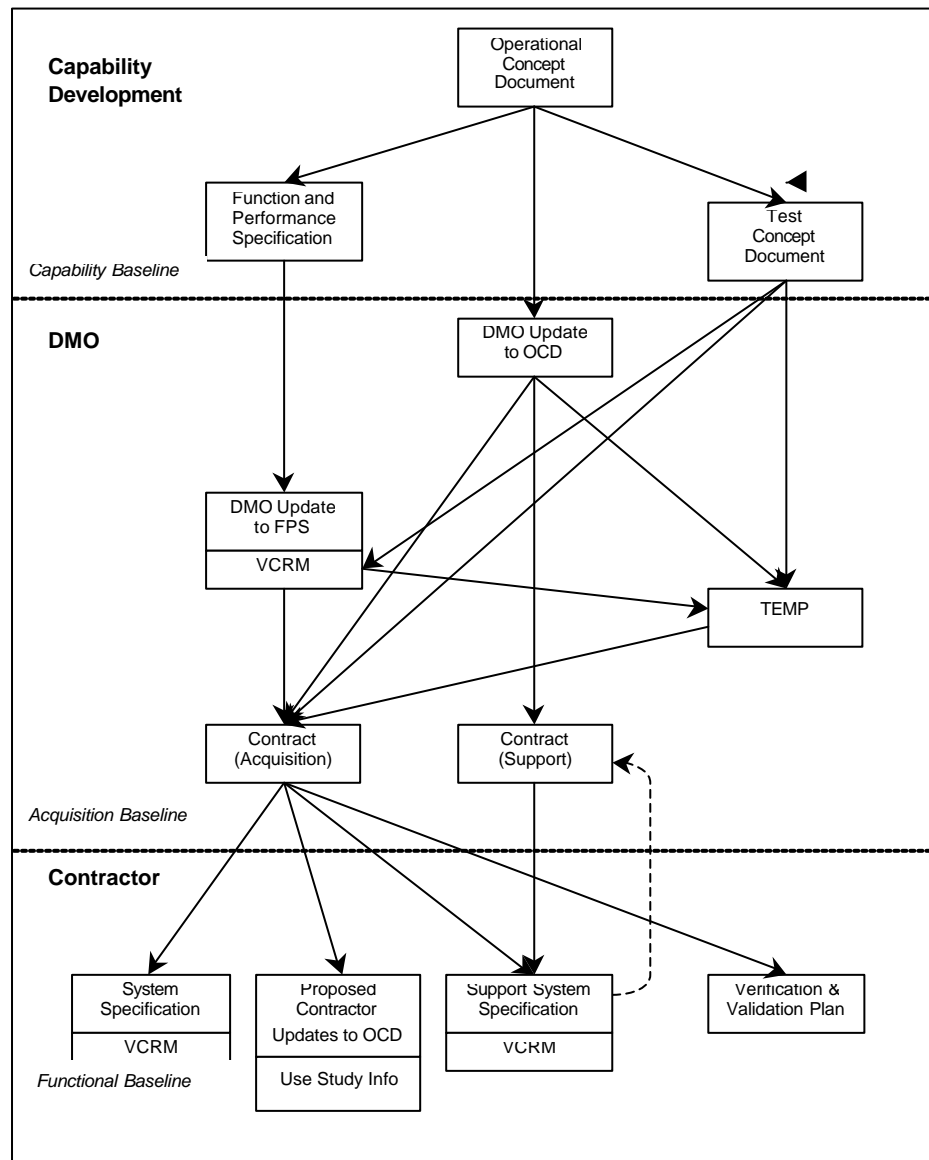
The ABL, which specifies the “design to” requirements for an item, is defined by the approved allocated configuration documentation (ACD). The ACD typically includes documentation describing a CI’s functional, performance, interoperability, and interface requirements that are allocated from those of a system or higher level configuration item; interface requirements with interfacing configuration items; and the verifications required to confirm the achievement of those specified requirements. The Contractor is responsible for generating the ACD required for the FBL for both the Mission System and Support System.

The PBL, which describes the “as built” system, is defined by the approved product configuration documentation (PCD). The product baseline of a configuration item may include the actual equipment and software. The PCD typically includes the combined performance/design documentation utilized for the production or procurement of the CI. The PCD incorporates the ACD describing a CI’s functional, performance, interoperability and interface requirements and the verifications required to confirm the achievement of those specified requirements. The PCD also includes such additional design documentation, ranging from form and fit information about the proven design to a complete design disclosure package, as is deemed necessary for the acquisition program. The Contractor is responsible for generating the PCD required for the FBL for both the Mission System and Support System.

The Contractor should recommend to the Commonwealth the types of specifications and associated documentation to a level of detail commensurate with logistic support requirements and procurement strategies that should be used to define each CI; however, the actual specifications provided should be those ultimately ordered in the Contract.

The Contractor should generate the configuration documentation required for the configuration baselines being established by the Commonwealth. The FCD, ACD, and PCD defining the configuration baselines need to be mutually consistent and compatible. Each succeeding level of configuration documentation from FCD to ACD to PCD should be traceable to, and be a detailed extension of, its predecessor(s).

Note that the FBL, ABL and PBL are typically constructed following Contract award. Other baselines may be struck prior to, and at Contract award. Figure 6-1 highlights these additional baselines, which are known as the Capability Baseline and the Acquisition Baseline.



**Figure 6-1 – Relationship Between the FBL and Pre-Contract Baselines**

Depending on the complexity of design different baselines may exist at multiple levels in a design (e.g. baselines at the system level of design, sub-system level of design, component level of design, and part level of design). The levels at which baselines are to be established within a design should be clearly articulated in the CMP and should be consistent with the strategy for identification of CIs and the level of design control to be applied.

The Contractor's Configuration Status Accounting (CSA) system needs to be able to track the documentation set comprising each baseline, at all levels at which baselines are to be established, together with the revision status and history of that baseline documentation.

In keeping with the ASDEFCON (Strategic Materiel) principle of Clear Accountability In Design (CAID), the Commonwealth is primarily interested in maintaining control over:

- a. the FBL because this baseline represents the requirements against which Verification will be conducted; and
- b. the PBL because this baseline has significant implications for the support and Life Cycle Cost (LCC) of the system (both Mission System and Support System).



Although the Commonwealth is primarily interested in the control of the FBL and PBL for the Mission System and Support System, the ABL is also of interest because the ABL defines the point where system requirements are converted into specific physical design requirements. A review of the ACD constituting the ABL will provide the Commonwealth with an appreciation of the Contractor's detailed approach to the design and assure the Commonwealth that requirements specified are being addressed in the physical design. Nevertheless, the Commonwealth does not generally maintain control over the ABL because this approach would act to transfer risk to the Commonwealth.

The FCD for the FBL and the PCD for the PBL are critical as they provide the basis for Functional Configuration Audits (FCAs) and Product Configuration Audits (PCAs) conducted during the Acceptance Verification and Validation of a system at the end of an acquisition program.

**Drafter's Action:** Clause 6.4.1 may need to be modified to address project-specific strategies such as delivery of functionality in multiple increments, where baselines would need to be established for each increment. Other baselines per-platform or for a production first article may also be necessary.

**Related Clauses:** All other clauses within clause 6 of the draft SOW.

The FBL is referenced in the following clauses in the draft SOW: 4.2.2, 5.2.2, 5.2.3, 5.2.4, 5.2.5, 5.2.6, 5.2.7, 5.2.8, 6.5.2, 6.5.3, 7.1.3, and 7.2.2.

The PBL is referenced in the following clauses in the draft SOW: 6.5.2, 6.5.4, 6.5.5, 6.5.6, 6.5.7, and 6.7.3.

**Further Reading:** See also – *MIL-STD-973, Configuration Management*

## 6.5 Configuration Control

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that all formal baselines are managed and controlled and that the Commonwealth has the appropriate input into any significant changes.

Policy: DI(G) LOG 08-4, Defence Policy on Configuration Management

Guidance: Configuration control is the systematic proposal, justification, evaluation, coordination, approval or disapproval of proposed changes, and the implementation of all approved changes, in the configuration of a Configuration Item (CI) after establishment of the configuration baseline(s) for the CI.

The configuration control program established by the Contractor should:

- a. ensure effective control of all CIs and their approved configuration documentation (e.g. release of only approved configuration changes into CIs and their related configuration documentation);
- b. establish effective change procedures for use during the design, development and production of the item design, including, as a minimum, procedures for Engineering Change Proposals (ECPs), Request for Deviations (RFDs), and Request for Waiver (RFWs); and
- c. ensure implementation and verification of approved changes.

The procedures used for configuration control should be described in the CMP, which is subject to review and Approval by the Commonwealth.

A clear understanding should be displayed by the Contractor as to when and why Commonwealth involvement is required as part of the configuration control process (e.g. in the case of a major modification program to an existing system, the configuration control process should clearly articulate the relationship between configuration control activities conducted as part of the design under the Contract and those Commonwealth-related configuration control processes for the system being modified).

Drafter's Action: Configuration control practices may, depending upon the support concept, migrate into an In-Service phase. In this case, the In-Service configuration control requirements may need to flow back and influence these Contract clauses, since the strategies for configuration control adopted in the acquisition Contract should allow clean migration to the configuration management on the support phase.

Related Clauses: All other clauses within clause 6 of the draft SOW.

Further Reading: Nil

## 6.6 Configuration Status Accounting

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that the Contractor records and reports information on Mission System and Support System designated Configuration Items (CIs) in an effective and efficient manner.

Policy: DI(G) LOG 08-4, Defence Policy on Configuration Management  
DI(G) LOG 03-2, Defence Policy on Computer-aided Acquisition and Logistic Support

Guidance: The Configuration Status Accounting (CSA) system established by the Contractor should:

- a. identify the current approved configuration documentation and identification number associated with each CI;
- b. record and report the status of proposed engineering changes from initiation to final approval/contractual implementation;
- c. record and report the results of configuration audits to include the status and final disposition of identified discrepancies;
- d. record and report the status of all critical and major requests for deviations and waivers that affect the configuration of a CI;
- e. record and report implementation status of authorized changes;
- f. provide the traceability of all changes from the original baselined configuration documentation of each CI; and
- g. report the effectivity and installation status of configuration changes to all CIs at all locations.

There is no single CSA process or CSAR used throughout Defence. In fact, even within Air Force alone, AAP 7001.047 recognises that there are many "Configuration Status Accounts distributed across corporate information systems forming a distributed or virtual repository of configuration information".

With the advent of improved electronic transaction systems for business, the electronic transfer of configuration data is currently an area of worldwide attention. At the current time though, Defence is not adequately equipped to work in such an environment and electronic transactions for CM need to be addressed on a case-by-case basis.

Drafter's Action: Depending on the logistics-support concept, the configuration status accounting system as a whole, rather than just CSA reports, may need to be considered as a deliverable. The drafter should also consider the applicability of standards for interchange of CM data, such as MIL-STD-2549 and the evolving commercial standard EIA-836. If either of these considerations are applicable, clause 6.6 will require amendment to incorporate these requirements.

Related Clauses: All other clauses within clause 6 of the draft SOW.

Further Reading: Nil

## 6.7 Configuration Audits

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To ensure that the Contractor conducts both Functional Configuration Audits (FCAs) and Physical Configuration Audits (PCAs) on each Mission System product and Support System Component prior to Acceptance (and Final Acceptance).

Policy: DI(G) LOG 08-4, Defence Policy on Configuration Management

Guidance: Configuration audits are performed before establishing a product baseline (PBL) for an item and consist of Functional Configuration Audits (FCAs) and Physical Configuration Audits (PCAs).

A Functional Configuration Audit (FCA) is the formal examination of functional characteristics of a Configuration Item (CI) (functional characteristics are quantitative performance parameters and design constraints, including operational and logistic parameters and their respective tolerances), prior to Acceptance, to verify that the item has achieved the requirements specified in its FCD and ACD. The FCA will also involve examination of test results from any testing conducted as part of the Acceptance Verification and Validation process.

A Physical Configuration Audit (PCA) is the formal examination of the "as-built" configuration, or physical characteristics of a CI (physical characteristics are quantitative and qualitative expressions of material features, such as composition, dimensions, finishes, form, fit, and their respective tolerances), against its technical documentation to establish or verify the configuration item's PBL.

The Commonwealth's intent with respect to configuration audits is for an FCA and PCA to be conducted by, or on behalf of the Commonwealth, on each Mission System product or Support System Component (i.e. if the system is delivered as a single element, then the FCA and PCA will only be on that element) prior to Acceptance.

Note that, in the case of the Support System, which may comprise a number of Support System Constituent Capabilities, FCAs and PCAs should be conducted on each Support System Constituent Capability and on the Support System as a whole. The latter step is required to ensure that the Support System Constituent Capabilities developed under the Contract correctly interface with each other and with other elements of the existing support infrastructure to provide a coherent support package.

Drafters and users of ASDEFCON (Strategic Materiel) should be aware that FCAs and PCAs are Mandated System Reviews and are conducted in accordance with the Approved System Review Plan (SRP). The entry criteria, exit criteria and objectives for FCA and PCA are to include those defined in DMO-CHECKLIST-FCA and DMO-CHECKLIST-PCA, respectively. These checklists should be identified as the latest version available on the DMO web site.

Drafter's Action: Drafters are to review the DMO Checklists for FCA and PCA to ensure that these checklists are aligned to the requirements of the project.

Drafters are to ensure that the appropriate versions of the DMO Checklists for FCA and PCA are inserted into Annex D of the draft SOW.

Drafters are to identify whether or not the Mandated System Reviews should be identified as Stop Payment Milestones or Schedule Compression Milestones in accordance with clause 7.11 of the conditions of contract.

Related Clauses: All other clauses within clause 6 of the draft SOW.

Clause 4.1.4 of the draft SOW addresses the conduct of System Reviews.

Clause 7.2 of the draft SOW addresses the requirements for Acceptance Verification and Validation.

Clause 7.11 of the draft conditions of contract provide the provisions relating to Stop Payment Milestones and Schedule Compression Milestones.

Annex D to the draft SOW provides the DMO Checklists that are invoked by the SOW.

Annex C to Attachment B of the draft Contract provides the Schedule of Milestone Entry and Exit Criteria.

Further Reading: Nil

## 6.8 Interface Control

Sponsor: Materiel Policy & Services

Status: Optional

Purpose: To provide a mechanism, if required, to resolve interface issues that may arise across project, Contractor and government boundaries.

Policy: Nil

Guidance: Interfaces are a classic area of risk in projects, and the use of Interface Control Working Groups (ICWGs) is one mechanism for managing these risks. In particular, interfaces between the Mission System and other systems that are under development (e.g. under other projects) may have interfaces that are a “moving feast”, yet the separate systems need to integrate together for the total Capability to be provided. Problems with interfaces and with obtaining data relating to those interfaces are two reasons why the use of Government Furnished Equipment (GFE) should be minimised under Defence contracts (with another reason being the ability to provide the GFE at the time required and for the period required). The Commonwealth’s IP rights over the interface data provide another dimension to this issue.

This clause should be considered for Contracts that have complex interfaces to single systems or significant complexity due to the number of interfaces with other systems. The ICWGs may involve various Commonwealth agencies and third party contractors.

Corresponding consideration needs to be given to the related IP clauses of the Contract to ensure that the Commonwealth has the appropriate rights to use the interface data (or to provide it to third parties) and to the IP rights in any other contract that relates to the other side of the interface. Additionally, if the interface data is identified as Government Furnished Data (GFD) under the Contract (as it invariably will be), then there are implications under the Contract if the GFD is incorrect. Guidance should be sought from CPO on both of these matters during the drafting of the RFT.

The need for ICWGs will depend on such factors as maturity, complexity and numbers of external interfaces. For example, if an interface is fixed and the data relating to that interface is accurate and available, then an ICWG to manage that interface would probably not be required because the design space only allows one side of the interface to be addressed.

Drafters should be aware that cross-project ICWGs need to be closely managed because of the implications for project scope. Given that one of the primary functions of ICWGs is to resolve interface issues, these forums are likely to drive design changes onto the project, which will affect the planned scope of work under the Contract. Nevertheless, the Project Authority should always keep the test of reasonableness in mind when issues of scope arise (i.e. was it reasonable for the Contractor to have known about this issue at the time of tendering?). It is sound practice in a project that involves complex interfaces or a significant number of interfaces for contingency to be specifically targeted to the resolution of interface issues.

Interfaces can also have implications for the project schedule, particularly if different elements of a Capability, which are being provided under separate projects, need to be coupled together to Verify and Validate that the total Capability is being provided. Under this scenario (which is not that uncommon), a slip in one project will cause a corresponding slip to the other project. Once again, it is sound practice to avoid coupling projects together in this way because of the risk and contingency implications. At a different level, this discussion helps to explain why the Commonwealth might wish to avoid being the prime system integrator for a project.

Drafter’s Action: Drafters need to consider the need for ICWGs, the number of meetings required, their locations, and the effort for all parties involved. Consideration should also be

given to the timing of the delivery of, and the relationship to, Government Furnished Materiel (GFM), particularly GFE and GFD.

Drafters are to ensure that the Commonwealth's IP rights enable ICWGs to operate. For cross-project ICWGs, drafters should ensure that the other parties are willing to participate in the ICWGs.

Drafters are to ensure that appropriate levels of contingency exist to address any interface issues, and should ensure that this contingency is specifically annotated for these purposes.

Related Clauses: Clauses 3.5 and 3.6 of the conditions of contract address the contractual provisions relating to GFM.

Clause 3.13 of the draft SOW addresses the work-related provisions relating to GFM.

Clause 5 of the conditions of contract addresses the contractual provisions relating to IP.

Clause 3.15 of the draft SOW addresses the work-related provisions relating to IP.

Further Reading: Nil

## 7. VERIFICATION AND VALIDATION (V&V)

### 7.1 V&V Management

Sponsor: Materiel Policy & Services

Purpose: To require the Contractor to implement appropriate practices for the management of the Verification and Validation (V&V) program.

Policy: DI(G) LOG 08-10, "Defence Test and Evaluation Policy" (Although this policy does not address V&V specifically, it does define the policy requirements for test and evaluation, which is but one portion of the overall V&V framework.)

Guidance: The philosophy adopted as part of the strategy for ASDEFCON (Strategic Materiel) involves:

- a. an integrated V&V approach such that V&V of the Mission System and Support System are considered concurrently;
- b. employing a process of progressive Verification throughout the duration of the Contract to manage the risks of the Mission System and Support System meeting their specified requirements; and
- c. Validation for Acceptance purposes in a real or synthetic operational environment to the extent that is necessary to achieve acceptable risk to the Commonwealth.

A more detailed insight into the philosophy underpinning the V&V elements of ASDEFCON (Strategic Materiel) is provided in Section 13 of the Philosophy Volume of the Handbook.

A Risk Assessment of the project will guide the scope and depth of V&V activities that need to be conducted – this will depend on the risks associated with the design being undertaken. The V&V approach from the TCD and TEMP will also provide guidance on the approach for V&V as part of the project.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

#### 7.1.1 - GENERAL

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To establish the overall objectives within which the V&V program will be undertaken.

Policy: Refer Section 7.1.

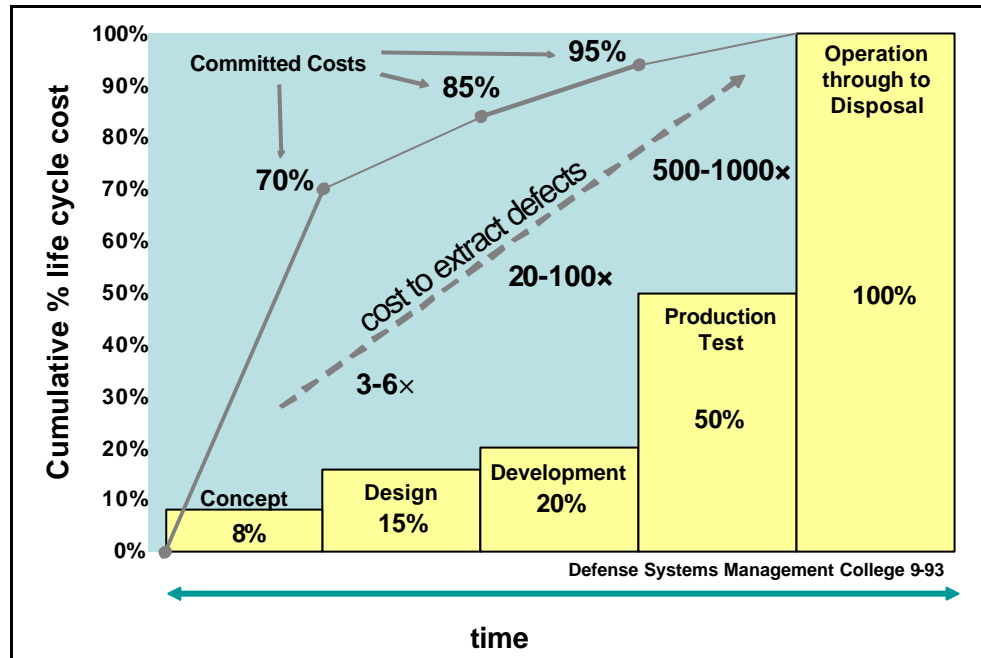
Guidance: The progressive Verification of the evolving design may encompass a range of activities including Mandated System Reviews, additional specialist program reviews and even potentially some DT&E activities. In some circumstances, Verification may also involve OT&E on operational prototypes to allow the Contractor to understand the impact of the operational environment on the evolving design, prior to the final design being completed.

The concept of progressive Verification is to ensure that the Commonwealth and the Contractor maintain an appropriate degree of oversight over the evolving design so that as many risks as possible are resolved before the final system is presented for Acceptance. The cost of undertaking such progressive reviews is likely to save money when compared with the potential for major design changes down track. The potential benefit of using a progressive review approach is that a problem that is identified early in the design cycle will be less costly to correct than one identified later in the design cycle (e.g. correcting a problem identified during the requirements validation activity may save substantial costs in modifications to



the system if the problem was not identified until the complete integrated system had been developed). This outcome is illustrated in Figure 7-1.

The Contractor should acknowledge these objectives in their Verification and Validation Plan (V&VP), which is subject to review and approval by the Commonwealth – this will provide objective evidence that the Contractor has acknowledged these objectives.



**Figure 7-1 – Relative Cost through the Project Lifecycle**

**Drafter's Action:** Clause 7.1.1 is to be included in the RFT without amendment.

**Related Clauses:** All other clauses within clause 7 of the draft SOW.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Verification and Validation*

#### 7.1.2 - VERIFICATION AND VALIDATION PLAN

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to submit a V&V Plan (V&VP) for agreement by the Project Authority and to manage the V&V elements of the project in accordance with the agreed V&VP.

**Policy:** See Section 7.1.

**Guidance:** The V&VP, including or supplemented by subordinate plans, is used by the Contractor to provide direction and guidance to the Contractor's team responsible for conducting the V&V program. The V&VP is also used by the Project Authority to gain visibility of the Contractor's V&V planning and to provide input into Project Authority planning.

The V&VP describes the complete effort required for V&V activities as part of the Contract. Care should be taken when discussing activities that perform a V&V function that are encompassed as part of another program (e.g. FCAs and PCAs can technically be considered both a V&V activity as well as a CM activity but are detailed as part of the CM program). In such a circumstance, the V&VP should identify the activities and describe the role of these activities in each of the programs but refer out to the lead document/plan for further details.

- Drafter's Action:** Clause 7.1.2 is to be included in the RFT without alteration.
- Depending upon whether or not the Project Authority intends to obtain a Contract-ready V&VP prior to Contract (i.e. through offer definition activities or contract negotiations), the CDRL delivery times for the V&VP may need to be adjusted.
- Related Clauses:** Clause 3.5 of the conditions of tender addresses the offer definition phase.
- TDR G-3 of the conditions of tender requests tenderers to provide a draft V&VP.
- Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Verification and Validation*
- 7.1.3 - VERIFICATION CROSS REFERENCE MATRIX**
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- Sponsor:** Materiel Policy & Services
- Status:** Core
- Purpose:** To impose a contractual obligation on the Contractor to define the methods by which specified requirements (at multiple levels in the design) are to be verified.
- Policy:** See Section 7.1.
- Guidance:** The Verification Cross Reference Matrix (VCRM) is a generic term used for a table that cross-references specified requirements to the methods by which those requirements will be verified. A VCRM may be associated with a specification at any level in a specification hierarchy, so care should be taken to ensure that the context of application within that hierarchy is clearly enunciated. The clauses in ASDEFCON (Strategic Materiel) are specifically targeted at those specifications that define the Functional Baselines for the Mission System and Support System.
- Note that, if the case arises where the Commonwealth has included a VCRM as part of the Contract specification, the VCRM developed by the Contractor should be examined for consistency with the VCRM requirements in the Contract specification. Any differences/changes should be negotiated with the Contractor to ensure that the original Commonwealth specification VCRM requirements are not lost.
- One potential problem when a VCRM is aligned against lower level specifications (e.g. subsystem by subsystem) is the loss of the high-level view that ensures all component systems of the Mission System operate effectively together (e.g. communication systems don't adversely interfere with navigation systems, etc). A similar problem may occur with poorly integrated Support Systems. To avoid this problem, the Project Authority should ensure the VCRM contains high-level, whole-of-system Verification requirements and that this is carried through into the Contractor's VCRMs. Note that there still may be an issue in the Verification of the combined Mission System and Support System operating effectively together. If this is seen as a significant issue for a project, then consideration should be given to including such issues as part of the Validation for the integrated systems under clause 7.2.3 of the draft SOW.
- Section 13 of the Philosophy Volume of the Handbook provides an explanation of the relationships between, and the responsibilities of the Project Authority with respect to, the various VCRMs that will exist under the Contract.
- Drafter's Action:** Clause 7.1.3 is to be included in the RFT without alteration.
- Related Clauses:** Clause 4.2.2 of the draft SOW specifies the processes for the development and Approval of the Mission System Functional Baseline.
- Clause 5.2.2 of the draft SOW specifies the processes for the development and Approval of the Support System Functional Baseline.
- Clause 6.4 of the draft SOW specifies the configuration baselines that the Contractor is required to develop and maintain for the Mission System and the Support System.
- Further Reading:** See also – *Philosophy, Section 13 – Verification and Validation*. See also – SOW 7.2.3, Acceptance Validation.

#### 7.1.4 - TEST READINESS REVIEWS

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<b><u>Sponsor:</u></b>	Materiel Policy & Services
<b><u>Status:</u></b>	Core
<b><u>Purpose:</u></b>	To require formal reviews to be conducted prior to commencing any type of formal Acceptance V&V activity to ensure that all parties are prepared and that it is appropriate to proceed with such activities.
<b><u>Policy:</u></b>	See Section 7.1.
<b><u>Guidance:</u></b>	<p>Prior to conducting any form of formal testing, as part of any V&amp;V activities relating to formal Acceptance of the system, a TRR should be conducted. The TRR provides a formal review mechanism to enable the Project Authority to be assured that all is in order prior to commencing testing (e.g. test documentation is in order, the testing resources are available, and all test methods are agreed).</p> <p>TRRs are Mandated System Reviews and are conducted in accordance with the Approved System Review Plan (SRP) and the Approved V&amp;VP. The entry criteria, exit criteria and objectives for each TRR should be defined in a DMO Checklist appropriate to the test activity.</p> <p>Depending on the particular program, specific TRRs may also need to be considered. For example, Ground Test Readiness Reviews (GTRRs) and Flight Test Readiness Reviews (FTRRs) may need to be conducted for acquisitions involving aircraft. Alternatively, TRRs for Factory Acceptance Test (FAT) and Site Acceptance Test (SAT) activities might also be deemed appropriate. Notwithstanding, the range of specific TRRs should align with the planned scope of Acceptance V&amp;V activities under clause 7.2 of the draft SOW.</p> <p>Drafters should also consider whether any of the planned TRRs should be identified as a Stop Payment Milestone in accordance with the provisions of clause 7.11 of the conditions of contract (or, perhaps, even Schedule Compression Milestones as described in clause 7.11). The specific TRRs should also be formally identified in the Schedule of Milestone Entry and Exit Criteria, Annex C to Attachment B of the Contract.</p>
<b><u>Drafter's Action:</u></b>	<p>Drafters are to consider whether or not any specific TRRs need to be inserted into clause 7.1.4. If not, clause 7.1.4 is to be included in the RFT without amendment.</p> <p>Drafters are to ensure that the DMO Checklist for each TRR is aligned to the requirements of the project.</p> <p>Drafters are to ensure that the appropriate versions of the DMO Checklists for each TRR are inserted into Annex D of the draft SOW.</p> <p>Drafters are to identify whether or not the TRRs should be identified as Stop Payment Milestones or Schedule Compression Milestones in accordance with clause 7.11 of the conditions of contract.</p>
<b><u>Related Clauses:</u></b>	<p>Clause 4.1.4 of the draft SOW addresses the conduct of System Reviews.</p> <p>Clause 7.2 of the draft SOW addresses the requirements for Acceptance Verification and Validation.</p> <p>Clause 7.11 of the draft conditions of contract provide the provisions relating to Stop Payment Milestones and Schedule Compression Milestones.</p> <p>Annex D to the draft SOW provides the list of DMO Checklists that are invoked by the SOW.</p> <p>Annex C to Attachment B of the draft Contract provides the Schedule of Milestone Entry and Exit Criteria.</p>
<b><u>Further Reading:</u></b>	Nil

### 7.1.5 - COMMONWEALTH INVOLVEMENT IN AV&V

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<u>Sponsor:</u>	Materiel Policy & Services
<u>Status:</u>	Core
<u>Purpose:</u>	To ensure that Commonwealth oversight of any AV&V activities is catered for as part of the Contract.
<u>Policy:</u>	See Section 7.1.
<u>Guidance:</u>	<p>Although the Contractor may perform the detailed testing activities, the Project Authority, or duly appointed representatives, need to observe testing to be assured that the systems under test satisfy their specified requirements. The onus in any testing is on the Contractor to prove to the Commonwealth that the delivered systems meet the specified requirements, not the other way around - requiring the Commonwealth to perform this activity may transfer the burden of proof away from the Contractor and is not a recommended practice.</p> <p>In some cases, however, there may be a need to have Commonwealth personnel as participants (e.g. where military personnel are required to operate and/or support the systems being tested). If this is the case, then clear boundaries should be established at the outset as to specific Commonwealth involvement and any conditions whereby failures identified during testing are not attributable to the system but due to the manner in which Commonwealth personnel operated the system. Clarity of responsibility is important here, as training of Commonwealth personnel by the Contractor can also be validated in such tests.</p> <p>The Commonwealth may also need to provide other substantial resources for the AV&amp;V of the Mission System and Support System. These may include ranges and test facilities, In-Service mission systems to be used in joint system operations, deployment and/or transportation. Again, clear boundaries must be established.</p> <p>These conditions will need to be documented in any AV&amp;V plans and procedures developed to conduct such testing.</p>
<u>Drafter's Action:</u>	Clause 7.1.5 is to be included in the RFT without alteration. Prior to Contract signature, drafters should consider the possible locations for AV&V and, if required, a change to the notification period in clause 7.1.5.4 should be addressed with the successful tenderer.
<u>Related Clauses:</u>	Clause 7.2 of the draft SOW addresses the requirements for Acceptance Verification and Validation.
<u>Further Reading:</u>	Nil

### 7.1.6 - FAILURE REPORTING AND ANALYSIS

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<u>Sponsor:</u>	Materiel Policy & Services
<u>Status:</u>	Core
<u>Purpose:</u>	To require that all failures identified as part of AV&V are reported and analysed by the Contractor.
<u>Policy:</u>	See Section 7.1.
<u>Guidance:</u>	<p>Failure Reporting and Analysis is an essential part of any testing. All failures need to be recorded, analysed as to the root cause of that failure, and then a corrective action should be proposed. Note that it is not sufficient just to record an occurrence of a failure and assume that most apparent cause is correct because the apparent mode in which a system failed may be misleading - a root cause analysis of the failure should be conducted to identify the true cause of the apparent failure. Care should be taken as part of any failure investigation as to the conditions under which the failure occurred because overstress test conditions beyond the use conditions specified may actually invalidate any test results. The failure should also carefully record the configuration of the system or system</p>

component under test at the time of failure so that appropriate regression testing can be identified following a design change.

This activity should be integrated with any Failure Reporting Analysis and Corrective Action System (FRACAS) implemented as part of the Reliability Engineering program.

Drafter's Action: Clause 7.1.6 is to be included in the RFT without alteration.

Related Clauses: Clause 7.2 of the draft SOW addresses the requirements for Acceptance Verification and Validation.

Further Reading: Nil

#### 7.1.7 - REGRESSION TESTING

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require that any corrective actions implemented by the Contractor, due to failures reported and analysed as part of AV&V, are verified to ensure the effectiveness of the corrective action that was implemented.

Policy: See Section 7.1.

Guidance: Any subsequent changes to the design due to rectify identified failures need to be re-tested to prove that the design change was effective - this is the objective of Regression Testing. Care needs to be taken when determining the scope of regression testing to be undertaken to also ensure that the testing encompasses any systems that have a dependency on the area rectified by the design change. Note that the management of the configuration of the items under test during failure and through consequent design changes and testing is a key factor in ensuring the effectiveness and integrity of any regression testing.

Drafter's Action: Clause 7.1.7 is to be included in the RFT without alteration.

Related Clauses: Clause 7.2 of the draft SOW addresses the requirements for Acceptance Verification and Validation.

Further Reading: Nil

## 7.2 Acceptance Verification and Validation (AV&V)

Sponsor: Materiel Policy & Services

Purpose: To specify the program of AV&V activities to ensure that the Mission System and Support System developed by the Contractor are fit for purpose.

Policy: DI(G) LOG 08-10, "Defence Test and Evaluation Policy" (Although this policy does not address V&V specifically, it does define the policy requirements for test and evaluation, which is but one portion of the overall V&V framework.)

Guidance: Under clauses 6.5 and 6.6 of the draft conditions of contract, Acceptance of Supplies is divided into two parts: Acceptance and Final Acceptance. Acceptance relates to individual Supplies, whereas Final Acceptance relates to the Supplies functioning and integrating as required by the Contract. Final Acceptance occurs after Acceptance of all Supplies. The AV&V activities documented under clause 7.2 of the draft SOW have been drafted to accord with these two sets of Acceptance provisions for both the Mission System and Support System, and any amendments to clause 7.2 must continue to be aligned with the Acceptance provisions.

There are two fundamental groups of activities that need to be performed before the systems can be formally accepted per the Contract. The first is the Verification of the Mission System and Support System against their respective functional baselines (Acceptance Verification), the second is the Validation of these systems when operated in their actual use environments or an agreed representation of the actual use environment (Acceptance Validation).

Acceptance Test and Evaluation (AT&E) is but one process by which Acceptance Verification and Acceptance Validation may be conducted. Other processes may involve design reviews and audits, analysis of modelling and simulation results, etc.

Section 7.2 should also address any mandated test phases for the program. These may consist of a factory (or office environment) test phase, one or more site-based test phases, and one or more operationally focussed test phases. In addition to these phases, others that could be considered are First Article Test (where multiple identical units will be procured), Ground and Flight Tests for aircraft, and specialty tests such as those associated with EMI/EMC testing. Verification-related phases should be identified under clause 7.2.2 and Validation-related phases under clause 7.2.3.

Drafter's Action: Nil

Related Clauses: Nil

Further Reading: Nil

### 7.2.1 - GENERAL

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Sponsor: Materiel Policy & Services

Status: Core

Purpose: To define those conditions under which AV&V of the Mission System and Support System are to occur. To impose a contractual obligation for the Contractor to Validate the test environment and the test equipment used for AV&V.

Policy: See Section 7.2.

Guidance: Logically, the intention of the Commonwealth is to ensure that the AV&V activities are conducted on the same system that will be delivered to the Commonwealth. This is an important objective, especially given the complexity that can be built into systems through software. With only minor changes to configuration, such systems may exhibit quite different behaviour.

Ideally the "identical system" concept could be mandated, but instead the SOW identifies this as a goal. Because of the complexity of the systems that are being

addressed ASDEFCON (Strategic Materiel) coupled with the significant time and effort required to conduct a comprehensive V&V program, the likelihood of completing a V&V program without need for rework is low. It would not be cost-effective for the Commonwealth to demand a complete retest for any rework. The alternative is, where a design or configuration change is made during the V&V program, to conduct regression testing based on the knowledge of the implementation and the risk to the Commonwealth.

It is important that all test environments and equipment used during the V&V phases are controlled and Validated to confirm that they will meet their objectives as used in the program. This includes the more straightforward elements, such as the calibration of test equipment, as well as the need to validate more elaborate models used in the V&V program (e.g. underwater propagation models used as part of the V&V program for a sonar system). In the latter case, if the models were well established and known to be valid, then they might be Validated by reference to subject matter experts. If the models were relatively new or developed specifically for the project, however, then they might need further scrutiny and potential supplementation by real world trials (i.e. as part of the Acceptance Validation under clause 7.2.3).

**Drafter's Action:** As discussed in the guidance, the drafter may need to consider the visibility of test equipment and environments to enable the Commonwealth to agree to the context of their use on the V&V program (e.g. for a case where a Defence specialist, such as DSTO, may need to assess the adequacy of environmental models used in Verification).

**Related Clauses:** Clause 7.2.2 of the draft SOW addresses Acceptance Verification.  
Clause 7.2.3 of the draft SOW addresses Acceptance Validation

**Further Reading:** Nil

#### 7.2.2 - ACCEPTANCE VERIFICATION

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**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To impose a contractual obligation on the Contractor to Verify that the "as built" Mission System and Support System satisfy their specified requirements as defined by their respective FBLs.

**Policy:** See Section 7.2.

**Guidance:** The Note to drafters in this clause highlights that specific clauses need to be drafted to ensure that the scope of Acceptance Verification, consistent with the Test Concepts Document (TCD) and the project office Test and Evaluation Master Plan (TEMP), is captured in the Contract.

Verification of the Mission System involves verifying that each of the requirements specified for the Mission System Functional Baseline have been satisfied.

Verification of the Support System involves verifying that each of the Support System Constituent Capabilities satisfy its relevant specification and that the Support System overall satisfies the requirements defined in the Support System Functional Baseline. Verification of the Support System Components involves verifying that each of these components satisfies its specification.

**Drafter's Action:** Clause 7.2.2 is to be tailored to address the required scope of Acceptance Verification activities for both the Mission System and Support System, including the need for test phases (as discussed under clause 7.2).

**Related Clauses:** Clause 7.2 of the draft SOW addresses Acceptance Verification and Validation.

**Further Reading:** Nil

### 7.2.3 - ACCEPTANCE VALIDATION

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<u>Sponsor:</u>	Materiel Policy & Services
<u>Status:</u>	Core
<u>Purpose:</u>	To impose a contractual obligation on the Contractor to Verify the “as built” Mission System and Support System satisfy their specified requirements when operated in their actual use environments and when interfacing with extant In-Service capabilities and systems.
<u>Policy:</u>	See Section 7.2.
<u>Guidance:</u>	The Note to drafters in this clause highlights that specific clauses need to be drafted to ensure that the scope of Acceptance Validation, consistent with the TCD and the project office TEMP, is captured in the Contract. ASDEFCON (Strategic Materiel) includes the framework of Acceptance Validation for the Support System; however, each Project Authority would need to incorporate requirements for Acceptance Validation of the Mission System and would need to tailor the requirements for the Support System to accord with the specific requirements of the project.

#### Mission System Validation

The purpose of this clause is for the Contractor to demonstrate to the Commonwealth that the Mission System will satisfy the Mission System Functional Baseline when operated in accordance with the OCD. In other words, this clause is assessing fitness for purpose in the actual operating environment. Operational Test and Evaluation (OT&E) is a subset of Mission System Validation; however, OT&E under ASDEFCON (Strategic Materiel) is limited to that required for Acceptance purposes. For example, the Mission System elements of the RAN's processes for Acceptance Into Naval Service (AINS) could come under this umbrella if the Project Authority wished it to do so.

From a supportability perspective, this aspect of V&V would validate that the supportability characteristics of the Mission System meet the specified requirements. Supportability Factors for the Mission System would normally be defined in the FPS for the Mission System and, as part of the validation of the Mission System, these supportability factors/characteristics need to be validated.

#### Engineering Support Effectiveness Demonstration

The purpose of this clause is for the Contractor to validate to the Commonwealth in the Defence environment the effectiveness of the Engineering Support Constituent Capability, developed as part of the Support System, which has been documented in the Support System Specification (SSSPEC).

The process involves not just testing against the elements of the Engineering Support Constituent Capability, but also testing of the complete Engineering Support Constituent Capability as integrated into the existing logistics infrastructure. This means that the effectiveness demonstration cannot commence until the elements of the Engineering Support Constituent Capability developed under the Contract have been integrated into the broader logistics system that is already in place with Defence or relevant Contractor(LS) / Subcontractor(LS) (e.g. delegated design authority or software support Contractor).

This activity may include validation methods of demonstration, desktop review, analysis, etc, but must be conducted within the Defence Engineering Support environment. For example, this may include the physical demonstration of the use of Configuration Management or Maintenance Control software applications. Alternatively, a detailed review may be conducted of procedures for processing modification approvals with technical regulatory requirements, involving the relevant stakeholders and approval authorities. In this second example, it may not be physically possible to demonstrate the processing of a modification when there are no modifications to be performed; however, the review process and



acceptance by the relevant parties may be sufficient to validate the successful transition into service of the process.

As software maintenance is, in essence, an on-going development process (i.e. software is modified, not returned to a previously serviceable condition in the same way as hardware), it has been included in Engineering Support. Supportability-related demonstrations for software would vary for the type of software. For example, data libraries containing operational information, which are regularly updated, would need to be successfully demonstrated at the applicable operating or operations control unit. Application software supported by a Contractor(LS) would need to be validated by demonstration of successful compilation of amended software. There are many other aspects such as accessibility to documentation, use of development tools, etc, but as a requirement of Validation, they must be proven in the intended In-Service environment or Project Authority approved equivalent (e.g. lab testing).

If tailoring the Engineering Support Effectiveness Demonstration clauses of the draft SOW, the Project Authority should consider any related changes to the Engineering Support Design clauses of clause 5.2, tailored Acceptance Verification clauses, and the Implementation of Software Support clauses in 5.3. Tailoring changes should be consistent with Specifications (SOW Annex A) for Engineering Support that must be Validated.

#### Maintenance Support Effectiveness Demonstration

The purpose of this clause is for the Contractor to demonstrate to the Commonwealth the effectiveness of the Maintenance Support Constituent Capability, developed as part of the Support System, which has been documented in the SSSPEC.

The process involves not just testing against the elements of the Maintenance Support Constituent Capability, but also testing of the complete Maintenance Support Constituent Capability as integrated into the existing logistics infrastructure. This means that an effectiveness demonstration cannot commence until the elements of the Maintenance Support Constituent Capability developed under the Contract have been integrated into the broader logistics system that is already in place with Defence or maintenance Contractor(LS) / Subcontractors(LS).

The difference between the Maintenance Support Effectiveness Demonstration and a Maintainability Demonstration is that a Maintainability Demonstration is focused on proving that the inherent maintainability design characteristics of the Mission System design have been satisfied, whereas a Maintenance Support Effectiveness Demonstration is focused on proving that the Mission System can be effectively supported in the Maintenance Support environment. For further discussion on the differences and relationships between Maintainability Demonstrations, Maintenance Support Effectiveness Demonstrations and Maintenance Evaluations, refer to the ADO RAM Manual. Accordingly, in tailoring the Maintenance Support Effectiveness Demonstration clauses, the Project Authority should consider related clauses for Maintainability Demonstrations and Maintenance Evaluations, particularly where the same physical demonstration(s) may be used in the Validation of both Mission System Maintainability and Maintenance Support effectiveness.

In addition to the coordination of the tailoring considerations discussed in the previous paragraph, the Project Authority must consider a number of other clauses. Maintenance effectiveness is dependent on contributions from all ILS elements, and the data reduction and review following demonstrations need to successfully identify the contributing factors from the various Support System Components involved. Tailoring of these Maintenance Support Effectiveness Demonstration clauses, particularly where additional project-specific detail is added, should also consider any required changes to the Support System Implementation clauses of clause 5.3 and vice versa.

In-Service support and interim support Contracts that include maintenance must also be taken into consideration when tailoring these clauses. If an interim support Contract provides maintenance, the Maintenance Support Effectiveness Demonstration may need to be delayed, in whole or part, until Defence takes over maintenance responsibilities. Refer to the discussion on the Support System Endurance Demonstration below, for considerations when a support Contract and performance guarantees are involved in extended periods for a Maintenance Support Effectiveness Demonstration.

#### Supply Support Effectiveness Demonstration

The purpose of this clause is for the Contractor to demonstrate to the Commonwealth the effectiveness of the Supply Support Constituent Capability, developed as part of the Support System, which has been documented in the SSSPEC.

The process involves not just testing against the elements of the Supply Support Constituent Capability, but also testing of the complete Supply Support Constituent Capability as integrated into the existing logistics infrastructure. This means that the effectiveness demonstration cannot commence until the elements of the Supply Support Constituent Capability developed under the Contract have been integrated into the broader logistics system that is already in place.

Validation of Supply Support effectiveness can involve a wide variety of assessment activities conducted within Defence and Contractor(LS)/ Subcontractor(LS) environments. Some validation activities may involve demonstration methods, others may be via analysis involving the In-Service processes, Defence Supply Support units and Contractors(LS), as well as relevant stakeholders. In either case, tailoring of these clauses should be coordinated with the Support System Implementation clause, 5.3.

Supply Support Effectiveness Demonstration results, measured either through short-term demonstrations or monitoring over extended periods, can be distorted in a positive way if performed during the transition period before all Mission Systems in a fleet have been deployed, and there is an excess of resources per Mission System. Alternatively results can be distorted negatively while personal skills and organisational cultures and process convert to the new Capability. For both of these reasons, some Validation of Supply Support effectiveness will be delayed until some time during the In-Service Phase. Where this occurs, tailoring of these clauses should, in addition to the Support System Implementation clause, be coordinated with the transition requirements and any In-Service support Contracts. Additionally, linkages to a performance guarantee may need to be considered.

#### Training Support Effectiveness Demonstration

The purpose of this clause is for the Contractor to demonstrate to the Commonwealth the effectiveness of the Training Support Constituent Capability, developed as part of the Support System, which has been documented in the SSSPEC.

The process involves not just testing against the elements of the Training Support Constituent Capability, but also testing of the complete Training Support Constituent Capability as integrated into the existing logistics infrastructure. This means that the effectiveness demonstration cannot commence until the elements of the Training Support Constituent Capability developed under the Contract have been integrated into the broader logistics system that is already in place.

The effectiveness of Training Support has significant quantitative and qualitative components, including, for example, breadth of training coverage and the transfer of knowledge/skills respectively. As training builds expertise within individuals, the true effectiveness may not be known until individuals have completed a range of training that may include a variety of classroom, computer-based, and on-the job training.

Validation of the effectiveness of training development systems, via physical demonstration, may not be measured until In-Service training development is required. Alternatively, the individual demonstration of tools and review of processes involved may be sufficient to Validate the effectiveness of training development without actual physical demonstration of the complete process. Tailoring of these clauses with additional detail, where this approach is taken, should be coordinated with any similar approach in other AV&V clauses.

The build up of knowledge and/or skills requires time, as does the requirement to prove Training Support effectiveness through physical demonstration. Accordingly, in tailoring these clauses, the Project Authority needs to consider the scheduling of the Training Support Effectiveness Demonstration in the context of the Implementation of Training System clauses in 5.3, and transition requirements, where interim Contractor support may delay the rollout of training and Training Support. Also requiring consideration is the linkage to a performance guarantee where Training and Training Support can not be fully evaluated until well after other major Acceptance and final Contract activities.

#### Support System Endurance Demonstration

The purpose of this clause is for the Contractor to demonstrate to the Commonwealth that the complete integrated Support System performs effectively over an extended period. The extended period means that the demonstration may extend beyond other acquisition AV&V activities and the preferred timing for the final payment under the Contract. Hence, to ensure the Contractor has provided an effective Support System, the endurance demonstration may be linked to a performance guarantee along with other extended demonstrations such as for reliability.

The rationale for this activity being conducted over an extended period is because a number of measures of the effectiveness of the Support System are statistical in nature, and need a reasonable amount of time for the results to be valid. Additionally, implementation problems occurring during rollout and a partial build-up of a fleet during transition may falsely indicate a support situation that differs from what will actually be achieved in the long-term In-Service support environment. For these reasons, the start of endurance testing may also be delayed until late in the transition period.

Due to the timing of endurance demonstrations, the Project Authority should ensure co-ordination between endurance demonstrations and In-Service support Contracts. For example, failure to meet maintenance turn around times from a Contractor(LS) may direct penalties against the Contractor(LS) under the In-Service Contract, but the real reason for the delays may be deficiencies in the Maintenance Support system established under the (acquisition) Contractor's definition of maintenance requirements. In this case, remedial actions through the performance guarantee may be more appropriate than penalising the Contractor(LS). Deficiencies may also be found in the Support System elements undertaken by the ADF; in this case, remedial action through the performance guarantee would also be sought.

Accordingly, due to the timing and relationship between In-Service and acquisition Contracts, the Project Authority should review the clauses in the draft SOW and make necessary amendments to suit the project, conditions of the performance guarantee, and In-Service Contract support arrangements.

Drafter's Action: Clause 7.2.3 is to be tailored to address the required scope of Acceptance Validation activities for both the Mission System and Support System, including the need for test phases (as discussed under clause 7.2) using the guidance provided herein.

Related Clauses: Clause 7.2 of the draft SOW addresses Acceptance Verification and Validation.

Further Reading: Nil

## 8. QUALITY MANAGEMENT PROGRAM

### 8.1 Contractor Quality Responsibilities

Sponsor: Materiel Policy & Services

Status: Core. The optional clauses 8.1.6 – 8.1.8 should be included in all RFTs unless it is known that all potential tenderers are certified to ISO 9001:2000.

Purpose: To increase confidence that the Supplies will meet the Contract requirement through effective management of quality by the Contractor. To notify the Contractor of the quality system standard that must be maintained and applied by the Contractor during the Contract.

Policy: DPPM - Section 3, Chapter 3.5  
DMOKS 2.9, "Quality Assurance"  
DI(G) LOG 02-1, "Defence Policy on Quality Assurance"  
AS/NZS ISO 9001:1994  
AS/NZS ISO 9002:1994  
AS/NZS ISO 9001:2000, "Quality Management Systems – Requirements"  
AS/NZS ISO 9001:2000, "Vocabulary"

Guidance: The ISO 9000 series Quality Management System Standards which are used in Defence Contracts are commercial standards. The risk based approach to the application of these standards is consistent with Commonwealth procurement policy for Quality Assurance.

#### Requirement for A Quality System

The application of a formal and documented quality system to work performed under the Contract assists the Contractor in meeting the quality requirements of the Contract and gives the Commonwealth a measure of assurance that adequate quality management practices are in place. Without such quality management systems, management of quality can be unstructured and quality issues can sometimes be sacrificed in the interests of cost and schedule with no visibility to the Commonwealth.

Clause 8.1 of the draft SOW enables:

- a. the implementation and management of an appropriately certified quality system for the Contractor;
- b. an appropriate flow down of the quality system requirements to Approved Subcontractors; and
- c. the Commonwealth to perform Audits and surveillance of work under the Contract.

#### Selection of a Quality System Standard

Clause 8.1.1 of the draft SOW places an obligation on the Contractor to be certified to a specified quality system standard by the Effective Date. The quality system standard requirements in clause 8.1.1 are to be left uncompleted at the RFT stage and will be completed with the specific details of the quality system standard and any appropriate Software standards and guidelines prior to Contract negotiations (and subsequently updated, if required, after Contract negotiations are finalised). The appropriate standards and guidelines will be derived from the successful tenderer's response to the Quality Statement at Annex E to the conditions of tender and any appropriate issues resolved at Contract negotiations.

#### Transition to ISO 9001:2000

Clause 8.1 contains an optional suite of clauses (clauses 8.1.6 to 8.1.8) which allow for Contracts signed with AS/NZS ISO 9001:1994 or AS/NZS ISO 9002:1994

to be transitioned to ISO 9001:2000. The transition to the new standard may take until December 2003 and, therefore, the optional clauses 8.1.6 to 8.1.8 should be included in all RFTs unless it is known that all potential tenderers are certified to ISO 9001:2000. This will ensure that all tenderers are made aware of their obligation to maintain Certification and to transition their quality systems to ISO 9001:2000.

Where the successful tenderer has a quality system certified to AS/NZS ISO 9001:1994 or AS/NZS ISO 9002:1994 the optional transition clauses will need to be agreed and retained in the Contract. For further details regarding the transition to the new standard contact MPS-QA.

#### Maintenance of Quality Records

To ensure that, where required, the Commonwealth can obtain access to records relating to the Contractor's quality system and the quality of the Supplies, clause 2.2.10 places a contractual obligation on the Contractor to maintain records relating to the planning and verification of the quality of the Supplies for a minimum period of seven years after the completion of the Contract.

#### Amendments to Clause 8.1 of the Draft Sow

Clause 8.1 of the draft SOW should not be changed or tailored without appropriate policy advice and assistance from MPS-QA. Changes could result in the application of inappropriate standards or a reduction in the Commonwealth's rights.

The contact details for MPS-QA staff are available on the following website:

Defence Intranet:

<http://stagedao.cbr.defence.gov.au/esad/MPS/contacts.htm#QA>

**Drafter's Action:** The agreed quality system standard that will apply to the Contract must be included in clause 8.1.1 prior to Contract signature.

**Related Clauses:** The Quality Statement at Annex E to the conditions of tender requests tenderers to provide information relating to the tenderer's quality management system and notifies tenderers of the quality system standard required for the Contract.

'Effective Date' is defined in the Glossary at Attachment M to the Contract.

Clause 8.2 of the Statement of Work sets out the procedure for agreement of the Quality Plan and any subsequent amendments to the Quality Plan.

Clause 8.3 of the Statement of Work specifies the mechanism for establishing corrective actions on quality system, process and product non-conformances identified by the Commonwealth.

Clause 8.4 of the Statement of Work specifies the mechanism for seeking Project Authority approval of non-conforming Supplies, materials or work.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Quality Assurance*

## 8.2 Quality Plan

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To require the Contractor to submit a Quality Plan and maintain and apply the agreed Quality Plan to the work performed under the Contract. To set out the procedure for agreement of the Quality Plan and any subsequent amendments to the Quality Plan.

Policy: DPPM - Section 3, Chapter 5  
DMOKS 2.9 "Quality Assurance"  
DI(G) LOG 02-1, "Defence Policy on Quality Assurance"  
AS/NZS ISO 9001:1994  
AS/NZS ISO 9002:1994  
AS/NZS ISO 9001:2000, "Quality Management Systems – Requirements"  
AS/NZS ISO 9001:2000, "Vocabulary"

Guidance: The Quality Plan describes how the Contractor's certified quality management system is applied specifically to the Contract. From the Contractor's perspective the Quality Plan is the means by which the detailed application of the Contractor's quality system is documented and all activities needed to fulfil the quality requirements of the Contract are addressed. From the Commonwealth's perspective the Quality Plan provides evidence that all quality planning activities have been adequately addressed and provides a baseline against which the Quality Assurance Representatives' (QARs') auditing and surveillance activities can be scheduled.

### Contract Data Requirements

Drafters must include details of the Data Item Descriptions (DIDs) for the Quality Plan in clause 8.2.1. Drafters should contact MPS-QA staff to assist in the development of any project-specific Quality Plan DIDs and should reference the applicable DIDs at clause 8.2.1.

### Quality Plan Delivery and Approval

Drafters should note that the conditions of tender only require tenderers to submit a Quality Statement as part of their tender responses and not an outline Quality Plan. To obtain an agreed Quality Plan under the Contract, therefore, drafters may require a Quality Plan to be developed:

- d. as part of offer definition activities (if programmed);
- e. as part of Contract negotiations; or
- f. shortly after Contract award.

Currently, the draft Contract Data Requirements List (CDRL) specifies that the Quality Plan will be Approved at the Effective Date, which would be the case if the Quality Plan were included as an activity under either of the first two options specified above. If the third option were to be selected, however, drafters will need to specify, in the CDRL, the initial delivery requirements for the Quality Plan and the time allowed for the agreement and amendment of the submitted Quality Plan. Careful consideration will need to be given to selection of the time periods, particularly where it is likely that critical or significant Contract work (e.g. design, development or integration) will be undertaken prior to, or immediately after, Contract signature. Drafters should contact MPS-QA staff to assist in the determination of these periods.

Drafters are advised that the preferred approach for the development of the Quality Plan is to include this activity as part of either offer definition or Contract negotiations (or both). The two principal benefits with this approach are that:

- a. the Quality Plan will be specifically tailored for the Contract before Contract signature; and
- b. the risks associated with having uncontrolled or ineffective processes being applied in the early stages of critical or significant Contract work is mitigated.

In negotiating the Quality Plan, any issues raised during tender evaluation should be considered for mitigation in the Quality Plan (and the Risk Register). MPS-QA staff can assist in the determination of risk-mitigation strategies for inclusion in the Quality Plan (e.g. specific controls to be applied to the activity in question).

#### Amendments to Clause 8.2 of the Draft SOW

Clause 8.2 of the draft SOW should not be changed or tailored without appropriate policy advice and assistance from MPS-QA. Changes could result in the application of inappropriate standards or a reduction in the Commonwealth's rights.

The contact details for MPS-QA staff are available on the following website:

Defence Intranet:

<http://stagedao.cbr.defence.gov.au/esad/MPS/contacts.htm#QA>

**Drafter's Action:** If the development of the Quality Plan is to be included as an activity during either offer definition or contract negotiations (or both), the drafters should not alter the CDRL delivery requirement of ED. If, however, the Quality Plan is to be developed under the Contract, then drafters must insert in the CDRL the period within which the Contractor is to submit the Quality Plan to the Project Authority for agreement. Time periods for the agreement and amendment of the submitted Quality Plan must also be inserted in the CDRL. In this latter case, advice should be sought from MPS-QA. Furthermore, in all cases, advice should be sought from MPS-QA for specific additions or deletions associated with the DID requirements.

**Related Clauses:** The Quality Statement at Annex E to the conditions of tender requests tenderers to provide information relating to the tenderer's quality management system and notifies tenderers of the quality system standard required for the Contract.

'Effective Date' is defined in the Glossary at Attachment M to the Contract.

Clause 8.1 of the Statement of Work notifies the Contractor of the quality system standard that must be maintained and applied by the Contractor during the Contract.

Clause 8.3 of the Statement of Work specifies the mechanism for establishing corrective actions on quality system, process and product non-conformances identified by the Commonwealth.

Clause 8.4 of the Statement of Work specifies the mechanism for seeking Project Authority approval of non-conforming Supplies, materials or work.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Quality Assurance*

### 8.3 Quality Systems, Process and Product Non-Conformances

Sponsor: Materiel Policy & Services

Status: Core. The optional clause 8.3.3 should be included where the project contains significant technical risk.

Purpose: To set out as contractual obligations the mechanism for establishing corrective actions on quality system, process and product non-conformances identified by the Commonwealth.

Policy: Requirements for the control of quality system, process and product non-conformances should always be included in Contracts in order to increase the probability that Supplies received conform to quality requirements.

DPPM - Section 3, Chapter 3.5

DMOKS 2.9, "Quality Assurance"

DI(G)LOG 02-1, "Defence Policy on Quality Assurance"

AS/NZS ISO 9001:1994

AS/NZS ISO 9002:1994

AS/NZS ISO 9001:2000, "Quality Management Systems – Requirements"

AS/NZS ISO 9001:2000, "Vocabulary"

Guidance: This clause provides the mechanism for establishing Commonwealth control of corrective actions on quality system, process and product non-conformances.

#### Correction of Non-Conformances

Clause 8.3 entitles the Project Authority to require the Contractor by written notice to correct quality system, process and product non-conformances within the period specified in the notice. In selecting the period in which the non-conformance must be corrected, consideration should be given to the nature of the non-conformance, the time required to rectify the non-conformance and the criticality of the non-conformance. Clause 8.3.2 entitles the Project Authority to undertake an Audit to verify that the non-conformance has been corrected.

Where the Contractor fails to remedy a quality system, process or product non-conformance within the time period specified in the notice, the Contractor will be in breach of Contract and the Commonwealth will be entitled to claim damages where it has suffered loss as a result of the breach. In addition to damages, the Commonwealth may be entitled to terminate the Contract for default through the process provided for under clause 12.2.1m of the conditions of contract (i.e. issue of a notice to 'make good' the default), or at common law if it can be established that the Contractor's failure to correct the non-conformance was a fundamental breach of the Contract or was otherwise a default for which the common law gives a right to terminate. Advice should be sought from CPO branch prior to any action being taken to claim damages or terminate the Contract for default.

#### Option for Projects Containing Significant Technical Risk

The optional clause 8.3.3 allows the Project Authority to direct the Contractor to cease work where the identified quality system, process or product non-conformances may have an effect on the Supplies. Clause 8.3.3 should only be included in projects containing significant technical risk and especially where Contract work may include the production of Supplies which will be sealed after production. In these circumstances access to the Supplies for inspection or rework (i.e. sealed compartments in an aircraft airframe or ships hull) would not be possible and unless production is ceased there would be little or no opportunity for corrective action. Drafters should contact MPS-QA staff for advice and assistance in determining the applicability of the optional clause 8.3.3.



### Amendments to Clause 8.3 of the Draft SOW

Clause 8.3 of the draft SOW should not be changed or tailored without appropriate policy advice and assistance from MPS-QA. Changes could result in the application of inappropriate standards or a reduction in the Commonwealth's rights.

The contact details for MPS-QA staff are available on the following websites:

Defence Intranet:

<http://stagedao.cbr.defence.gov.au/esad/MPS/contacts.htm#QA>

**Drafter's Action:** Drafters must determine the applicability of the optional clause 8.3.3.

**Related Clauses** The Quality Statement at Annex E to the conditions of tender requests tenderers to provide information relating to the tenderer's quality management system and notifies tenderers of the quality system standard required for the Contract.

Clause 8.1 of the Statement of Work notifies the Contractor of the quality system standard that must be maintained and applied by the Contractor during the Contract and details the Commonwealth's right to perform Quality Audits and surveillance activities.

Clause 8.2 of the Statement of Work sets out the procedure for agreement of the Quality Plan and any subsequent amendments to the Quality Plan.

Clause 8.5 of the Statement of Work specifies the mechanism for seeking Project Authority approval of non-conforming Supplies, materials or work.

**Further Reading:** See also – *Philosophy Annex A, Lifecycle Thread – Quality Assurance*

## 8.4 Project Authority Approval of Non-Conforming Supplies

Sponsor: Materiel Policy & Services

Status: Core

Purpose: To set out as contractual obligations the mechanism for seeking Project Authority approval of non-conforming Supplies, materials or work.

Policy: Requirements for the control of non-conforming Supplies should always be included in Contracts in order to increase the probability that Supplies received conform to quality requirements, and are free of reworked or repaired components which do not have Project Authority approval.

DPPM - Section 3, Chapter 5

DMOKS 2.9, "Quality Assurance"

DI(G)LOG 02-1, "Defence Policy on Quality Assurance"

AS/NZS ISO 9001:1994

AS/NZS ISO 9002:1994

AS/NZS ISO 9001:2000, "Quality Management Systems – Requirements"

AS/NZS ISO 9001:2000, "Vocabulary"

Form SG2 – Application for Deviations

Guidance: This clause provides the mechanism by which the Contractor may apply for Project Authority approval of non-conforming Supplies.

### Use of Non-Conforming Materials or Work

The Contractor must obtain the Project Authority's written approval to use non-conforming work or materials in the production of the Supplies. The Defence mechanism for processing these applications and providing written approval is through the use of Form SG 2 "Application for Deviations" (which may also be known as Production Permits and Concessions).

A Defence internal procedure for managing applications for Deviations is published as a Departmental Quality Assurance Instruction. This Instruction is available through the DEFWEB or DMOKS 2.9, "Quality Assurance".

Form SG 2 can be obtained from the Defence Intranet web forms system.

### Approval of Non-Conforming Materials or Work

The Project Authority is under no obligation to approve use of non-conforming work or materials in the production of the Supplies. If the Project Authority does approve the use of non-conforming work or materials the Commonwealth will be bound by the approval and may be prevented from claiming against the Contractor in the event that the Supplies are defective. The Project Authority's approval of the use of non-conforming work and materials may also affect the Project Authority's ability to reject Supplies under clause 6 of the conditions of contract. It is important to note, however, that clause 8.4.2 limits the extent to which the Contractor's obligations under the Contract are affected to the extent specifically set out in the approved application.

### Amendments to Clause 8.4 of the Draft SOW

Clause 8.4 of the draft SOW should not be changed or tailored without appropriate policy advice and assistance from MPS-QA. Changes could result in the application of inappropriate standards or a reduction in the Commonwealth's rights.

The contact details for MPS-QA staff are available on the following websites:

Defence Intranet:

<http://stagedao.cbr.defence.gov.au/esad/MPS/contacts.htm#QA>

Drafter's Action: Nil

Related Clauses: The Quality Statement at Annex E to the conditions of tender requests tenderers to provide information relating to the tenderer's quality management system and notifies tenderers of the quality system standard required for the Contract.

Clause 8.1 of the draft SOW notifies the Contractor of the quality system standard that must be maintained and applied by the Contractor during the Contract and details the Commonwealth's right to perform Quality Audits and surveillance activities.

Clause 8.2 of the draft SOW sets out the procedure for agreement of the Quality Plan and any subsequent amendments to the Quality Plan.

Clause 8.3 of the draft SOW specifies the mechanism for establishing corrective actions on quality system, process and product non-conformances identified by the Commonwealth.

Further Reading: See also – *Philosophy Annex A, Lifecycle Thread – Quality Assurance*



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**ANNEX A – FUNCTION AND PERFORMANCE SPECIFICATION (FPS)**

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To detail the requirements for the Mission System and Support System.

**Policy:** Nil

**Guidance:** For further discussion on the role of the FPS under ASDEFCON (Strategic Materiel), refer to the Philosophy volume of this Handbook.

Drafters should note that the FPS remains on the Contract for the life of the Contract, even though the Functional Baselines for both the Mission System and the Support System change after Acceptance of the SS and the SSSPEC.

**Drafter's Action:** Drafters are to ensure that the most current version of the FPS is included in this annex prior to release of the RFT. Drafters must also include the negotiated FPS in this annex prior to Contract signature.

**Related Clauses:** The FPS is referenced in a number of clauses in the draft SOW, including clause 2.1 (Scope of Work); clause 3.11 (Life Cycle Cost); clause 4.2.2 (System Requirements Validation); and clause 5.2.2.1 (Support System Requirements Validation).

**Further Reading:** See also – *Capability Definition Documents Guide*





**ANNEX B – OPERATIONAL CONCEPT DOCUMENT (OCD)**

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To detail the operational and support concepts for both the Mission System and Support System.

**Policy:** Nil

**Guidance:** For further discussion on the role of the OCD under ASDEFCON (Strategic Materiel), refer to the Philosophy volume of this Handbook.

Drafters should note that the OCD remains on the Contract for the life of the Contract, providing a significant source of information for assessing “fitness for purpose” of the Contractor’s design.

**Drafter’s Action:** Drafters are to ensure that the most current version of the OCD is included in this annex prior to release of the RFT. Drafters must also include the negotiated OCD in this annex prior to Contract signature.

**Related Clauses:** The OCD is referenced in a number of clauses in the draft SOW, including clause 2.1 (Scope of Work); Clause 3.11 (Life Cycle Cost); Clause 3.12 (Transition); Clause 4.1.6 (Technical Performance Measures); Clause 4.2.1 (OCD); Clause 4.2.2 (System Requirements Validation); Clause 5.2.2.1 (Support System Requirements Validation); Clause 5.2.8.1 (Support System Synthesis – General); and Clause 7.2.3 (Acceptance Validation).

**Further Reading:** See also – *Capability Definition Documents Guide*



**ANNEX C – CONTRACT DATA REQUIREMENTS LIST (CDRL)**

<u>Sponsor:</u>	Materiel Policy & Services
<u>Status:</u>	Core
<u>Purpose:</u>	To summarise the data deliverables under the Contract and to define their parameters, including required delivery times; Commonwealth Review, Approval and Acceptance rights; and required standards. To set out the processes and procedures for preparation, delivery, management and maintenance of data items by the Contractor.
<u>Policy:</u>	Nil
<u>Guidance:</u>	A detailed discussion of each section within Annex C is provided.

**1 - PURPOSE**

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The purpose of this annex to the SOW is to summarise the data deliverables under the Contract and to define their parameters, including required delivery times; Commonwealth Review, Approval and Acceptance rights; and required standards. The Annex also sets out the processes and procedures for preparation, delivery, management and maintenance of data items by the Contractor.

**CDRL vs DID**

A common misconception is that a CDRL item and the Data Item Description (DID) represent the same thing. The CDRL line number (column 'a' in section 6) refers to a particular line number that is referenced in the SOW and is required to be delivered under the contract. A DID is called out for each CDRL line number (column 'i' in section 6) and specifies the purpose and minimum requirements for the document. There is no 1:1 relationship between them because a given DID may be called out for any number of CDRL line numbers, and ideally the same DID should be referenced across multiple contracts. DMO maintains a library of common DIDs that can be used across all projects and may be modified if necessary.

**Basis for the CDRL**

The Contract Data Items, defined by the CDRL as individual CDRL line numbers, act as the prime vehicle for information transfer between the Contractor and the Commonwealth. As such, the CDRL needs to consider the processes that the Contractor will adopt, the consequent outputs and hence Data Items that may be provided and their content.

Best practice suggests that both the Contractor and Commonwealth should establish a working relationship with continuous interaction, better feedback and the avoidance of "big bang reviews". In particular the reviews should avoid overloading both parties so the focus of the review is lost – the consequence of which is that both the end product and the working relationship will suffer.

Reviews are held periodically after contract award to:

- a. enhance communications between disciplines and organisations;
- b. contribute to Commonwealth confidence that the evolving design will meet contractual requirements;
- c. provide technical familiarity with the evolving design;
- d. highlight important, high risk, or controversial alternatives in the design approach which require customer input; and
- e. ensure that interpretation of requirements is in accordance with customer expectations.

Where possible, the Commonwealth should progressively review the Contractor process products throughout the design phases and in between major reviews.

The CDRL would still specify the required products for each major review but intermediate steps and products, defined by Contractor's processes, would be used for progressive review. It is expected these would be captured in the Engineering Information System (EIS) and made available to resident Commonwealth staff or via remote on-line access.

Given progressive review of intermediate products, the major design reviews (Mandated System Reviews) would then serve to consolidate and baseline the previous work. If the previous activities have been comprehensive, little new material would be need to be presented at the design review. The review would then take a minimum time with lower likelihood of significant follow-up actions.

#### Principles of CDRL Selection and Approval

This is intended to provide the philosophy applied develop the contract CDRL.

#### Project Processes

The Commonwealth is responsible for ensuring the adequacy of the development processes for the development of the System as well as the adequacy of the System product. This is, in part, because no amount of end-testing can assure quality that is not built-in along the development path and also since the Commonwealth, as an informed buyer, needs to understand the risks during the development processes. The Commonwealth specifies the framework for the project processes (e.g. EIA-632) in the SOW and the Contractor, using its expertise, tailors these mandated processes in the appropriate plans and provides the detailed processes to undertake the job.

#### What Data Items?

##### *Process Definition vs Process Work Products*

The required Data Items must be considered in the context of the relevant project processes. The Data Items that need to be specified by the CDRL can be divided into two basic types:

- a. process definition Data Items, such as the PMP and SEMP; and
- b. process work product Data Items, such as a Project Status Report (PSR) or System Specification.

Process-definition Data Items should be relatively static documents, and only change when the project processes are changed or inadequately defined. This includes the situation in which the process definition Data Item needs to be updated to address future phases of the project not covered in the existing Data Item. Process work product Data Items may be either static or dynamic depending upon whether they are reporting on the process or defining the system products and its design. As an example, the Risk Management Plan (RMP) should define the risk management strategy and processes, which should not change over time. However, the risk register (part of the PSR), which captures the individual risks at any point in time, will change throughout the life of the project.

The work-products Data Items are required for one or more of the following:

- a. to monitor project progress (e.g. project status report, issue based metrics);
- b. to verify that the processes are being followed (e.g. design review package);
- c. to define design goals (e.g. system specification, internal interface documents);
- d. to allow the Commonwealth to provide early feedback to contractor as to suitability of design and to avoid nugatory work on the part of the contractor (e.g. design documents, human factors design output, design review package);

- e. to verify system against design goals (test plans, reports);
- f. form part of the operational system that consists of equipment people and processes (training, operational manuals); and
- g. permit the ongoing support and development of the system (maintenance manuals, configuration information, and design data).

#### Timing for Data Item Deliveries

Data Items that define processes should be delivered before those processes are implemented within the project and, in general, are required at the start of the project. Ideally, these should be delivered as a set rather than in a piecemeal fashion, to ensure that the processes form a complete set and are harmonised.

Data Items that are the work products of the process should be delivered as they are produced. Of course, these Data Items must also pass through the Contractor's internal review and approval. For iterative processes such as HMI development, draft Data Items may be required to reflect the current status.

For those Data Items in which the format and content need to be Approved (or agreed) by the Project Authority, an outline Data Item is required before the execution of the process.

#### Endorsement of Data Items

Depending on the significance of the deliverable, the Project Authority will require differing levels of endorsement. These are, in order of most to least significance:

- a. Accept;
- b. Approve;
- c. Review; or
- d. CCP approval.

The processes associated with these differing levels of endorsement are specified in clause 2.3 of the draft SOW.

All Data Items should be internally reviewed and, if necessary, approved by the Contractor before presentation to the Project Authority.

Data Items that define project processes must be Approved by the Project Authority.

Data Items that define the user requirements (e.g. SS and SSSPEC) should be Accepted by the Project Authority.

Data Items that form part of the operational system (e.g. operational manuals) should be Accepted by the Project Authority.

Data Items that permit the ongoing support and development of the system are divided into two cases. Where the Contractor provides the whole-of-life support for the system, these Data Items should be Reviewed. Where the Contractor may not support the system over its entire life, these Data Items should be Approved.

Data Items that define the output from key design stages (e.g. design review minutes) should be Approved by the Project Authority.

Data Items that monitor progress (e.g. PSR) and verify that the processes are being followed should be reviewed by the Project Authority. As the series of PSRs represents the history of the project, the comments by the Project Authority are needed to ensure accuracy. Note that in the case of the progress reports, some items may still need Approval for contractual reasons (e.g. the Cost Performance Reports).

Data Items that provide visibility of activities (e.g. EIS databases) or provide early feedback on the design (e.g. design documents) should be supplied to the Project Authority as review items.

### Update Schedule for Data Items

Process-description Data Items must be updated when they no longer accurately reflect the actual processes to be used or the project is entering a different phase that has not been addressed in the current data item. These Data Items should be updated and Approved before the process is implemented. The process changes within any phase are expected to be rare.

Process work-products Data Items need to be updated:

- a. if they form part of a configuration baseline that is subject to formal change control (i.e. ECP);
- b. if they are found to be inadequate for their intended purpose;
- c. if they contain inconsistencies or errors of fact; or
- d. if, during a project process and before incorporation into a formal baseline, the Data Item is required to disseminate information, but does not accurately reflect the current situation.

## 2 - MANAGEMENT OF DATA ITEMS

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No tailoring is expected in this section.

## 3 - EXPLANATION OF THE CDRL

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The drafter must ensure that each line item in the CDRL has been referenced from the SOW and that each line item has been given a unique identifier, name and cross reference that are consistent with the SOW.

Delivery schedules should consider the expected maturity of the document, the ability of the Commonwealth to adequately review it in the specified time, and the risk to the program.

At least one hard copy should be requested when the line item is for Commonwealth Approval or Acceptance, ensuring that the appropriate Contractor signatures are retained. Wherever possible, the use of softcopy is encouraged, though the ability of the Commonwealth to interpret and review the relevant file format needs to be addressed in the wording of the CDRL and SOW.

DIDs need to be carefully chosen and uniquely identified as discussed in section 6.

The drafter needs to consider the actual period required to review each data item before inserting periods in the CDRL. Factors to be considered include:

- a. the size and complexity of the document;
- b. whether a preliminary or draft version would already have been reviewed;
- c. the need to involve external agencies or Approval authorities; and
- d. conflicting requirements (e.g. the need to review more than one data item concurrently).

## 4 - DELIVERY ADDRESSES

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Drafters should think carefully about the distribution of data items listed in the CDRL before the RFT is released. Wherever possible, arrange via the Contract for the Contractor to send the appropriate quantities of data items to all Commonwealth locations that require the data item. Add to the distribution list in the CDRL and expand as required below.

## 5 - GENERAL REQUIREMENTS FOR DATA ITEMS

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### 5.1 - Data Item Media

If on-line access or on-line delivery of information is specified in the SOW, then this section needs to be modified appropriately.

Drafters should note that USA-based contractors will base their normal business practices on letter size paper. Requiring the use of A4 type paper will increase the cost above that for letter format paper.

Drafters should carefully consider the preferred electronic format. The ILS section of the SOW specifies the Continuous Acquisition and Lifecycle Support (CALs) requirements for all Technical Data and the requirements specified here should be consistent with the requirements in the SOW.

#### 5.2 - Format Instructions

The requirements in this area may be expanded or contracted as assessed by each project on a risk basis. For example, Project Authority staff may need to control the document reference number and format to integrate with an existing suite of documentation.

#### 5.3 - Content Instructions

The requirement for submitted data items (eg manuals) to satisfy a certain reading grade level (e.g. RGL 9) could be included as necessary. This is to ensure that the data item is written focussed at an acceptable level of reading difficulty.

#### 5.4 - Use of Existing Data

No tailoring expected.

### 6 - CONTRACT DATA REQUIREMENTS LIST

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The Data Item Descriptions (DID) can be accessed from the Asset Library folder located within the ASDEFCON (Strategic Materiel) website at:

<http://intranet.defence.gov.au/dmoweb/sites/cpo/default.asp?p=load.asp?page=8219>

Drafters should download the most recent DID version from the website, and specify the version in place of the 'x' under the Data Item Description Reference column. For example, Version H of the Project Management Plan DID will be referenced as DID-PM-MGT-PMP-VH.

If project-specific data items are required (e.g. to meet regulatory requirements), drafters should generate these additional DIDs using the standard format and approach utilised for the Standard Asset DIDs. The short title for the DID should then be incorporated into the CDRL, along with the other information required. To the extent practicable, drafters should avoid using project-specific DIDs unless no other option is available. Drafters also need to ensure that access to all DIDs is provided to tenderers, which may be achieved through:

- a. attachment to the draft Contract (e.g. as another annex to the SOW);
- b. provision of the DIDs in soft format (e.g. CDROM) to the respective tenderers; or
- c. access to the DIDs through a project-specific web site.

**Drafter's Action:** The CDRL is to be amended, both prior to release of the RFT and prior to Contract signature, to:

- a. ensure that all (and only) those data items called up in the draft SOW (including though other DIDs (e.g. Risk Log)) are invoked;
- b. ensure that the latest versions of the data items are referenced;
- c. ensure that the appropriate level of endorsement (i.e. Review, Approval and Acceptance) for each data item or versions of data items is included, consistent with the guidance provided herein and the principle of Clear Accountability In Design (CAID);
- d. ensure that the scheduling of the delivery times for data items reflects the requirements of the project, the interactions between data items, and the

- interrelationships with the developmental cycle for the Mission System and Support System;
- e. ensure that the Commonwealth review times for data items reflect the factors discussed in the guidance;
  - f. reflect the method of delivery (e.g. hard copy, electronic or via a Contractor Integrated Technical Information Service (CITIS));
  - g. reflect the required distribution of data items;
  - h. reflect those data items for which prior Approval has been provided, either through offer definition activities or through contract negotiations.

Drafters are to ensure that access to the draft DIDs is provided to each tenderer.

**Related Clauses:** Clause 3.5 of the conditions of tender addresses the offer definition phase.

Clause 2.3 of the draft SOW requires the Contractor to produce, update and deliver the data items referenced in the CDRL. The clause also details the Contractor's obligations and the Commonwealth's rights with respect to processing the data items.

**Further Reading:** Refer to the Philosophy Volume of the Handbook for a discussion of the Guiding Principles and the CAID philosophy.



**ANNEX D – LIST OF DMO CHECKLISTS**

**Sponsor:** Materiel Policy & Services

**Status:** Core

**Purpose:** To provide the DMO Checklists that are invoked by the SOW.

**Policy:** Nil

**Guidance:** This Annex identifies the DMO Checklists that are invoked by the SOW. Each checklist defines entry criteria, a checklist of questions for the review, and a set of exit criteria for that review.

The DMO Checklists can be accessed from the "Asset Library" folder located within the ASDEFCON (Strategic Materiel) website at:

<http://intranet.defence.gov.au/dmoweb/sites/cpo/default.asp?p=load.asp?page=8219>

Drafters should download the most recent DID version from the website, and specify the version in place of the 'x' under the DMO Checklist Reference column. For example, Version B of Spares Provisioning Preparedness Review will be referenced as DMO-CHECKLIST-SPPR-VB. The table should only contain reference to the checklists called up in the SOW (e.g. if there is no Support & Test Equipment Provisioning Preparedness Review in the SOW, then DMO-CHECKLIST-S&TEPPR should *not* appear).

Although the standard checklists should normally be used, if the Project Authority needs to tailor a checklist, the modified checklist should appear in this annex. Additionally, if the SOW invokes Mandated System Reviews for which standard DMO Checklists do not exist, drafters should generate the additional checklists required.

Drafters should be aware that Annex C to Attachment B of the draft Contract provides the Schedule of Milestone Entry and Exit Criteria for the identified Milestones under the Contract. These Milestone Entry and Exit Criteria specifically refer to the DMO Checklists. The guidance provided in respect of the Milestone Entry and Exit Criteria should be read in conjunction with the guidance provided here.

**Drafter's Action:** Drafters are to ensure that the annex lists the appropriate DMO Checklists and versions of the checklists for those Mandated System Reviews that are invoked by the SOW.

Drafters are to ensure compatibility between this annex and the Schedule of Milestone Entry and Exit Criteria contained at Annex C to Attachment B of the draft Contract.

**Related Clauses:** Annex C to Attachment B of the draft Contract provides the Schedule of Milestone Entry and Exit Criteria.

Numerous clauses within the draft SOW refer to the DMO Checklists.

**Further Reading:** Nil



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## 1. SCOPE

This guide is to assist DMO staff using the ASDEFCON (Strategic Materiel) proforma Request For Tender (RFT) for use in strategic materiel acquisitions, which are high-risk and software-intensive or involve the acquisition of platforms.

The ASDEFCON (Strategic Materiel) RFT Template is not meant for projects that do not fit all of the descriptors above. For example, the template would not be appropriate for:

- a. a small-scale acquisition, even if the acquisition were software intensive;
- b. acquisition of a large number of off-the-shelf items (e.g. trucks);
- c. a moderately-sized acquisition, which involves some design and development, but minimal Integrated Logistics Support (ILS); and
- d. projects utilising an Evolutionary Acquisition (EA) strategy.

Other proforma RFTs are being developed for such projects and, with the possible exception of EA projects, will generally be less demanding in terms of controls, formal reviews and documentation deliverables. DMO staff should note that the misuse of this proforma will almost certainly result in extraordinary project overheads and inefficiency. For further guidance on the selection of an appropriate RFT template, DMO staff are referred to Annex C to Chapter 2 of the Defence Procurement Policy Manual (DPPM).

ASDEFCON (Strategic Materiel) is an integral part of a much larger set of integrated process and products being developed to ensure effective and efficient acquisition and support of Defence materiel. Other components of this set includes the development of the Operational Concept Document (OCD), Function and Performance Specification (FPS) and Test Concept Document (TCD) at the Capability Staff end of the process and the Standard Acquisition Management System (SAMS) being developed in the Materiel Policy and Support Branch of the Electronic Systems Division.

ASDEFCON (Strategic Materiel) was developed in close consultation with Defence Industry over a series of one-day workshops and culminating in a one-week workshop. It incorporates many hundreds of man-years of collective experience. Given the often-conflicting requirements of Industry and Defence, the result is something that both parties can work with.

It should be noted that this documentation set is analogous to a jigsaw puzzle that has been designed to contain no overlaps or gaps; hence, great care needs to be taken when consideration is given to adding or deleting clauses, or even moving clauses from one section to another. If a particular clause appears to be missing, it is recommended that the index be checked to ensure that it does not appear somewhere else. An example of this occurs in the area of Practical Software and Systems Measurement (PSM), which does not appear under the software or systems engineering section, but has been elevated to the project management section to cover measurement and analysis across all aspects of the project.

Clauses that may be tailored out are indicated as 'Optional' whereas clauses which are either unmarked or annotated as 'Core' must not be tailored. This document set, and the specific wording of the clauses, has undergone extensive review by DMO staff, Defence industry, Technical Regulators, and legal and commercial authorities including Attorney General's Department. Great care needs to be taken if consideration is being given to changing wording. It is recommended that advice be sought if there is any doubt as to the impact of proposed changes.



## 2. REFERENCED DOCUMENTS, ACRONYMS AND ABBREVIATIONS

### 2.1 Referenced Documents

The following table lists the documents referenced by the Philosophy behind the Statement of Work. The list forms a super-set of the list of reference documents in Attachment M to the Draft Conditions of Contract of ASDEFCON (Strategic Materiel).

Reference	Description
AAP 7001.053	Technical Airworthiness Management Manual (TAMM)
CSLCMG	Capability Systems Life Cycle Management Guide 2001 December 2001
DOD-STD-2167	Defense System Software Development
DPPM	Defence Procurement Policy Manual
EIA/IS-632	Interim Standard Systems Engineering
EIA-632	Processes for Engineering a System
IEEE 1220	Standard for the Application and Management of the System Engineering Process
ISO/IEC 12207	Software Life Cycle Process
ISO/IEC 15288	Life Cycle Management – System Life Cycle Processes
MIL-STD-499A	Engineering Management
MIL-STD-499B	Systems Engineering

### 2.2 Acronyms and Abbreviations

The following table lists the acronyms and abbreviations used by the Philosophy behind the Statement of Work. The list forms a super-set of the list of acronyms and abbreviations in Attachment M to the Draft Conditions of Contract of ASDEFCON (Strategic Materiel).

Abbreviation	Description
CAID	Clear Accountability In Design
EA	Evolutionary Acquisition
IDA	Initial Design Activities
ITR	Invitation to Register
MTA	Maintenance Task Analysis
OD	Offer Definition
PSM	Practical Software and Systems Measurement
S3	Safety and Suitability for Service
SAMS	Standard Acquisition Management System
SME	Subject Matter Expert
TRA	Technical Regulatory Authorities





### **3. GUIDING PRINCIPLES**

In preparing ASDEFCON (Strategic Materiel), it became necessary to identify guiding principles to ensure a consistent approach by all parties and to ensure that the resultant product was compliant with relevant policies.

#### **3.1 What is Included in the Statement Of Work?**

The Conditions Of Contract (COC) are effectively the 'rules of engagement' between the Commonwealth and the Contractor, thus all clauses fitting this description are contained in that section of the proforma.

The Statement of Work (SOW) on the other hand should incorporate all project activities that are conducted within the scope of a Contractor's Work Breakdown Structure (CWBS) (i.e. activities that cost money). The SOW prepared by the Commonwealth is ultimately mapped into the CWBS and CWBS Dictionary and clearly defines the authorised work under the Contract. The principles outlined above align with activity based costing and the Earned Value principles (i.e. there is not a cent outside of the WBS).

#### **3.2 Fixed Price Equates to Fixed Scope**

It is Government policy that the Commonwealth will be a fair trader; therefore, if the Commonwealth is seeking a fixed-price Contract, then there must be no uncertainty in the scope of work. In instances where the scope cannot be clearly defined, the Commonwealth could indicate an initial bound on time and material.

As an example of such a situation, it is desired that the Contractor produce a prototype of a Human Computer Interface (HCI) for a complex system that would ultimately form part of the specification baseline for the system. As the agreement on the acceptability of this HCI is highly subjective, it will not be possible to clearly bound the scope of work. In this instance, it could be proposed that the Contractor develop the HCI on a time-and-materials basis.

#### **3.3 Integrated Management Framework**

To minimise overlaps and gaps in the management framework, a highly integrated approach has been taken for ASDEFCON (Strategic Materiel). This approach is consistent with current best practice to employ integrated teams (e.g. Integrated Product Teams (IPTs)) for developmental activities. The objectives of this integrated management framework are to:

- e. avoid 'stove-piping' of particular disciplines (e.g. PM, SE, ILS, CM, QA, V&V and All);
- f. help to ensure that all disciplines are involved as and when required; and
- g. ensure that a standard approach is taken to common tasks across the differing disciplines.

Such an approach should ensure that all items are addressed and that there are clearly defined responsibilities having no overlaps or gaps. This integrated approach commences at the concept phase during the development of the Operational Concept Document (OCD) and is visible throughout the project lifecycle. For example the Contractor is to demonstrate at each technical review that its developmental activities will result in a combined Mission System and Support System that meets requirements, at minimum Life Cycle Cost (LCC), when both the Mission System and Support System are operated and supported in accordance with the OCD. Thus, the Support System design is evaluated at each technical review, providing close integration of the Systems Engineering (SE) activities and Integrated Logistics Support (ILS) activities. This integration is facilitated by the concept of a Mission System and a Support System.

Defining the Mission System support requirements as a Support System is the most obvious and significant aspect of ASDEFCON (Strategic Materiel) that facilitates the integrated management framework. By adopting this approach, ASDEFCON (Strategic Materiel) causes ILS to be subject to an event-driven

schedule, as opposed to a time-driven schedule, which enables ILS to better map into the SE process. An event-driven schedule means that ILS now has well-defined objectives and detailed entry and exit criteria for each of the technical reviews (such as SRR, SDR, etc). Furthermore, these technical reviews have been renamed as Mandated System Reviews to avoid any confusion as to their applicability across the domains. All ILS reviews, including such reviews as provisioning reviews (which are specific to ILS), now come under the umbrella of Mandated System Reviews and are subject to the clauses under SE relating to the conduct of such reviews.

Integration of the SE and ILS activities into Project Management is assured through the use of a product-structured Work Breakdown Structure (WBS). Items that could not clearly be allocated to either SE or ILS were raised up to the Project Management area. Examples of this approach include the Life Cycle Cost (LCC) and Transition requirements, which have been incorporated into the PM section of SOW.

The concept of the Support System also provides greater visibility into the activities that will be undertaken by In-Service logistics-support Contractors (i.e. under a separate Logistics Support Contract (Contract(LS))), as well as into the access that these logistics-support Contractors will have to Support Resources such as Technical Data and S&TE. This enhanced level of visibility helps to integrate Australian Industry Involvement into the management framework because Project Office staff will now be able to make a more-informed assessment as to whether or not the Industry Requirements will actually be met.

Schedule is another area in which the separate disciplines have been united. Under the RFT Template, only a singular schedule (known as the Contract Master Schedule (CMS)) is required. The DID for each plan (e.g. SEMP, ISP and V&VP), for example, specifies that the schedule associated with the plan is to be provided as part of the CMS. This approach helps to avoid the problems associated with the use of separate schedules, which quickly become non-aligned.

The inclusion of measurement and analysis in the Project Management section of the SOW reflects the need for projects to apply an integrated, quantitative approach to project monitoring and control. Where measurement has been used in the past, it has generally been performed and understood in specific isolated pockets. For example, Earned Value Management and Technical Performance Measures have generally not been used to determine the status of technical progress in a quantitative form. Through the application of methodologies such as PSM and by raising the profile of measurement and analysis as a project management tool, projects can expect to be better informed and therefore make better decisions earlier. Measurement is useful for making the invisible visible. For software intensive projects this is a necessity for by its nature software is invisible in its manufacture making an assessment of progress near impossible. Measurement allows the project manager to identify issues early through trend analysis and to impose controls earlier by detecting excursions beyond set thresholds. By combining measures from various areas the project manager gains new insights and understanding into the health of the project.

There are a number of common activities across the disciplines, which have now been brought together under a common set of clauses to help to ensure that a common approach is taken. The clauses under PM relating to meetings are one example of this approach. Progress meetings and extraordinary meetings now cover all meetings, irrespective of discipline. Additionally, the term "progress meetings" was employed to facilitate this approach (as opposed to the previous term, "Project Management Reviews"). Common DIDs for agendas and minutes have also been utilised. Incorporating the clauses relating to Independent Verification and Validation (IV&V) under the PM section of the RFT Template is another example of this approach.

### 3.4 Focus On Outcomes

The SOW should maximise the focus on outputs or outcomes to enable tenderers to bid using their own processes. The mandating of standards should be minimised, allowing the tenderers to document proposed processes for achieving the Contract outcomes in tendered plans. Where the proposed processes satisfy the Commonwealth's needs, these plans will be approved and placed on Contract.

In cases where the Commonwealth identifies a particular standard in the SOW, this generally does not preclude the Contractor from using different standards or processes, if these can be demonstrated to achieve the required outcomes.

In the past, particular standards would have been mandated, as follows:

“Undertake Maintenance Task Analysis (MTA) in accordance with MIL-STD-XXX.”

ASDEFCON (Strategic Materiel) uses the following approach:

“Identify the maintenance tasks that must be undertaken at each echelon of maintenance to enable the requirements for the Mission System and the Support System to be met.”

### 3.5 Work in the Contractor Process Domain Where Suitable

#### Mandating Process

Historically, the Defence Department has often mandated specific processes to be used for the conduct of a Contract, often through reference to relevant military standards, such as the US DOD-STD-2167. This approach conflicts with the accepted quality systems concepts, where each company will develop a set of processes and procedures that is best suited to its business environment and practices. It also leads to problems where a Contractor has multiple customers, each with differing process requirements – which process does a Contractor adopt as their standard or do they start from ‘scratch’ each time a new Contract is won?

In a Contract to acquire an operational system, mandating the processes to be undertaken is not the end aim of the Commonwealth. And since mandated processes have generally not evolved over time, they may not be the most efficient given the particular Contractor's circumstances and the application domain. Note also that Defence is becoming more reliant on an integrated civil-military industrial base rather than a defence-unique industrial base. The Commonwealth's aim is to ensure that the end user's needs are met through adequate development and quality management processes, with appropriate monitoring of Contract progress and risk during development. A question that had to be addressed in the development of the ASDEFCON (Strategic Materiel) template is: “How may the Commonwealth best achieve this?”

The US Defence acquisition reform<sup>1</sup> that abolished many older proscriptive military standards, led to the development of more general military or commercial equivalents in their place. Most of these new standards do not specify the details of processes but provide a set of evaluation criteria that can be used to assess existing development processes. The approach taken in the ASDEFCON (Strategic Materiel) SOW is to refer to these more abstract standards, allow the Contractor to use their standardised internal processes, and where relevant, ask the Contractor to show that what they intend to do satisfies the high-level framework (i.e. to ensure that the proposed Contractor development processes can be considered good or best practice). Detailed process standards will only be mandated when there is a defence-specific need, such as those relating to safety and airworthiness.

The focus of the Commonwealth and the Contractor, however, are likely to be different. The Contractor will be trying to minimise the effort and streamline

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<sup>1</sup> US Secretary of Defense, William Perry, Memorandum June 1994

activities to achieve a minimum cost solution. The Commonwealth is trying to ensure a quality product that is 'fit for purpose'. Accordingly, since the SOW is focussed on Commonwealth goals, it will emphasise those specific areas of process.

#### Benefits of Standards

Standards exist for processes, interfaces and product qualities. They are developed by various bodies to satisfy a number of aims including:

- a. definition of a common language to facilitate communication, interaction and comparison;
- b. predetermined minimum levels of quality that can be relied upon (e.g. products that comply with safety or similar standards); and
- c. definition of best practice in the processes used in development or manufacture.

Standards are currently applied by the DMO to:

- a. establish minimum quality requirements for work products;
- b. mandate how the Contractor is to conduct their work in those situations where mandating process is required (e.g. to meet safety and regulatory requirements); and
- c. recommend guidance as to how the Contractor may consider conducting their work.

Many of the standards that DMO references are process standards and mandate a minimum work process. The main process areas relating to engineering are systems and software engineering.

### 3.6

#### **All Plans to be Completed by Effective Date**

An objective of the SOW is to ensure that all project plans are completed by Effective Date (ED) so that those plans can be put on Contract. This approach leaves little room for disagreement about the scope of work for the project and will help in achieving an orderly start to the project.

The practice of seeking delivery of a large number of plans shortly after ED has a number of drawbacks. At ED there is usually only a handful of people working on the Contractor's project team, and these will be put under great internal pressure to deliver the required documents and achieve the associated payment milestones. This focus on the deliverables will be to the detriment of the project start up activities. This inevitably leads to the delivery of poor quality planning documents and a poorly started project.

### 3.7

#### **Products, Processes and Evaluation Criteria**

The SOW should clearly identify the required products to be developed and the evaluation criteria to be applied to those products during the Contract period. The SOW should also identify the required processes and the evaluation criteria to be applied to the processes during the Contract period. It should be noted that many of the processes will be proposed by the Contractor generally as part of its tender response, and if suitable, will be approved by the Commonwealth, placed on Contract, and evaluated throughout the project lifecycle.

It is important to note that the Commonwealth is not just buying the product, but is buying the process as well. For example, if the Contractor is conducting a safety hazards analysis, the Commonwealth is far more concerned with the rigour of the process than it is with the report at the end of the process. Software development is another area where it is essential to approve the Contractor's processes and to evaluate the adherence to those processes under the Contract.

This discussion highlights that the following four elements need to be agreed by Contract signature:

- a. the products to be delivered under the Contract,
- b. the product evaluation criteria to be used to evaluate the products developed by the Contractor under the Contract,
- c. the processes to be used by the Contractor in developing the required products, and
- d. the process evaluation criteria to be used to evaluate the adherence of the Contractor to the agreed processes under the Contract.

The offer definition phase (in conjunction with contract negotiations) was introduced into the ASDEFCON (Strategic Materiel) RFT template to provide, inter alia, the mechanism and framework to enable the preceding four outcomes to be consistently and effectively achieved.

### **3.8 Process Definition Documents**

In identifying the documentation requirements for ASDEFCON (Strategic Materiel) the “process definition” documents have been clearly separated from the “products of the process” type documents.

As an example of this the Risk Management Plan is a process definition document that describes how risk will be managed for the project and probably will not change over life of project. On the other hand the Risk Register, which is a product of the risk management process, will contain a log of risks and mitigation plans and will change often as risks are added or treated. The Risk Register may even be an electronic database.

The Project Management Plan and the Systems Engineering Management Plan are further examples of process definition documents whereas Project Status Reports and Engineering Design documents are products of the process documents.

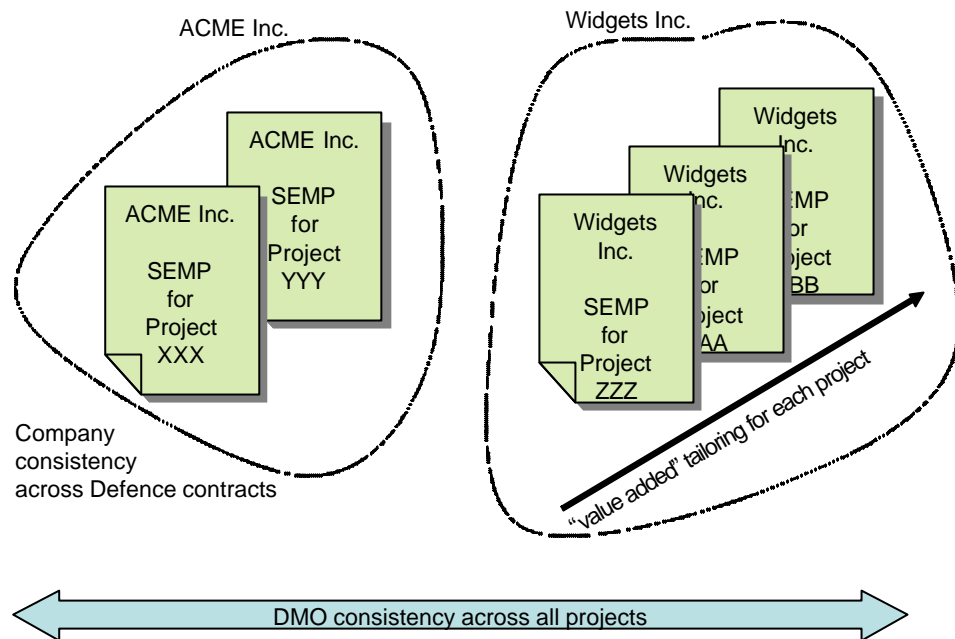


#### 4. STANDARD WAY OF DOING BUSINESS

One key benefit of the ASDEFCON (Strategic Materiel) template methodology for developing the Contract is that all parties – DMO, Contractors and their suppliers – can expect more consistency of approach. This is done in several ways illustrated below:

- a. Conditions of Contract. By providing a standard framework for each Contract with common use of terminology.
- b. Statement of Work (SOW). By providing a standard set of expectations for the work that needs to be performed as defined in the SOW as well as standard ways of evaluating that performance (e.g.. standard reviews, status reporting, measurement and analysis).
- c. Contract Data Requirements List (CDRL). By providing a standard list of deliverables with defined relationships and delivery expectations throughout a Contract. Although the CDRL is likely to be tailored to each project, the tailoring of a standard template is likely to produce less variations and therefore more commonality across projects.
- d. Data Item Descriptions (DIDs). If all data items are expected to have similar expectations across projects, the potential for reuse by a Contractor is increased. In particular, for planning documents (e.g. PMP, SEMP), there are two aspects. The first is the tailoring that each Contractor must do to match their internal technical and managerial processes; the second is the tailoring to match the specific needs of the project. Standardised DIDs enable reuse in the former – the latter will still need work for each project, however it will allow focus by DMO and Contractor on those project specific “value added” areas.
- e. Review Checklists. By creating standard expectations for the goals of each review, DMO standard review checklists aim to create consistency between projects.

For those Contractors that predominantly work in the defence arena, the ASDEFCON (Strategic Materiel) standard allows for the development of standard internal processes that are aligned with the template SOW and may be used across a suite of projects (Figure 4-1). For those Contractors that only occasionally work on defence Contracts, the template is designed to maximise the use of internal processes but still requires the Contractor to demonstrate that these are adequate to satisfy Defence needs.



**Figure 4-1 - Planning Document Standardisation**

Standardised Contracts also lead to the likelihood of consistency of interpretation, especially when areas of expertise that align with the template are established - the “subject matter experts” or SMEs. These SMEs can act as arbiters for the given area as well as a focus for continuous improvement of the template as Commonwealth or industry learns better ways to achieve the desired project outcomes.

Wherever possible, the ASDEFCON (Strategic Materiel) DIDs are expected to be used unaltered to achieve the above aims. If, in developing and tailoring the SOW, a project feels that their needs cannot be accommodated within the existing set of DIDs, the expectation is that a new DID can be developed in conjunction with the relevant SME and added to the “pool” of ASDEFCON (Strategic Materiel) DIDs for future reuse in similar situations. If necessary, this could also lead to the introduction of new or modified standard template CDRL items along with their DIDs.

In terms of the solicitation processes, avoidance of reinventing the wheel may potentially lead to faster tender evaluation as focus can be provided to the critical aspects.

Since the ASDEFCON (Strategic Materiel) template is less proscriptive than the historical general contracting practice, it places more emphasis on insight into Contractor activities. This insight is dictated by both DMO mandated activities (such as formal system reviews) as well as Contractor-defined processes (such as the capture of design in the Contractor-specified documentation tree). Throughout this insight and interaction, the peaks and troughs of the workload need to be managed across the project, for both the Contractor and DMO. Where possible (though this may be difficult at some times (e.g. DDR)), activities, in terms of formal deliverables and interactions, should be staggered to provide levelled workloads for DMO Project Offices and Contractor alike.



## 5. INTRODUCTION TO THREAD CONCEPTS

Each area to be addressed by the Contract can be represented in a life cycle thread that describes the various activities and outputs of each phase. These threads are used to describe the chronological sequence of events and products for a particular area and depict a consistent set of activities and outputs that need to be reflected in the Statement of Work, the associated Contract Data Requirements List and the solicitation and evaluation process.

These life cycle threads support the mapping, integration and application of life cycle standards such as EIA-632 and ISO 12207 to the DMO acquisition life cycle processes. This approach highlights what is required from an earlier phase in order to meet the objectives of a current phase. The threads can identify required DMO and Contractor processes and associated process documentation to support standards compliance. Conversely, where a life cycle standard contains the desired process description, the thread can include by reference, the life cycle or other standards that apply to one or more of the life cycle phases of the thread or activities within a life cycle phase.

In this way, the threads define an overview of DMO's organisational standard process. This allows DMO to become a learning organisation as the lessons learned from each Contract can be applied to the organisational level process model that is the default way of "doing business" for the majority of DMO projects. As such, these threads have value beyond the ASDEFCON (Strategic Materiel) SOW template.

The threads should ensure that both the Project Authority and the potential Contractors have a full understanding of what to expect at each phase in the project lifecycle and that there are no surprises to either party. It is highly recommended that users of the ASDEFCON (Strategic Materiel) proforma familiarise themselves with these lifecycle threads during the preparation of the required documentation.

Each Lifecycle thread contains the following information

- a. an introduction,
- b. a definition which defines the thread subject,
- c. an objectives section which defines the objectives of creating the thread,
- d. an applicability section which identifies the target areas of the thread and,
- e. the lifecycle Phases

The phases identified in each of the threads include:

- a. Solicitation Phase,
- b. Offer Definition Phase,
- c. Contract Negotiation Phase,
- d. Contract Execution Phase,
- e. Transition to Support Phase, and
- f. In-Service Support Phase.

Threads address the following topics:

- a. Key Personnel Management
- b. Project Planning
- c. Life Cycle Cost (LCC)
- d. Engineering Management
- e. Design Solution

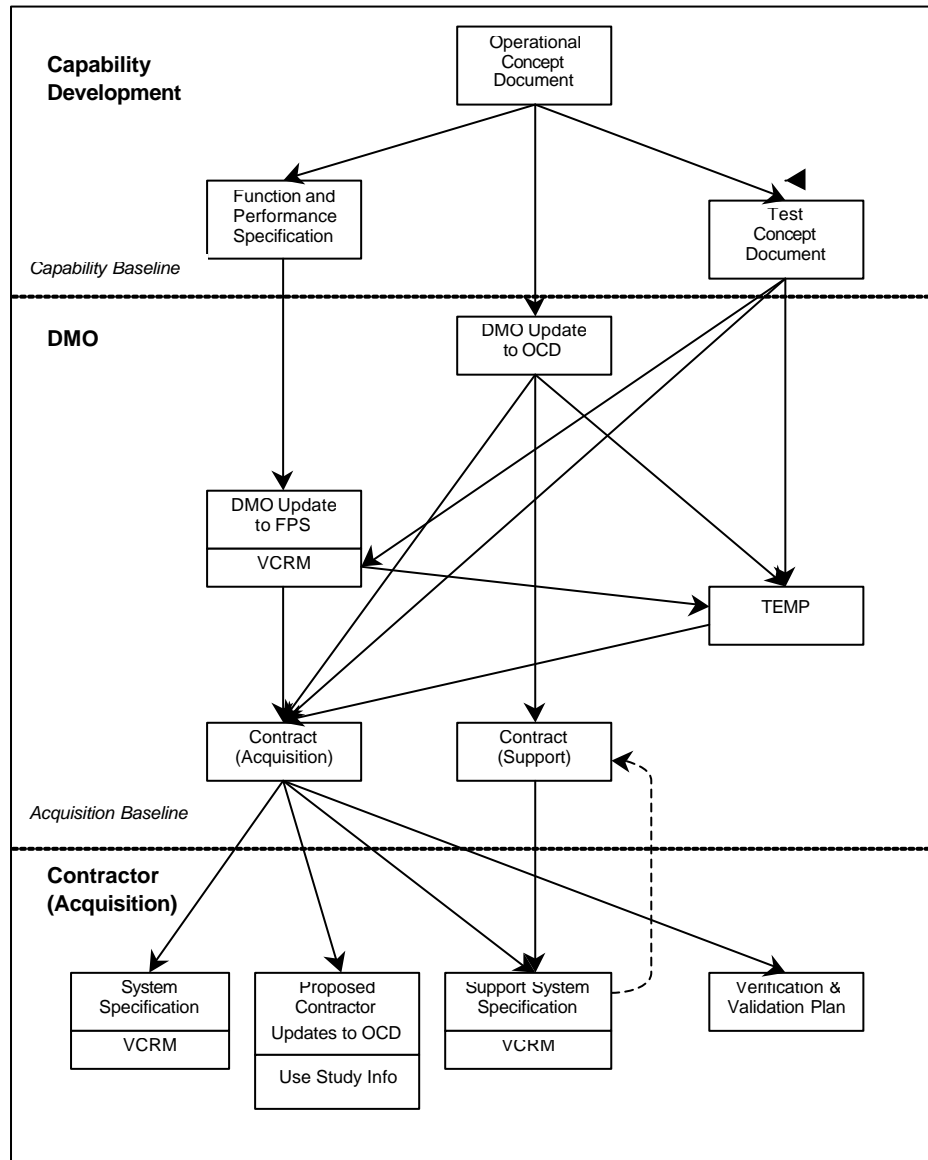
- f. Configuration Management
- g. Design Documentation
- h. System Reviews
- i. Verification And Validation
- j. Software Management
- k. Measurement and Analysis
- l. Safety
- m. Safety Engineering
- n. Technology Insertion
- o. ILS/LSA Management
- p. Engineering Support
- q. Maintenance Support
- r. Supply Support
- s. Technical Data
- t. Personnel
- u. Training and Training Support
- v. Facilities
- w. Packaging, Handling, Storage and Transportation (PHS&T)
- x. Support And Test Equipment (S&TE)
- y. Computer Support
- z. Contract Management
- aa. Defence Radiocommunications
- bb. Airworthiness Regulatory Requirements
- cc. Assessment Of Safety And Suitability For Service (S3) Of Explosive Ordnance
- dd. Quality Assurance
- ee. Australian Industry Involvement Management
- ff. Australian Industry Involvement
- gg. Intellectual Property (Management)

## 6. TECHNICAL THREAD

### 6.1 Role of OCD, FPS and TCD

Each project should have at least three key technical input documents, developed in accordance with the guidelines of the Capability Systems Life Cycle Management Guide. These documents are:

- a. an Operational Concept Document (OCD), which describes the characteristics of the required capability from an operational perspective, facilitates an understanding of the overall system goals for both the mission system and support system, details missions and scenarios associated with operations and support, and provides a reference for determining 'fitness for purpose';
- b. a Function and Performance Specification (FPS), which specifies the requirements for the system as well as providing the basis for design and qualification testing of the system (i.e. through the Verification Cross Reference Matrix (VCRM)); and
- c. a Test Concept Document (TCD), which provides a high level overview of which organisations (in particular DMO, accreditation organisations, and the operational system) are verifying and validating which aspects of the capability (e.g. DMO to verify against the developed System Specification and the operational system to conduct the validation against the evolved OCD, or alternatively perhaps DMO has a greater role in the validation / Operational Test and Evaluation (OT&E) aspects before system acceptance).



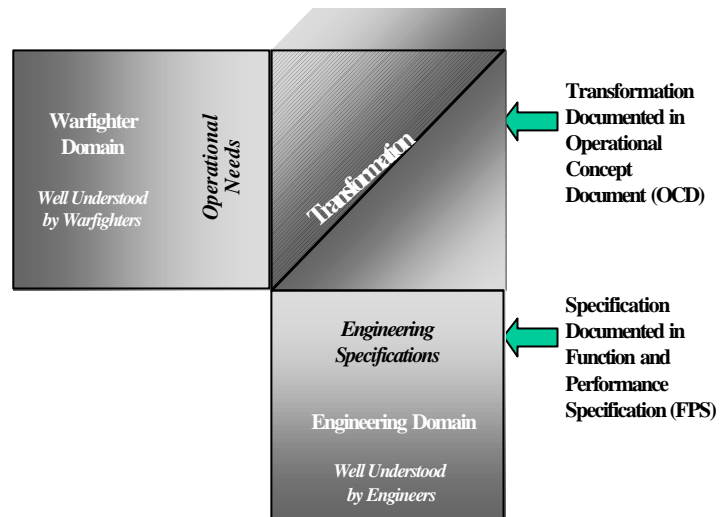
**Figure 6-1 - Relationships between Key Definitional Documents**

As shown in Figure 6-1, these three documents provide the input to DMO to develop the required Contract(s) to deliver the capability.

The OCD contributes to the following:

- a. the DMO development of the support concepts and the consequent requirements for a Contractor to develop the support system for the capability;
- b. as input to a Contractor requirements analysis process in the transition from the FPS to a mature System Specification (SS) and Support System Specification (SSSPEC); and
- c. along with the TCD, provides a definition of the Critical Operational Issues (COI) as a focus for the Test and Evaluation Master Plan (TEMP).

As shown in Figure 6-2, the OCD acts as a bridge between the operational needs and the detailed engineering definition, as captured in the System Specification, of what will be developed.



**Figure 6-2 - Systems Engineering Documents**

The FPS provides the basis for the DMO/Contractor development of an SS for the Mission System and an SSSPEC for the Support System. Both the SS and the SSSPEC should capture a greater level of detail than the FPS and should resolve any feedback from implementation issues. All changes between the FPS and the SS/SSSPEC should be traced both forwards and backwards.

The TCD provides the basis for DMO development of a TEMP as part of the Acquisition PMP. In turn, the TEMP provides the framework for the verification and validation of the capability and will lead to specific clauses in the SOW.

## 6.2 Verification and Validation – DMO “Output”

As a minimum, a project must ensure that the delivered system meets the Contracted requirements. This is called “verification” (in accordance with EIA-632) or previously Developmental Test and Evaluation (DT&E) and Acceptance T&E (AT&E), and is conducted by verifying against each requirement in the baselined System Specification (SS) and Support System Specification (SSSPEC).

In addition, a project may be required to conduct further testing activities to validate that the Mission System, Support System, or both deliver the required capability to the user. This is called “validation” (in accordance with EIA-632) or previously Operational T&E (OT&E), and is conducted by confirming conformance with the original user requirements (i.e. effectively, what is described in the OCD and FPS). In practice and often due to the long acquisition time scales, by the time the capability is delivered, the user requirements have changed or matured to reflect the then current operational environment. In these cases, the OCD and FPS may be updated before the validation activities take place. One of the main purposes for OT&E in this case is to identify the differences between the delivered and desired capability as a basis for potential remedial action.

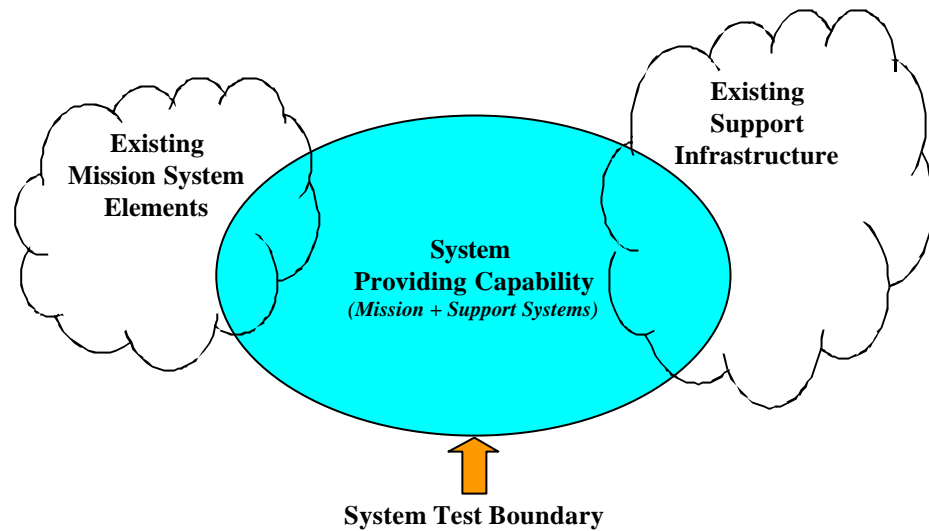
## 6.3 Mission System and Support System Concept

What is a system? There are many definitions, but for our purposes, a system can be defined as:

“...an integrated composite of people, products, and processes that provides a capability to satisfy a stated need or objective.”

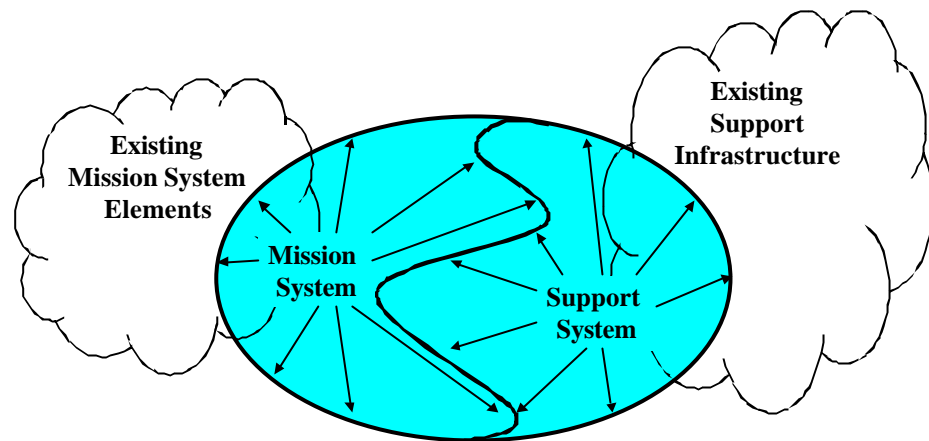
MIL-STD-499A

In the ASDEFCON (Strategic Materiel) model, the “total” system consists of a Mission System and a Support System, with the delivered capability being dependent on both. In many cases, a new Mission System will use existing ADF elements and, in almost all cases, the new Support System will use existing support infrastructure, as shown in Figure 6-3. It should be noted that, when a system is delivered, the total capability will be tested, and that testing will include existing elements of both the Mission System and existing elements of the Support System, as indicated by the testing boundary below. The scope of this testing should be defined in the TCD.



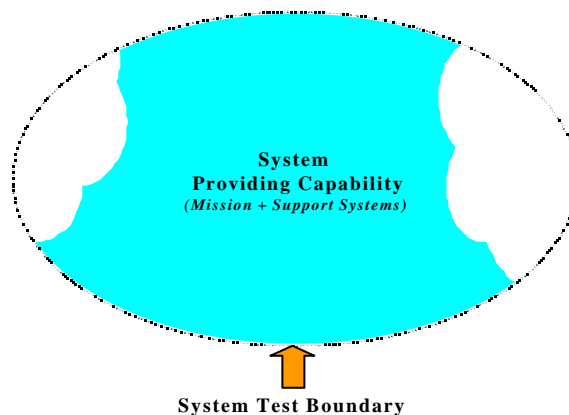
**Figure 6-3 - Actual View of the System**

In developing the system, ASDEFCON (Strategic Materiel) assumes that the Contractor will decompose it into a Mission System, with its own specifications, and a Support System with its own specifications. The exact boundaries between the Mission System and the Support System may not be determined until relatively late in the design process (Figure 6-4). To take a simplistic example, in one solution the Contractor may have a basic Mission System that requires a high level of maintenance activity to keep it operational. Another alternative may have less critical manual maintenance and a higher level of redundancy and automatic fault detection. This split would lead to differing Mission System and Support System specifications.



**Figure 6-4 - Actual View of the System = Mission System + Support System**

Although the system will be tested at the boundary of the overall system, the actual elements being acquired are less than the total system, as shown by the inner area in Figure 6-5 below. These elements are likely to become constraints in the Mission System and Support System specifications and may be provided as Government Furnished Equipment (GFE). For the Mission System, these constraints may include existing installations which will be integrated into the final solution (e.g. existing Defence radio assets that may be integrated into the solution, or existing computer hardware that will be integrated into the solution) or associated projects providing other elements of the total capability. For the Support System, these constraints may include such aspects as existing Defence maintenance personnel structures and configuration management systems.



**Figure 6-5 - Boundary of Acquisition**

## 6.4

### Linkages to In-Service Support

The ASDEFCON (Strategic Materiel) SOW requires the Contractor to analyse the In-Service support requirements, the associated Support Resources, and the requirement to transition from the Acquisition Phase to the In-Service Support Phase to meet the needs of the new Mission System. As a result of these analytical processes, the Contractor's activities under the acquisition contract SOW will define In-Service support through the series of data item deliverables requested by and for the ILS Program.

A vast number of aspects that assist with defining In-Service support are addressed and delivered in response to the Acquisition SOW, including:

- a. the design of the Support System, including details from DID-ILS-DES-SSSPEC and the support plans for the ILS elements;
- b. Support Resource requirements, including:
  - (1) range and quantity of Spares,
  - (2) range and quantity of S&TE and Training Equipment,
  - (3) range and quantity of Technical Data,
  - (4) numbers and skills of personnel required and whether they are Service or Contractor(LS) personnel,
  - (5) type of facilities and usage required and whether they are Service or Contractor(LS) facilities; and
- c. transition requirements.

As the Contractor's activities in response to the acquisition SOW effectively define In-Service support (in the context of the ADO's requirements), any In-Service support contracts should be consistent with the outcomes of the acquisition SOW. This creates a difficult situation where a competitive price for contracted In-Service support is needed during tender evaluation, but the In-Service support requirements will not be fully defined until many of the acquisition SOW deliverables have been provided. The decision as to whether or not an In-Service support contract should accompany the acquisition contract needs to be made in the context of the acquisition strategy. Nevertheless, the inherent linkages between the two contracts indicate that the default position for the acquisition strategy should be to include a draft In-Service support contract with the draft acquisition contract, and to issue both draft contracts in the one RFT. This draft In-Service support contract would define the majority of the Commonwealth's requirements, but would leave certain critical performance measures open until the Contractor's design was finalised. These critical performance measures would be included in the FPS (and, subsequently, in the SSSPEC) as goals, with accompanying minima or maxima as dictated by the particular performance measure. The tender response and any initial analysis during the Offer Definition Phase should enable the draft In-Service support contract to be refined. Greater definition, achieved during the Acquisition Phase, will enable the In-Service support contract to be more accurately defined, while enabling any improvements proposed by the Contractor to reduce the cost of In-Service support (e.g. under the LCC clauses in the acquisition contract) to be incorporated. Thus, not only is the ASDEFCON (Strategic Materiel) SOW closely linked to In-Service support, any In-Service support contracts need to be closely linked to it.



## 7. SOLICITATION AND OFFER DEFINITION

**Note: This section has been included in the Philosophy volume of the Handbook to provide the background and rationale for introducing the offer definition phase under ASDEFCON (Strategic Materiel). For definitive guidance on offer definition and its relationship with contract negotiations, users are referred to the guidance in Part 1 of the Handbook – Conditions of Tender and Annexes.**

### 7.1 Background to the Offer Definition Phase

#### Solicitation Philosophy

Lifecycle Threads have been developed for key topics to assist both the Commonwealth and Industry to determine what information is needed at each stage of the solicitation, source selection and contract negotiation processes. These threads identify the activities, information and other requirements at each of the following phases:

- a. Solicitation,
- b. Offer Definition,
- c. Contract Negotiation,
- d. Contract Execution, and
- e. In-Service Support.

The above phases represent the minimum set of phases to be considered in conducting solicitation, source selection and contract negotiations. They are not meant to exclude additional phases if they are considered necessary. For example, the fact that the first phase identified is 'Tender Response' is not meant to eliminate an Invitation to Register (ITR) process to enable an initial shortlisting. The process may progress through many different phases, including Invitation to Register (ITR), Request For Proposal (RFP), Initial Design Activities (IDA), Request For Tender (RFT), and so on. At the end of these processes, there may still not be a clear preferred supplier and further selection activities may be necessary.

Notwithstanding the above, for a firm or variable-price contract, there is a fairly clear set of criteria to be met before Contract signature, including (for example):

- a. agreement on actual Persons filling Key Positions in the project;
- b. agreement on price;
- c. agreement on schedule;
- d. agreement on project risks;
- e. agreement on Subcontractors and Subcontracted scope;
- f. agreement on compliance with Regulatory requirements; and
- g. agreement on the SOW, including:
  - (1) agreement on function and performance specifications,
  - (2) agreement on the products to be delivered under the Contract,
  - (3) agreement on the product evaluation criteria,
  - (4) agreement on the processes to be used,
  - (5) agreement on the process evaluation criteria,
  - (6) agreement to commercial terms and conditions including IP principles, and
  - (7) agreement on All amount and Industry Requirements.

- (8) For other Contracting models, such as evolutionary acquisition the above list may change; however, the immutable commercial principle of “fixed price equals fixed scope” still applies.

The information needed to conduct source selection is often combined with the information needs of contract negotiation. As a result, material is called for during the RFT phase that is often not needed or used until Contract negotiations.

Source Selection: The objective of source selection is to identify the supplier best able to satisfy the Contract.

The purpose of Solicitation is to prepare a solicitation package that identifies the needs of a particular acquisition and to select a contractor who is best able to satisfy the requirements of the Contract.

A number of criteria are needed to select the supplier best able to satisfy the Contract, including:

- a. technical solution (both Mission System and Support System);
- b. operational effectiveness;
- c. price and payment regime;
- d. compliance with SOW, including Specification;
- e. value for money;
- f. past performance;
- g. contractor capability;
- h. tendered All; and
- i. risk associated with:
  - (1) price;
  - (2) Project Management (PM);
  - (3) engineering;
  - (4) Integrated Logistics Support (ILS); and
  - (5) commercial factors, including IP.

***Note that section 3.5 and the annexes to the conditions of tender identify the information needs for both the full and the minimal RFT.***

#### Shortlisting from Many Tenderers to One Tenderer in a Single Pass

If the objective of the solicitation process is to reduce the number of potential suppliers from N down to 1 in a single pass then there are a number of pitfalls to watch for, including the following:

- a. The Commonwealth’s competitive advantage will be lost after the single preferred tenderer is selected, which can impact on the time taken to get to Contract award and place the Commonwealth in the position where it may have to make compromises not in its best interests to reach agreement on the Contract.
- b. Any work brought forward from the Contract into an Offer Definition phase may be subject to ‘misinterpretation’ by the tenderer resulting in claims for additional ‘unscoped’ work.
- c. The Commonwealth may be subjected to unreasonable pricing on any genuine changed scope or new work.
- d. If the price or scope changes significantly, the Commonwealth needs to ensure that the original basis of the source selection is not compromised.

There are a number of possible mechanisms to help overcome this Commonwealth vulnerability, such as:

- a. ensuring that the Offer Definition phase has well-defined activities with well-defined acceptance criteria and, if conducted under a separate contract, minimal time-and-materials components (note - given that the actual scope is affected by what the tenderer has offered, it may be necessary to finalise some details by issuing clarification questions or by utilising parallel negotiations (refer clauses 3.5 and 3.6 of the conditions of tender));
- b. requiring a more detailed set of plans to be delivered as part of the tender response to ensure that the tenderer's scope is well understood;
- c. using the Company Scorecard to capture the performance of the company during the Offer Definition phase and use this performance measure in subsequent tender assessments (noting that, for this to be effective the tenderer will need to fully understand that the assessment has long-term implications and that the Company Scorecard reporting process can affect future business).

#### Shortlisting from Many Tenderers to Two Tenderers Then to One Tenderer

Shortlisting from many tenderers to two tenderers then to one tenderer (i.e. through competitive Offer Definition activities and/or through parallel negotiations) maintains the competitive advantage to the Commonwealth and is less likely to cause the problems outlined with the many-to-one approach.

- a. Offer definition activities will be conducted in a competitive mode with each tenderer doing their best to win the prime Contract.
- b. Tenderers will usually be highly cooperative while they are in a competitive mode.

#### Parallel Negotiations

Conducting parallel negotiations with two tenderers has a number of drawbacks, including:

- a. the high risk of compromising both Commonwealth and third party "Commercial-in-Confidence" material when working with multiple tenderers;
- b. the excessive workload on the Project Office staff in conducting the parallel negotiations, which could potentially lead to poor decision-making;
- c. configuration management of the offers and changes can be excessive;
- d. tenderers are less likely to offer their best price in the first round;
- e. the cost to the Commonwealth will be considerably greater than for the conduct of a single negotiation; and
- f. Defence industry is generally opposed to the 'Best and Final Offer' approach.

These drawbacks make parallel negotiations quite problematic; however, for reasons of probity, it may be necessary to utilise this approach. Users are referred to the DPPM and clauses 3.5 and 3.6 of the conditions of tender for definitive guidance on parallel negotiations.

#### Reducing Negotiation Duration

Meeting contract signature criteria means that a multitude of issues need to be agreed upon. The best way to reduce the contract negotiation duration is to have most of the issues agreed before the actual contract negotiations take place. The Offer Definition phase provides the mechanism for achieving this outcome.

## 7.2 Solicitation Models

There are a number of solicitation models that can be applied to the solicitation process. Each model has its strengths and weaknesses, depending on the number of tenderers. This section discusses each of the models from a cost perspective, highlighting how the use of an Offer Definition phase can reduce, on average, the cost of tendering if the number of initial tenderers is likely to be large.

### Average Cost Per Tenderer

The table below is a crude approximation of the average cost per tenderer for the various solicitation models that are described below.

Assumptions:

- If an ITR phase is used, it will reduce the number of tenderers from N to 4, while the subsequent RFT phase will reduce the number of tenderers from 4 to 2.
- If an ITR phase is not used, the RFT phase will reduce the number of tenderers from N to 2 or 1 (as indicated in column).
- The cost of one tenderer responding to a full RFT, that is an RFT satisfying all source selection criteria and Contract signature criteria, is represented as 100%.
- The cost of responding to an ITR is 5% of the cost of responding to a full RFT.
- The cost of responding to a minimal RFT is 60% of the cost of responding to a full RFT. A minimal RFT is defined as one satisfying all of the source selection criteria but not satisfying all of the Contract signature criteria.

### Method of Calculation of Cost to Tenderers

The average cost per tenderer is defined as, the total cost to industry to tender, divided by the number of tenderers. Thus, if there are ten tenderers who are reduced to four after the ITR, then the ITR will cost  $10 \times 5\%$  or 50% of the cost of one tenderer preparing a full RFT. If the remaining four tenderers are reduced to one via a full RFT then the cost of the RFT phase will be  $4 \times 100\%$  or 400% of the cost of one tenderer responding to a full RFT. Thus, the total cost to industry will be  $50\% + 400\%$  or 450%. Averaged over the ten tenderers gives an average cost of  $450/10 = 45\%$ .

		N>ITR>4			N>ITR>4
Number	N>RFT>1	4>RFT>1	N>RFT>2	N>RFT>2	4>RFT>2
Of			NEG>1	2>OD>1	2>OD>1
Tenderers	N>1	N>4>1	N>2>1	N>2>1	N>4>2>1
4	100%	105.00%	80.00%	80.00%	85.00%
5	100%	85.00%	76.00%	76.00%	69.00%
6	100%	71.67%	73.33%	73.33%	58.33%
7	100%	62.14%	71.43%	71.43%	50.71%
8	100%	55.00%	70.00%	70.00%	45.00%
9	100%	49.44%	68.89%	68.89%	40.56%
10	100%	45.00%	68.00%	68.00%	37.00%

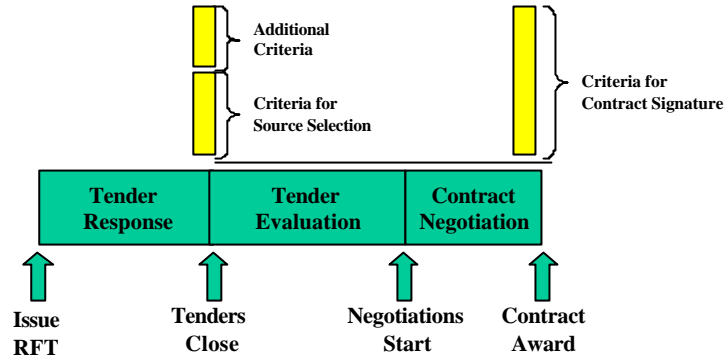
OD = Offer Definition Phase

**Table 7-1 – Average Cost to Tenderers (Full Model)**

Solicitation Costs to the Commonwealth

If it is assumed that the time taken for the Commonwealth to evaluate a tenderer’s documentation is proportional to the time taken for the tenderer to prepare that documentation then, for any given number of tenderers, the average cost to tenderers will be proportional to the cost to the Commonwealth to conduct the solicitation process. That is the average cost per tenderer reflects the average level of documentation produced and will reflect the average level of documentation to be evaluated.

Simple Full RFT Model



**Figure 7-1 - Simple Full RFT Solicitation Model**

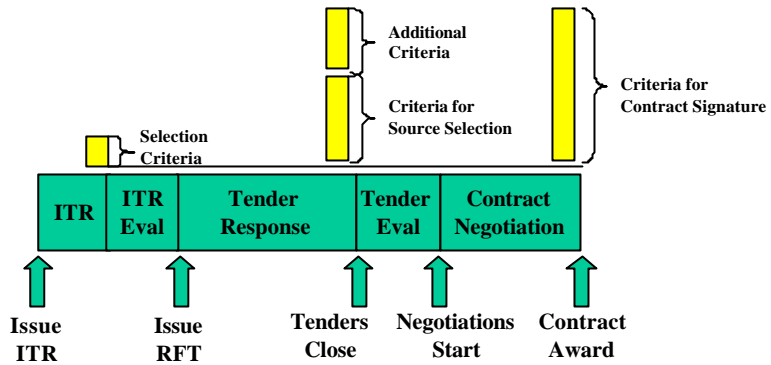
This is the classic model in which all information and agreements are sought in the single RFT. There is a high penalty for errors in the RFT. This model has the highest average cost per tenderer as none of them are eliminated until source selection (first column in the following table). This model also has the highest cost to the Commonwealth to evaluate and is not recommended for situations in which there are more than four potential tenderers.

		N>ITR>4			N>ITR>4
Number	N>RFT>1	4>RFT>1	N>RFT>2	N>RFT>2	4>RFT>2
Of			NEG>1	2>OD>1	2>OD>1
Tenderers	N>1	N>4>1	N>2>1	N>2>1	N>4>2>1
4	100%	105.00%	80.00%	80.00%	85.00%
5	100%	85.00%	76.00%	76.00%	69.00%
6	100%	71.67%	73.33%	73.33%	58.33%
7	100%	62.14%	71.43%	71.43%	50.71%
8	100%	55.00%	70.00%	70.00%	45.00%
9	100%	49.44%	68.89%	68.89%	40.56%
10	100%	45.00%	68.00%	68.00%	37.00%

OD = Offer Definition Phase

**Table 7-2 – Average Cost to Tenderers (Single RFT Model)**

ITR Full RFT Solicitation Model



ITR Reduced number of tenderers hence cost of and duration of tender evaluation  
 ITR Selection generally does not reduce information asked for in tender

**Figure 7-2 - ITR Full RFT Solicitation Model**

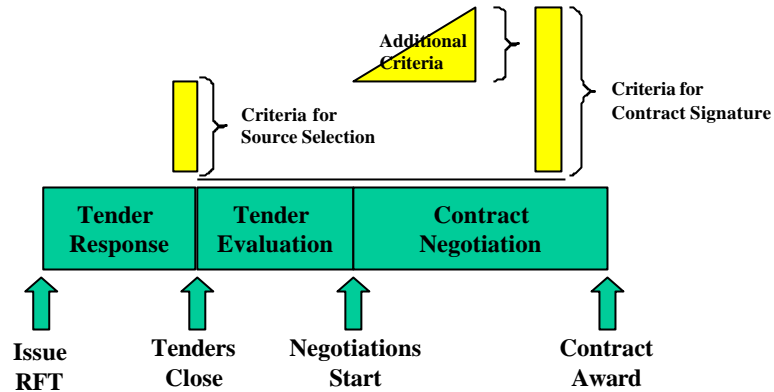
This model has the advantage that by eliminating tenderers after the ITR the average cost to the tenderers is reduced and the cost to the Commonwealth for tender evaluation is reduced because of the lower number of tenders to evaluate (second column in the following table). There is a heavy penalty for errors in the RFT.

		N>ITR>4			N>ITR>4
Number	N>RFT>1	4>RFT>1	N>RFT>2	N>RFT>2	4>RFT>2
Of			NEG>1	2>OD>1	2>OD>1
Tenderers	N>1	N>4>1	N>2>1	N>2>1	N>4>2>1
4	100%	105.00%	80.00%	80.00%	85.00%
5	100%	85.00%	76.00%	76.00%	69.00%
6	100%	71.67%	73.33%	73.33%	58.33%
7	100%	62.14%	71.43%	71.43%	50.71%
8	100%	55.00%	70.00%	70.00%	45.00%
9	100%	49.44%	68.89%	68.89%	40.56%
10	100%	45.00%	68.00%	68.00%	37.00%

OD = Offer Definition Phase

**Table 7-3 – Average Cost to Tenderers (ITR and Full RFT Model)**

Simple Minimal RFT Solicitation Model



Satisfying additional criteria during Contract Negotiations will extend negotiation duration

**Figure 7-3 - Simple Minimal RFT Solicitation Model**

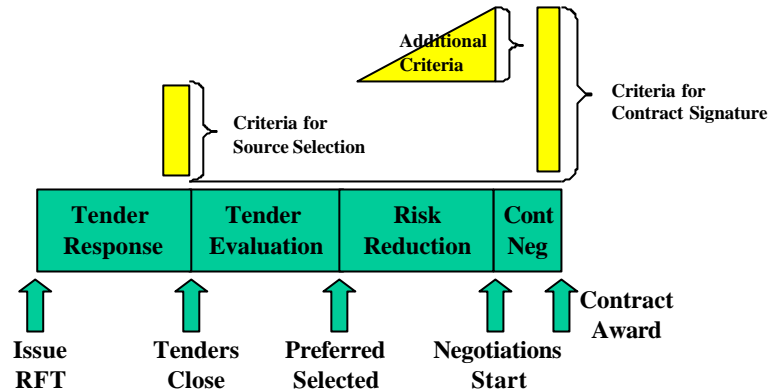
This solicitation model seeks to select the best supplier(s) with the information requested in the RFT and not to satisfy all of the criteria necessary for Contract signature. Any additional information agreements or changes needed to meet Contract signature criteria will be obtained during contract negotiations. Note that achieving all of the agreements etc to satisfy the Contract signature criteria will extend the contract negotiation period. Note the danger of using this process in reducing the number of tenderers from N down to 1, in which case there can be heavy penalties for omissions in the RFT. It is recommended that this model be used to reduce the number of tenderers to 2 and then to conduct parallel negotiations with the two tenderers and then to select the preferred tenderer. This model has the second highest cost per tenderer (third column in the following table).

		N>ITR>4			N>ITR>4
Number	N>RFT>1	4>RFT>1	N>RFT>2	N>RFT>2	4>RFT>2
Of			NEG>1	2>OD>1	2>OD>1
Tenderers	N>1	N>4>1	N>2>1	N>2>1	N>4>2>1
4	100%	105.00%	<b>80.00%</b>	80.00%	85.00%
5	100%	85.00%	<b>76.00%</b>	76.00%	69.00%
6	100%	71.67%	<b>73.33%</b>	73.33%	58.33%
7	100%	62.14%	<b>71.43%</b>	71.43%	50.71%
8	100%	55.00%	<b>70.00%</b>	70.00%	45.00%
9	100%	49.44%	<b>68.89%</b>	68.89%	40.56%
10	100%	45.00%	<b>68.00%</b>	68.00%	37.00%

OD = Offer Definition Phase

**Table 7-4 – Average Cost to Tenderers (Simple Minimal RFT Model)**

Minimal RFT Offer Definition



Risk Reduction activities should significantly reduce Contract Negotiation period.

**Figure 7-4 – Offer Definition Solicitation Model**

This solicitation model seeks to select the best supplier(s) with the information requested in the RFT and not to satisfy all of the criteria necessary for Contract signature in the tender phase. Any additional information agreements or changes needed to meet Contract signature criteria will be obtained during the Offer Definition Phase. Note that during the Offer Definition Phase many of the Contract signature criteria will be met and, hence, the contract negotiation period should be considerably reduced.

Note the danger of using this process in reducing the number of tenderers from N down to 1 in which case there can be heavy penalties for omissions in the RFT. It is recommended that this model be used to reduce the number of tenderers to 2 and then to conduct parallel Offer definition with the two tenderers and then to down select to the preferred tenderer. This model has the equal second highest cost per tenderer (fourth column in the following table).

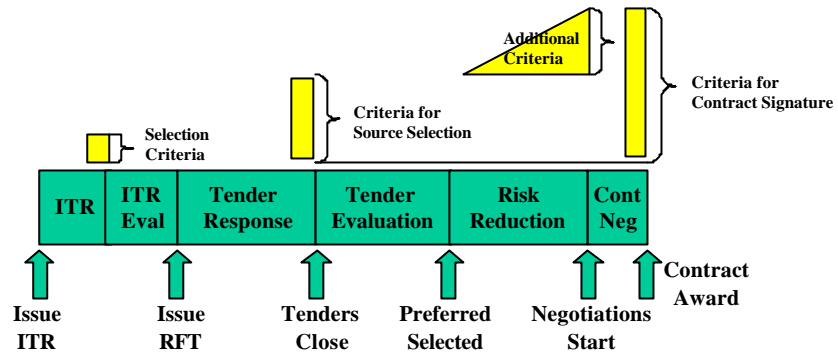
		N>ITR>4			N>ITR>4
Number	N>RFT>1	4>RFT>1	N>RFT>2	N>RFT>2	4>RFT>2
Of			NEG>1	2>OD>1	2>OD>1
Tenderers	N>1	N>4>1	N>2>1	N>2>1	N>4>2>1
4	100%	105.00%	80.00%	<b>80.00%</b>	85.00%
5	100%	85.00%	76.00%	<b>76.00%</b>	69.00%
6	100%	71.67%	73.33%	<b>73.33%</b>	58.33%
7	100%	62.14%	71.43%	<b>71.43%</b>	50.71%
8	100%	55.00%	70.00%	<b>70.00%</b>	45.00%
9	100%	49.44%	68.89%	<b>68.89%</b>	40.56%
10	100%	45.00%	68.00%	<b>68.00%</b>	37.00%

OD = Offer Definition Phase

**Table 7-5 – Average Cost to Tenderers (RFT and Offer Definition Model)**



ITR Minimal RFT Offer Definition



Risk Reduction activities should significantly reduce Contract Negotiation period.

**Figure 7-5 - ITR and Offer Definition Solicitation Model**

This solicitation model seeks to shortlist the number of tenderers from N to say 4 during the ITR phase. The RFT will be used to select the best 1 or 2 supplier(s) from the 4 with the information requested in the RFT and not to satisfy all of the criteria necessary for Contract signature in the tender phase. Any additional information agreements or changes needed to meet Contract signature criteria will be obtained during the Offer definition phase. Note that during the Offer definition phase many of the Contract signature criteria will be met and hence the contract negotiation period should be considerably reduced.

Note the danger of using this process in reducing the number of tenderers from N down to 1 in which case there can be heavy penalties for omissions in the RFT. It is recommended that this model be used to reduce the number of tenderers from N to say 4 then to 2 and then to conduct parallel Offer definition with the two tenderers and then to select preferred tenderer. This model has the lowest cost per tenderer (fifth column in the following table).

		N>ITR>4			N>ITR>4
<b>Number</b>	N>RFT>1	4>RFT>1	N>RFT>2	N>RFT>2	4>RFT>2
<b>Of</b>			NEG>1	2>OD>1	2>OD>1
<b>Tenderers</b>	N>1	N>4>1	N>2>1	N>2>1	N>4>2>1
<b>4</b>	100%	105.00%	80.00%	80.00%	<b>85.00%</b>
<b>5</b>	100%	85.00%	76.00%	76.00%	<b>69.00%</b>
<b>6</b>	100%	71.67%	73.33%	73.33%	<b>58.33%</b>
<b>7</b>	100%	62.14%	71.43%	71.43%	<b>50.71%</b>
<b>8</b>	100%	55.00%	70.00%	70.00%	<b>45.00%</b>
<b>9</b>	100%	49.44%	68.89%	68.89%	<b>40.56%</b>
<b>10</b>	100%	45.00%	68.00%	68.00%	<b>37.00%</b>

OD = Offer Definition Phase

**Table 7-6 – Average Cost to Tenderers (ITR, RFT and Offer Definition Model)**

### Conclusions

When the number of potential tenderers becomes larger than four, there is a clear advantage to both the Commonwealth and Industry to conduct an ITR phase to reduce the number of tenderers to four or less.

Using a solicitation model in which an ITR is followed by an Offer Definition phase will lead to the lowest average cost to both the Commonwealth and Industry.

Although not examined in detail, the process of conducting an Offer Definition phase will lead to a lower risk Contract for both the Commonwealth and Industry.

## 8. STRUCTURE AND MANAGEMENT OF SOW, CDRL, DIDS

### 8.1 General

The structure of ASDEFCON (Strategic Materiel) is similar to previous DMO Contracts. However the ASDEFCON (Strategic Materiel) SOW, CDRL and DIDs reflect some basic but fundamental rules for the clear separation of Contract requirements. These requirements can be categorised as:

- a. Work Requirements – these requirements task the Contractor to do something and/or to do something in a particular way (e.g. SOW clause 3.2.2.1, “The Contractor shall develop, deliver and update a Project Management Plan (PMP) in accordance with CDRL Line Number MGT-100”);
- b. Delivery Requirements – these requirements specify the delivery date, location, format, quantity, approval rights, etc for Contract deliverables; and
- c. Data Requirements - these requirements specify the content and format of Contract data items.

In the past, many of the requirements to do work, make data deliveries, and the data requirements themselves were mixed across the SOW, CDRL and DIDs (e.g. how to prepare a Contract deliverable, when and where to deliver it, and in what format were often in the Data Item Description (DID) for the deliverable). Another common error was including DIDs and having an entry in the CDRL but with no SOW requirement to task the Contractor to produce and deliver the item. These practices often resulted in confusion between the parties and a loss of commercial leverage when the Commonwealth’s expectations were not met.

ASDEFCON (Strategic Materiel) addresses these issues by rigorously separating these requirements with all work requirements being contained in the SOW, all delivery requirements being contained in the CDRL and all data requirements being contained in the DIDs.

Another fundamental change in ASDEFCON (Strategic Materiel) is the use of standards and Contractor plans to elaborate the SOW. This not only reduces the size of the SOW but also allows the Contractor the freedom to determine how best to perform the work. Where the Commonwealth still feels it necessary to apply standards these are referenced with no attempt to embed or copy elements of the standard into the SOW.

This approach has also been applied to DIDs. Where a data item is to be based on a standard DID (e.g. an industry or military DID), the ASDEFCON (Strategic Materiel) DID simply references the standard DID. This approach readily accommodates project specific tailoring of the standard DID through the application of tailoring instructions contained in the ASDEFCON (Strategic Materiel) DID. This approach is the preferred approach to tailoring a standard DID over the duplication and editing of the standard DID text to create a project-specific DID. Doing so is time consuming for both the Commonwealth and industry.

The establishment of a standard set of DIDs for use across the DMO assists in the establishment of a common way of doing business. This standardisation allows DMO wide organisational support for projects to save them time and effort when preparing solicitation packages. To better support the use of standard DIDs, the ASDEFCON (Strategic Materiel) DIDs are available on the Internet. This makes them available to industry as well as the DMO. It is intended that projects will reference the standard DIDs from their RFTs and Contracts without the need to reproduce or include them directly. Previous versions of the DIDs, potentially still in use in existing Contracts, will be maintained in an archive at the same Internet site.

## 8.2 Hooks for Regulatory Authorities

A number of Technical Regulatory Authorities (TRAs) have responsibility for nominating the various standards for use in Defence projects related to their area of expertise (for example in areas and organisations such as Navy Certification and Safety, Land Engineering, Airworthiness, Safety Management and the Ordnance Safety Group). Each TRA may have a preference for different standards based on their area of interest. In the past, for projects that had come under the jurisdiction of a number of TRAs, several standards that overlapped a given area (e.g. engineering management) may have been placed on Contract. This non-rationalisation of standards gave rise to complexity and ambiguity in Contract requirements. One benefit of the ASDEFCON (Strategic Materiel) template approach for the SOW is that these TRAs are able to work with a common baseline and only impose additional requirements where necessary.

Notes to drafters advising of the need to consult with TRAs are included in the SOW. These notes identify known areas that may be affected by specific TRA requirements. An example of this can be seen in clause 4.1.3 of the SOW template, which provides for the optional inclusion of clauses relating to Authorised Engineering Organisations and refers the drafter to AAP 7001.053 and the ASD Chief Engineer (Acquisition) as the point of contact for advice.

The domain experts within a given DMO project office may identify other areas and, if over time these are identified as common to a number of projects, they can be added to future versions of ASDEFCON (Strategic Materiel) as additional 'hooks'. These hooks may be elaborated with time and either the TRAs may develop a number of standardised options that can be applied to the various classes of project, or the options can be incorporated into the ASDEFCON (Strategic Materiel) SOW along with associated tailoring guidance.

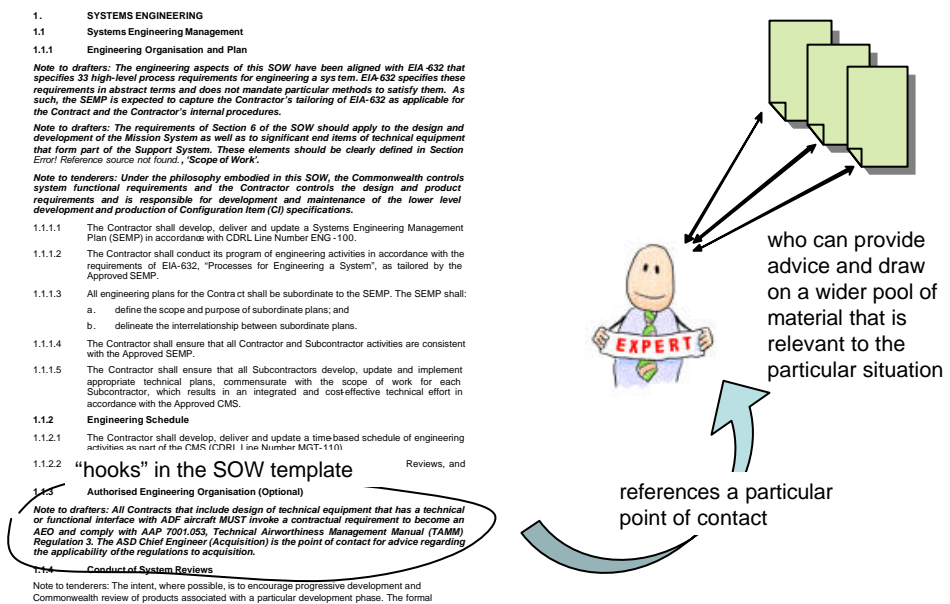


Figure 8-1 – 'Hooks' in the SOW

This process allows the TRAs to focus on key issues within their domains and to integrate effectively with the acquisition process.

**9. PROJECT MANAGEMENT**

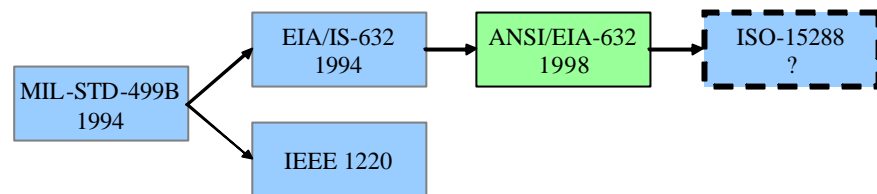
No specific ASDEFCON (Strategic Materiel) background material relating to project management has been developed at this time. Reference may be made to the discussion of project management in the SOW section of this Handbook.



## 10. SYSTEMS ENGINEERING

### 10.1 Key Systems and Software Standards

MIL-STD-499A Engineering Management was the last commonly used military standard for Systems Engineering. A revised version, MIL-STD-499B, Systems Engineering, was proposed but never released as it came out at the time the US DoD began cancelling standards. Two commercial standards then emerged (Figure 10-1), namely IEEE 1220, Standard for the Application and Management of the System Engineering Process and a commercialised version of MIL-STD-499B released as EIA/IS-632 Interim Standard Systems Engineering. Since that time the EIA has released a completely revised version of the standard, EIA-632, Processes for Engineering a System. There is also an ISO standard under development, ISO/IEC 15288, Life Cycle Management – System Life Cycle Processes.



historically  
Defence  
systems  
development to  
MIL-STD-499

military  
standards  
abandoned in  
favour of  
commercial  
standards

adopts a more  
generic  
approach than  
earlier  
standards and is  
less prescriptive  
about the “how”

not yet released,  
in working  
group stage

**Figure 10-1 - Engineering Standards**

Similarly, the software standards have also been volatile. The earlier DOD-STD-2167A was replaced by the more flexible MIL-STD-498. This was commercialised in J-STD-016 with little change when the US DoD cancelled many of its standards. J-STD-016 was seen as a stopgap measure and has since been replaced by ISO 12207: Standard for Software Life Cycle processes. This international standard has since been adopted as IEEE 12207 in the USA and AS/NZS ISO/IEC 12207, Information Technology – Software Lifecycle Processes, in Australia and New Zealand.

These more recent standards share a similar philosophy and differ from their predecessors in their scope (i.e. where the lifecycle begins and ends) and in their level of abstraction. In general, the later standards are more abstract and less prescriptive than their predecessors.

### 10.2 Systems and Software Standards within Defence

The DMO has historically applied military standards originating from the US DoD. In the early 1990s the US DoD took the decision to phase out many of its standards and to allow the use of industrial standards or Contractor processes. This decision was part of a reform to address industry claims that military standards impose unnecessary costs in this day and age when commercial products often have a similar quality and reliability as military standard equipment. This decision also relieved the US DoD from the immense burden of maintaining the large body of consistent standards. The result has been that organisations electing to retain the use of military standards now need to address any inconsistencies resulting from the use of a combination of older superseded standards, current guidance and new standards.

### 10.3 DMO Systems and Software Standards for ASDEFCON (Strategic Materiel)

Given that the end users of the standards proposed by DMO may be from any country with Defence-related industries, it stands that these standards should have wide international visibility and acceptance. Where possible, they should provide the common framework for communication rather than overly restricting how to perform a task. They also need to be relevant to organisations that are likely to deal with multiple customers, as the DMO may be only one of many customers and not necessarily a major one.

This being the case, the ASDEFCON (Strategic Materiel) SOW has adopted EIA-632 and AS/NZS ISO/IEC 12207 as the default system and software standards respectively. Both standards use similar terminology and take a "life cycle" approach (i.e. they are based on a definition of phases and activities or processes that should occur in each phase). They both also recognise the need for recursive application (refer Figure 10-2) and apply equally to DMO as "acquirer", the Prime Contractor as "supplier" and the Prime Contractor as "acquirer" where Subcontractors are used. For example:

- DMO as "acquirer": the standards define the activities and issues that DMO needs to address in acquisition planning, solicitation, Contract development and Contract monitoring;
- Prime Contractor as "supplier": the standards define the activities of the Contractor and their interaction with the acquirer (DMO);
- Prime Contractor as "acquirer": the standards define the activities of the Contractor in their acquisition, solicitation, Contract development and in monitoring and oversight of Subcontractors;
- Subcontractor as "supplier" and as "developer": the standards define the activities of the developer and the interaction with the acquirer (Prime Contractor).

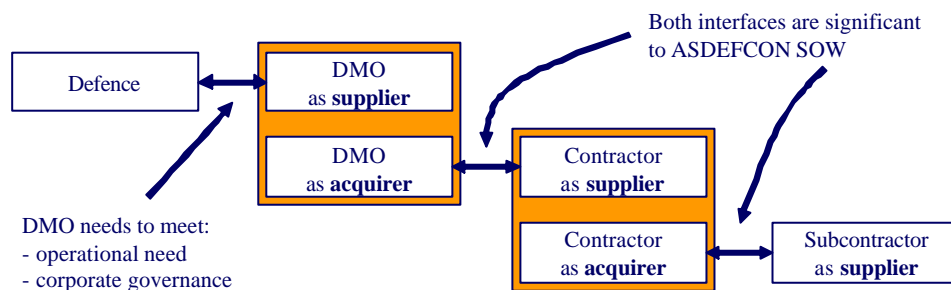


Figure 10-2 - "Supplier" and "Acquirer"

### 10.4 Clear Accountability In Design (CAID)

Clear Accountability In Design (CAID) is an element of the overall ASDEFCON (Strategic Materiel) acquisition strategy to help balance cost, schedule, and performance risks while keeping Commonwealth manpower to the minimum essential.

The CAID approach is based on two key elements:

- the Commonwealth controls requirements at the highest practicable level (i.e. the FPS, Mission and Support System Specifications) to manage risk and ensures all needed verifications (in accordance with the VCRM and test program) have been accomplished; and



- b. the Contractor controls lower level requirements and the design in order to implement cost, schedule, performance, and risk-based business decisions, unless the Commonwealth has a specific need to control them.

Applied in concert, these elements provide a mechanism to develop, produce and support products that satisfy customer needs while minimising Commonwealth manpower requirements.

The CAID approach focuses on providing the Contractor with the maximum latitude practicable in satisfying higher level contractual requirements by giving the Contractor the authority and responsibility to derive and control lower level requirements and the design satisfying the requirements. This approach provides clear design accountability. The Commonwealth is accountable for higher level requirements and the Contractor is accountable for a complete technical baseline including the lower level requirements and the design. The Contractor retains control of all elements of the technical baseline until it becomes essential for the Commonwealth to assume control based on risk or to execute business decisions.

The Commonwealth retains a “hands-off” approach, but is still responsible for a comprehensive monitoring program that ensures the Contractor is fulfilling their obligations in the manner that was offered and that ensures any risks to the Commonwealth are identified and managed as early as possible. The Contractor is free to develop and evolve the most effective and efficient processes that meet Contract requirements – including the delivery of a quality product.

It is important for the Commonwealth to ensure the Contractor has an effective systems engineering process with robust configuration management practices which can successfully satisfy accountability requirements. This may be evaluated during source selection by addressing the Contractor’s past performance to execute similar approaches to that proposed.

## 10.5

### **Use of EIA-632 in DMO**

Table 10- shows the requirements in EIA-632. These requirements were used in developing the engineering aspects of the ASDEFCON (Strategic Materiel) SOW (i.e. applying to DMO as the acquirer). The Contractor is also expected to show how they will meet the same requirements, in particular through a section to that effect in the Contractor’s System Engineering Management Plan (SEMP), that must show how these requirements trace to the Contractor’s processes defined within the SEM, and how each requirement of EIA-632 is addressed from the perspective of the Contractor as a supplier to the Commonwealth and as an acquirer of goods and services from Subcontractors. If a Contractor proposes any tailoring of an EIA-632 requirement for the Contract, it must also identify this in that section along with an appropriate justification.

Table 10-3 has been annotated with a “notes” column that is not intended to be read stand-alone but provides supplemental guidance to EIA-632.

**Table 10-3 - EIA-632 Requirements**

ID	ANSI/EIA-632-1998 Subject	ANSI/EIA-632-1998 Requirement	Notes
1	ACQUISITION AND SUPPLY: Supply Process Requirements: <i>Product Supply</i>	For a system, or portion thereof, supplied to an acquirer, the developer (when acting as the supplier) shall establish and satisfy an agreement with the acquirer.	DMO-Contractor agreement in the formal Contract based on the ASDEFCON (Strategic Materiel) template.
2	ACQUISITION AND SUPPLY: Acquisition Process Requirements: <i>Product Acquisition</i>	For a system, or portion thereof, acquired from a supplier, the developer (when acting as the acquirer) shall establish an agreement with that supplier.	Contractor-supplier agreements in the form of Subcontracts and purchase agreements.
3	ACQUISITION AND SUPPLY: Acquisition Process Requirements: <i>Supplier Performance</i>	The developer (when acting as the acquirer) shall manage supplier performance to ensure that the technical effort to be accomplished by the supplier provides end products that satisfy the assigned requirements.	DMO requirements for review and oversight are captured in the SOW. The Contractor must ensure equivalent and appropriate oversight through their SEMP and supplier agreements.
4	TECHNICAL MANAGEMENT: Planning Process Requirements: <i>Process Implementation Strategy</i>	The developer shall define a strategy for implementing the adopted processes of this Standard as a basis for project technical planning and that is in accordance with the agreement	The strategy is captured in the SEMP which requires formal mapping to this standard to demonstrate compliance

ID	ANSI/EIA-632-1998 Subject	ANSI/EIA-632-1998 Requirement	Notes
	TECHNICAL MANAGEMENT: Planning Process Requirements: <i>Technical Effort Definition</i>	The developer shall define a technical effort that is in accordance with the process implementation strategy.	<p>The Contractor is required to document their process requirements for technical effort in the SEMP, including elements such as:</p> <ul style="list-style-type: none"> <li>• establishing an information database</li> <li>• determine the risk management strategy (documented in the Risk Management Plan)</li> <li>• defining product metrics to evaluate product quality</li> <li>• establishing cost drivers for trade-off analysis (in particular through LCC analysis of the SOW)</li> <li>• identifying technical performance measures</li> <li>• identifying applicable tasks with event entry / exit criteria (in the System Review Plan)</li> <li>• identifying methods and tools, facilities and equipment, and training to meet project exit criteria (SEMP)</li> <li>• identifying applicable or potential technology constraints and developing appropriate mitigation and technology insertion strategies (SEMP).</li> </ul>
6	TECHNICAL MANAGEMENT: Planning Process Requirements: <i>Schedule and Organisation</i>	The developer shall schedule and organise the defined technical effort.	The Contractor is required to develop a schedule of engineering activities as part of the Contract Master Schedule (CMS), including identification of all technical milestones and their key dependencies.
7	TECHNICAL MANAGEMENT: Planning Process Requirements: <i>Technical Plans</i>	The developer shall create technical plans to ensure an integrated and cost effective technical effort in accordance with the defined schedule and organisation.	The Contractor needs to show their plans in the defined CDRL items
8	TECHNICAL MANAGEMENT: Planning Process Requirements: <i>Work Directives</i>	The developer shall create work directives that implement the technical effort.	Contractor work planning is addressed through the EVMS. Suppliers of the Contractor must use EVMS or other approved system as appropriate.

ID	ANSI/EIA-632-1998 Subject	ANSI/EIA-632-1998 Requirement	Notes
9	TECHNICAL MANAGEMENT: Assessment Process Requirements: <i>Progress Against Plans and Schedules</i>	The developer shall assess the progress of the technical effort against applicable technical plans and schedules.	Contractor progress is addressed through measurement program, EVMS and through the defined engineering reviews.
10	TECHNICAL MANAGEMENT: Assessment Process Requirements: <i>Progress Against Requirements</i>	The developer shall assess the progress of system development by comparing currently defined system characteristics against requirements.	The Contractor is required to show progress through the measurement program (focussing on process metrics for identified risk areas) and tracking the status of key Technical Performance Measures (TPMs) at identified stages of development.
11	TECHNICAL MANAGEMENT: Assessment Process Requirements: <i>Technical Reviews</i>	The developer shall conduct technical reviews of progress and accomplishments in accordance with appropriate technical plans.	The Contractor is required to undertake a program of DMO-defined technical reviews, and identify a program of reviews that it will undertake with respect to its suppliers.
12	TECHNICAL MANAGEMENT: Control Process Requirements: <i>Outcomes Management</i>	The developer shall manage the outcomes of the technical effort.	The Contractor elaborates their management strategy in the SEMP and associated plans (e.g. RMP, CMP).
13	TECHNICAL MANAGEMENT: Control Process Requirements: <i>Information Dissemination</i>	The developer shall ensure required and requested information is disseminated in accordance with the agreement, project plans, enterprise policies, and enterprise procedures.	The Contractor is required to supply the documentation in accordance with the CDRL.
14	TECHNICAL MANAGEMENT: Requirements Definition Requirements: <i>Acquirer Requirements</i>	The developer shall define a validated set of requirements for the system, or portion thereof.	The Contractor is required to develop the Mission and Support System Specifications through a formal requirements analysis process culminating in formal review at SRR / SDR.
15	TECHNICAL MANAGEMENT: Requirements Definition Requirements: <i>Other Stakeholder Requirements</i>	The developer shall define a validated set of other stakeholder requirements for the system, or portion thereof.	The Contractor is required to develop the Mission and Support System Specifications through a formal requirements analysis process culminating in formal review at SRR / SDR
16	SYSTEM DESIGN: Requirements Definition Requirements: <i>System Technical Requirements</i>	The developer shall define a validated set of system technical requirements.	The Contractor is required to develop the Mission and Support System Specifications through a formal requirements analysis process culminating in formal review at SRR / SDR

ID	ANSI/EIA-632-1998 Subject	ANSI/EIA-632-1998 Requirement	Notes
17	SYSTEM DESIGN: Solution Definition Requirements: <i>Logical Solution Representations</i>	The developer shall define one or more validated sets of logical solution representations that conform with the technical requirements of the system.	The Contractor is expected to present logical system models at SDR in a format as defined by the SEMP.
18	SYSTEM DESIGN: Solution Definition Requirements: <i>Physical Solution Requirements</i>	The developer shall define a preferred set of physical solution representations that agrees with the assigned logical solution representations, derived technical requirements, and system technical requirements.	The Contractor is expected to present physical solution representations at SDR in a format as defined by the SEMP.
19	SYSTEM DESIGN: Solution Definition Requirements: <i>Specified Requirements</i>	The developer shall specify requirements for the design solution.	A hierarchy of lower level technical documentation is defined in the Contractor's Technical Documentation Tree (TDT).
20	PRODUCT REALISATION: Implementation Process Requirements: <i>Implementation</i>	The developer shall implement the design solution in accordance with the specified requirements to obtain a verified end product.	The Contractor is required to develop the solution with appropriate review stages as defined by the SRP and an overall verification and validation approach in the Verification and Validation Plan) V&VP.
21	PRODUCT REALISATION: Transition To Use Process Requirements: <i>Transition to Use</i>	The developer shall transition verified products to the acquirer of the products in accordance with the agreement.	The Contractor is required to develop a formal Contractor Transition Plan (CTXP) identifying their approach.
22	TECHNICAL EVALUATION: Systems Analysis Process Requirements: <i>Effectiveness Analysis</i>	The developer shall perform effectiveness analyses to provide a quantitative basis for decision making.	System effectiveness is addressed through the formal review process. An evaluation of LCC and potential alternatives forms an important of this.
23	TECHNICAL EVALUATION: Systems Analysis Process Requirements: <i>Tradeoff Analysis</i>	The developer shall perform tradeoff analyses to provide decision makers with recommendations, predictions of the results of alternative decisions, and other appropriate information to allow selection of the best course of action.	The Contractor's processes for trade-off analysis are documented in the SEMP and major elements requiring trade-off may be specifically identified.
24	TECHNICAL EVALUATION: Systems Analysis Process Requirements: <i>Risk Analysis</i>	The developer shall perform risk analyses to develop risk management strategies, support management of risks, and support decision making.	The Contractor is required to provide a formal Risk Management Plan and risks are addressed through the Project Status Reports (PSR) and at each technical review.

ID	ANSI/EIA-632-1998 Subject	ANSI/EIA-632-1998 Requirement	Notes
25	TECHNICAL EVALUATION: Requirements Validation Process Requirements: <i>Requirements Statements Validation</i>	The developer shall ensure that technical requirement statements and specified requirement statements, individually and as sets, are well formulated.	Contractor is required to address this through the objectives and checklist of SRR and SDR.
26	TECHNICAL EVALUATION: Requirements Validation Process Requirements: <i>Acquirer Requirements Validation</i>	The developer shall ensure that the set of defined requirements agrees with acquirer needs and expectations.	Contractor is required to address this through the objectives and checklist of SRR and SDR and the requirements to maintain traceability of requirements.
27	TECHNICAL EVALUATION: Requirements Validation Process Requirements: <i>Other Stakeholder Requirements Validation</i>	The developer shall ensure that the set of defined other stakeholder requirements agrees with other stakeholder needs and expectations with respect to the system.	Contractor is required to address this through the objectives and checklist of SRR and SDR and the requirements to maintain traceability of requirements.
28	TECHNICAL EVALUATION: Requirements Validation Process Requirements: <i>System Technical Requirements Validation</i>	The developer shall ensure that the set of defined system technical requirements agrees with the validated acquirer and other stakeholder requirements.	Contractor is required to address this through the objectives and checklist of SRR and SDR and the requirements to maintain traceability of requirements.
29	TECHNICAL EVALUATION: Requirements Validation Process Requirements: <i>Logical Solutions Representations Validation</i>	The developer shall ensure that each set of logical solution representations agrees with the appropriately assigned subset of system technical requirements.	Contractor is required to address this through the objectives and checklist of SDR and the requirements to maintain downward traceability of requirements.
30	TECHNICAL EVALUATION: System Verification Process Requirements: <i>Design Solution Verification</i>	The developer shall verify that each end product defined by the system design solution conforms to the requirements of the selected physical solution representation.	Contractor is required to address this through the objectives and checklist of SDR and the requirements to maintain downward traceability of requirements.

ID	ANSI/EIA-632-1998 Subject	ANSI/EIA-632-1998 Requirement	Notes
31	TECHNICAL EVALUATION: System Verification Process Requirements: <i>End Product Verification</i>	The developer shall verify that end product to be delivered to an acquirer conforms to its specified requirements.	The Contractor is required to implement a formal V&V program.
32	TECHNICAL EVALUATION: System Verification Process Requirements: <i>Enabling Product Readiness</i>	The developer shall determine readiness of enabling products for development, production, test, deployment/installation, training, support/maintenance, and retirement or disposal.	The Contractor demonstrates readiness for V&V through a Test Readiness Review (TRR) for each major V&V activity. The Contractor's testing program is aligned with the Contract and the Contractor's CXP.
33	TECHNICAL EVALUATION: End Products Validation Process Requirements: <i>End Products Validation</i>	The developer shall ensure that an end product, or aggregation of end products, conforms to its validated acquirer requirements.	The Contractor is required to implement a formal V&V program.

## 10.6 Use of AS/NZS ISO/IEC 12207 in DMO

AS/NZS 12207 was selected for a number of reasons including:

- c. lifecycle coverage,
- d. open format documentation, and
- e. preservation of detailed development process requirements.

Lifecycle coverage provides process requirements in addition to development and documentation, which were covered previously by standards such as MIL-STD-498. These additional process requirements address the management aspects of software and apply to the Project Office, the Prime Contractor as the supplier, as well as the developer organisations. These process requirements are not onerous but place reasonable requirements in the SOW (elaborated through the Software Management Plan), emphasising the needed software management. The lifecycle requirements of ISO 12207 extend to maintenance and operation of software, allowing a common standard to be applied across acquisition and In-Service support.

ISO 12207 does contain requirements to document certain natural work products as outputs of the process activities. Where these documents are not required, the standard can readily be tailored to remove these requirements. While the standard includes default requirements for the production of documentation, it does not mandate the format and content of this documentation. In short, ISO 12207 does not include Data Item Descriptions (DID). This allows Contractors flexibility in satisfying the information needs of the DMO at reasonable cost.

The development process requirements of ISO 12207 are essentially those of MIL-STD-498. This level of process requirement is still seen as desirable at this stage, given the current state of process capability maturity in Defence Industry.

In summary, ISO 12007 provides all of the benefits of MIL-STD-498 with additional process requirements to address the management of software, and the flexibility to encourage Contractors to provide useful information in a cost-effective manner.

ISO 12207, as an ISO standard, is intended to be tailored by each nation for its own purposes. AS/NZS 12207 has adopted the ISO "as is". The USA's adoption of the ISO standard, IEEE 12207 has modified the ISO standard for its national use. IEEE 12207.0 is essentially the ISO standard with some additional annexes. IEEE 12207.1 and IEEE 12207.2 are additional to the ISO standard and provide data product definition (i.e. DID equivalents) and guidance respectively. IEEE 12207 provides an extra level of sophistication and, therefore, complexity to the adoption of the standard. This added complexity, together with the potential bias towards US companies, led to the specification of ISO 12207 in the Australian guise within the SOW. This approach does not disadvantage US companies, while also supporting a more generic approach to software process requirements.

## 10.7 Structure of the Engineering Section of the SOW

The engineering clauses of the ASDEFCON (Strategic Materiel) SOW template have the structure shown in Table 10-4. The central clauses, 4.2, 4.3 and 4.4, are related to the phases of development activity, whereas the other clauses are related to the project-wide infrastructure and domain specialties.



4. SYSTEMS ENGINEERING	
4.1 Systems Engineering Management	This clause addresses the requirements that the Contractor must meet for the planning and management framework of engineering activities.
4.2 System Definition	This clause addresses the formation of the system specification and the reviews of developing design (i.e. System Requirements Review (SRR) and System Definition Review (SDR))
4.3 System Design	This clause addresses the formation of the Contractor's design solution and the reviews of developing design (i.e. Preliminary Design Review (PDR) and Detailed Design Review (DDR))
4.4 System Implementation	This clause addresses the Commonwealth requirements on the implementation domains, in particular hardware and software development. It should also address integration implementation including interactions with the Commonwealth.
4.5 System Analysis, Design And Development	This clause captures the requirements for the technical support infrastructure, the management of engineering documentation including specific system models.
4.6 Specialty Engineering	This clause contains engineering specialty specific requirements including logistics engineering, human engineering, electromagnetic environmental effects engineering and safety.

**Table 10-4 - ASDEFCON (Strategic Materiel) SOW Engineering Clauses**



## 11. INTEGRATED LOGISTICS SUPPORT

The cornerstone concepts underpinning the Integrated Logistics Support (ILS) and related elements of the ASDEFCON (Strategic Materiel) RFT Template are:

- a. support should be considered and treated as a system; and
- b. ILS should be integrated with the developmental processes associated with the Mission System under an acquisition Contract, and should not be treated as a stand-alone discipline.

These two concepts, along with the general concepts and principles discussed under sections 3 and 4 of this volume of the Handbook, have been instrumental in shaping the form and content of the ILS sections of ASDEFCON (Strategic Materiel).

Similarly to the other sections of the SOW, the ILS section of ASDEFCON (Strategic Materiel) has been written in outcome terms rather than process terms to promote the use of the Contractor's own process domain. This approach allows the Contractor and Subcontractors to tailor their own standards and processes to meet the requirements of a project. In this way, costs are minimised by not specifying processes that are inconsistent with the Contractor's established approach, and the Contractor is allowed to determine the most cost-effective way of providing the solution. An ILS example, which demonstrates the two approaches, is provided in the following table:

Process-based Approach	Outcome-based Approach
Undertake Maintenance Task Analysis (MTA) in accordance with MIL-STD-XXX.	Identify the maintenance tasks that must be undertaken at each echelon of maintenance to enable the requirements for the Mission System and the Support System to be met.

**Table 11-1 – Process-based vs Outcome-based**

ASDEFCON (Strategic Materiel) has been written as if a draft support Contract will accompany the draft acquisition Contract as part of an RFT. This approach has been adopted because it is more difficult for a Contractor to undertake a thorough analysis of the logistics-support requirements without knowing the framework for support. A support Contract defines the logistics-support requirements as a defined set of detailed contractual requirements, which is different to, and to a level that is different from, the support concepts and requirements included in the Operational Concept Document (OCD) and the Function and Performance Specification (FPS), respectively. Additionally, ASDEFCON (Strategic Materiel) has been written to ensure that, to the maximum practicable extent, there are clean boundaries between the acquisition Contract and the support Contract.

### 11.1 Support as a System

A system can be defined as 'an integrated composite of people, products, and processes that provide a capability to satisfy a stated need or objective' (MIL-STD-499A). In this context, it can be seen that the requisite support to enable a Mission System to achieve its objectives can itself be treated as a system. Of note, the systems-engineering standard utilised in ASDEFCON (Strategic Materiel) also suggests this approach (refer Annex G, Figure G.3 of EIA-632). MIL-STD-1388, "Logistic Support Analysis", introduces the term 'Support System', and defines it as 'a composite of all the resources that must be acquired for operating and maintaining a system or equipment throughout its lifecycle'. ASDEFCON (Strategic Materiel) takes the concept of a support system beyond the definition used in MIL-STD-1388, and defines the Support System as:

“the sum of the existing support infrastructure (including that of the Commonwealth, the Contractors and Subcontractors) and the additional support elements being generated under the Contract to enable the Mission System and Support System to be effectively supported so that the Mission System can meet its operational requirements”.

The existing support infrastructure includes all of the support elements and aspects, which already exist and which can apply, or will be applied, to the support of the new Mission System. The following list, which should not be read as complete, provides some indication of these support elements and aspects from a Commonwealth perspective only, and includes:

- a. the ranks and classifications, skills and competencies, and trade and organisational structures associated with support personnel;
- b. the existing logistics information management systems (e.g. the Standard Defence Supply System (SDSS));
- c. the body of existing logistics-related doctrine, concepts, policy and procedures;
- d. the body of existing training-related doctrine, concepts, policy and procedures;
- e. the ADF distribution system;
- f. the ADF storage and warehousing capability (e.g. the Defence National Storage and Distribution Centre (DNSDC));
- g. the regulatory requirements from each of the regulatory agencies;
- h. any existing support elements that could be re-used for the support of the new Mission System (e.g. facilities, Support and Test Equipment (S&TE), etc);
- i. Commonwealth personnel involved in the provision of support for the new Mission System (noting that the Contractor does not provide these personnel, only the training to convert them into useful support staff); and
- j. the corporate governance requirements, as they relate to the provision of support.

The definition of Support System provided earlier highlights a number of the ideas underpinning the concept associated with viewing support as a system, including:

- a. the Support System is not limited to the support that the Commonwealth will provide after the Mission System is delivered and accepted, but includes the support provided by the In-Service logistics-support Contractors and Subcontractors (i.e. Contractors(LS) and Subcontractors(LS));
- b. support of the Support System (e.g. calibration of items of Support and Test Equipment (S&TE)) is considered to be a part of the Support System;
- c. the Support System does not have a purpose in its own right, and its functionality and requisite performance can only be determined in the context of a Mission System (i.e. the Support System is an enabling system); and
- d. the Support System is a combination of new support elements and existing support elements, which are integrated together to produce the requisite functionality and performance.

Each of these concepts is discussed further in the following paragraphs; however, before this discussion can occur, it is necessary to discuss the relationship between the Support System and the elements of ILS, which are currently defined in Defence policy.

DI(G) LOG 03-6 (Issue No LOG B/8/97) defines ten elements of ILS, as follows:

- a. Engineering Support;
- b. Maintenance Support;
- c. Supply Support;
- d. Technical Data;
- e. Personnel;
- f. Training and Training Support;
- g. Facilities;
- h. Packaging, Handling, Storage and Transportation (PHS&T);
- i. Support and Test Equipment (S&TE); and
- j. Computer Support.

Each of these elements of ILS is discussed in life-cycle terms in the life-cycle threads included at Annex A to this volume of the Handbook. These threads show the changing emphases, issues and considerations for each of these elements throughout the life-cycle of a capability. Furthermore, to show the in-depth nature of these threads, a more detailed thread has been developed for Technical Data, and this thread is attached at Annex C to this volume of the Handbook.

ASDEFCON (Strategic Materiel) recognises that these elements of ILS are a mixture of products (such as Facilities, S&TE and Technical Data) and process domains (such as Engineering Support, Maintenance Support, etc). ASDEFCON (Strategic Materiel) also recognises that, while the acquisition Contractor is responsible for designing the process domains as they apply to the specific Mission System, it delivers only the physical products associated with each of these domains under an acquisition contract. Furthermore, the Support System does not come into existence until these physical products are integrated with the existing support infrastructure. For the Commonwealth elements of the Support System, the Commonwealth would normally have a role in this integration (e.g. entering codification data onto the Standard Defence Supply System (SDSS), providing appropriate personnel to undertake Contractor-provided training, or placing spares in a Defence warehouse). This discussion highlights one of the challenges with the Support System, in that there is not always clear accountability for system performance. This last issue is discussed further in other sections of the handbook (e.g. under Verification and Validation (V&V)).

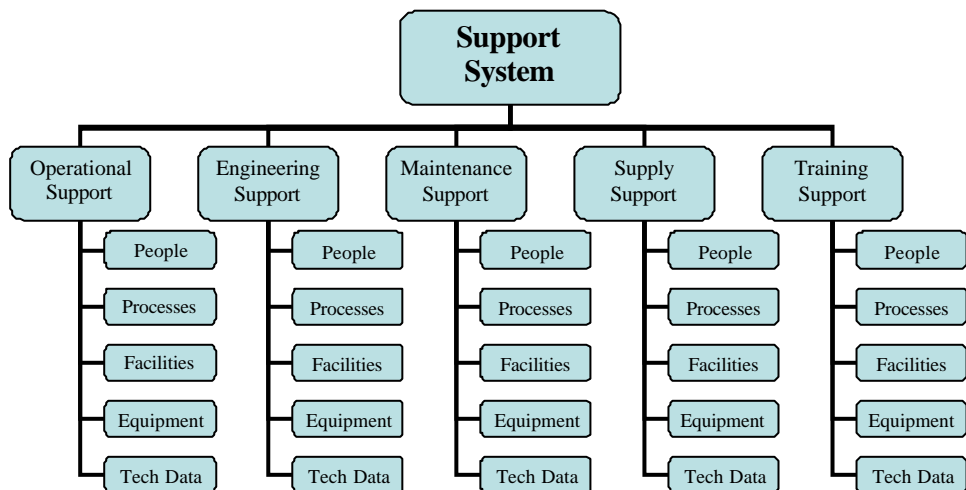
As highlighted in the preceding paragraph, the Contractor is only responsible for delivering the physical products associated with the process domains, noting that services, such as training, are considered to be a product in this context. The differentiation between the elements of ILS and the physical products provided by the Contractor under an acquisition Contract are illustrated in the following table:

Elements of ILS	Physical Products Delivered to the Cwth by the Acquisition Contractor
<ul style="list-style-type: none"> <li>• Engineering Support</li> <li>• Maintenance Support</li> <li>• Supply Support</li> <li>• Technical Data</li> <li>• Personnel</li> <li>• Training and Training Support</li> <li>• Facilities</li> <li>• PHS&amp;T</li> <li>• S&amp;TE</li> <li>• Computer Support</li> </ul>	<ul style="list-style-type: none"> <li>• Spares</li> <li>• Packaging</li> <li>• Training</li> <li>• Training Equipment</li> <li>• Training Materials</li> <li>• Technical Data</li> <li>• S&amp;TE</li> <li>• Facilities</li> <li>• Software Support Capability</li> </ul>

**Table 11-2 – Elements of ILS vs Acquisition Deliverables**

As will be discussed later in this section of the handbook, it is not sufficient to understand this relationship from a Commonwealth perspective only. The Contractor will also have to develop and implement a support infrastructure within itself and within other Contractors(LS) and Subcontractors(LS). This is the “supply chain” view of the Support System.

To overcome the difficulties with the mixture of products and process domains associated with the standard elements of ILS, ASDEFCON (Strategic Materiel) has modified these elements and has produced a systems view of support, as illustrated in Figure 11-1:

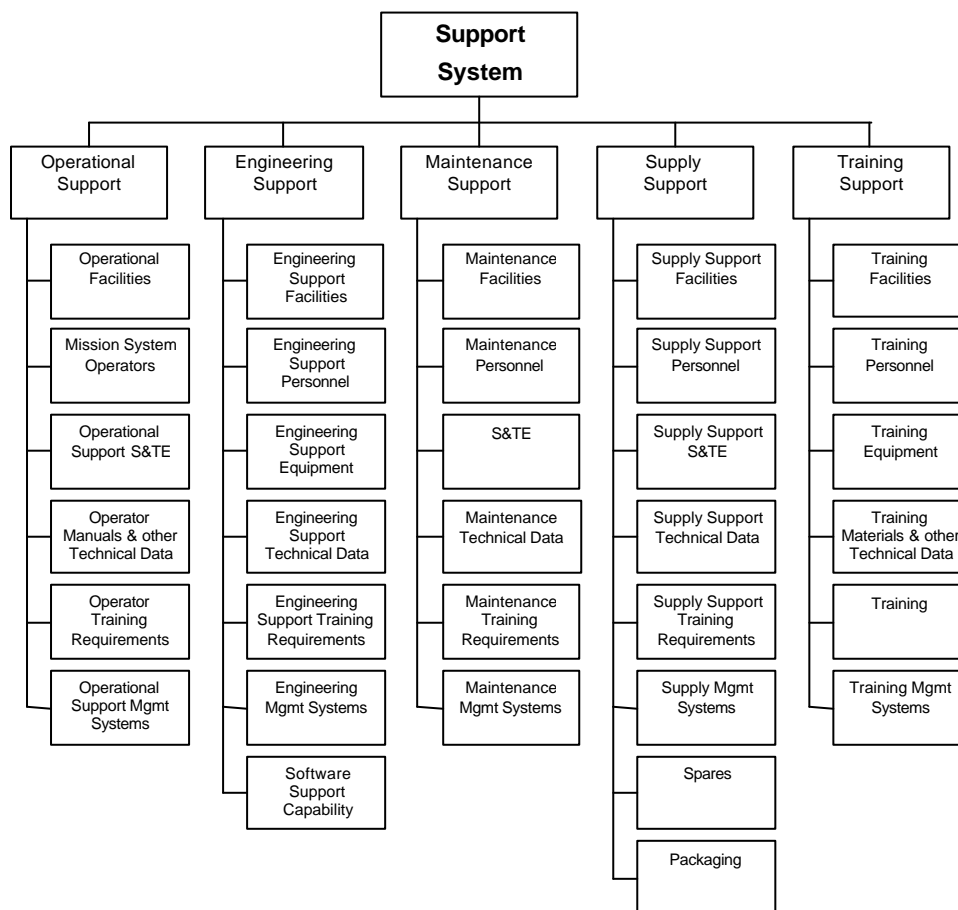


**Figure 11-1 - Defining Mission System Support as a System**

Figure 11-1 highlights that the Support System has been defined as having five subordinate subsystems (or process domains), each of which is comprised of a set of resources. Under ASDEFCON (Strategic Materiel), these five subsystems have been called, “Support System Constituent Capabilities”, with definitions for each of these constituent capabilities included in the glossary. The following examples help to explain the relationships between the elements of ILS and the Support System Constituent Capabilities:

- a. Operational Support does not appear as an element of ILS; however, operational tasks, procedures, training requirements, etc, are outcomes of the Logistic Support Analysis (LSA) process. Given that these outcomes are derived from a logistics process and the derived products form a part of the set of resources required to support the Mission System, Operational Support has been included as one of the Support System Constituent Capabilities. A building in which a communications system is housed is an example of an Operational Support facility, while a mission planning system for a weapon system is an example of Operational Support S&TE.
- b. The ILS elements of Engineering Support, Maintenance Support, Supply Support, and Training Support map directly into the Support System Constituent Capabilities having the same names. Additionally, the related product ILS elements of Facilities, Technical Data and S&TE map into each of the Support System Constituent Capabilities because these product elements are integral to the ability of each of the constituent capabilities to perform its respective functions. The inclusion of the related product elements within the process domains requires differing definitions to be utilised (refer glossary) from the ILS definitions contained in policy. These differing definitions are also more consistent with the systems view of logistics contained in ASDEFCON (Strategic Materiel).
- c. The ILS element, PHS&T has been included under the Support System Constituent Capability of Supply Support, in toto, because there is nothing within the scope of PHS&T that is not covered under the scope of Supply Support. The physical products of Packaging and Spares have been included under this constituent capability, albeit noting that the technical integrity responsibilities for Packaging and Spares are included under Engineering Support. A warehouse is an example of Supply Support Facilities, while mobile handling equipment is an example of Supply Support S&TE.
- d. The ILS element, Personnel, maps across each of the Support System Constituent Capabilities, under the resource heading, "People". Under an acquisition Contract, the Contractor is not responsible for providing people (except under some form of interim support arrangement), but is responsible for ensuring that all of the systems and processes are in place to ensure that the respective agencies, including the Commonwealth, can take over their responsibilities at the start of the support period, including under any warranty arrangements specified in the acquisition Contract.
- e. "Processes" are included as one of the entities under each of the Support System Constituent Capabilities. In general, this entity will exist in physical form as Technical Data; however, processes are considered to be an integral, but separate, element of a system, as highlighted in the earlier definition of system. Furthermore, the Contractor is required to develop these processes as part of its design of the Support System. For these reasons, "Processes" have been included under each of the Support System Constituent Capabilities.

A more-detailed mapping of the relationships between the Support System and the elements of ILS is illustrated in Figure 11-2. This figure shows the physical ILS elements (i.e. products and services) mapping into the process-based ILS elements, as defined through ASDEFCON (Strategic Materiel).



**Figure 11-2 - Mapping between the Physical ILS Elements and the Support System Constituent Capabilities**

The decision to view support from a system perspective in ASDEFCON (Strategic Materiel) was made for a number of reasons, including:

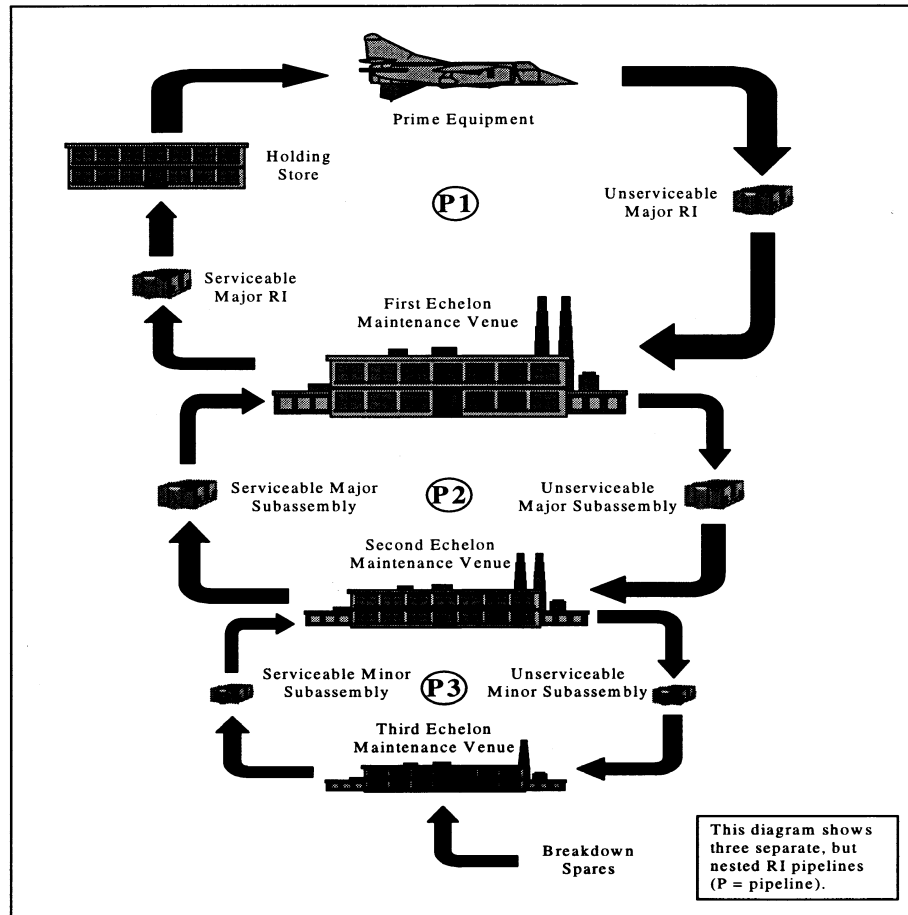
- a. that a systems approach, which addresses the complex interactions between people, products and processes, was more likely to yield a better understanding of the support issues and support requirements and, therefore, would result in a more complete and more rigorously defined Support System;
- b. as already discussed, to address the inconsistencies introduced into an acquisition Contract by having ILS elements that are a mix of products and process domains;
- c. to better clarify the scope of an ILS program (e.g. by clarifying which elements of the Support System are already existing and which elements are required to be provided by the acquisition Contractor);
- d. to better delineate the relationship between acquisition and support by improving the boundary definitions for the separate contractual activities;
- e. to help to ensure that all support elements were adequately addressed (e.g. it is not clear that Engineering Support was adequately addressed in the past because its definition is not part of the traditional LSA process);
- f. to integrate ILS into the Systems Engineering process and cause it to be managed as a requirements-driven process;
- g. to address performance requirements for support systemically and to be better linked to the operational requirements;



- h. to help to ensure that ILS is managed under an event-driven schedule as opposed to a time-driven schedule (refer next paragraph) and, therefore, to improve the Commonwealth's ability to monitor the progress of the ILS program (particularly in conjunction with the developmental activities for the Mission System); and
- i. to make the interactions between ILS and the other disciplines (e.g. SE, PM, V&V and CM) more apparent.

An event-drive schedule is one in which progress is measured through a pre-determined and defined series of events. This approach underpins earned value management, which assesses the "earned value" at particular times (e.g. monthly) by reference to well-defined measures of performance that underpin each work package. At the macro level, the systems-engineering process is based around a series of events or "gates", such as the System Reviews, which are used, inter alia, to adjudge progress of the Contractor's design. By defining support as a system and having defined requirements for each of the Mandated System Reviews (i.e. through entry/exit criteria), the progress of the ILS program is now able to be measured through achievement of these defined events. Schedule performance, therefore, is measured through exiting the Mandated System Reviews, as opposed to measuring the passage of time and subjectively assessing the progress that has been made based on this time.

Figure 11-3 provides one way of viewing support as a system. This figure shows support from a supply-chain perspective, highlighting relationships between maintenance and supply, as well as interactions between different echelons of maintenance. While the figure is obviously a generic representation, it does highlight one of the key differences between the Mission System and the Support System. In any system development, interfaces provide one of the major sources of risk. For a Mission System, these interfaces are generally physical; whereas, for a Support System, the interfaces are typically organisational. As such, a key component of the system-level design for the Support System will be addressing the interfaces between the various organisations involved in the provision of support. The supply-chain view of the Support System should not be limited to services such as the provision of maintenance and the supply of spares. The provision of engineering-support services can also be viewed from this perspective, which is another way of viewing the design-support network.



**Figure 11-3 - The Supply Chain View of the Support System**

Figure 11-3 also helps to highlight another key difference between the Mission System and the Support System. In general, the Mission System tends to be dominated by a single, stand-alone product (i.e. the prime-mission product), whereas the Support System is an interrelated set of products and services that are given utility by people implementing processes. In fact, the effectiveness of the Support System is determined by the skills of the people internal to the system as well as by the effectiveness of the interfaces and relationships between the various organisations and individuals integral to the system. As such, the Support System is not a fixed entity, but is dynamically reconfigurable to meet the circumstances at hand. This ability to be reconfigured is most evident in the transition from peacetime to contingency operations; however, it is also evident on a daily basis due to numerous, small-scale interruptions (e.g. lack of a spare part or an individual being sick on a particular day). The dynamic nature of the Support System helps to explain why many of its key performance characteristics are statistically based (e.g. average waiting time for spares, Turn-Around Times (TATs), and Administration and Logistics Delay Time (ALDT)).

Some of the challenges associated with defining performance measures for the Support System are also highlighted by Figure 11-3. In an ideal world, one of the defining performance measures for the Support System would be the requisite Operational Availability (Ao) of the Mission System. The ADF, however, often needs to be able to undertake front-line maintenance, which makes it very difficult, contractually, to utilise Ao as a measure of Contractor performance. Instead, defacto measures of availability need to be defined (e.g. spares-outage response times, Contractor maintenance response times, and average waiting time for spares), which can have meaning contractually. Systemic views of support, such as that provided in Figure 2, can help to clarify system boundaries and, therefore,

can help to define appropriate Contractual performance measures. For example, another performance measure indicated by Figure 2 relates to the requisite visibility and turn-around times of any assets that could be present in the maintenance/supply chains. Whichever performance measures are selected, however, they must be derived from the operational requirements and, in particular, those requirements related to preparedness.

The rationale for including the Contractors(LS) and Subcontractors(LS) in the scope of the Support System is also illustrated, in part, by Figure 11-3. The performance of the Support System is inextricably linked to the performance of these supporting organisations. As such, ASDEFCON (Strategic Materiel) has incorporated processes to provide visibility into the design, development and implementation of those support elements that will be provided by the Contractors(LS) and Subcontractors(LS). ASDEFCON (Strategic Materiel) does not assume that the acquisition Contractor will be the same as the support Contractor, or that there will only be a single support Contractor. This approach of providing visibility into the design, development and implementation of the supporting organisations also provides one of the mechanisms for monitoring the Australian Industry Involvement (All) program.

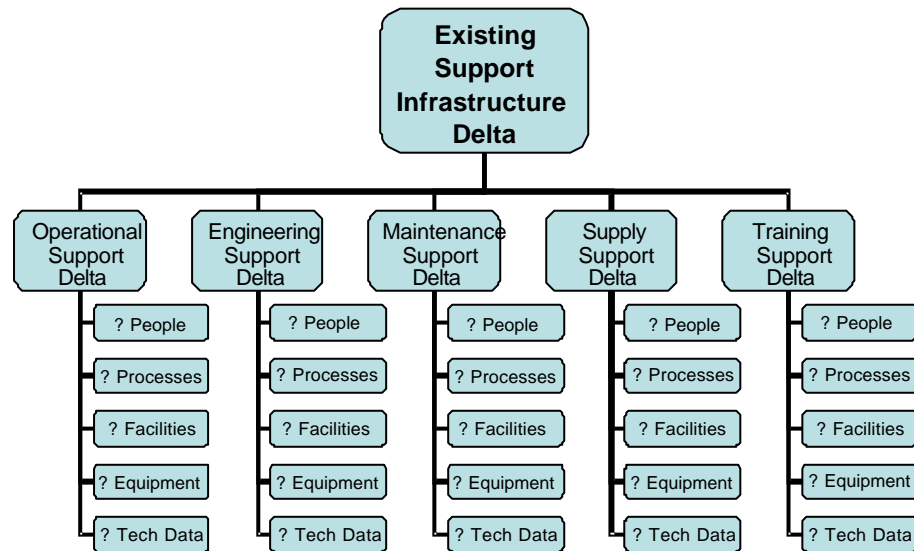
In providing the requisite support under a Contract(LS), the performance of the Subcontractors(LS) can sometimes be more important than the performance of the Contractor(LS). Overseas prime contractors often utilise Australian subcontractors as the primary interface with the Commonwealth for the provision of support (to satisfy All requirements), even when the Contract is between the overseas prime and the Commonwealth. Furthermore, critical elements of the Mission System or Support System (e.g. software support) could be supported by Subcontractors(LS) and, therefore, these Subcontractors(LS) can be critical to the performance of the Support System. For these reasons, ASDEFCON (Strategic Materiel) has included Subcontractors(LS) in the scope of the Support System; however, this is one area where judgement should be utilised to ensure that the Commonwealth only seeks visibility into the definition of those Subcontractors(LS) that are critical to the performance of the Support System.

In designing the Support System, the Contractor needs to know those elements of the existing logistics-support infrastructure that will be utilised in developing the Support System for a particular Mission System or set of Mission Systems. These existing elements may:

- a. be mandated for use by the Commonwealth (e.g. the Standard Defence Supply System (SDSS), the ADF line-haul system, and the types and quantities of personnel);
- b. be offered for use by the Commonwealth but not mandated (e.g. surplus S&TE);
- c. be suggested for use by the Commonwealth (e.g. for standardisation purposes); or
- d. be mandated or offered for use by other business entities within the Contractor or Subcontractors, or by the Contractors(LS) or Subcontractors(LS) (e.g. existing facilities).

If mandated for use, these elements become constraints on the design, and the Support System must be designed and developed to take these constraints into account. This is an important issue because it is expected that the existing elements will form a significant portion of the Support System. A brief consideration of the five process domains identified in Figure 11-1 will highlight just how much of a particular Support System is likely to already exist. Furthermore, as this consideration is extended along the supply chain, other aspects, such as the technology base of the companies involved, their existing capabilities, and their current capacities become relevant. These latter aspects will be particularly relevant during tender evaluation.

Given that the Support System comes into existence only after the physical products delivered by the Contractor are integrated into the existing logistics-support infrastructure, it can be said that the new or modified elements simply represent a change to the existing infrastructure. As such, one way of viewing the design process for the Support System is that the Contractor determines the changes (or deltas) that need to be made to the existing infrastructure to produce the Support System for a particular Mission System. This view of the process is illustrated in Figure 11-4.



**Figure 11-4 - Design of the Support System (Delta Analysis)**

The deltas in Figure 11-4 could represent increases, decreases, modifications, or some combination of all of these depending upon the circumstances. For people, modifications would mean that the operational and support personnel require different or additional training. Additionally, from a supply-chain perspective, the deltas would include Commonwealth, Contractors(LS) and Subcontractors(LS).

The approach illustrated in Figure 11-4 also provides a hint as to when the approach to defining and supplying support, as specified in ASDEFCON (Strategic Materiel), would not be applicable. If almost all of the requisite Support System already existed and the envisaged deltas were small, then it would not be cost-effective to utilise ASDEFCON (Strategic Materiel). A modification to an existing weapon system, which did not involve a large number of new or modified Repairable Items (RIs), would be an example of an acquisition project in which the approach specified in ASDEFCON (Strategic Materiel) would not be cost-effective. In this instance, a better approach could be to define the specific logistics deliverables that are required (i.e. publications, training, spares, etc).

As a final comment on the Support System, it is worth highlighting that ASDEFCON (Strategic Materiel) introduces two additional key terms: Support System Components and Support Resources. These two terms are defined in the glossary; however, users of ASDEFCON (Strategic Materiel) need to understand the requirement for these two terms and the differences between them. Essentially, Support Resources are all of the resources required to support the Mission System (or, where the context requires, a part of the Mission System), including the resources required to support specific support resources (e.g. calibration equipment for items of S&TE). "Support Resources" is a global term that captures all of the resources, both new and existing, that comprise the Support System. Support System Components are a subset of Support Resources, with Personnel and Mission System Spares being excluded. Personnel are excluded because they are not physically delivered, while Mission System Spares are excluded because the functionality and performance of these items is defined as

part of the design of the Mission System and not as part of the design of the Support System. These definitions can be viewed hierarchically, as follows:

- a. Support System Components = physical support items (excluding Mission System Spares);
- b. Support Resources = Support System Components + Mission System Spares + Personnel; and
- c. Support System = Support Resources + Support Processes + existing support infrastructure + system integration.

## 11.2 Integration of ILS

The integrated management framework was discussed earlier under Section 3 of this volume of the Handbook. Nevertheless, from an ILS-centric perspective, the following points are worthy of note:

- a. Integrating ILS with the other technical disciplines (i.e. SE, CM and V&V) helps to ensure that the development of both the Support System and the Mission System occur in harmony, with appropriate trade-offs, both between the systems and within the systems, being able to be made along the way as the designs of both systems mature.
- b. Splitting of ILS, so that elements of what would traditionally have been regarded as the ILS program of activities now appear under the domains of PM, SE, CM and V&V, makes the scope of the ILS program more difficult to visualise, while making the total scope of those other programs more apparent. Overall, however, the scope of the total acquisition program is now considered to be clearer.
- c. With the exception of clause 5.1 (ILS Program), which covers the entire ILS program of activities, the remaining clauses under clause 5 of the SOW relate solely to the design, development, production/procurement, and implementation of the Support System.
- d. Supportability aspects for the Mission System are covered under the Specialty Engineering section within the broader subject of Systems Engineering, and include the topics of Logistics Engineering and Reliability, Maintainability and Testability Engineering. Of note, Logistics Engineering comes under the scope of coverage of the ISP and not the SEMP due to the linkages with the relevant standards (e.g. MIL-STD-1388).
- e. The previous term, Technical Reviews, which only included SE-related reviews has now been renamed, System Reviews, and now includes all ILS reviews. These ILS reviews now come under the System Review Plan (SRP) and are managed in the same way as all system reviews and audits.

A complete mapping of all ILS and related activities or functions within the SOW is provided in the following table:

**Table 11-3 - Mapping of ILS to the ASDEFCON (Strategic Materiel) SOW**

<b>Clause</b>	<b>Title</b>	<b>Description of ILS and Related Activity</b>
1	Scope	High-level overview of Contract activities and products, including ILS.
2.1	Scope of Work	Includes description of ILS activities and products.
2.2	Delivery of Supplies	The methodology specified here would normally fall to ILS to manage.
2.3	Deliverable Data Items	Addresses Data Item management, which includes ILS Data Items.
2.4	Draft Data Items Included as Contract Annexes	Could include the Draft ISP or other Draft ILS Data Items.
2.5	Ozone Depleting Substances and Hazardous Substances	These activities are likely to be managed by ILS.
2.6	Commonwealth-Directed Trade Studies	Could include supportability trade studies, such as standardisation opportunities, technological opportunities and Support System alternatives.
3.2.1	Project Start Up Plan	Would include ILS start-up activities.
3.2.2	Project Management Plan	Would include reference to ILS activities.
3.2.3	Contract Master Schedule (CMS)	The ILS schedule is a part of the CMS.
3.2.4	Contract Work Breakdown Structure	The CWBS includes all ILS activities and products.
3.2.5	Earned Value Management System	The EVMS includes all ILS activities and products.
3.2.6	Change Control	Includes ILS CCPs.
3.2.7	Measurement and Analysis	Includes ILS measurement activities.
3.3	Project Monitoring and Control	Includes monitoring of the ILS program.
3.4	Key Persons Management	Is likely to include the Contractor's ILSM.
3.5	Subcontractor Management	Would include any Subcontracted ILS activities.
3.6	Risk Management	Includes ILS risks.
3.7	Issue Management	Includes ILS issues.
3.9.1	Progress Meetings	Includes ILS meetings.
3.9.2	Extraordinary Meetings	Includes ILS meetings.
3.9.3	Contract Performance Reviews	Refers to Company Scorecard, which includes ILS.
3.10	Independent Verification and Validation (IV&V)	Could include ILS (e.g. for IV&V of the Contractor's spares-optimisation model).

Clause	Title	Description of ILS and Related Activity
3.11	Life Cycle Cost (LCC)	The LCC program, particularly any LCC modelling, is likely to be undertaken by ILS.
3.12	Transition into Operational Service	Involves significant ILS activity because of the relationship to support.
3.13	Government Furnished Material (GFM) Management	GFE is likely to be managed by ILS, but this clause also includes ILS-related GFI/GFD.
3.14	Australian Industry Involvement (All) Management	In-country support will almost certainly be one of the Industry Requirements; hence, ILS will almost certainly be involved.
3.15	Intellectual Property (IP) Management	Significant relationship between IP management and Technical Data management; hence, lots of scope for ILS to be involved here.
3.16	Defence Security Compliance	Possible ILS involvement.
3.17	Resident Project Personnel	Could include ILS personnel.
4.1.1	Engineering Organisation and Plan	Overlaps and interfaces between the SE and ILS organisations and between the SEMP and ISP need to be addressed.
4.1.4	Conduct of System Reviews	Includes all ILS reviews.
4.2.1	Operational Concept Document	Activities under this clause need to be coordinated with the activities under clause 5.2.2.1.
4.2.2	System Requirements Validation	Clauses 4.2.2.3 and 4.2.2.4 establish the traceability and associated management requirements for the SSSPEC.
4.2.3	System Requirements Review	Includes the Support System (called out from clause 5.1.2.2).
4.2.4	System Definition Review	Includes the Support System (called out from clause 5.1.2.2).
4.3.1	Preliminary Design Review	Includes supportability requirements for the Mission System.
4.3.2	Detailed Design Review	Includes supportability requirements for the Mission System.
4.4.2	Software Development	Possible interfaces/interactions with software support.
4.5.1	Technical Documentation Tree	Details the Technical Data for the Mission System that will be delivered under the Contract.
4.5.4	Engineering Drawings	Forms part of the Technical Data that will be delivered under the Contract.
4.6.1	Growth, Evolution and Obsolescence Program	Likely to involve ILS input, as well as LCC modelling activities.

Clause	Title	Description of ILS and Related Activity
4.6.2	Integrated Reliability, Maintainability and Testability Engineering Program	Part of the supportability considerations for the Mission System. Significant interaction and interfacing with ILS.
4.6.3	Logistics Engineering	Covers the remaining supportability considerations for the Mission System.
4.6.4	Human Engineering	Likely to include Human Engineering for elements of the Support System.
4.6.6	Safety	Likely to include Safety for elements of the Support System.
5	Integrated Logistics Support	Discussed in the SOW Volume of the Handbook
6	Configuration Management	Includes CM for the Support System, including configuration identification, configuration baselines, configuration control, configuration status accounting, and configuration audits for the Support System.
7	Verification and Validation	Includes V&V for the Support System and Support System Components. Requires a Verification Cross Reference Matrix (VCRM) to be developed for the Support System. Acceptance Validation of the Support System involves a series of effectiveness demonstrations and an endurance demonstration.
8	Quality Management Program	Includes ILS.

As can be seen from the preceding table, ILS is now integrated throughout the SOW. As such, ILS staff in a project office will need to have an appreciation of the total SOW, with an understanding of which elements of the SOW are applicable at any time during the project life.

### 11.3

#### Structure of the ILS Section of the SOW

Clause 5 of the SOW has been structured at the higher levels to parallel the Systems Engineering section of the SOW, while progressing to greater levels of detail as the design of the Support System develops. The first three levels of the clause headings illustrate these points, as follows:

- 5 Integrated Logistics Support
  - 5.1 Integrated Logistics Support Program
    - 5.1.1 ILS Program Objectives
    - 5.1.2 ILS Program Management
  - 5.2 Logistics Support Analysis (LSA) Program
    - 5.2.1 LSA Program Management
    - 5.2.2 Support System Definition
    - 5.2.3 Operational Support Design
    - 5.2.4 Engineering Support Design
    - 5.2.5 Maintenance Support Design
    - 5.2.6 Supply Support Design



- 5.2.7 Training Support Design
- 5.2.8 Support System Synthesis
- 5.3 Support System Implementation
  - 5.3.1 General
  - 5.3.2 Implementation of Spares and Packaging Requirements
  - 5.3.3 Implementation of Technical Data Requirements
  - 5.3.4 Implementation of Training and Training Support Requirements
  - 5.3.5 Implementation of Support and Test Equipment (S&TE) Requirements
  - 5.3.6 Implementation of Facilities Requirements
  - 5.3.7 Implementation of Software Support

As can be seen from the preceding list, clause 5.2 relates to the design of the entire Support System, including Commonwealth, Contractors(LS) and Subcontractors(LS). Clause 5.3, on the other hand, only covers the implementation (i.e. design, development, manufacture, procurement, delivery and installation) of those Support System Components that are either delivered to the Commonwealth or are of interest to the Commonwealth.

Clause 5.2 is worthy of further discussion because it highlights the mapping of the design processes for the Support System into the SE framework. A further breakdown of the clause headings illustrates this point, as follows:

- 5.2 Logistics Support Analysis (LSA) Program
  - 5.2.1 LSA Program Management
  - 5.2.2 Support System Definition
    - 5.2.2.1 Support System Requirements Validation
    - 5.2.2.2 Support System Logical Solutions Representation
    - 5.2.2.3 Support System Analysis
  - 5.2.3 Operational Support Design
    - 5.2.3.1 Operational Tasks
    - 5.2.3.2 Resource Requirements for Operation of the Mission System
    - 5.2.3.3 Procedures for Operation of the Mission System
    - 5.2.3.4 Personnel Competency Requirements for Operation of the Mission System
  - 5.2.4 Engineering Support Design
    - 5.2.4.1 Engineering Support Tasks
    - 5.2.4.2 Resource Requirements for Engineering Support
    - 5.2.4.3 Procedures for Engineering Support
    - 5.2.4.4 Personnel Competency Requirements for Engineering Support
  - 5.2.5 Maintenance Support Design
    - 5.2.5.1 Corrective Maintenance Tasks
    - 5.2.5.2 Preventive Maintenance Tasks
    - 5.2.5.3 Maintenance Levels and Repair Policies for Maintenance Tasks
    - 5.2.5.4 Maintenance Resource Requirements
    - 5.2.5.5 Maintenance Procedures
    - 5.2.5.6 Maintenance Support Personnel Competency Requirements
  - 5.2.6 Supply Support Design
    - 5.2.6.1 Supply Support Tasks
    - 5.2.6.2 Supply Support Resource Requirements
    - 5.2.6.3 Supply Support Procedures
    - 5.2.6.4 Supply Support Personnel Competency Requirements

- 5.2.6.5 Disposal Requirements
- 5.2.7 Training Support Design
  - 5.2.7.1 Training Needs Analysis
  - 5.2.7.2 Training Support Tasks
  - 5.2.7.3 Training Resource Requirements
  - 5.2.7.4 Training Support Procedures
  - 5.2.7.5 Training Support Personnel Competency Requirements
- 5.2.8 Support System Synthesis
  - 5.2.8.1 General
  - 5.2.8.2 Spares
  - 5.2.8.3 Packaging
  - 5.2.8.4 Training
  - 5.2.8.5 Technical Data
  - 5.2.8.6 Support and Test Equipment
  - 5.2.8.7 Facilities
  - 5.2.8.8 Personnel

As can be seen from the preceding list, the ILS SOW follows a reasonably standard SE process, as follows:

- a. requirements analysis,
- b. system definition,
- c. subsystem design, and
- d. synthesis.

Clause 5.2.1 covers the management aspects of the LSA program and requires the Contractor to undertake the LSA Program in accordance with the Approved ISP.

Clause 5.2.2 covers the System Requirements Analysis (SRA) and the System Definition phases, which takes the design of the Support System through the System Requirements Review (SRR) to the System Definition Review (SDR). At (or around) SDR, the Contract is amended to incorporate the Support System Specification (SSSPEC), which has been developed by the Contractor during these phases, as the Functional Baseline for the Support System.

Clauses 5.2.3 – 5.2.7 cover the design of each of the Support System Constituent Capabilities. With some minor exceptions to cover the specifics of each of the domains, the design of these constituent capabilities follows the same path, as follows:

- a. determine the tasks to be performed,
- b. determine the resource requirements needed to enable these tasks to be performed,
- c. define the procedures that implement these tasks using the associated resources, and
- d. determine the competency requirements that personnel need to implement the procedures.

Synthesis is the process of defining solutions that satisfy the requirements. While the design of the individual Support System Constituent Capabilities will result in an operable Support System, this design will not be balanced and optimised to satisfy the requirements at a minimised LCC. As such, a series of synthesis processes are required to achieve this balance. After the design for each of the Support System Constituent Capabilities is complete, clause 5.2.8 looks at the Support Resources in more detail to determine whether or not any synergies or opportunities for rationalisation/optimisation exist across the constituent

capabilities. Spares-optimisation modelling is an example of this synthesis process; however, the synthesis approach could be much simpler. For example, another approach (for facilities) could be to analyse the facilities requirements under each of the constituent capabilities to determine whether or not the separate requirements could be combined into a single facility.

Of note, the clause breakdown (and subsequent discussion) also demonstrates how the concepts associated with considering support as a system have been mapped into the SOW. Clause 5.2.8 also illustrates how the distinction between the elements of ILS and the physical products delivered by the acquisition Contractor has been mapped into the SOW.

#### 11.4 **Mapping of LSA Processes to the ASDEFCON (Strategic Materiel) RFT Template**

Annex B to this volume of the Handbook provides a table that cross-references (or maps) the LSA tasks defined in MIL-STD-1388 as well as the LSA activities defined in DEF(AUST) 5691 (to be issued) to the sections and clauses of ASDEFCON (Strategic Materiel). This table highlights how the outcomes from the LSA processes have been incorporated into ASDEFCON (Strategic Materiel), and is provided as a navigation tool to assist with understanding ASDEFCON (Strategic Materiel) from a more traditional LSA perspective.

#### 11.5 **Relationship with a Logistics Support Contract (Contract(LS))**

As stated earlier, the ASDEFCON (Strategic Materiel) RFT Template was written as if a draft support Contract would accompany the acquisition Contract as part of an RFT. This approach was adopted, in part, because there are potentially many interactions between an acquisition Contract and a support Contract, particularly when an acquisition Contract requires a Support System to be designed. However, a support Contract does not need to accompany the acquisition Contract because the support concepts and support requirements are mainly captured in the OCD and FPS, respectively. Nevertheless, for many reasons (including contractual, financial, and risk), the inclusion of a support Contract as part of an RFT is considered to be the preferred approach.

In considering the relationship between the acquisition Contract and the support Contract, it can be argued that the Support System does not really come into existence until it is given utility by people enacting processes. This argument indicates that the Contractor-based elements of the Support System do not come into existence until there is a requirement for support, which in accordance with ASDEFCON (Strategic Materiel), could occur under one or more of the following arrangements:

- a. a warranty or latent defects claim;
- b. an interim support period under the acquisition Contract;
- c. the Support System Endurance Demonstration as part of Acceptance Validation, which could be run as a precursor to, in parallel (but integrated) with, or as part of, the Contract(LS); and
- d. the Contract(LS).

Of these four possibilities, the Contract(LS) is by far the most significant and the most extensive. The Contract(LS), therefore, provides the primary mechanism by which the full extent of the Support System is brought into existence. Furthermore, the Contract(LS) will achieve this, generally, for an extended period of time. This perspective makes the linkages between the acquisition and support Contracts reasonably self-evident. Simply put, the acquisition Contract designs the Support System and acquires the Support Resources needed to operate and support the Mission System, while the support Contract enacts that portion of the Support System provided by the support Contractor. This discussion highlights that the acquisition and support Contracts are inextricably linked, and that consideration of one independently of the other is likely to produce a solution that is sub-optimal. It is recommended, therefore, that the two Contracts be developed in parallel to

ensure that the linkages and the potential disconnects and overlaps between the Contracts be properly addressed.

ASDEFCON (Strategic Materiel) includes a number of references to the Contract(LS), either explicitly or implicitly, of which the more significant references are discussed in the following sub-paragraphs:

- a. In the ILS section of the conditions of tender, each tenderer is required to submit a Tender Data Requirement (TDR) entitled, "Proposed Support System Solution (PSSS)". As would be expected, this data item includes a number of references to the Contract(LS) to enable each tenderer to describe how its proposed solution for the Support System would enable the requirements of (inter alia) the Contract(LS) to be met. Drafters should note that there is potential for overlap between this TDR and one or more of the common TDRs utilised with a Contract(LS) (e.g. the overarching support plan for the Contract(LS)).
- b. In addition to the PSSS TDR, each tenderer is required to submit a TDR entitled, "Tender Life Cycle Cost Model (TLCCM)". As would be expected of any LCC model, this model must take into consideration the principal cost drivers associated with the Support System, which would include the provisions of the Contract(LS).
- c. Under clause 3.11 ("Life Cycle Cost (LCC)") of the SOW, the Contractor is required to analyse the LCC for the combination of the Mission System and Support System and, specifically, to report to the Commonwealth any proposal that results in a transfer of costs between:
  - (1) the Mission System and the Support System; or
  - (2) any of the Commonwealth, the Contractor (and Subcontractors), and the Contractor(LS) (and Subcontractors(LS)).
- d. Under clause 3.12 ("Transition into Operational Service") of the SOW, the Contractor is required to document its transition responsibilities and obligations, which includes transitioning from an acquisition environment to a support environment and, if applicable, from an acquisition Contract to a support Contract.
- e. Under clause 5.2.2.1 ("Support System Requirements Validation") of the SOW, the Contractor is required to analyse the Contract(LS) to confirm that all of the Support System functional and performance requirements and constraints have been captured.
- f. Under clauses 5.2.5.1 ("Corrective Maintenance Tasks") and 5.2.5.2 ("Preventive Maintenance Tasks") of the SOW, the Contractor is required to identify the Corrective and Preventive Maintenance tasks to be conducted at each level of maintenance for both the Mission System and Support System Components. These activities lead into the identification, under clause 5.2.5.3, of the maintenance levels under which these tasks will be conducted. Clearly, there is an interaction with the Contract(LS) in this area, which could result in an amendment to the Contract(LS) to capture these design outputs when the design of the Support System is finalised.
- g. Clause 5.2.6.1 ("Supply Support Tasks") of the SOW explicitly acknowledges the supply-chain view of the Support System by requiring the Contractor to identify supply-support tasks that would be undertaken by Contractors(LS).
- h. Under clause 5.2.8.8 ("Personnel") of the SOW, the Contractor is required to identify the types and quantities of personnel required to operate and support the Mission System and Support System, including the Commonwealth, Contractor(LS), and Subcontractors(LS).

- i. Clauses 5.3.2.1 (“Spares”) and 5.3.5.4 (relating to S&TE) of the SOW contain similar clauses, which are only relevant if a Contract(LS) exists.
- j. Clause 5.3.3.4 (“Publications”) of the SOW includes a requirement for the Contractor to maintain publications for a period of three years after contractual acceptance of the publications. This clause would not be required if the Contract(LS) included a requirement to maintain publications.
- k. Under clause 5.3.3.8 (“Escrow”) of the SOW, the Commonwealth is able to obtain access to any Technical Data held in escrow should the Contract(LS) be terminated for default.
- l. Clause 7.2.3.6 (“Support System Endurance Demonstration”) of the SOW suggests that one of the more appropriate dates for starting this demonstration is the Commencement Date of the Contract(LS).

The examples provided in the preceding list highlight some of the more obvious linkages between ASDEFCON (Strategic Materiel) and an accompanying Contract(LS). Notwithstanding, there are likely to be a number of much more subtle linkages, particularly when the design of the Support System provides the baseline against which performance is measured under the Contract(LS). Of note, jumping across contractual boundaries in this way is always somewhat problematic if not handled appropriately. Furthermore, given that the Support System is designed under the acquisition Contract, it may be necessary to leave certain elements of the Contract(LS) open until the design is finalised, and then to amend the Contract(LS) to capture these design outcomes. This is the meaning associated with the dotted line that has been drawn between the Support System Specification and the Contract (Support) in Figure 6-1.



**12. CONFIGURATION MANAGEMENT**

No specific ASDEFCON (Strategic Materiel) background material relating to configuration management has been developed at this time. Reference may be made to DI(G) LOG 08-04, Defence Policy on Configuration Management.





### 13. VERIFICATION AND VALIDATION

#### 13.1 Integrated Project Assurance

The philosophy for Verification and Validation (V&V) under ASDEFCON (Strategic Materiel) involves a two-pronged strategy to provide:

- a. an integrated V&V approach such that V&V of the Mission System and Support System are considered concurrently; and
- b. a process of progressive V&V throughout the duration of the Contract to manage the risks associated with the Mission System and Support System meeting their specified requirements, particularly when those requirements are considered in the context of the operational and support concepts documented in the Operational Concept Document (OCD).

V&V is a key element of project assurance, with the major activities at the Contract level being the Mandated System Reviews and the Acceptance-related activities (i.e. Acceptance Verification and Acceptance Validation).

Users of ASDEFCON (Strategic Materiel) should note that the RFT template contains a number of clauses that link the requirements, the OCD, the Contractor's design processes, and Life Cycle Cost (LCC) within a V&V context. For example, clause 3.11.3.1 of the SOW states:

“In accordance with the Approved System Review Plan (SRP), the Contractor shall [...] demonstrate to the Commonwealth at each Mandated System Review that the Contractor's developmental activities under the Contract will result in a combined Mission System and Support System that:

- a. minimises LCC [...]; and
  - b. meets the other requirements of the Contract,
- when both the Mission System and Support System are operated and supported in accordance with the OCD.”

From a V&V perspective, this clause documents the ‘burden of proof’ that the Contractor must present at each Mandated System Review to assure the Commonwealth that the correct system designs are proceeding and that the Contractor will deliver a Capability that meets the users’ needs.

The culmination of the V&V process is to ensure that:

- a. the major project milestones of Contractual Final Acceptance and Acceptance Into Service (AIS) (noting that AIS can be a part of the Contract under ASDEFCON (Strategic Materiel)) are achieved within the allocated budget and schedule; and
- b. the Mission System can be properly supported during its In-Service phase to achieve the required availability for combat operations.

#### 13.2 Why V&V and not T&E?

Currently, Defence policies, such as DI(G) LOG 08-6, address Test and Evaluation (T&E) and little reference is made to V&V. In the acquisition context, however, ASDEFCON (Strategic Materiel) has adopted the alternative terminology and philosophy associated with V&V for the following reasons:

- a. The terminology of V&V is consistent with the key international standards for the design and development of systems and software, such as:
  - (1) EIA-632, ‘Processes for Engineering a System’; and
  - (2) IEEE Std 1220-1998, ‘IEEE Standard for Application and Management of the Systems Engineering Process’.

- b. ASDEFCON (Strategic Materiel) recognises that V&V represents an ongoing series of risk-mitigation activities that run throughout the duration of a Contract as part of an overall assurance strategy, encompassing (for example):
  - (1) negotiation of, and management of updates to, each of the Verification Cross Reference Matrices (VCRMs) to maintain alignment with the Function and Performance Specification (FPS) and, subsequently, with the System Specification (SS) and the Support System Specification (SSSPEC);
  - (2) requirements-validation activities;
  - (3) the Mandated System Reviews; and
  - (4) Acceptance Verification and Acceptance Validation activities.
- c. The role of the Commonwealth in the V&V program has been better clarified, particularly under the philosophy of Clear Accountability In Design (CAID) embodied within ASDEFCON (Strategic Materiel) (refer Section 10.4 of this volume).
- d. T&E has tended to focus on testing, with lesser focus on the other evaluation activities of demonstration, analysis, inspection and equivalency (also known as prior certification). The concept of V&V, however, more cohesively acknowledges the full range of possible activities that could be associated with confirming that contractual deliverables accord with the Contract. Under ASDEFCON (Strategic Materiel), T&E now forms a component of the overall V&V activities under the Contract.

### 13.3

#### Relationships Between Key V&V Documents

The major V&V documents were illustrated in Figure 6-1, which is reproduced at Figure 13-1 for ease of reference.

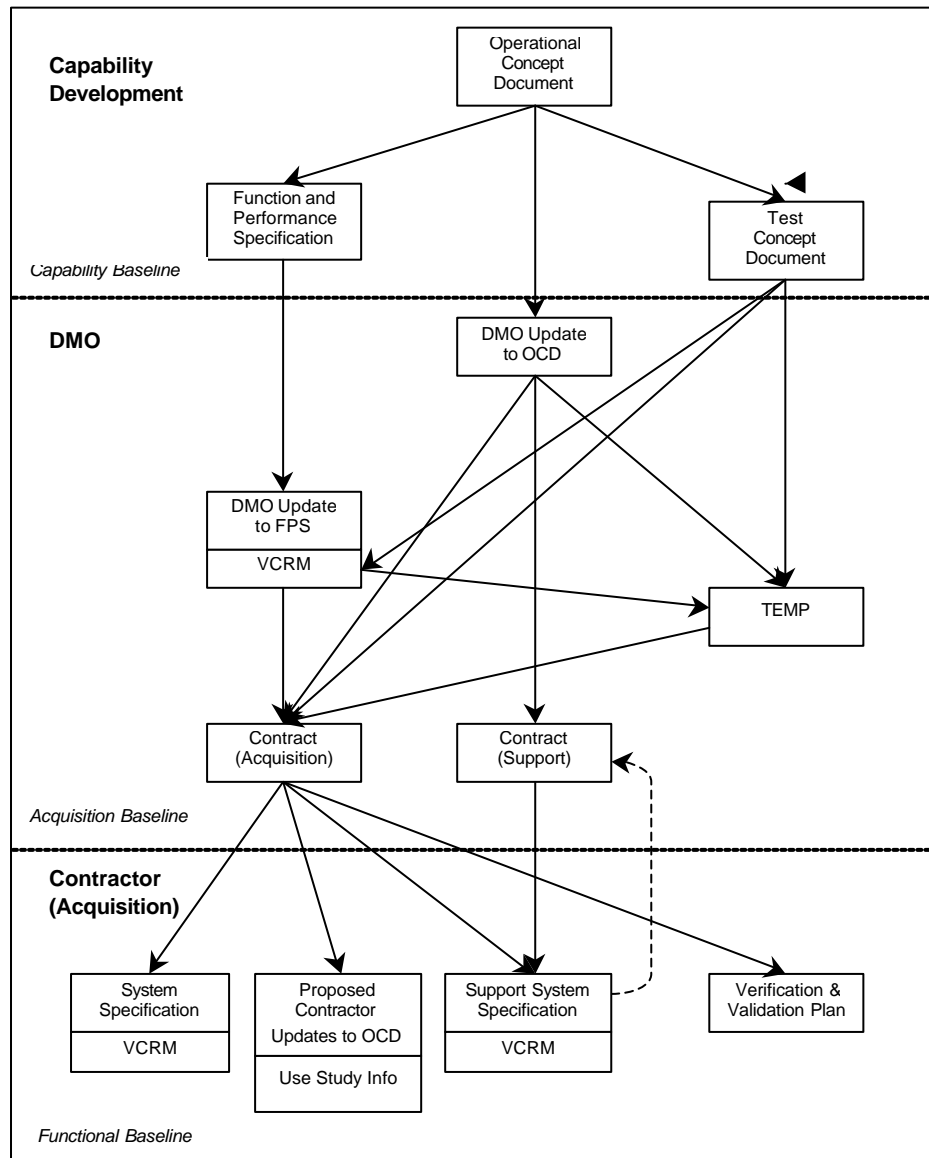
Figure 13-1 shows the TCD being the foundation V&V document, which provides input for the development of the Project Office's Test and Evaluation Master Plan (TEMP), and the VCRM and the associated V&V clauses in the Acquisition Contract.

The TCD identifies the warfighter's intended test approach and, hence, the strategy for acceptance between the DMO and its customer. The TCD documents the responsibilities of all parties involved in the V&V program, and identifies any significant cost and schedule drivers. The TCD covers V&V activities across the whole program, not just contractual V&V activities, and includes those V&V activities relating to Acceptance, Production, and Supportability. One of the main drivers for the TCD is to define the extent of the validation activities as a basis for defining their cost (e.g. a six-month sea trial or a series of flight test activities).

The VCRM attached to the FPS is derived, in part, from the test concepts documented in the TCD. Of note, this early version of the VCRM should not be overly prescriptive and should generally only document the Verification requirements by section of the FPS (as opposed to by individual requirements), commensurate with the assessed cost of the associated Verification activities and the risk of the requirements not being met.

The TEMP is also derived, in part, from the TCD. The TEMP forms a part of the Acquisition PMP and documents the necessary planning to enable the test concepts in the TCD to be realised. Once again, the scope of the TEMP is broader than the contractual V&V requirements. The TEMP and the TCD provide the input 'requirements' that enable the V&V clauses in ASDEFCON (Strategic Materiel) to be appropriately tailored for the specific requirements of a project. Given the broad scope of the TEMP, it should not be attached to the Contract. Instead, the V&V clauses in the RFT template should be modified to appropriately specify the Commonwealth's V&V requirements, as documented in the TCD and TEMP (refer

to the V&V section of the Handbook Part 3). As stated above, the VCRM attached to the FPS also assists with the specification of the Commonwealth's V&V requirements for inclusion in the RFT. Users of ASDEFCON (Strategic Materiel) should note that this early version of the VCRM is a typical candidate for fruitful discussion during contract negotiations because of the implications of the VCRM for project scope and cost.



**Figure 13-1 - Relationships between Key Definitional Documents<sup>2</sup>**

The V&V clauses in the Draft SOW utilise the terms 'Acceptance Verification' and 'Acceptance Validation' to highlight that the Commonwealth's role in the V&V program is almost solely related to determining whether or not contractual deliverables are able to be Accepted. Drafters should refer to the conditions of contract clauses relating to Acceptance, particularly noting the distinctions between 'Acceptance' and 'Final Acceptance', to ensure that the V&V requirements align with the differing requirements associated with these provisions.

<sup>2</sup> To reduce clutter, this diagram does not include the lower-level documents, such as test plans, test procedures and test reports, which are subordinate to the project office TEMP and the Contractor's V&VP.

The V&V clauses have been linked to the Acceptance provisions to clarify the Commonwealth's role under the Contract, which was unclear under the previous terminology of 'Developmental T&E (DT&E)', 'Operational T&E (OT&E)', and 'Acceptance T&E (AT&E)' because these terms are not independent and can overlap each other. Under the CAID principles, the Commonwealth should not have a hands-on role in the Contractor's internal testing activities (i.e. DT&E), unless the results of those activities are expected to be utilised for the purposes of obtaining Acceptance. Instead, the Commonwealth should adopt a monitoring role over the Contractor's internal testing activities for risk-management purposes. This approach helps to ensure that the Contractor retains responsibility for ensuring that the requirements of the Contract are met, which is one of the primary aims behind the adoption of the CAID philosophy.

Under the Contract (or, alternatively, under an offer definition phase), the Contractor will develop a V&V Plan, which describes its intended approach to meeting the V&V requirements of the Contract. Given that the SOW (including the VCRM) is a translation of the V&V requirements documented in the TCD and TEMP, the Project Authority should ensure that the Contractor's V&V Plan accords with the TCD and TEMP. If there are differences or discrepancies, this could highlight a problem with the SOW, which would need to be addressed either during Contract negotiations or during offer definition activities. Users of ASDEFCON (Strategic Materiel) should refer to the appropriate sections of Part 1 of the Handbook (i.e. conditions of tender) to ensure that these differences/discrepancies are handled in accordance with the normal provisions and probity requirements associated with an RFT.

Project Office staff should note that, as highlighted in Figure 13-1, the Contractor will be developing a VCRM (or two VCRMs) to document the Verification activities for each of the requirements in the SS and SSSPEC. The Project Authority will need to ensure that there is traceability from the VCRM attached to the FPS and the VCRMs that are attached to the SS and SSSPEC, with any changes documented and agreed (noting that, currently, there is no contractual obligation for the Contractor to maintain this traceability). The Contract Change Proposals (CCPs) that establish the SS and the SSSPEC as the Functional Baselines for the Mission System and the Support System, respectively, will also replace the VCRM attached to the FPS with the VCRMs attached to the SS and SSSPEC (refer clauses 4.2.2.5 and 5.2.2.1.4 of the SOW). As such, it is imperative that Project Office staff review and agree the replacement VCRMs as part of the approval processes for these CCPs.

**14. QUALITY MANAGEMENT PROGRAM**

No specific ASDEFCON (Strategic Materiel) background material relating to quality management has been developed at this time. Reference may be made to the discussion of quality management in the SOW section of this Handbook.

**SUPPLEMENTARY INFORMATION – ANNEXES TO THE PHILOSOPHY BEHIND THE DRAFT SOW****TABLE OF CONTENTS**

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**ANNEX A – LIFECYCLE THREADS**



## **1 LIFECYCLE THREAD - KEY PERSONNEL MANAGEMENT**

### **1.1 Introduction**

---

1.1.1 No single factor is likely to affect the outcome of a project more than the skills and experience of the people working on that project. Having people with the appropriate skills and experience will minimise the number of 'unknown unknowns' and hence risk to the project.

### **1.2 Definitions**

---

1.2.1 Key Personnel are those personnel filling positions that require staff with significant capability, highly specialised skills or such capabilities that are crucial to the success of the project. This would especially apply to those capabilities for which there is an industry wide shortage.

1.2.2 Key Staff Positions are those positions filled by Key Personnel.

1.2.3 The Key Staff Positions would normally include the Project Manager, the Systems Engineering Manager, the Software Development Manager (for projects containing a significant software component), and key Domain Experts such as Radar Design Engineers, IT System Design Engineers, Safety Experts etc.

### **1.3 Objective**

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1.3.1 To ensure that project positions that are critical to the success of the project are filled with staff having the necessary skills and experience throughout the lifecycle of the project.

### **1.4 Applicability**

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1.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **1.5 Lifecycle Phases for Key Personnel Management**

---

#### 1.5.1 SOLICITATION PHASE

1.5.1.1 The tenderer shall identify:

- a. those project staff positions that are critical to the success of the project,
- b. the duties and responsibilities of those staff positions, and
- c. the skills and experience needed for the person filling each of those staff positions.

#### 1.5.2 OFFER DEFINITION PHASE

1.5.2.1 The Project Authority and the tenderer shall determine:

- a. those project staff positions that are critical to the success of the project,
- b. the duties and responsibilities of those staff positions, and
- c. the skills and experience needed for the person filling each of those staff positions.

1.5.2.2 If the consequence of loss of Key Personnel is considered very high, then the tenderer should be requested to produce and operate to a Key Personnel Retention Plan.

### 1.5.3 CONTRACT NEGOTIATION PHASE

1.5.3.1 The tenderer shall identify for each project staff position:

- a. the person proposed to fill that staff position (Key Personnel),
- b. the availability of that person,
- c. the skills and experience of the proposed person,
- d. any deficiencies in skills and/or experience of the nominated person, and
- e. measures to fill those shortfalls in skills and experience.

### 1.5.4 CONTRACT EXECUTION PHASE

1.5.4.1 The Contractor shall notify the Project Authority of the impending loss to the project of any nominated Key Personnel immediately that the Contractor becomes aware of such a situation.

1.5.4.2 The Contractor shall identify for that staff position:

- a. the person proposed to fill that staff position,
- b. the availability of that person,
- c. the skills and experience of the proposed person,
- d. any deficiencies in skills and/or experience of the nominated person, and
- e. measures to fill those shortfalls in skills and experience.

### 1.5.5 TRANSITION TO SUPPORT PHASE

1.5.5.1 The Contractor shall identify:

- a. those Key Personnel that are critical to the success of the transition to support phase, and
- b. measures to ensure that those Key Personnel are retained throughout this phase of the project.

### 1.5.6 THROUGH LIFE SUPPORT PHASE

1.5.6.1 Acquiring and retaining staff with the appropriate levels of skill and experience is equally important for the In-Service phase of the project lifecycle. It is recommended that an approach similar to that outlined above is used for the In-Service support contract.

## **2 LIFECYCLE THREAD - PROJECT PLANNING**

### **2.1 Introduction**

---

- 2.1.1 Unrealistic plans will result in:
- a. the Contractor appearing not to perform;
  - b. the Project Authority appearing not to be doing their job; and
  - c. the ultimate need to have to replan, which then causes further delays and cost overruns.
- 2.1.2 Replanning is to be avoided if other acceptable means are available to bring the project into line with the existing plan.

### **2.2 Definitions**

---

- 2.2.1 Plans in this context consist of the following elements:
- a. WBS,
  - b. WBS dictionary,
  - c. schedule,
  - d. staff skills profile,
  - e. estimates, and
  - f. risks.

### **2.3 Objective**

---

- 2.3.1 To ensure that the project at all times has realistic plans. This includes activities that are not explicit components of the Contract itself. Items such as recruitment fall into this category.

### **2.4 Applicability**

---

- 2.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and all Approved Subcontractors. The Contractor should flow down all requirements of this section and subsections to all Approved Subcontractors.

### **2.5 Lifecycle Phases for Project Planning**

---

#### 2.5.1 SOLICITATION PHASE

- 2.5.1.1 The tenderer shall produce a project plan containing the following elements:
- a. WBS,
  - b. WBS dictionary,
  - c. schedule,
  - d. staff skills profile,
  - e. estimates, and
  - f. risks
- 2.5.1.2 These planning elements shall be self-consistent and realistic. That is:
- a. estimates of man-hours against the WBS tasks shall be realistic;
  - b. the time schedule of WBS task execution, including risks, shall be consistent with Staff Skills Profile; and

- c. the Staff Skills Profile shall be realistic in terms of ability to recruit and train staff to the appropriate levels.

## 2.5.2 OFFER DEFINITION PHASE

2.5.2.1 The tenderer and the Project Office shall review the project plan for realism and consistency and determine a project plan suitable to be placed on Contract.

2.5.2.2 The tenderer shall produce a Project Start Up Plan that includes all activities needed to start up the project. Such activities include recruitment, training, acquisition of accommodation furniture and fittings and all other required activities. These activities would not normally be part of project plan.

2.5.2.3 This start up plan should cover the period from ED (or before) up to the EVM Integrated Baseline Review (IBR).

2.5.2.4 The Project Authority and the tenderer shall determine the Project Start Up Plan.

## 2.5.3 CONTRACT NEGOTIATION PHASE

2.5.3.1 The project plan will be Approved by the Project Authority, and the Approved project plan shall be placed on Contract.

2.5.3.2 The Project Start Up Plan will be Approved by the Project Authority and shall be placed on Contract.

## 2.5.4 CONTRACT EXECUTION PHASE

2.5.4.1 If Earned Value Management is a Contract requirement, then the tendered project plans (as opposed to the management plans) will be subsumed by the EVM plans once the Performance Measurement Baseline (PMB) has been established (usually at IBR).

2.5.4.2 Project start up plan activities should usually be completed by IBR.

## 2.5.5 TRANSITION TO SUPPORT PHASE

2.5.5.1 Realistic plans are required.

## 2.5.6 THROUGH LIFE SUPPORT PHASE

2.5.6.1 Realistic plans are required.

### **3 LIFECYCLE THREAD - LIFE CYCLE COST (LCC)**

#### **3.1 Introduction**

---

- 3.1.1 In the past, LCC models have been developed by the tenderer and evaluated by the Commonwealth as part of tender evaluation, and these LCC models have been further developed by the successful tenderer under Contract. However, Contracts have generally not integrated the outcomes of in-Contract LCC analyses into the Contractor's developmental program.
- 3.1.2 The Contractor is motivated to provide a solution that minimises the Contractor's costs, while the Commonwealth is aiming to achieve a solution that minimises LCC. The tendering process and subsequent Contract need to ensure that these (often) contrary goals are made more congruent.
- 3.1.3 LCC analyses can often lead to assessment of cost-transfer issues between the Commonwealth and the Contractor and between acquisition and support. Contracts need to provide mechanisms for handling these cost-transfer issues.

#### **3.2 Definitions**

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- 3.2.1 The LCC of an equipment or system is the sum total of the direct, indirect, recurring, non-recurring, fixed and variable costs incurred by a system or equipment over its total life cycle from concept to disposal. LCC includes capability/concept development, DT&E, acquisition, operation and support and disposal costs. [DI(G) LOG 03-4]

#### **3.3 Objective**

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- 3.3.1 To ensure that:
- a. rigorously derived budgetary estimates for a new/replacement Capability are developed and incorporated into the budgetary process (e.g. Net Cost of Capability);
  - b. appropriate decisions with respect to LCC are able to be made during the acquisition and In-Service phases of a Capability; and
  - c. the goal of obtaining a Capability that meets requirements, while minimising LCC, is able to be realised.

#### **3.4 Applicability**

---

- 3.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

#### **3.5 Lifecycle Phases for Life Cycle Cost (LCC)**

---

##### **3.5.1 SOLICITATION PHASE**

- 3.5.1.1 The tenderer shall produce a LCC Model for its proposed solution to the Capability requirement, and shall analyse the LCC Model to identify LCC drivers and opportunities for reducing LCC (while still enabling requirements to be met). These opportunities shall be documented as part of its tender response (e.g. as Tenderer Initiated Options (TIOs)), including the proposed mechanisms for managing those opportunities that result in a transfer of costs between the Commonwealth and the Contractor and between acquisition and support.

##### **3.5.2 OFFER DEFINITION PHASE**

- 3.5.2.1 During tender evaluation, the Commonwealth will also analyse the tenderer's LCC Model to ascertain whether or not any additional LCC opportunities exist for reducing LCC.

- 3.5.2.2 During the offer definition phase, the Commonwealth and the Contractor shall discuss each opportunity and a way forward shall be determined between the parties (which shall be incorporated into the subsequent Contract). If further development of the tendered LCC Model is required to address the identified opportunities, this further development shall be undertaken during this phase.
- 3.5.2.3 Where identified opportunities result in changes to the funding arrangements or to Project Approval, the Commonwealth shall seek authorisation from the appropriate bodies.
- 3.5.2.4 Issues that could be investigated during this phase include:
- a. improvements in reliability, maintainability and testability;
  - b. improvements in Turn Around Times (TATs); and
  - c. opportunities that reduce Commonwealth costs (e.g. personnel, consumables, and, as a specific technical example, communications bandwidth).
- 3.5.2.5 During this phase, the parties shall also determine the mechanisms for analysing LCC during the Contract phase (to be documented in the LCCMP). These mechanisms shall include the processes by which the Contractor demonstrates to the Commonwealth that its developmental activities will result in a combined Mission System and Support System that meets requirements while minimising LCC.
- 3.5.3 CONTRACT NEGOTIATION PHASE
- 3.5.3.1 During contract negotiations, the defined opportunities for reducing LCC shall be negotiated onto the Contract (if not already achieved), including the processes for assessing progress in implementing these opportunities (if different from the normal Contractual monitoring mechanisms).
- 3.5.3.2 If not addressed during the offer definition phase, any outstanding LCC matters shall also be addressed during contract negotiations, including agreement to the set of LCC models and tools to be developed under the Contract. Any changes to the standard Commonwealth LCC models and tools should be discussed with the appropriate Commonwealth Centre of Expertise (COE) to ensure that the implications of these changes are known and, where applicable, addressed in the Contract.
- 3.5.4 CONTRACT EXECUTION PHASE
- 3.5.4.1 During the Contract, the Contractor shall further develop the LCC Model as the design of both the Mission System and Support System matures. The Contractor shall demonstrate (in accordance with the Approved LCCMP) that its developmental activities under the Contract will result in a combined Mission System and Support System that meets requirements, while minimising LCC.
- 3.5.4.2 An LCC Report (which includes an up-to-date LCC Model) will be provided prior to each System Review (e.g. SRR, SDR, PDR, DDR, and the Support System DDR). The LCC Report shall include recommendations for reducing LCC, particularly where the recommendations involve a transfer of costs between the Commonwealth and the Contractor or between acquisition and support.
- 3.5.4.3 These recommendations will be discussed at each System Review, with the objective of agreeing a way forward. The Contractor shall submit a CCP for those recommendations that the Commonwealth wishes to progress.
- 3.5.4.4 On receipt of the CCP, the Commonwealth will seek financial approvals, including, as applicable, additional funds, increases in project approval, and/or transfers of funds between support and acquisition.
- 3.5.4.5 If the Commonwealth rejects any recommendation, it is understood that the Contractor is no longer required to produce a solution that minimises LCC. Instead, the rejection adds an additional constraint to the Contractor's solution, such that the Contractor is only required to minimise LCC within the bounds imposed by the additional constraint.

3.5.5           TRANSITION TO SUPPORT PHASE

3.5.5.1        Not applicable.

3.5.6           THROUGH LIFE SUPPORT PHASE

3.5.6.1        During the support phase, LCC shall be continued to be monitored and assessed, and opportunities for reducing LCC shall be continued to be pursued.

## **4 LIFECYCLE THREAD - ENGINEERING MANAGEMENT**

### **4.1 Introduction**

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- 4.1.1 Good engineering management will not guarantee success of a project, but poor engineering management will guarantee its failure or the failure of the mission system to be effectively supported over its life of type.

### **4.2 Definitions**

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SEMP – System Engineering Management Plan  
EIA-632 – Processes for Engineering a System

### **4.3 Objective**

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- 4.3.1 To ensure that the management and control of the engineering effort leads to the delivery of the required capability and its support system. It is in the interests of DMO to ensure that the engineering activities are conducted in accordance with industry “best practice” for the type of project. Although “best practice” is an elusive goal, there are a number of steps that can be taken to move towards it. One of these is to adopt a suitable engineering framework, at the current time the most suitable of these is EIA-632. This standard does not mandate the detailed “HOW” of the processes but specifies “WHAT” should be done, leaving the “HOW” to the Contractor’s internal processes in a similar fashion to ISO 9000.

### **4.4 Applicability**

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- 4.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **4.5 Lifecycle Phases for Engineering Management**

---

#### 4.5.1 SOLICITATION PHASE

- 4.5.1.1 The tenderer shall identify the proposed engineering approach and procedures used for development in a draft SEMP that identifies:

- a. the Contractor’s relevant internal processes and procedures that would apply to the project
- b. any processes and procedures that would need to be specially developed for the project.

- 4.5.1.2 The engineering processes should meet the requirements of EIA-632 as reflected in the SOW.

#### 4.5.2 OFFER DEFINITION PHASE

- 4.5.2.1 The Project Authority may:

- a. request further development of the SEMP to address potential risk areas;
- b. request development of documentation subservient to the SEMP to address potential risk areas (e.g. Safety, Human-Factors development, etc);
- c. request development of procedures that are necessary for the conduct of the project but are yet to be developed and would be required in the near term (i.e. soon after Contract ED).



#### 4.5.3 CONTRACT NEGOTIATION PHASE

4.5.3.1 The draft SEMP and preliminary work may have highlighted areas of the SOW that need further elaboration. This may be due to perceived risk to Commonwealth or identified deficiencies in the RFT SOW that may have left ambiguities or uncertainties for either party.

4.5.3.2 The tenderer may have also identified areas of the SOW that add unnecessary cost or risk to the program. These would need to be negotiated if they offer positive benefit to the Commonwealth.

#### 4.5.4 CONTRACT EXECUTION PHASE

4.5.4.1 The Contractor shall maintain the SEMP over the life of the Contract, updating it to reflect the next phase of work in appropriate detail and amend as necessary to reflect changed work practices. Since inadequate engineering processes will create unacceptable risk to the Commonwealth, the Commonwealth shall have Approval rights over the SEMP and its amendments.

4.5.4.2 The Contractor shall conduct all engineering work in accordance with the SEMP. Detailed processes should be visible to the Commonwealth but should not require Commonwealth Approval unless tailoring for the project renders them significantly different from the Contractor's standard practice.

#### 4.5.5 TRANSITION TO SUPPORT PHASE

4.5.5.1 The documentation set provided by the Contract must be tailored and assessed as sufficient for the next phase.

#### 4.5.6 THROUGH LIFE SUPPORT PHASE

4.5.6.1 Not specifically addressed, however the overall engineering management through the support phases has the same underlying requirements but with different emphasis.

## **5 LIFECYCLE THREAD - DESIGN SOLUTION**

### **5.1 Introduction**

---

- 5.1.1 When the requirements of the capability are defined, the adequacy of the design solution and the risk in delivering what is promised is a key discriminator between potential suppliers.

### **5.2 Definitions**

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- COI – Critical Operational Issue  
 MOE – Measure of Effectiveness  
 OCD – Operational Concept Document  
 FPS – Function and Performance Specification

### **5.3 Objective**

---

- 5.3.1 To ensure the design solution meets the user requirements for the operational capability within the constraints of the relevant regulatory frameworks. The assumed input conditions are that an OCD has been developed and been reflected in a FPS. Both of these form the basis of the technical requirements for the Contract.

### **5.4 Applicability**

---

- 5.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **5.5 Lifecycle Phases for Design Solution**

---

#### **5.5.1 SOLICITATION PHASE**

- 5.5.1.1 Based on knowledge of the marketplace and the capability requirements as defined by the OCD and FPS, the Project office shall identify both areas of risk and appropriate technical discriminators to assess the suitability of the various proposals. The discriminators should be based on a hierarchy of Critical Operational Issues (COI) and Measures of Effectiveness (MOE). Wherever possible the tenderer should be asked to provide information that will most directly allow an assessment of the delivered operational capability of the solution (i.e. directly assess the COI).

#### **5.5.2 OFFER DEFINITION PHASE**

- 5.5.2.1 The Project Authority may:
- a. request further development of the solution to address potential risk areas identified during the tender evaluation process but not specifically addressed in the tender responses;
  - b. request more detail on design cost drivers to optimise the cost effectiveness of the proposed operational solution;
  - c. undertake work to refine Contract options based on the tendered solution.

#### **5.5.3 CONTRACT NEGOTIATION PHASE**

- 5.5.3.1 The Project Authority should:
- a. address tenderer non-compliances and, if necessary, resolve by appropriate specification changes;
  - b. define any options to be placed on Contract;

- c. resolve any significant cost drivers and cost inefficiencies; and
- d. update the DMO SOW, specification and potentially the OCD to reflect the above.

#### 5.5.4 CONTRACT EXECUTION PHASE

5.5.4.1 The Contractor shall develop the system in accordance with the defined specification and SOW.

5.5.4.2 A series of System Reviews, defined in the SOW, are used by both DMO and Contractor to assess technical progress. Wherever possible, reviews should be assessed against standard DMO checklists, which incorporate lessons learned from previous DMO projects.

#### 5.5.5 TRANSITION TO SUPPORT PHASE

5.5.5.1 Role of the Design Authority transitions to the support organisation(s).

#### 5.5.6 THROUGH LIFE SUPPORT PHASE

5.5.6.1 Design and configuration data should be maintained over the system life.

## **6 LIFECYCLE THREAD - CONFIGURATION MANAGEMENT**

### **6.1 Introduction**

---

6.1.1 Configuration management includes the capture of baseline requirements, design information and “as built” design data to ensure that the development process and the support processes can be effectively managed. Poor configuration management can lead to the need for re-engineering, or incompatibilities within or between interfacing systems – ultimately to increased costs and “later fixes”. Good configuration management is essential for the “do it right the first time” approach as well as being key to managing change in a system’s capability as operational needs change. Configuration management provides traceability of requirements throughout the materiel life cycle.

### **6.2 Definitions**

---

CM – Configuration Management

CMP – Configuration Management Plan

FCA – Functional Configuration Audit

PCA – Physical Configuration Audit

### **6.3 Objective**

---

6.3.1 To ensure that, at all times, both the Contractor and the Commonwealth understand the technical definition of the system, both in terms of the design requirements and design solution and that all changes are formally controlled. The design solution includes a traceable and managed set of design data that can be used to support the system over its life. One objective of configuration management is to ensure that the requirements, the design data and the “as built” requirements are a consistent set.

### **6.4 Applicability**

---

6.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **6.5 Lifecycle Phases for Configuration Management**

---

#### **6.5.1 SOLICITATION PHASE**

6.5.1.1 Normally, the tenderer shall be assessed on their compliance with the configuration management clauses in the SOW. CM is unlikely to be a key discriminator, however where there are significant perceived risks the tenderer may be asked to also provide a draft CMP that identifies the proposed configuration management approach and procedures used for development, which is consistent with relevant technical regulatory framework requirements and including:

- a. the relevant internal company processes and procedures that would apply to the project; and
- b. any processes and procedures that would need to be specially developed for the project.

6.5.1.2 Note that CM risk may also be independently assessed through a capability assessment or past performance history.

## 6.5.2 OFFER DEFINITION PHASE

6.5.2.1 The Project Authority may request either initial development of a CMP or further development to address potential risk areas and to ensure consistency with technical regulatory requirements.

## 6.5.3 CONTRACT NEGOTIATION PHASE

6.5.3.1 The draft CMP and preliminary work may have highlighted areas of the SOW that need further elaboration. This may be due to perceived risk to Commonwealth or identified deficiencies in the solicitation SOW that may have left ambiguities or uncertainties for either party.

## 6.5.4 CONTRACT EXECUTION PHASE

6.5.4.1 The Contractor shall maintain the CMP over the life of the Contract, updating it to reflect the next phase of work in appropriate detail and amend as necessary to reflect changed work practices. Since inadequate configuration management processes will create unacceptable risk to the Commonwealth (in particular supportability risk), the Commonwealth shall have Approval rights over the CMP and its amendments.

6.5.4.2 The Contractor shall conduct all engineering work in accordance with the CMP. Detailed processes should be visible to the Commonwealth but should not require Commonwealth Approval unless tailoring for the project renders them significantly different from the Contractor's standard practice.

## 6.5.5 TRANSITION TO SUPPORT PHASE

6.5.5.1 The Contractor's configuration management procedures need to transition to the support infrastructure. If support during this phase is by the same Contractor, then potentially the same procedures may be used. If support is by another organisation, then a plan to transition to these needs to be developed and actioned.

## 6.5.6 THROUGH LIFE SUPPORT PHASE

6.5.6.1 Not specifically addressed, however configuration management through the support phases has the same objectives but these may be realised by a different organisation. Configuration management must be consistent with relevant technical regulatory requirements.

## **7 LIFECYCLE THREAD - DESIGN DOCUMENTATION**

### **7.1 Introduction**

---

7.1.1 Design documentation will provide the Commonwealth with insight during the acquisition process to assure technical integrity of the design and to allow adequate support and maintenance over a system's life of type.

### **7.2 Definitions**

---

SS – System Specification  
 SSDD – System/Subsystem Design Description  
 SRS - Software Requirements Specification  
 IRS – Interface Requirements Specification  
 ICD- Interface Control Document  
 SDD - Software Design Description  
 TDT – Technical Documentation Tree

### **7.3 Objective**

---

7.3.1 The design documentation has a number of objectives:

- a. to assure the Commonwealth that the Contractor undertakes the design process in a manner that will ensure the technical integrity of the design;
- b. to ensure that the Contractor creates an adequate set of design documentation to enable the system to be supported over its life of type;
- c. to ensure that the Commonwealth has appropriate direct or indirect access to that design documentation so that the system can be supported over its life of type;
- d. to provide a means of communication of the design within the Contractor's organisation during the development of the system
- e. to provide a means of communication of the design between the Contractor and the Commonwealth during the development of the system

### **7.4 Applicability**

---

7.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **7.5 Lifecycle Phases for Design Documentation**

---

#### **7.5.1 SOLICITATION PHASE**

7.5.1.1 The Contractor shall supply a draft Technical Documentation Tree (TDT), showing the specification and design documentation produced at each level of the design hierarchy, the standards to which they will be produced, their schedule for production or amendment, and the Commonwealth visibility and approval rights. This tree will be used during the tender evaluation process as part of the assessment of the tenderer's development capability.

7.5.1.2 The use of the TDT allows each Contractor to use their internal processes to define the design data for a system, whilst maintaining appropriate Commonwealth visibility and access. The resulting documentation should be cost effective to produce and is likely to minimise unnecessary paperwork.

## 7.5.2 OFFER DEFINITION PHASE

7.5.2.1 The Project Authority may

7.5.2.2 request further development of the solution and, potentially, draft documents identified in the TDT for areas of significant risk. The Project Authority may identify areas of the TDT where the Commonwealth does not have sufficient visibility or Approval rights.

## 7.5.3 CONTRACT NEGOTIATION PHASE

7.5.3.1 Any identified deficiencies in the draft TDT will be negotiated and the result placed on Contract.

## 7.5.4 CONTRACT EXECUTION PHASE

7.5.4.1 The Contractor shall maintain the TDT, revising it as the design solution is refined.

7.5.4.2 As it defines a major interface with the Commonwealth and the quality of the documentation affects the system supportability, the Commonwealth shall have Approval rights over any updates to the TDT.

7.5.4.3 The Contractor shall provide the documentation defined by the TDT in accordance with the TDT.

## 7.5.5 TRANSITION TO SUPPORT PHASE

7.5.5.1 The design documentation needs to transition to the relevant support organisation(s) for maintenance.

## 7.5.6 THROUGH LIFE SUPPORT PHASE

7.5.6.1 The design documentation should be maintained over the life of type of the system.

## **8 LIFECYCLE THREAD - SYSTEM REVIEWS**

### **8.1 Introduction**

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- 8.1.1 System Reviews provide Commonwealth insight into the Contractor's development process. They act as key points at which the risk should be assessed and progressively reduced.
- 8.1.2 This section only addresses the engineering-related System Reviews (noting that there are a number of additional ILS-related System Reviews).

### **8.2 Definitions**

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SRR – System Requirements Review  
 SFR – System Functional Review  
 PDR – Preliminary Design Review  
 DDR – Detailed Design Review  
 SSDDR – Support System Detailed Design Review  
 TRR – Test Readiness Review  
 FCA – Functional Configuration Audit  
 PCA – Physical Configuration Audit  
 SRP – System Review Plan

### **8.3 Objective**

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- 8.3.1 To maximise the benefit of each review and provide maximum Commonwealth input in order to deliver the desired capability. To highlight the extant project technical risks. To provide a baseline for further work.

### **8.4 Applicability**

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- 8.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **8.5 Lifecycle Phases for System Reviews**

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#### 8.5.1 SOLICITATION PHASE

- 8.5.1.1 The tenderer should propose any amendments to the DMO proposed design reviews based on the solution and the perceived contractual arrangements between all parties, including Subcontractors. The revised proposals should be reflected in a draft SRP.
- 8.5.1.2 The SRP should reflect the standard DMO checklist for reviews tailored by the Contractor's processes and the particular project attributes.
- 8.5.1.3 The SRP should also reflect Contractor reviews of any Subcontract development.
- 8.5.1.4 The quality of the SRP and the proposed review strategy is an indication of the maturity of the Contractor's review processes and should be used as part of the tender evaluation.

#### 8.5.2 OFFER DEFINITION PHASE

- 8.5.2.1 The Project Authority may request further development of the SRP based on perceived risk areas.



8.5.3 CONTRACT NEGOTIATION PHASE

8.5.3.1 The updated SRP will be placed on Contract

8.5.4 CONTRACT EXECUTION PHASE

8.5.4.1 System Reviews will be conducted in accordance with the SRP.

8.5.5 TRANSITION TO SUPPORT PHASE

8.5.5.1 Not applicable.

8.5.6 THROUGH LIFE SUPPORT PHASE

8.5.6.1 Not applicable.

## **9 LIFECYCLE THREAD - VERIFICATION AND VALIDATION**

### **9.1 Introduction**

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9.1.1 A Verification and Validation program provides a measure of the assurance of the quality of the final product.

### **9.2 Definitions**

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9.2.1 Verification - confirmation and provision of objective evidence that specified requirements have been fulfilled.

9.2.2 Validation – confirmation and provision of objective evidence that the requirements for a specific intended use or application have been fulfilled.

V&V – Verification and Validation

V&VP – Verification and Validation Plan

### **9.3 Objective**

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9.3.1 To ensure that the Contractor will progressively verify and validate the system products.

### **9.4 Applicability**

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9.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **9.5 Lifecycle Phases for Verification and Validation**

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#### 9.5.1 SOLICITATION PHASE

9.5.1.1 The draft Contract SOW clauses should be developed to align with the test concepts (as input to DMO) for the system. Every system should undergo verification testing as a minimum and the test concepts should define the extent of operational validation testing required for the system. The tenderer should provide a draft Verification and Validation Plan (V&VP) that defines the verification and validation strategy for the project products. The Contract SOW and the V&VP should include V&V requirements for both the Mission System and Support System.

#### 9.5.2 OFFER DEFINITION PHASE

9.5.2.1 The Project Authority may request further development of the V&VP based on perceived risk areas.

#### 9.5.3 CONTRACT NEGOTIATION PHASE

9.5.3.1 The updated V&VP will be placed on Contract. Key areas of testing (i.e. those that verify or validate key operational capability or may lead to significant scope for the Contractor) may need to be refined in more detail in the SOW or V&VP.

#### 9.5.4 CONTRACT EXECUTION PHASE

9.5.4.1 Verification and Validation will be conducted in accordance with the V&VP. Early in the Contract, nominally at SRR, develop a Verification Cross Reference Matrix (VCRM) that identifies the proposed verification method for each system requirement. Where the methods may be contentious, provide further detail at an early stage about the scope and expectations for the testing.

#### 9.5.5 TRANSITION TO SUPPORT PHASE

9.5.5.1 Not applicable.

9.5.6 THROUGH LIFE SUPPORT PHASE

9.5.6.1 Not applicable.

## **10 LIFECYCLE THREAD - SOFTWARE MANAGEMENT**

### **10.1 Introduction**

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- 10.1.1 Software is historically a risky area of acquisition in both the Defence and commercial sectors. In general, the recognised “best practice” is to gain more insight into the management and development processes and process capability level of the suppliers to help lower the risk of software development/acquisition.
- 10.1.2 A number of software acquisition reforms are currently underway addressing safety critical software, process capability assessment, measurement and analysis, software estimating, and architecture. Other reforms in specific focus areas can be expected to be added to this list over time.

### **10.2 Definitions**

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- 10.2.1 As per Design Documentation

### **10.3 Objective**

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- 10.3.1 To ensure that the Contractor:
- a. has the required appreciation for the software task at hand, and
  - b. has the required capability to successfully achieve the desired outcomes.

### **10.4 Applicability**

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- 10.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **10.5 Lifecycle Phases for Software Management**

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#### 10.5.1 SOLICITATION PHASE

- 10.5.1.1 The tenderer should provide a draft Software Management Plan demonstrating the tenderer’s understanding of the scope and associated risks of the software element of the project. This plan would include:
- a. process capability and process suitability and experience in the domain (e.g. safety critical software);
  - b. management of software Subcontractors;
  - c. software size, effort and schedule estimates;
  - d. comparison with past performance data on similar projects;
  - e. how reuse and COTS will be managed;
  - f. software risks and mitigation strategies;
  - g. project life cycle model appropriate to risk and project constraints; and
  - h. safety critical software experience and proposed program if applicable

#### 10.5.2 OFFER DEFINITION PHASE

- 10.5.2.1 The tenderer will need to:
- a. finalise a Contract ready Software Management Plan;
  - b. support a capability appraisal in those situations where reliable recent appraisal results are unavailable to establish the organisational process capability; and

- c. prepare a Process Improvement Plan in-line with the gap analysis of the required project capability profile and the current Contractor capability.

### 10.5.3 CONTRACT NEGOTIATION PHASE

10.5.3.1 The agreed Software Management Plan.

### 10.5.4 CONTRACT EXECUTION PHASE

10.5.4.1 Software activities shall be conducted in accordance with the approved Software Management Plan, Process Improvement Plan, Measurement Plan and Safety Program plan)

### 10.5.5 TRANSITION TO SUPPORT PHASE

10.5.5.1 Plans for the delivery and transition a software support capability need to be approved and executed

### 10.5.6 THROUGH LIFE SUPPORT PHASE

10.5.6.1 On going process assessment, measurement and analysis and safety programs are executed.

## **11 LIFECYCLE THREAD - MEASUREMENT AND ANALYSIS**

### **11.1 Introduction**

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11.1.1 The following is an edited extract from the Practical Software and System Measurement Guidebook: One of the most challenging tasks in developing and maintaining systems is to meet critical project cost, schedule, and technical objectives. Today's systems are increasingly complex and contain many interacting hardware, software, and human components. Management of development and operations and maintenance efforts has therefore become a key factor in project success. The changing software and systems engineering and acquisition environments in both government and industry sectors require more effective management techniques. More than ever, project and technical managers need objective information to make day-to-day decisions, identify project issues, correct existing problems and manage prospective risks. This same information must also provide a basis for evaluating organisational and enterprise-level performance, and assessing the impact of policy and investment decisions. Integrating measurement with existing risk management and financial performance management disciplines enhances the quality of objective decision making.

### **11.2 Definitions**

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### **11.3 Objective**

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11.3.1 To provide decision makers within the Contractor and Project Authority organisations with quantitative regarding software and systems engineering activities. This information will provide insight into activities which are typically difficult to assess by other means and provide information to aid the decision making process. The measurement data collected should support independent analysis to increase the level of objectivity.

### **11.4 Applicability**

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11.4.1 Measurement and analysis is mandatory for all DMO projects. The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors. The access provisions of the Contract are inter alia to support the collection of measurement data from Subcontractors and to allow the Project Authority to obtain an independent analysis of the data to ensure timely insight into emerging trends and issues.

### **11.5 Lifecycle Phases for Measurement and Analysis**

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#### 11.5.1 SOLICITATION PHASE

11.5.1.1 The tenderer is to acknowledge their intent to comply with the requirement to implement a measurement program.

#### 11.5.2 OFFER DEFINITION PHASE

11.5.2.1 The Project Authority and the Contractor conduct a joint measurement workshop to collaboratively identify project information needs and determine a set of measures to be used to manage the information needs.

#### 11.5.3 CONTRACT NEGOTIATION PHASE

11.5.3.1 Develop an agreed Measurement Plan.

#### 11.5.4 CONTRACT EXECUTION PHASE

11.5.4.1 Measurement and Analysis activities shall be conducted in accordance with the Approved Measurement Plan.

- 11.5.4.2 Review the project information needs at each major technical review milestone.
- 11.5.4.3 Review and update measurement plan to reflect at each major technical review milestone to ensure currency for that phase
- 11.5.5 TRANSITION TO SUPPORT PHASE
  - 11.5.5.1 Measurement and Analysis activities shall be conducted in accordance with the Approved Measurement Plan.
  - 11.5.5.2 Review the project information needs.
  - 11.5.5.3 Review and update measurement plan to reflect transition phase
- 11.5.6 THROUGH LIFE SUPPORT PHASE
  - 11.5.6.1 Measurement and Analysis activities shall be conducted in accordance with the Approved Measurement Plan
  - 11.5.6.2 Periodically (to be defined within the measurement plan) review the information needs.
  - 11.5.6.3 Periodically (to be defined within the measurement plan) review and update measurement plan as required.

## 12 LIFECYCLE THREAD - SAFETY

### 12.1 Introduction

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- 12.1.1 Specific Contract outcomes must be supported by an occupational health and safety (OHS) management system geared to eliminating and controlling health and safety risks to Commonwealth employees, Contractors and their employees and the general public. Integration of health and safety procedures into the day to day aspects of the Contract management process is a key element for success.
- 12.1.2 There are two specific health and safety criteria that the Contractor must address:
- a. the duty of care obligations they have to their own employees, Subcontractors and the general public; and
  - b. the safe delivery of the project, whether it be plant or service.
- 12.1.3 Effective safety risk management in all phases of the Contract process can eliminate the potential for harm in terms of injury, ill-health, damage to property, damage to the environment, or a combination of these.
- 12.1.4 Safety is the freedom or protection from those conditions that can cause death, injury, illness, and damage to property or damage to the environment. The identification, assessment and control of hazards are integral to the safety assurance activities that lead to the development of materiel being safe, fit-for-service and environmentally compliant. Designing materiel that minimises failure or malfunction is not the only factor to be considered for safety assurance. Consideration should also be given to:
- a. chemical substances that may be used;
  - b. environmental conditions (e.g. level of noise exposure during use); and
  - c. other human factors or ergonomic considerations (i.e. operators/users should be considered part of the system).
- 12.1.5 The safety assurance process is critical to the acquisition of new capabilities. This process is to be well established prior to materiel use or acceptance into service as it is rarely possible for safety to be efficiently implemented at a later stage. Early implementation of the safety assurance process will prevent costly maintenance resulting from safety shortfalls later in the materiel life cycle.
- 12.1.6 Consideration of safety issues during design will minimise inherent hazards and reduce the system's safety risk. Effective and timely consideration of safety will reduce the project risk (i.e. materiel performance, project schedule and budget overrun) related to design acceptance (i.e. certification of technical integrity), as this acceptance cannot be granted without an assured level of safety. The tool that facilitates this safety assurance process is a safety study or safety case.

### 12.2 Definitions

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- 12.2.1 Safety Study/Case – The detailed report of the systematic analysis of safety hazards, actual or potential, related to a system/product/service in design, manufacture, test, use, storage, transport/movement, maintenance, modification or disposal phases.
- 12.2.2 WSMP – Workplace Safety Management Plan
- 12.2.3 SSMP – System Safety Management Plan
- 12.2.4 SMS – Safety Management System. That part of an overall management system which includes organisational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the company's OHS policy, and so managing the OHS risks associated with the business of the organisation.



### **12.3 Objective**

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- 12.3.1 To ensure that, at all times, the Contractor understands their obligations to assure the safety of people – from a Contractor’s workplace perspective, and a Commonwealth user interaction with the project deliverable perspective.
- 12.3.2 Specifically, the safety assurance objectives require Contractors undertaking design, procurement, acceptance, management, maintenance or modification of systems to be responsible for establishing and maintaining a safety assurance system which:
- a. identifying all known and potential hazards and evaluating associated risks during all stages of the Contract and materiel life cycle;
  - b. ensuring all safety requirements are adequately specified in any functional or physical specification or procurement action;
  - c. ensuring all hazards identified in a hazard analysis are controlled according to the hierarchy of hazard control and control measures or strategies are documented;
  - d. integrating the safety assurance system with existing project management and procurement processes;
  - e. demonstrating the existence of a safety study for systems/materiel being procured (this is best achieved by including such a study as a project deliverable);
  - f. ensuring all safety studies are performed, independently evaluated and reviewed;
  - g. maintaining safety-related documentation, such as a safety study and supporting documentation;
  - h. updating existing safety studies as appropriate for each phase of the Contract life cycle;
  - i. applying design requirements from regulations, codes of practices, standards, specifications, design handbooks and guidance, and other appropriate sources to achieve an acceptable level of risk;
  - j. minimising risk resulting from the use, storage and disposal of hazardous substances associated with systems/materiel through design change, material selection or substitution;
  - k. all hazardous materials data, as provided in the Material Safety Data Sheet (MSDS), is to be obtained and provided; and
  - l. certifying that the system/materiel is safe to use prior to trials and prior to introduction into service, including communicating hazard control measures, residual risks and training requirements.

### **12.4 Applicability**

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- 12.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **12.5 Lifecycle Phases for Safety**

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#### 12.5.1 SOLICITATION PHASE

##### 12.5.1.1 The tenderer shall identify:

- a. the relevant Commonwealth, State and Territory OHS legislation, including Regulations, Commonwealth Approved Codes of Practice and standards that impose specific health and safety requirements appropriate to the work to be conducted, plant to be operated, and to the system or project deliverable; and

- b. any system or project deliverable specifications, which contradict the Commonwealth, State and Territory OHS legislation.

12.5.1.2 The tenderer shall provide:

- a. the safety management system (SMS) in place for the Contractor and Subcontractor workplaces, which demonstrates compliance with the applicable the Commonwealth, State and Territory OHS legislation;
- b. a workplace safety management plan (WSMP), which specifies how the work is going to be carried out, ensuring safe work premises, using proper and safe plant and substances, providing adequate instruction, training and supervision to their employees;
- c. a systems safety management plan (SSMP), which details the approach to be adopted to ensure safety at all stages of the system lifecycle;
- d. evidence of their safety performance relating to prior projects or services;
- e. evidence of a preliminary hazard evaluation for the project output; and
- f. evidence of safety risk assessment process and documentation relevant to hazard management.

12.5.2 OFFER DEFINITION PHASE

12.5.2.1 The Project Authority may request further development of the SMS, WSMP and/or SSMP to address potential safety risk areas and fulfilment of Commonwealth duty of care obligations.

12.5.3 CONTRACT NEGOTIATION PHASE

12.5.3.1 The SMS, WSMP and/or SSMP may require further elaboration. This may be due to perceived risk to Commonwealth or failure to meet Commonwealth, State or Territory OHS legal obligations.

12.5.4 CONTRACT EXECUTION PHASE

12.5.4.1 The Contractor shall:

- a. maintain the SMS, SSMP and WSMP over the life of the Contract, updating in appropriate detail to reflect new phases of work, as work practices change, or as new safety risk treatment methods become available;
- b. conduct all work in accordance with the SSMP;
- c. reveal all safety risks to the Commonwealth as they become apparent during this phase; and
- d. complete a safety study/case, which systematically identifies the hazards posed to personnel who use, transport, store or maintain the project or system deliverable.

12.5.5 TRANSITION TO SUPPORT PHASE

12.5.5.1 The Contractor shall:

- a. reveal all safety risk to the Project Authority;
- b. ensure the safety risk treatments transition to the system users and support infrastructure; and
- c. remedy any safety risks rejected by the Project Authority until the risk treatments have accepted.

12.5.6 THROUGH LIFE SUPPORT PHASE

12.5.6.1 The Contractor shall inform the Commonwealth of any safety hazards or risk treatment methods they become aware of during the life of the system or project deliverable. The

Contractor retains legal liability for any known or potential safety risks not notified to the Commonwealth or accepted by the Project Authority.

## **13 LIFECYCLE THREAD - SAFETY ENGINEERING**

### **13.1 Introduction**

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13.1.1 All DMO projects are considered safety critical until they have undergone a Preliminary Safety Assessment that demonstrates that they contain no potential safety critical elements. Where such elements exist, a System Safety Program will be implemented which considers safety issues throughout the acquisition life cycle.

### **13.2 Definitions**

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13.2.1 Systems considered to be safety critical are those controlling or including physical devices, including those displaying information or advice to operators, which may cause serious injury or death. Such systems include, but are not restricted to:

- a. any munition-related system that controls or directly influences the prearming, arming, enabling, release, launch, firing, flight path or detonation of a munition system, including target identification, selection and designation;
- b. any system that controls or directly influences the movement of gun mounts, launchers and other equipment;
- c. any computer-based combat system;
- d. any system that controls or directly influences the movement of munitions and/or hazardous materials;
- e. any system that monitors the state of another system for safety purposes;
- f. any system that controls, regulates or contains potentially dangerous energy sources;
- g. any system used to compute safety critical data (including applications software that may not be connected to or directly control a safety critical hardware system, such as stress analysis programs);
- h. any system that collects, stores, manipulates, and reports or displays data that may be safety critical in nature;
- i. any system that controls or partially controls the movement of a vehicle (e.g. ship, aircraft, land-based craft, radar-guided objects). This includes traffic-control systems; and
- j. any system that controls or partially controls potentially dangerous moving parts of equipment to which personnel or members of the public may come in close proximity.

### **13.3 Objective**

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13.3.1 This program is designed to provide evidence that the system will operate safely at a level of assurance commensurate with the level of risk associated with system use, throughout the system life cycle. Although some activities within the System Safety Program may be best performed by individual parties, system safety is a joint responsibility involving all stakeholders. From an acquisition perspective, the DMO has a responsibility to procure a safe system and to operate it safely. The Contractor is required to design and build a safe system. Software safety should be managed as an integral part of an overall System Safety Program.

### **13.4 Applicability**

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13.4.1 All projects acquiring or modifying systems considered to be safety critical (see Definitions) must undertake a System Safety Program. The System Safety Program should identify and evaluate safety risks throughout the system lifecycle, and should put in place measures to eliminate or mitigate these risks.

**13.5 Lifecycle Phases for Safety Engineering**

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## 13.5.1 SOLICITATION PHASE

13.5.1.1 Identify the tenderer's experience in implementing a system safety program and in particular the development of safety critical software if applicable.

## 13.5.2 OFFER DEFINITION PHASE

13.5.2.1 Support a safety workshop to define a joint safety program. Document the defined program in a System Safety Program Plan.

## 13.5.3 CONTRACT NEGOTIATION PHASE

13.5.3.1 The agreed System Safety Program Plan if applicable.

## 13.5.4 CONTRACT EXECUTION PHASE

13.5.4.1 Implement the System Safety Program in accordance with the Approved System Safety Program Plan.

## 13.5.5 TRANSITION TO SUPPORT PHASE

13.5.5.1 Implement the System Safety Program in accordance with the Approved System Safety Program Plan.

## 13.5.6 THROUGH LIFE SUPPORT PHASE

13.5.6.1 Implement the System Safety Program in accordance with the Approved System Safety Program Plan.

## 14 LIFECYCLE THREAD - TECHNOLOGY INSERTION

### 14.1 Introduction

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- 14.1.1 Defence's ability to take advantage of commercial product development cycles in dynamic industries has been hindered by cumbersome, time-consuming acquisition process. For instance, the commercial computer and electronics sectors now introduce "next generation" products every few years. By contrast, Defence typically takes five to ten years to develop and upgrade new systems. As a result, military technology in fielded systems has grown increasingly expensive and distant from the commercial leading edge in many areas.
- 14.1.2 Recognising the rapid commercial development cycles, Technology Insertion (TI) is the ability to replace COTS system components, both hardware and software, in a Defence system as that commercial component product is updated.
- 14.1.3 TI is important in that, over the system Life-of-Type (LOT), it:
- a. allows for system growth, especially as new threats are identified; and
  - b. minimises wasted or obsolescent parts.
- 14.1.4 Designing for TI encompasses a number of concepts such as commonality and standardisation of parts, the use of fewer parts, modularity, flexibility, adaptability, and open architecture. Since a significant percentage of a product's life cycle cost is established during initial systems engineering design, Defence will need to perform early, integrated assessments of the "cradle to grave" life cycle cost, thereby enabling technology insertion to occur in the most cost effective manner.

### 14.2 Definitions

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COTS – Commercial-Off-the-Shelf  
 GP - Growth Plan  
 LOT – Life of Type  
 TI – Technology Insertion  
 OCD – Operational Concept Document  
 FPS – Function and Performance Specification

### 14.3 Objective

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- 14.3.1 The objectives of a TI program are to:
- a. minimise support costs through maximising life of given system configuration by buying the technology "just in time";
  - b. provide a planned mechanism to cope with rapid change in defence it-based systems; and
  - c. provide a planned means of system growth.
- 14.3.2 The aims of a TI program are to:
- a. avoid premature purchase of COTS components; and
  - b. seek early identification of those elements that are candidate targets for TI; and
  - c. maintain a watch and understand the decisions made with respect to the candidates for TI.
- 14.3.3 It should be noted that the candidate targets primarily come from the design solution and the use of "open systems", although this may be influenced by the use of open systems at the macro system level (where "architecture frameworks" such as the C4ISR Architecture Framework may be relevant).

- 14.3.4 In order to make the objectives of a TI program work, the Commonwealth needs to:
- a. heavily encourage open systems approaches in the OCD and FPS for relevant Contracts; and
  - b. get tenderers to address the candidate items for TI (which may be done by a specific deliverable or as part of the objectives of each System Review)

#### **14.4 Applicability**

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- 14.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

#### **14.5 Lifecycle Phases for Technology Insertion**

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##### 14.5.1 SOLICITATION PHASE

- 14.5.1.1 Based on the likely risk over the LOT of the system, obtain visibility of the candidate items for TI as part of the tenderer's response as a specific deliverable.

- 14.5.1.2 For some Contracts, the plan for TI may be embodied in the acquisition strategy rather than managed within a particular Contract. For example, where an IT system consists of a basic design that is "rolled out" over a significant period of time with respect to the equipment development cycles, it may be prudent to define suitable breakpoints in the Contract where the addition of new technology may be negotiated. This may require design modification or regression testing to ensure integrity of the re-continued rollout.

##### 14.5.2 OFFER DEFINITION PHASE

- 14.5.2.1 Either during an offer definition phase or early in the Contract, the Contractor should develop a Growth Plan (GP). This plan should address the following:
- a. the candidate items for TI;
  - b. the design aspects that may allow the candidate items to be replaced for new or updated technology versions (i.e. what are the relevant design features relating to hardware independence, modular design and use of open system standards);
  - c. plan for purchase of candidate items;
  - d. the time phasing of and key decision points; and
  - e. how the candidate items will be addressed at design reviews.

##### 14.5.3 CONTRACT NEGOTIATION PHASE

- 14.5.3.1 The draft GP may be placed on Contract. Key areas may need to be refined in more detail in the SOW.

##### 14.5.4 CONTRACT EXECUTION PHASE

- 14.5.4.1 The Contractor shall maintain the GP, refining it as the design solution evolves.
- 14.5.4.2 As this defines long-term system supportability, the Commonwealth shall have Approval rights over any updates to the GP.
- 14.5.4.3 The Contractor shall implement the TI program defined by the GP in accordance with the GP.

##### 14.5.5 TRANSITION TO SUPPORT PHASE

- 14.5.5.1 The GP needs to address the whole-of-life issues so it should remain current over the transition into service.

14.5.6 THROUGH LIFE SUPPORT PHASE

14.5.6.1 The GP needs to be maintained over the system LOT.



## **15 LIFECYCLE THREAD - ILS/LSA MANAGEMENT**

### **15.1 Introduction**

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- 15.1.1 Effective ILS/LSA management, which includes a sound ILS/LSA program, will help to ensure that:
- a. a supportable Mission System is acquired;
  - b. a complete, coherent, balanced, and integrated Support System is acquired; and
  - c. the total Capability is acquired at a minimised Life-Cycle Cost (LCC).

### **15.2 Definitions**

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- 15.2.1 "ILS/LSA Management" means the process of planning, directing, controlling, coordinating and monitoring the ILS/LSA program to provide an optimally supportable Mission System and associated Support System at a minimised LCC commensurate with achieving preparedness objectives. [Adapted from DI(G) LOG 03-6]
- 15.2.2 ILS management involves managing the overall ILS program, including setting ILS objectives, managing the integration of the ILS elements, and managing (generally through the Contract) the development and delivery of the Support Resources. LSA management, on the other hand, is subordinate to ILS management and involves the management of the analytical processes required to design the Support System and to determine the range and quantity of Support Resources.

### **15.3 Objective**

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- 15.3.1 To ensure that the ILS/LSA effort leads to an optimally supportable Mission System and the delivery of an optimal Support System commensurate with the delivery of the Mission System.

### **15.4 Applicability**

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- 15.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Subcontractors. The Contractor should flow down all of the requirements of this section and all subsections to all Subcontractors, commensurate with the scope of work being undertaken by those Subcontractors.

### **15.5 Lifecycle Phases for ILS/LSA Management**

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#### **15.5.1 SOLICITATION PHASE**

- 15.5.1.1 The tenderer shall identify:
- a. the proposed ILS/LSA organisation (including Subcontractors), division of responsibilities, key personnel, management arrangements, and approach to meeting the ILS/LSA requirements of the project;
  - b. the proposed standards that will be used for undertaking the ILS/LSA program, including any tailoring of those standards;
  - c. the relevant internal company processes and procedures that would apply to the project, including the identification of any new or modified procedures that would need to be developed for the project;
  - d. time-based and event-based schedules for the ILS/LSA program, with particular attention on the interfaces with, and interactions between, the SE and ILS/LSA programs;
  - e. its past experience and past performance in undertaking similar ILS/LSA activities to those required by the project;

- f. the extent of the Support System that already exists and the perceived extent of development to meet the requirements of the project; and
- g. the expected Commonwealth involvement in the ILS/LSA program.

#### 15.5.2 OFFER DEFINITION PHASE

##### 15.5.2.1 The Project Authority may:

- a. request further development of the ILS plans to address potential risk areas and to ensure that a sound ILS program is placed on Contract (noting that the preferred tenderer could be the weakest in the area of ILS);
- b. request development of documentation subservient to the ILS plans to address potential risk areas; and
- c. request development of procedures that are necessary for the conduct of the project but are yet to be developed and would be required in the near term (i.e. soon after Contract ED).

#### 15.5.3 CONTRACT NEGOTIATION PHASE

15.5.3.1 The agreed set of standards and processes for undertaking the ILS program, including appropriate event-based management criteria (i.e. milestone entry/exit criteria) and performance measurement (as part of the Measurement Plan), will be negotiated into the Contract (if not already determined during the offer definition phase).

#### 15.5.4 CONTRACT EXECUTION PHASE

15.5.4.1 The Contractor shall maintain the ILS plans over the life of the Contract, updating them to reflect each subsequent phase of work in appropriate detail and amending as necessary to reflect changed work practices. Since inadequate ILS/LSA processes will create unacceptable risk to the Commonwealth, the Commonwealth shall have Approval rights over the ILS plans and their amendments.

15.5.4.2 The Contractor shall conduct all ILS work in accordance with the ILS plans. Detailed processes should be visible to the Commonwealth but should not require Commonwealth Approval, unless tailoring for the project renders them significantly different from the company standard practice.

15.5.4.3 The Support System developed and delivered by the Contractor as an outcome from the ILS program will be subject to a formal Verification and Validation process. The effectiveness of the Support System in contributing to operational and preparedness requirements may not be able to be properly validated until some period after all of the Supplies under the acquisition Contract have been accepted by the Commonwealth. In this situation, the Commonwealth should retain a performance guarantee until the Support System is demonstrated to have met requirements.

#### 15.5.5 TRANSITION TO SUPPORT PHASE

15.5.5.1 ILS Management will be a significant element of Transition, as the Contractor, in conjunction with the Commonwealth, has to provide the Support System elements commensurate with the introduction into operational service of the Mission System.

15.5.5.2 Of note, Validation of the Support System cannot occur until all of the Support Resources are in place and integrated into the existing logistics support infrastructure. For this reason, Validation will be unable to occur until after Transition.

#### 15.5.6 THROUGH LIFE SUPPORT PHASE

15.5.6.1 In-Service ILS management will be conducted under separate plans and will involve:

- a. monitoring and adjusting the performance of the Support System to ensure that operational and preparedness requirements continue to be met through the LOT of the Capability; and

- b. management of any modifications to the Support System when the Mission System is modified.

## **16 LIFECYCLE THREAD - ENGINEERING SUPPORT**

### **16.1 Introduction**

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- 16.1.1 There is considerable overlap between this element of ILS and the regulatory life-cycle threads.
- 16.1.2 During acquisition, the main focus of this element of ILS is to ensure that all of the issues to ensure the design integrity of the Mission System for its LOT are addressed as part of the acquisition Contract.
- 16.1.3 If the acquisition includes requirements for In-Service support (e.g. interim support), then details of the proposed Engineering Management System (EMS) (i.e. In-Service EMP, engineering organisation, people and processes) will need to be sought during the acquisition Contract.
- 16.1.4 If, under Australian Industry Involvement (AII), there is a requirement to provide in-country engineering support, then the viability and sustainability of this in-country support will need to be assessed as part of tender evaluation.

### **16.2 Definitions**

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“Engineering Support” means (as an element of ILS) all of the considerations necessary to ensure design integrity throughout the life cycle of a Capability. [Adapted from DI(G) LOG 03-6]

### **16.3 Objective**

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- 16.3.1 To ensure that suitable arrangements for the In-Service, engineering management of the Mission System and elements of the Support System are:
- a. developed during the acquisition phase,
  - b. established in sufficient time to facilitate a seamless transition into operational service, and
  - c. continue to operate effectively under the In-Service, logistics-support arrangements.

### **16.4 Applicability**

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- 16.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

### **16.5 Lifecycle Phases for Engineering Support**

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#### 16.5.1 SOLICITATION PHASE

- 16.5.1.1 The tenderer shall identify:
- a. the proposed In-Service organisational arrangements, division of responsibilities, key personnel, and approach to meeting the In-Service engineering-management requirements of the project;
  - b. the proposed approach to transitioning from the developmental organisation to the In-Service support organisation;
  - c. the relevant internal company processes and procedures that would apply to the In-Service arrangements, including the identification of any new or modified procedures that would need to be developed;
  - d. its past experience in undertaking similar In-Service engineering-management activities to those required by the project; and

- e. the extent of the engineering-management infrastructure that already exists and the perceived extent of development to meet the In-Service engineering-management requirements of the project.

#### 16.5.2 OFFER DEFINITION PHASE

- 16.5.2.1 Given that the In-Service phase of the project could be many years into the future, the offer definition phase would mainly focus on perceived risk areas during acquisition that could preclude effective In-Service arrangements being able to be implemented and/or sustained (e.g. technology-transfer issues, staff retention/turnover, and export licence restrictions).

#### 16.5.3 CONTRACT NEGOTIATION PHASE

- 16.5.3.1 The tender response and preliminary work may have highlighted areas of the draft Contract or Contract(LS) that need further elaboration. This may be due to perceived risk to the Commonwealth or identified deficiencies in the RFT version of the draft Contracts that result in ambiguities or uncertainties for either party.

#### 16.5.4 CONTRACT EXECUTION PHASE

- 16.5.4.1 During the Contract period, the Contractor should develop all of the engineering-management systems and processes that will be required during the In-Service phase of the Capability.

#### 16.5.5 TRANSITION TO SUPPORT PHASE

- 16.5.5.1 During Transition, the acquisition engineering-management framework (i.e. organisation, systems, data and processes) is transitioned to the In-Service engineering-management framework in accordance with the Approved Transition Plan.
- 16.5.5.2 The product elements of the engineering-support function are transitioned under the specific product elements of ILS.

#### 16.5.6 THROUGH LIFE SUPPORT PHASE

- 16.5.6.1 Refer to regulatory threads.

## **17 LIFECYCLE THREAD - MAINTENANCE SUPPORT**

### **17.1 Introduction**

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- 17.1.1 There is some overlap between this element of ILS and the individual regulatory life-cycle threads.
- 17.1.2 During acquisition, the main focus of this element of ILS is to ensure that all of the issues to ensure that the Mission System and relevant elements of the Support System are optimally maintainable over the LOT are addressed as part of the acquisition Contract.
- 17.1.3 If the acquisition includes requirements for In-Service support, then details of the proposed Maintenance Management System (MMS) (i.e. MMP, maintenance infrastructure, organisation, people, systems and processes) will need to be sought during the acquisition Contract. Furthermore, as part of the design of the Support System, the design of the maintenance-support infrastructure will need to be addressed. This infrastructure will also need to be developed and delivered under the acquisition Contract.
- 17.1.4 If, under Australian Industry Involvement (All), there is a requirement to provide in-country maintenance support, then the viability and sustainability of this in-country support will need to be assessed as part of tender evaluation.

### **17.2 Definitions**

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“Maintenance Support” means (as an element of ILS) all of the considerations necessary to ensure an optimally maintainable Capability with a defined maintenance support structure. [Adapted from DI(G) LOG 03-6]

“Maintenance” means all actions taken to retain material in or restore it to a specified condition or to restore it to serviceability. It includes inspection, condition monitoring, servicing, repair, overhaul, testing, calibration, rebuilding, reclamation, upgrades, modification, recovery, classification and the salvage of technical equipment.

### **17.3 Objective**

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- 17.3.1 To ensure that suitable arrangements for the In-Service, maintenance support of the Mission System and elements of the Support System are:
- a. developed during the acquisition phase,
  - b. established in sufficient time to facilitate a seamless transition into operational service, and
  - c. continue to operate effectively under the In-Service, logistics-support arrangements.

### **17.4 Applicability**

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- 17.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

### **17.5 Lifecycle Phases for Maintenance Support**

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#### **17.5.1 SOLICITATION PHASE**

- 17.5.1.1 The tenderer shall identify:
- a. the proposed In-Service organisational arrangements, division of responsibilities, key personnel, and approach to meeting the In-Service maintenance-support requirements of the project;

- b. the relevant internal company processes and procedures that would apply to the In-Service arrangements, including the identification of any new or modified procedures that would need to be developed;
- c. its past experience in undertaking similar In-Service maintenance activities to those required by the project; and
- d. the extent of the maintenance-support infrastructure that already exists and the perceived extent of development to meet the In-Service maintenance-support requirements of the project.

#### 17.5.2 OFFER DEFINITION PHASE

17.5.2.1 Given that the In-Service phase of the project could be many years into the future, the offer definition phase would mainly focus on perceived risk areas during acquisition that could preclude effective In-Service arrangements being able to be implemented and/or sustained.

17.5.2.2 The offer definition phase could also address the proposed methodology for undertaking maintenance-related analyses (e.g. Level Of Repair Analysis (LORA)).

#### 17.5.3 CONTRACT NEGOTIATION PHASE

17.5.3.1 The tender response and preliminary work may have highlighted areas of the draft Contract or Contract(LS) that need further elaboration. This may be due to perceived risk to the Commonwealth or identified deficiencies in the RFT version of the draft Contracts that result in ambiguities or uncertainties for either party.

17.5.3.2 The set of standards and processes for undertaking maintenance-related analyses will be negotiated into the Contract (if not already determined during the offer definition phase).

#### 17.5.4 CONTRACT EXECUTION PHASE

17.5.4.1 During the Contract period, the Contractor should develop and deliver all of the maintenance-support systems and processes that will be required during the In-Service phase of the Capability (depending upon the Contracted support arrangements). Under the LSA processes, this will include:

- a. determining the optimum repair level for elements of the Mission System and Support System (to meet operational and preparedness requirements at a minimised LCC) commensurate with the Commonwealth's support concepts (as documented in the OCD);
- b. determining the maintenance tasks that need to be undertaken at each level of repair;
- c. determining the maintenance infrastructure required to support maintenance at each level; and
- d. determining the differing maintenance processes and practices that will exist between peacetime and contingency operations.

17.5.4.2 The Commonwealth should undertake Verification and Validation of maintenance support to ensure that it is both efficient and effective and likely to result in the operational and preparedness requirements being met.

#### 17.5.5 TRANSITION TO SUPPORT PHASE

17.5.5.1 Not applicable (all elements of Maintenance Support are transitioned under the specific product elements of ILS).

#### 17.5.6 THROUGH LIFE SUPPORT PHASE

17.5.6.1 Ongoing monitoring of the maintenance-support function is required throughout the LOT of the Capability to ensure that the function operates effectively and efficiently,

consistent with operational and preparedness requirements and the configuration of the Mission System.



## **18 LIFECYCLE THREAD - SUPPLY SUPPORT**

### **18.1 Introduction**

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- 18.1.1 During acquisition, supply support mainly involves the determination of appropriate spares-holding levels (as well as the procurement of these spares) to meet the operational and preparedness requirements of the Mission System.
- 18.1.2 Spares costs can be a significant contributor to Life-Cycle Cost (LCC); however, it can also be difficult to obtain a definitive figure for spares costs at the time of tendering because there are many unknowns at this time. Packaging is a second element of supply support, albeit a minor element in comparison with spares. Nevertheless, during acquisition, packaging levels will need to be determined and procurement action undertaken.
- 18.1.3 If the acquisition includes requirements for In-Service support, then details of the proposed supply-support system (i.e. SSP, supply-support infrastructure, organisation, people, systems and processes) will need to be sought during the acquisition Contract. Furthermore, as part of the design of the Support System, the design of the supply-support infrastructure will need to be addressed. This infrastructure will also need to be developed and delivered under the acquisition Contract.

### **18.2 Definitions**

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“Supply Support” means (as an element of ILS) all of the considerations necessary to ensure an optimally supportable Capability with a defined supply support structure. [Adapted from DI(G) LOG 03-6]

Supply Support includes:

- a. determination of spares-holding levels (at each maintenance echelon) to meet both peacetime and contingency requirements;
- b. determination of spares pipelines (i.e. supply-chain mgmt) for both peacetime and contingency scenarios, including storage locations, transportation modes, packaging requirements, interfaces, management information systems, asset visibility requirements, and pipeline performance measures;
- c. determination of systems and processes for the management of the supply-support function (e.g. inventory-mgmt systems); and
- d. determination of optimal stores-holding locations (e.g. storage/warehouse siting).

### **18.3 Objective**

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- 18.3.1 To ensure that suitable arrangements for In-Service, supply support for the Mission System and elements of the Support System are:
- a. developed during the acquisition phase,
  - b. established in sufficient time to facilitate a seamless transition into operational service, and
  - c. continue to operate effectively under the In-Service, logistics-support arrangements.

### **18.4 Applicability**

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- 18.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

## **18.5 Lifecycle Phases for Supply Support**

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### **18.5.1 SOLICITATION PHASE**

#### **18.5.1.1 The tenderer shall identify:**

- a. the proposed In-Service organisational arrangements, division of responsibilities, key personnel, and approach to meeting the In-Service supply-support requirements of the project;
- b. the relevant internal company processes and procedures that would apply to the In-Service arrangements, including the identification of any new or modified procedures that would need to be developed;
- c. its past experience in undertaking similar In-Service supply-support activities to those required by the project;
- d. the extent of the supply-support infrastructure that already exists and the perceived extent of development to meet the In-Service supply-support requirements of the project;
- e. the relevant company processes and procedures for undertaking the identification of spares and packaging requirements; and
- f. a preliminary spares provisioning list, identifying high-cost items, individual spares costs, and likely numbers required.

### **18.5.2 OFFER DEFINITION PHASE**

18.5.2.1 Given that the In-Service phase of the project could be many years into the future, the offer definition phase would mainly focus on perceived risk areas during acquisition that could preclude effective In-Service arrangements being able to be implemented and/or sustained.

18.5.2.2 The offer definition phase could also address the proposed methodology for undertaking supply-support-related analyses, such as spares optimisation.

### **18.5.3 CONTRACT NEGOTIATION PHASE**

18.5.3.1 The tender response and preliminary work may have highlighted areas of the draft Contract or Contract(LS) that need further elaboration. This may be due to perceived risk to the Commonwealth or identified deficiencies in the RFT version of the draft Contracts that result in ambiguities or uncertainties for either party.

18.5.3.2 The set of standards and processes for undertaking supply-support-related analyses will be negotiated into the Contract (if not already determined during the offer definition phase).

### **18.5.4 CONTRACT EXECUTION PHASE**

18.5.4.1 During the Contract, the Contractor should develop and deliver all of the supply-support systems and processes that will be required during the In-Service phase of the Capability (depending upon the Contracted support arrangements). Under the LSA processes, this will include:

- a. determining the optimum spares holdings for the Mission System and the Support System (to meet operational and preparedness requirements at minimum LCC) at each echelon of maintenance;
- b. determining the supply-support tasks that need to be undertaken at key points in the supply chain;
- c. determining the supply-support infrastructure required to support maintenance at each echelon;
- d. determining the differing stockholding levels (and practices) that will exist between peacetime and contingency operations (i.e. reserve stockholding); and

- e. developing and delivering the requisite supply-support infrastructure (including against the Approved Spares Provisioning List).
- 18.5.4.2 The Commonwealth should undertake verification and validation of supply support to ensure that it is both efficient and effective and likely to result in the operational and preparedness requirements being met.
- 18.5.5 TRANSITION TO SUPPORT PHASE
- 18.5.5.1 The physical elements of Supply Support that could be subject to Transition include the delivery and distribution of spares (to the relevant warehousing facilities). Other elements of the supply-support function are likely to be transitioned under other elements of ILS (e.g. supply-support processes would be transitioned under Technical Data and supply-support training would be transitioned under Training and Training Support)
- 18.5.6 THROUGH LIFE SUPPORT PHASE
- 18.5.6.1 Ongoing monitoring of the supply-support function is required throughout the LOT of the Capability to ensure that the function operates effectively and efficiently, consistent with operational and preparedness requirements and the configuration of the Mission System.

## 19 LIFECYCLE THREAD - TECHNICAL DATA

### 19.1 Introduction

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- 19.1.1 Technical Data, by itself, is unlikely to be a discriminator during tender evaluation; however, as an integral element of ILS, it can contribute to the assessment of the scope of development and the risks associated with a Contractor's tendered proposal.
- 19.1.2 Under ASDEFCON (Strategic Materiel), the ILS concept of Technical Data has been combined with the Intellectual Property (IP) concept of Technical Information (united under the single term, Technical Data). As such, there are strong linkages between the ILS function and the IP function.
- 19.1.3 Export-licence issues associated with overseas-sourced equipment can be significant for in-country support (under All), particularly the availability of, and level of access to, proprietary data.

### 19.2 Definitions

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"Technical Data" means (as an element of ILS) all recorded information of a scientific, technical and engineering nature relating to a Capability. Technical Data includes all types of specifications, standards, engineering drawings, instructions, reports, manuals, tabular data, test results, and software documentation, used in the development, production, In-Service operation and logistics support (such as maintenance, provisioning, codification, testing and modification), and disposal of a Capability. [Adapted from DI(G) LOG 03-6]

Technical Data includes:

- a. technical publications;
- b. technical drawings;
- c. requirements for Continuous Acquisition and Life-Cycle Support (CALs);
- d. Interactive Electronic Technical Manuals (IETMs);
- e. data that is delivered in database format (e.g. Logistics Support Analysis Record (LSAR), spares-optimisation model, Inventory Management System (IMS) and Maintenance Management System (MMS));
- f. codification data; and
- g. data that needs to be provided to the Contractor by the Commonwealth (i.e. GFD/GFI).

### 19.3 Objective

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- 19.3.1 Technical Data needs to be effectively managed to ensure that:
- a. the efforts of both the Contractor and the Commonwealth, with respect to the development, delivery, review, approval, and acceptance of Technical Data, are coordinated;
  - b. the Commonwealth acquires all of the necessary Technical Data to meet the In-Service support requirements for the life-of-type of the Capability (e.g. through the implementation of CALs requirements);
  - c. the Commonwealth acquires Technical Data of appropriate quality;
  - d. appropriate arrangements are implemented for the In-Service support of the Technical Data;
  - e. appropriate arrangements are implemented to ensure that the Commonwealth has access to any Technical Data, which has not been delivered under the Contract, for the life-of-type of the capability (e.g. through the implementation of escrow arrangements); and

- f. appropriate In-Service support arrangements are implemented for electronic-based Technical Data, such as IETMs.

#### **19.4 Applicability**

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- 19.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Subcontractors. The Contractor should flow down all of the requirements of this section and all subsections to all Subcontractors, commensurate with the scope of work being undertaken by those Subcontractors.

#### **19.5 Lifecycle Phases for Technical Data**

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##### 19.5.1 SOLICITATION PHASE

###### 19.5.1.1 The tenderer shall identify:

- a. the extent of existing Technical Data and the scope of Technical Data that is envisaged to be produced under the Contract;
- b. the extent of Technical Data that currently exists in, or will be ultimately delivered in, CALS-compliant format;
- c. the standards that will be used for the development of Technical Data, including the identification of the systems and processes that are proposed to be used for the development of the Technical Data;
- d. past experience and past performance in the development of Technical Data using the standards and formats required by the Commonwealth;
- e. expected Commonwealth involvement in the development and review of any Technical Data;
- f. any export-licence restrictions (if applicable) or IP licence restrictions; and
- g. any requirements for GFI/GFD.

##### 19.5.2 OFFER DEFINITION PHASE

- 19.5.2.1 The Project Authority may require further clarification/negotiation of the standards to be employed for the development of Technical Data. In particular, this would include assessing the cost-effectiveness of implementing CALS requirements.

- 19.5.2.2 If the Mission System (or key elements thereof) is being acquired from overseas, any potential export-licence restrictions should be investigated further. Similarly, IP licence restrictions should be investigated further to determine whether or not these restrictions could have implications for the long-term supportability of the Capability.

- 19.5.2.3 If the Contractor has offered IETMs, the draft Contract may need to be updated to capture requirements for these IETMs, including any relationship with Computer-Based Training (CBT).

##### 19.5.3 CONTRACT NEGOTIATION PHASE

- 19.5.3.1 The set of standards and processes will be negotiated into the Contract (if not already determined during the offer definition phase).

- 19.5.3.2 Contract provisions associated with export-licence issues (e.g. condition precedent) should be negotiated into the Contract.

##### 19.5.4 CONTRACT EXECUTION PHASE

- 19.5.4.1 When the design of the Mission System and Support System are sufficiently mature, the Contractor shall deliver (for Approval) a Technical Data Plan (TDP), which shall detail the plan for the development, delivery, review, Approval, and Acceptance of all Technical Data.

- 19.5.4.2 The Contractor shall conduct all development work associated with Technical Data in accordance with the plan.
- 19.5.4.3 The Contractor shall also develop and deliver all of the requisite systems and processes for the support of Technical Data during the In-Service phase of the life-cycle of the Capability.
- 19.5.4.4 The Commonwealth should undertake Verification and Validation of Technical Data, including as part of broader V&V activities (e.g. Maintenance Support Effectiveness Validation).
- 19.5.5 TRANSITION TO SUPPORT PHASE
  - 19.5.5.1 In accordance with the Approved Transition Plan, the Technical Data needs to transition to the appropriate support organisations (Commonwealth, Contractor, and Subcontractor).
  - 19.5.5.2 Systems and processes for the In-Service support of Technical Data should also be implemented at this time.
- 19.5.6 THROUGH LIFE SUPPORT PHASE
  - 19.5.6.1 Technical Data should be kept current with the configuration status of the Mission System and Support System.

## **20 LIFECYCLE THREAD - PERSONNEL**

### **20.1 Introduction**

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- 20.1.1 The provisioning and training of personnel is an inherently lengthy process that requires early identification of the numbers and types personnel required. Furthermore, retention of appropriately qualified personnel (e.g. by the Contractor) can be a major issue with respect to the sustainability of any in-country-support arrangements. Finally, personnel are a significant contributor to Life-Cycle Cost (LCC).
- 20.1.2 Identification of personnel numbers is an integral element of determining the Net Operating Cost (NOC) for a Capability, and therefore, is important for medium-to-long-term Defence financial planning.

### **20.2 Definitions**

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“Personnel” means (as an element of ILS) the identification and provisioning of Service and Defence civilian and Contractor personnel with the rank, classification and skills necessary to acquire, install, test, train, operate, and support a Capability throughout its life cycle. [Adapted from DI(G) LOG 03-6]

Under ASDEFCON (Strategic Materiel), Personnel also includes equivalent information for the Contractors(LS) and the Subcontractors(LS).

### **20.3 Objective**

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- 20.3.1 Personnel requirements need to be identified early enough to ensure that appropriate personnel are available in time to undertake initial training prior to a Mission System being introduced into operational service. Additionally, if the numbers of available Personnel are limited, this information needs to be conveyed to the tenderers so that it can be factored into the design (as a constraint on the design).
- 20.3.2 The prime Contractor needs to have appropriate strategies in place to ensure that Industry Objectives (such as in-country logistics support) can be met, including personnel-related strategies with respect to such aspects as technology transfer, training, and retention of staff.

### **20.4 Applicability**

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- 20.4.1 The applicability of these requirements would need to be tailored, depending upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

### **20.5 Lifecycle Phases for Personnel**

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- 20.5.1 SOLICITATION PHASE
- 20.5.1.1 At the time of tendering, the tenderers could identify any implications associated with any restrictions on the availability of personnel for the designs of the Mission System and Support System.
- 20.5.1.2 Additionally, the tenderers are unlikely to be able to provide details with respect to Commonwealth personnel numbers, categories, skill levels, etc required to support the Capability. As a first-order approximation, personnel numbers can be related to gross measures, such as reliability, maintainability and useability (noting that useability embraces such matters as ease of use, easy to learn, efficiency, easy to remember, and low error rates).

## 20.5.2 OFFER DEFINITION PHASE

20.5.2.1 The offer definition phase could be utilised to further investigate the implications of limited personnel numbers on the tenderer's proposed designs for the Mission System and Support System.

20.5.2.2 Additionally, this phase could be utilised to undertake a comprehensive analysis of useability (e.g. with respect to the Human Machine Interface (HMI)) and maintainability of both the Mission System and elements of the Support System. HMI is a typical area of risk in Defence contracts, and trade-off analyses between the useability of the system (i.e. through assessment of operator workload) and Personnel could be a worthwhile endeavour during the offer definition phase. Equivalent trade-off analyses between maintainability and maintenance personnel could also be conducted.

## 20.5.3 CONTRACT NEGOTIATION PHASE

20.5.3.1 Changes to the HMI to enhance useability could be negotiated into the Contract.

## 20.5.4 CONTRACT EXECUTION PHASE

20.5.4.1 As an output of the LSA process, the Contractor should provide regular updates of personnel requirements by category and skill level.

## 20.5.5 TRANSITION TO SUPPORT PHASE

20.5.5.1 In accordance with the Approved Transition Plan (or other plan (e.g. Approved Training Plan)), the Commonwealth should provide appropriate personnel where and when required.

## 20.5.6 THROUGH LIFE SUPPORT PHASE

20.5.6.1 Ongoing personnel management.



## **21 LIFECYCLE THREAD - TRAINING AND TRAINING SUPPORT**

### **21.1 Introduction**

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- 21.1.1 Training needs to be coordinated with the introduction into operational service of the Mission System and with the other elements of ILS to ensure that training is provided at the right time (i.e. not too early and not too late).
- 21.1.2 Certain items of Training Equipment could be significant end-products in themselves (e.g. simulators). End-products of this magnitude should be managed at the same level in the WBS as the Mission System.
- 21.1.3 Computer-Based Training (CBT) provides its own series of challenges, which need to be effectively managed to ensure that any CBT is both supported and supportable.

### **21.2 Definitions**

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“Training and Training Support” means (as an element of ILS) all the considerations necessary to provide Service, Defence civilian, and Contractor personnel with the skills necessary to acquire, operate, support and dispose of a Capability. [Adapted from DI(G) LOG 03-6]

Training is generally divided into initial training and sustainment training, with the former being provided as part of the acquisition Contract and the latter being provided during the In-Service phase of the Capability.

### **21.3 Objective**

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- 21.3.1 Training and Training Support need to be effectively managed to ensure that:
- a. the efforts of both the Contractor and the Commonwealth, with respect to the development, delivery, review, approval, and acceptance of Training, are coordinated;
  - b. the Commonwealth acquires all of the necessary Training materials, Training equipment and support to meet the sustainment training and associated support requirements for the life-of-type of the Capability;
  - c. the Commonwealth acquires Training materials and Training equipment of appropriate quality; and
  - d. appropriate arrangements are implemented for the In-Service support of Training materials and equipment (including CBT).

### **21.4 Applicability**

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- 21.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

### **21.5 Lifecycle Phases for Training and Training Support**

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#### 21.5.1 SOLICITATION PHASE

- 21.5.1.1 The tenderer shall identify:
- a. the extent of existing Training and the scope of Training that is envisaged to be produced under the Contract (including for both initial and follow-on training);
  - b. the proposed media for the provision of Training (e.g. classroom, CBT, self-paced learning, etc);
  - c. the standards that will be used for the development of Training, including the identification of the systems and processes that are proposed to be used for the development of the Training;

- d. past experience and past performance in the development of Training using the standards and formats required by the Commonwealth;
- e. expected Commonwealth involvement in the development and review of Training materials, courseware, etc.

#### 21.5.2 OFFER DEFINITION PHASE

- 21.5.2.1 The Project Authority may require further clarification/negotiation of the standards to be employed for the development of Training courses, materials and equipment. Design standards for significant items of training equipment (e.g. part-task trainers) may be determined at this time.
- 21.5.2.2 If the Contractor has offered CBT, the draft Contract may need to be updated to capture requirements for this CBT, including any relationship with Interactive Electronic Technical Manuals (IETMs).

#### 21.5.3 CONTRACT NEGOTIATION PHASE

- 21.5.3.1 The set of standards and processes will be negotiated into the Contract (if not already determined during the offer definition phase)

#### 21.5.4 CONTRACT EXECUTION PHASE

- 21.5.4.1 When the design of the Mission System and Support System are sufficiently mature, the Contractor shall deliver (for Approval) a Training Support Plan (TSP), which shall detail the plan for the development, delivery, review, Approval, and Acceptance of all training courses, material, and equipment.
- 21.5.4.2 The Contractor shall conduct all development work associated with Training in accordance with the plan.
- 21.5.4.3 The Contractor shall also develop and deliver all of the requisite systems and processes for the support of Training during the In-Service phase of the life-cycle of the Capability.
- 21.5.4.4 The Commonwealth should undertake Verification and Validation of the Training and Training Support (e.g. through a Training Support Effectiveness Validation) to ensure that any training provided by the Contractor has been effective.

#### 21.5.5 TRANSITION TO SUPPORT PHASE

- 21.5.5.1 In accordance with the Approved Transition Plan, Sustainment Training and Training Support need to transition to the appropriate support organisations (Commonwealth, Contractor, and Subcontractor).
- 21.5.5.2 Systems and processes for the In-Service support of Training courses, materials and equipment need to be implemented.

#### 21.5.6 THROUGH LIFE SUPPORT PHASE

- 21.5.6.1 Training materials and equipment should be kept current with the configuration status of the Mission System and Support System.
- 21.5.6.2 In-Service training is provided when required.

## 22 LIFECYCLE THREAD - FACILITIES

### 22.1 Introduction

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22.1.1 Generally, facilities aspects of a new Capability are managed under separate contractual arrangements by an organisation external to the Project Office (e.g. CSIG). As such, there needs to be strong liaison and coordination between this external organisation and the Project Office.

22.1.2 Given the often lengthy timeframe for initiating a new facilities proposal, the design of a new or modified facility may need to be 'frozen' before the design of the remaining elements of the Capability are sufficiently mature to fully determine the facilities requirements. Under this approach, the facilities become a constraint on the design of the remaining elements of the Capability.

### 22.2 Definitions

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"Facilities" means (as an element of ILS) all the considerations necessary to establish permanent and semi-permanent capital works and associated machinery and plant to operate and support a Capability throughout its life cycle. [Adapted from DI(G) LOG 03-6]

### 22.3 Objective

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22.3.1 Facilities aspects of a Capability need to be effectively managed to ensure that any new facilities or modifications to existing facilities:

- a. are provided in a timely manner commensurate with the introduction of the other elements of the Capability;
- b. meet the operational and logistics-support requirements of the Capability; and
- c. have minimal impact on those elements of Defence that are affected by the introduction of, or modifications to, any facilities.

### 22.4 Applicability

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22.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

### 22.5 Lifecycle Phases for Facilities

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#### 22.5.1 SOLICITATION PHASE

22.5.1.1 In the RFT, the Commonwealth would normally indicate whether there were any facilities that could be utilised by the successful tenderer (noting that, for strategic reasons, some facilities could be mandated).

22.5.1.2 In the tender response, the tenderer would identify:

- a. any existing facilities that the Contractor proposes to use (including the purpose) that do not require modification;
- b. any existing facilities that the Contractor proposes to use (including the purpose) that do require modification; and
- c. any new facilities that the Contractor proposes to implement (including the purpose).

#### 22.5.2 OFFER DEFINITION PHASE

22.5.2.1 The offer definition phase provides an ideal opportunity for the Commonwealth and the Contractor to work together to refine any facilities requirements. Updated and more-

mature statements of facilities requirements can then be provided to the Defence organisation that will manage the acquisition and development of new/modified facilities. This approach helps to ensure that the facilities are compatible with the Mission System and Support System.

### 22.5.3 CONTRACT NEGOTIATION PHASE

22.5.3.1 During Contract negotiations, the division of responsibilities between the Commonwealth and the Contractor will need to be agreed. Additionally, the standards, systems, and processes for the development of any new/modified facilities will also need to be agreed.

### 22.5.4 CONTRACT EXECUTION PHASE

22.5.4.1 During the Contract, the Contractor will need to design the Support System within the constraints imposed by the early statement of facilities requirements.

22.5.4.2 If the Contractor is providing any new/modified facilities, these will need to be designed, developed and implemented:

- a. to be compatible with the Mission System and Support System; and
- b. in sufficient time for the delivery of the Mission System and other elements of the Support System.

### 22.5.5 TRANSITION TO SUPPORT PHASE

22.5.5.1 The Commonwealth will need to provide any new/modified facilities, for which it is responsible, in sufficient time to enable the Contractor to meet its transition obligations.

22.5.5.2 The Contractor will need to provide any new/modified facilities, for which it is responsible, in sufficient time to enable it to meet its transition obligations.

### 22.5.6 THROUGH LIFE SUPPORT PHASE

22.5.6.1 Ongoing facilities management.

## **23 LIFECYCLE THREAD - PACKAGING, HANDLING, STORAGE AND TRANSPORTATION (PHS&T)**

### **23.1 Introduction**

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23.1.1 PHS&T is unlikely to be a discriminator during tender evaluation, and is really only a ‘bit player’ within the scope of ILS. Nevertheless, it can be an important issue when hazardous substances, explosives, pyrotechnics, secure equipment and information are involved. Given the specialist nature of these issues and the minor role of PHS&T when these issues are not involved, a life-cycle thread has not been developed for PHS&T at this time.

### **23.2 Definitions**

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“Packaging, Handling, Storage and Transportation (PHS&T)” means (as an element of ILS) all the considerations necessary to ensure that Capability elements are preserved, packaged, handled, stored, and transported properly until required for use. [Adapted from DI(G) LOG 03-6]

“Packaging” means the process of preparing materiel for storage or distribution, embracing preservation, marking for shipment or storage, consolidation and palletising. [Adapted from DI(G) LOG 03-6]

“Handling” means the physical movement of items of materiel into storage, during storage, and out of storage, embracing all handling processes associated with receipt, storage, issues, and transportation. Handling is the manual or mechanical movement of material and supplies from one place of operation to another without affecting its value or ability to perform its required function. [Adapted from DI(G) LOG 03-6]

“Storage” means the keeping or placing of property in a warehouse, shed, open area, or other designed facility. Storage is the continuation of the receiving operation and is preliminary to the shipping or issuing operation. [Adapted from DI(G) LOG 03-6]

“Transportation” means the conveying of material from the supplier to the user, via intermediate storage locations, and from the user to the maintainer and return. Transportation may involve movement by rail, road, air, sea, pipeline, or a combination of these modes. [Adapted from DI(G) LOG 03-6]

### **23.3 Objective**

### **23.4 Applicability**

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23.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

### **23.5 Lifecycle Phases for Packaging, Handling, Storage and Transportation (PHS&T)**

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- 23.5.1 SOLICITATION PHASE
- 23.5.2 OFFER DEFINITION PHASE
- 23.5.3 CONTRACT NEGOTIATION PHASE
- 23.5.4 CONTRACT EXECUTION PHASE
- 23.5.5 TRANSITION TO SUPPORT PHASE
- 23.5.6 THROUGH LIFE SUPPORT PHASE

## **24 LIFECYCLE THREAD - SUPPORT AND TEST EQUIPMENT (S&TE)**

### **24.1 Introduction**

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- 24.1.1 Identification of S&TE needs to occur in sufficient time to maximise opportunities for standardisation with existing items of S&TE or for obtaining offsets from within the Commonwealth's spare inventory of S&TE.
- 24.1.2 Delivery of S&TE needs to be coordinated with the introduction into operational service of the Mission System and with the other elements of ILS to ensure that all of the requisite S&TE is available when and where required.
- 24.1.3 Certain items of S&TE could be significant end-products in themselves (e.g. new suites of ATE). Consideration should be given to managing end-products of this magnitude at the same level in the WBS as the Mission System.

### **24.2 Definitions**

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"Support and Test Equipment (S&TE)" means (as an element of ILS) the identification, acquisition, and management of all equipment necessary to support operations and maintenance of a Capability throughout its life cycle. [Adapted from DI(G) LOG 03-6]

### **24.3 Objective**

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- 24.3.1 S&TE needs to be effectively managed to ensure that:
- a. the efforts of both the Contractor and the Commonwealth, with respect to the development, delivery, review, approval, and acceptance of S&TE, are coordinated;
  - b. the Commonwealth acquires all of the necessary S&TE to meet the In-Service support requirements for the life-of-type of the Capability (including the acquisition of strategic S&TE that would be operated by the Contractor at a deeper maintenance echelon);
  - c. the Commonwealth maximises opportunities associated with standardisation and offsetting; and
  - d. appropriate arrangements are implemented for the In-Service support of S&TE (including spares, technical data, facilities, etc); and
  - e. high-risk elements of S&TE (such as ATE) are identified early and managed accordingly.

### **24.4 Applicability**

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- 24.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (i.e. as documented in the support concepts contained in the Operational Concept Document (OCD)).

### **24.5 Lifecycle Phases for Support and Test Equipment (S&TE)**

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#### 24.5.1 SOLICITATION PHASE

- 24.5.1.1 The tenderer should identify any proposed developmental items of S&TE.
- 24.5.1.2 The tenderer should provide a preliminary S&TE provisioning list, identifying high-cost items, individual S&TE costs, and likely numbers required.

#### 24.5.2 OFFER DEFINITION PHASE

- 24.5.2.1 During the offer definition phase, preliminary discussion relating to standardisation of S&TE and available offsets from the Commonwealth's inventory could be initiated.

- 24.5.2.2 The Project Authority may require further clarification/negotiation of the processes to be employed for the identification and development of S&TE. Design standards for significant items of developmental S&TE (e.g. ATE) may also be determined at this time.
- 24.5.3 CONTRACT NEGOTIATION PHASE
  - 24.5.3.1 The set of standards and processes will be negotiated into the Contract (if not already determined during the offer definition phase)
- 24.5.4 CONTRACT EXECUTION PHASE
  - 24.5.4.1 As an output of the LSA process, the Contractor should provide regular updates of S&TE requirements.
  - 24.5.4.2 If an S&TE plan is a requirement of the Contract, the Contractor shall conduct all S&TE work in accordance with the Approved plan.
  - 24.5.4.3 The Contractor will need to provide all of the requisite S&TE (at all maintenance echelons, including Contractor and Subcontractors (as applicable)) in sufficient time to enable the Mission System and other elements of the Support System to be supported from initial delivery.
- 24.5.5 TRANSITION TO SUPPORT PHASE
  - 24.5.5.1 The Commonwealth will need to provide all of the S&TE, for which it is responsible (ie, offset S&TE), in sufficient time to enable the Contractor to meet its transition obligations.
  - 24.5.5.2 The Contractor will need to provide all of the S&TE, for which it is responsible, in sufficient time to enable it to meet its transition obligations.
- 24.5.6 THROUGH LIFE SUPPORT PHASE
  - 24.5.6.1 Ongoing S&TE management.

## **25 LIFECYCLE THREAD - COMPUTER SUPPORT**

### **25.1 Introduction**

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- 25.1.1 Software Support is a significant Life-Cycle Cost (LCC) driver, and generally, a key issue under Australian Industry Involvement (AII). As such, all of the relevant issues need to be closely scrutinised and monitored throughout the acquisition process (e.g. export licence restrictions, IP licence restrictions, etc).
- 25.1.2 One of the key decisions affecting software support, particularly with respect to overseas-sourced systems, is whether or not the support concept is for the software configuration baseline of the delivered system to maintain currency with the configuration baseline of the OEM's product line. This decision may have implications for the long-term supportability of the software and for interoperability with overseas operators of similar systems.

### **25.2 Definitions**

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"Computer Support" means (as an element of ILS) the identification, acquisition and management of computing hardware, firmware, software, documentation, and other resources necessary to provide data processing or computer support to the operational, maintenance, supply, training, and administrative requirements of a Capability. Computer support includes the management of procedures, documentation, source code, proprietary rights, and equipment to train operators and to control the development and implementation of software changes throughout the life cycle of a Capability. [Adapted from DI (G) LOG 03-6]

### **25.3 Objective**

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- 25.3.1 To ensure that suitable arrangements for the In-Service support of software in the Mission System and in elements of the Support System are:
- a. developed during the acquisition phase;
  - b. established in sufficient time to facilitate a seamless transition into operational service; and
  - c. continue to operate effectively under the In-Service, logistics-support arrangements.

### **25.4 Applicability**

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- 25.4.1 The extent of applicability of these requirements would depend upon the nature and extent of In-Service support that is envisaged to be provided by the Contractor and/or Subcontractors (ie, as documented in the support concepts contained in the Operational Concept Document (OCD)).

### **25.5 Lifecycle Phases for Computer Support**

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#### 25.5.1 SOLICITATION PHASE

- 25.5.1.1 The tenderer shall identify:
- a. the proposed In-Service organisational arrangements, division of responsibilities, key personnel, and approach to meeting the In-Service software-support requirements of the project;
  - b. the proposed approach to transitioning from the software-development organisation to the In-Service support organisation;
  - c. the relevant internal company processes and procedures that would apply to the In-Service arrangements, including the identification of any new or modified procedures that would need to be developed;



- d. its past experience in undertaking similar In-Service, software-support activities to those required by the project;
- e. the proposed configuration-management processes that would apply, particularly if the software being provided is a variant of an overseas company's standard product line;
- f. the proposed processes and test beds that will be utilised to undertake V&V of the software under the acquisition contract, and whether or not these processes and test beds will transition to the In-Service, support arrangements; and
- g. any export-licence restrictions (if applicable) or IP licence restrictions.

#### 25.5.2 OFFER DEFINITION PHASE

25.5.2.1 The Project Authority may require further clarification/negotiation of the standards to be employed for the development of software, particularly with respect to the support and supportability of the software.

25.5.2.2 If the Mission System (or key elements thereof) is being acquired from overseas, any potential export-licence restrictions should be investigated further, including any implications for All (such as side-by-side development). Similarly, IP licence restrictions should be investigated further to determine whether or not these restrictions could have implications for the long-term supportability of the Capability.

#### 25.5.3 CONTRACT NEGOTIATION PHASE

25.5.3.1 The tender response and preliminary work may have highlighted areas of the draft Contract that need further elaboration. This may be due to perceived risk to the Commonwealth or identified deficiencies in the RFT version of the draft Contract that result in ambiguities or uncertainties for either party.

25.5.3.2 The set of standards and processes for undertaking software development, particularly with respect to the support and supportability of the software, will be negotiated into the Contract (if not already determined during the offer definition phase).

#### 25.5.4 CONTRACT EXECUTION PHASE

25.5.4.1 During the Contract, the Contractor should develop and deliver all of the software-support systems and processes that will be required during the In-Service phase of the Capability. Under the LSA processes, this will include:

- a. undertaking analyses of the requirements for software support (e.g. using DEF(AUST) 5691 or DEF-STAN-00-60) for the software elements of the Mission System and Support System;
- b. determining the software-support infrastructure required to support in-country, software support, commensurate with the Approved All Plan; and
- c. documenting the software-support requirements in a Software Support Plan (SWSP);
- d. developing and delivering the requisite software-support infrastructure (e.g. commensurate with the Contractor's All obligations).

25.5.4.2 The Commonwealth should undertake Verification and Validation of any software-support capability to ensure that it is both efficient and effective and likely to result in the operational and preparedness requirements being met.

#### 25.5.5 TRANSITION TO SUPPORT PHASE

25.5.5.1 If a specific software transition plan is a requirement of the Contract, the Contractor shall conduct all software transition activities in accordance with the Approved plan. Otherwise, software transition will be conducted in accordance with the Approved Transition Plan.

25.5.6 THROUGH LIFE SUPPORT PHASE

25.5.6.1 Ongoing software support.

## **26 LIFECYCLE THREAD - CONTRACT MANAGEMENT**

### **26.1 Introduction**

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- 26.1.1 The use of a contracting template (proforma terms and conditions of tender and contract [including a template SOW and associated documentation]) by DMO projects provides for consistency and probity throughout the acquisition life-cycle, including:
- a. certainty for Commonwealth and for tenderers/contractors;
  - b. establishing a baseline for tender evaluation; and
  - c. the same law applies to the RFT and the Contract. DMO's contracting templates are drafted to be consistent with Australian law, which would be applied in the case of any dispute.
- 26.1.2 For these reasons, the tailoring of elements into or out of any part of the template requires commercial approval.
- 26.1.3 More importantly, however, the purview of DMO contracting officials can extend beyond the scope of issues covered within the contracting template to include the examination of:
- a. other documentation included in or referenced by the Contract
  - b. deliverables that are provided to satisfy Contract requirements
  - c. any correspondence between the parties to the Contract, and
  - d. above all else, the formal and informal conduct of the parties to the Contract.

### **26.2 Definitions**

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Contract means the conditions of contract, the attachments including the SOW and any document expressly referenced as part of the Contract

SOW – Statement of Work

### **26.3 Objective**

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- 26.3.1 To promote certainty, consistency and probity in DMO projects

### **26.4 Applicability**

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- 26.4.1 The extent of applicability of these requirements would depend upon the nature of the contracting strategy documented in the project's EAS.

### **26.5 Lifecycle Phases for Contract Management**

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- 26.5.1 SOLICITATION PHASE
- 26.5.1.1 Tender Response
- 26.5.2 OFFER DEFINITION PHASE
- 26.5.2.1 PreConNeg
- 26.5.3 CONTRACT NEGOTIATION PHASE
- 26.5.3.1 ConNeg
- 26.5.4 CONTRACT EXECUTION PHASE
- 26.5.4.1 Contract

- 26.5.5        TRANSITION TO SUPPORT PHASE
- 26.5.5.1     Transition
- 26.5.6        THROUGH LIFE SUPPORT PHASE
- 26.5.6.1     Support

## **27 LIFECYCLE THREAD - DEFENCE RADIOCOMMUNICATIONS**

### **27.1 Introduction**

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- 27.1.1 Procurement of Defence equipment accessing the Radiofrequency (RF) spectrum must be compliant with the Radiocommunications ACT 1992, unless DCRA-CI has given prior exemption.
- 27.1.2 The responsibility of Project Managers and other procurers, in respect to the use of the Radio Frequency Spectrum, are defined in the following documents:
- a. DI(G) ADMIN 05-9 Projects involved in the Provisioning / Utilisation of Communications-Electronics Equipment – Approval Process (under review),
  - b. DI(G) OPS 07-14 Management of Defence Use of the Radio Frequency Spectrum,
  - c. DI(G) OPS 07-16 Coordination of Use of the Radiofrequency Spectrum Shared by Defence Telemetry and Other Equipment and Deep Space Tracking Stations in the Radiofrequency Band 2200-2300 MHz, ADFP 561 – Joint Communications – Radio Frequency Spectrum Management, and
  - d. DIMPI 9/99 – Policy for the Payment of Radio Frequency Spectrum Charges.

### **27.2 Definitions**

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DCRA-CI – Directorate Communications and Regulatory Affairs

ITU - International Telecommunication Union

RF - Radio Frequency

### **27.3 Objective**

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- 27.3.1 To ensure that Defence procurement requiring access to the radio frequency spectrum meets legislation and regulatory responsibilities.

### **27.4 Applicability**

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- 27.4.1 These requirements are applicable to all equipment, systems, subsystems, Configuration Items (Cis) or end products that require access to, use of, or rely on the radio frequency spectrum for their operation.
- 27.4.2 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

### **27.5 Lifecycle Phases for Defence Radiocommunications**

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#### **27.5.1 SOLICITATION PHASE**

- 27.5.1.1 If there is no requirement for procured Defence equipment to access the RFS, then there is no need for further action on this item. The Project Authority should document reasons behind this decision and whether DCRA-CI staff was contacted.
- 27.5.1.2 If the proposed procured Defence equipment requires access to the RFS, then the following requirements shall be included in any documentation:
- a. The Function and Performance Specification (FPS), including the Verification Cross Reference matrix (VCRM) that accompanies the FPS, shall include requirements to ensure that equipment that uses RF spectrum complies with the current edition of the 'Australian Radiofrequency Spectrum Plan'. This includes band or channel plans and any relevant standards, regulations or specifications as identified by the Australian Communications Authority, unless Defence (through DCRA-CIP) has granted prior exemption.

- b. The Test Concept Document (TCD) shall include the Verification requirements for evaluating systems and equipment that require access to the RF spectrum, where these Verification requirements are likely to be significant cost and schedule drivers.:
  - c. Tenderers shall provide a preliminary Equipment Certification to access Radiofrequency Spectrum (ECARS) in accordance with DID-ENG-SOL-ECARS. (ECARS references Form AA763, "Certification of Radio frequency (RF) Spectrum Availability ")
- 27.5.1.3 This information provides the basis for the tender evaluation of the RF spectrum aspects of the RFT, including the following: :
- a. Preference shall be given to systems that operate wholly within those parts of the RFS designated in the current edition of the 'Australian Radiofrequency Spectrum Plan' as being designated for Defence purposes (but only if this preference has been included as one of the evaluation criteria in the conditions of tender).
  - b. Evidence of compliance shall be provided identifying that all radio frequency transmission equipment included in any submission conforms to relevant technical standards defined by the ITU. Particular attention is to be given to ITU Appendix S3 – Table of Maximum Permitted Spurious Emission Power Levels and Draft New Recommendations on Out of Band emissions (DNR OOB Limits).
  - c. The Contractor shall be responsible for licensing and compliance with the Radiocommunications Act 1992 for:
    - i) all equipment prior to hand over to the ADF or Department of Defence, and
    - ii) for any equipment which remains the property of the Contractor. (This issue needs careful consideration by Project staff as there could be significant costs with licensing of RF spectrum access.
- 27.5.1.4 The area of contracting where the Contractor is performing an RF spectrum related task on behalf of Defence needs separate consideration and guidance from DCRA-CI staff.
- 27.5.2 OFFER DEFINITION PHASE
- 27.5.2.1 Projects requiring access to the RF spectrum can seek assistance from DCRA-CI staff in the evaluation process from a RF spectrum point of view only. Assistance could include advice on:
- a. compliance with current 'Australian Radiofrequency Spectrum Plan',
  - b. compliance with any relevant band and channel plans,
  - c. compliance with future planned regulatory changes,
  - d. operational restrictions that may apply due to equipment using an inappropriate frequency band,
  - e. cost implications (in accordance with DIMPI 9/99) of equipment not operating in 'defence bands',
  - f. interoperability issues with other In-Service defence systems, and
  - g. compliance with Australian or International radio frequency bands to either establish or maintain interoperability with allied systems.
- 27.5.2.2 During the offer definition phase , any of the aforementioned issues may be discussed with the shortlisted tenderers to ensure that:
- a. RF spectrum issues with the tenderers' proposals are addressed prior to Contract, and
  - b. The resultant Contract adequately captures the agreed resolution for these issues.

### 27.5.3 CONTRACT NEGOTIATION PHASE

- 27.5.3.1 An assurance of spectrum availability should be obtained from DCRA-CI prior to the commitment of the Commonwealth to the purchase of equipment requiring access to the RF spectrum.
- 27.5.3.2 Any system design work and choice of operating frequency bands shall take into account the total bandwidth requirements of the proposed system and those systems (existing and future) that are expected to operate in the same electromagnetic and geographic environments. (This requirement is mandatory for operational equipment but optional for training and domestic systems).
- 27.5.3.3 All Radio Frequency transmission equipment (including but not limited to communications, navigation, radar and space systems) shall conform to relevant technical standards defined by the ITU. Particular attention is to be given to ITU Appendix S3 – Table of Maximum Permitted Spurious Emission Power Levels and Draft New Recommendations on Out of Band emissions (DNR OOB Limits).
- 27.5.3.4 The equipment/systems (proposed to be) supplied to the Department of Defence may comply with the 'Australian Class Licence' regulatory framework but shall be subject to the technical constraints imposed on each authorised radio frequency band. Requirements of Australian Class Licenses can be found through the Australian Communications Authority web site. Note: Devices operating in accordance with Australian Class Licenses may be used for training and support but should not normally form part of operational systems. Devices operating within the parameters of an Australian Class Licence may not conform to requirements in other countries negating the ability of such devices to deploy during peacetime or training activities. Devices operating in accordance with an Australian Class Licence in Australia are not protected from interference.
- 27.5.3.5 Systems design shall provide operator selectable multiple radio channels to enhance survivability in a hostile electromagnetic operating environment. (This requirement is optional and project offices can specify what number of channels they require depending on the environment in which the equipment is intended to operate. It is recommended that DCRA-CI advice be sought on this issue).

### 27.5.4 CONTRACT EXECUTION PHASE

- 27.5.4.1 The Contractor shall be responsible for compliance with the Radiocommunications Act 1992 for:
- a. all equipment prior to hand over to the ADF or Department of Defence, and
  - b. for any equipment which remains the property of the Contractor.
- 27.5.4.2 The Contractor shall provide fully completed and/or updated ECARS to DSCR, through the Project Office, on each item of equipment requiring access to the RF spectrum. The Contractor is required to re-submit forms at any time the design of equipment modifies the radio frequency transmission properties or access requirements.
- 27.5.4.3 DSCR can provide software versions of this form to facilitate more efficient transfer of information. This information can be classified up to Secret.
- 27.5.4.4 Form AA763 (or ECARS) will be raised and sent to DCRA at the Experimental and Developmental Stages, and during the Operational Stage of the system. The level of detail required in these forms is dependent upon 'stage of allocation' of the procurement.
- 27.5.4.5 Experimental and Developmental Stages: Outline the spectrum usage details (intended frequency bands, expected occupancy bandwidths, areas and modes of operation) for all equipment that is being considered for procurement. The level of information supplied is to be appropriate to the level of development that has taken place.
- 27.5.4.6 Operational Stage: A fully completed and updated form is to be submitted for final approvals.

- 27.5.4.7 Upon receipt of each completed AA763 (or ECARS), DCRA will advise the submitting authority or project office of any problems and / or any operational constraints that may arise from the requested use of spectrum. Detailed technical parameters are required once the Commonwealth has finalised or contracted deliverables. When completing form AA763, Project Managers should clearly outline the Concept of Operations (which should not be different from the concepts document in the OCD), particularly where this describes:
- a. the intended areas of operation of spectrum using devices,
  - b. the manner in which the devices are used,
  - c. the number likely to be used in any scenario, and
  - d. the impact of radio frequency interference to the device.
- 27.5.4.8 Initiate Frequency Assignment action with DCRA-CI (through Single Service Frequency Managers where appropriate) three months prior to initial delivery.
- 27.5.4.9 DMO staff must note that submission of AA763 forms does not constitute frequency assignment action. The AA763 provides the technical data on which the equipment's spectrum supportability within the Australian environment can be assessed. Just prior to acceptance or introduction into service, a separate request is made to provide frequency clearance and assignment through the normal frequency management chain of command via single service frequency managers.
- 27.5.5 TRANSITION TO SUPPORT PHASE
- 27.5.6 THROUGH LIFE SUPPORT PHASE



## **28 LIFECYCLE THREAD - AIRWORTHINESS REGULATORY REQUIREMENTS**

### **28.1 Introduction**

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28.1.1 DMO projects managing major capital projects for the acquisition or modification of RAAF, Army or Navy Aircraft are required to implement the ADF Technical Airworthiness Regulator's engineering regulations. Further, the regulations may also apply to the acquisition and modification of non-airborne equipment with an interface with an aircraft. These regulations will need to be satisfied to ensure the aircraft is subsequently allowed to be released to service by the ADF Airworthiness Authority (ADF AA). The TAR staff within DGTA-ADF should be consulted as early as possible in the project life cycle to ensure technical airworthiness is adequately addressed in the Contract.

### **28.2 Definitions**

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ADF AA – ADF Airworthiness Authority. The ADF AA is responsible to CDF for the establishment, management and monitoring of a regulatory framework for type certification, service release and In-Service management of airworthiness in the ADF.

AEO – Authorised Engineering Organisation

AMTC – Australian Military Type Certificate. All ADF aircraft types must be certificated with an AMTC before they can be authorised for operational use In-Service.

CBD – Certification Basis Description

DGTA – Director General of Technical Airworthiness

TAMM – Technical Airworthiness Management Manual

SSPP - System Safety Program Plan

STC – Supplemental Type Certificate. A STC may be issued for major changes or alterations in type design.

SFP – Special Flying Permit. Prior to certification with an AMTC, a SFP may be issued to allow the aircraft to be operated for the purpose of achieving an AMTC.

TCP - Type Certification Plan

TEWG – Tender Evaluation Working Group

### **28.3 Objective**

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28.3.1 To ensure that equipment delivered to the Commonwealth is technically airworthy. In the project environment, it encompasses:

- a. the definition of technical airworthiness for the equipment
- b. the selection of competent design, construction and maintenance organisations; and
- c. the management of project engineering processes, people and data to ensure that the final product is technically airworthy on delivery.

### **28.4 Applicability**

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28.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

## **28.5 Lifecycle Phases for Airworthiness Regulatory Requirements**

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### **28.5.1 SOLICITATION PHASE**

28.5.1.1 The PO shall consult with DGTA to tailor the SOW and FPS to ensure aircraft certification in accordance with AAP7001.053 and AAP7001.054. The Technical Airworthiness Requirements can be captured either in the FPS and/or SOW. Eventually these should form part of the SS through the Contractor's requirements analysis activities.

28.5.1.2 The tenderer, if required by the Contract to perform any design activities shall:

- a. seek and attain AEO status through the Project Authority;
- b. outline a proposed airworthiness CBD including any reliance on prior certification and proposed basis for extending certification to cover new design;
- c. provide a draft Engineering Management Plan describing how the relevant regulatory requirements are to be met.
- d. provide a System Safety Program Plan that it believes will provide an adequate level of safety when the ADF's aircraft configuration is operated in its intended roles and operating environment;
- e. provide a TCP that ties together the certification program, CBD and system safety program.

28.5.1.3 The TCP will be the prime document assessed by the TEWG to determine the risk associated with each tender submission.

28.5.1.4 For all acquisitions, new aircraft or modification, the Project Authority shall identify the Technical Airworthiness Regulatory requirements that the Contractor will be required to meet. Regulations that the Contractor may be required to meet are:

- a. Regulation 1 – Application of Regulations and Procedural Rules
- b. Regulation 2 – Type Certification and Service Release
- c. Regulation 3 – Authorised Engineering Organisation
- d. Regulation 4 – Authorised Maintenance Organisation; and
- e. Regulation 5 – Aircraft Maintenance and Management Procedures.

28.5.1.5 The Project Authority shall obtain DGTA endorsement of the Contract SOW prior to RFT to ensure that the certification basis and regulatory requirements contracted will be sufficient to achieve aircraft certification and release into Service at the completion of the acquisition phase. DGTA-SCI will assign a DGTA project co-ordinator responsible for co-ordinating DGTA staff involvement in the project, advising on the certification process, assessing certification bases and advising on the application of the regulations listed above.

### **28.5.2 OFFER DEFINITION PHASE**

28.5.2.1 During this Phase, the TCP and preliminary work may have highlighted areas where more detailed certification program information from the tenderer is required. For example, clarification may be required on the exact configuration that has been previously certified to determine the scope of certification activity required for the ADF variant and allocate responsibilities for that effort in the Contract.

28.5.2.2 For new aircraft acquisition the Contractor submission shall include detailed proposals for type certification, including:

- a. certification basis, that is a clear indication of the design standards invoked to meet design requirements for both the design seeking prior certification and new design.
  - (1) For major upgrades under ADF specification, the submission should demonstrate compliance with the original basis for certification and ensure

- (2) it is not compromised, and that the new work either complies with original airworthiness requirements, or with equally comprehensive updated requirements
    - (3) Existing systems may have a proven In-Service history which obviates the need for redesign to updated standards, but new design to obsolete standards can claim no such benefit and may result in products that are below the minimum acceptable performance by modern standards.
    - (4) Specification developers must ensure that where an older standard is used in place of a replacement or updated standard, the reasons for using the older standard are formally documented, contracted for and endorsed by the TAR as part of the specification development process.
  - b. full details of the basis of prior certification including, for civil Aircraft, all special conditions and equivalent safety findings which were approved.
  - c. where Contractor relies on prior certification, an analysis of the applicability of that prior certification to the configuration being proposed and the Aircraft intended roles and environment
  - d. the proposed means of demonstrating Aircraft meets certification basis where this is not clear.
- 28.5.2.3 The Commonwealth shall assess the completeness of the proposed CBD by evaluating it against its selected comparative standard. The comparative standard is described in AAP 7001.054 Section 1 Chapter 1.
- 28.5.2.4 The Commonwealth shall contract for the evidence that will be needed to substantiate the Certification Basis of the aircraft in support of Aircraft Certification. This evidence is required to be assessed by a competent compliance agent agreed by the TAR before he can make a recommendation to the Airworthiness Board (AB) for issue of an AMTC or STC. The TAR will also require evidence that its airworthiness is able to be maintained before he can make a recommendation to the AB for issue of a Service Release (SR).
- 28.5.3 CONTRACT NEGOTIATION PHASE
- 28.5.3.1 Prior to Contract signature, the Project Authority shall seek DGTA ratification to any changes to the SOW affecting technical airworthiness.
- 28.5.4 CONTRACT EXECUTION PHASE
- 28.5.4.1 The Contractor shall:
- a. establish, implement and control a Type Certification Program in accordance with the Approved TCP. The aim of the Type Certification Program is to obtain the necessary evidence to substantiate the Certification Basis of the Aircraft and thus the issue of an AMTC or STC and SR by the ADF
  - b. establish, implement and control a System Safety Program (SSP) in accordance with the Approved SSPP. The aim of the SSP is to identify and control the hazards and risks associated with the design, operation, maintenance and disposal of the aircraft.
  - c. record and maintain the TCP and the SSPP
  - d. provide evidence to substantiate the Certification Basis of the Aircraft in support of Aircraft Certification.
  - e. The Project Authority may audit the Contractor performing design against the requirements of AAP 7001.53 Regulation 3.
- 28.5.4.2 The Commonwealth will provide an Accomplishment Summary to the ADF AA for the purpose of issuing a SFP IAW AAP7001.048, Section 2, Chapter 4.
- 28.5.4.3 Aircraft Certification shall be conducted IAW AAP 7001.053 Regulation 2.

28.5.5           TRANSITION TO SUPPORT PHASE

28.5.5.1       Contractors performing design to support the aircraft shall be audited against the requirements of AAP 7001.053 Regulation 3.

28.5.5.2       Contractors performing maintenance to support the aircraft shall be audited against the requirements of AAP 7001.053 Regulation 4 and 5.

28.5.6           THROUGH LIFE SUPPORT PHASE

28.5.6.1       No specific activities currently identified.

## **29 LIFECYCLE THREAD - ASSESSMENT OF SAFETY AND SUITABILITY FOR SERVICE (S3) OF EXPLOSIVE ORDNANCE**

### **29.1 Introduction**

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- 29.1.1 The AOC is designated as the Defence Materiel Organisation (DMO) authority for the review and independent assessment of the safety aspects of weapon systems, explosive systems and related systems, and is empowered to make safety recommendations to the responsible Command, Project Director and Procurement Authority. With regard to the conduct of test firings, the AOC is the DMO safety approval authority.
- 29.1.2 The Commonwealth must discharge its duty of care to ensure that any explosive ordnance (EO)<sup>1</sup> introduced into ADF service is inherently safe for storage, distribution and, just as importantly, remains so through out its service life when exposed to the rigours of the ADF operational environment.
- 29.1.3 The Australian Defence Force (ADF) in carrying out its 'duty of care' responsibility, employs a process termed Safety and Suitability for Service (S3) to examine the safety aspects associated with EO.

### **29.2 Definitions**

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The S3 assessment has two discrete elements:

Assessment of Safety:

The assessment of safety involves an appraisal of the inherent freedom from explosive hazard of the item design, an evaluation of the risk attendant on deploying the item in prescribed environments throughout its anticipated service life and the consideration of the acceptability of this risk in meeting the operational requirement.

Suitability for Service

The assessment of suitability for service requires objective evidence that the item or associated elements of a weapon or equipment are capable of functioning as designed and that functioning will not be unacceptably degraded by the service environments encountered throughout the anticipated service life. This definition generally excludes operational effectiveness and lethality but may include certain performance characteristics if these aspects are deemed to be part of the item design function. The anticipated service life is defined as the whole life environment for the particular store, and is known as the manufacturer to target or disposal sequence (MTDS).

The S3 process is defined in Defence Operations Manual OPSMAN 4 "Safety and Suitability for Service of Explosive Ordnance".

### **29.3 Objective**

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- 29.3.1 To ensure that the Commonwealth's duty of care in assessing the safety and suitability for service of explosives ordnance throughout the lifecycle of the project.

### **29.4 Applicability**

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- 29.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section and all subsections to all Approved Subcontractors.

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<sup>1</sup> The term explosive ordnance (EO) is used throughout this manual. It incorporates all weapon and weapon systems which utilise explosive materiel and includes, for example, EO ranging in application from missiles to fire bottle cartridges.

## **29.5 Lifecycle Phases for Assessment of Safety and Suitability for Service (S3) of Explosive Ordnance**

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### 29.5.1 SOLICITATION PHASE

29.5.1.1 The tenderer shall liaise with the project officer and /or the Australian Ordnance Council (AOC) to gain:

- a. An understanding of the S3 process and the steps needed to effect it.

Note: This can be facilitated through direct contact with the AOC and the use of OPSMAN 4.

- b. Review with the AOC what prior assessments of this type (e.g. safety cases) have been conducted by the tenderer, his suppliers and contractors and what data and information can be provided for read across, if possible.

### 29.5.2 OFFER DEFINITION PHASE

29.5.2.1 The tenderer will:

- a. Ascertain from the project officer how the safety case is to be developed.
- b. Ascertain if they are required to develop the Safety Case and present it to the AOC for assessment or if the data is to be delivered and the Project office retains responsibility for the development of the safety case and its subsequent presentation to the AOC.
- c. Identify the responsibilities of the different organisations potentially involved in the S3 assessment including the requirement for the Commonwealth to witness any Acquisition Test and Evaluation testing, and for the AOC to review the Safety Case and provide the independent S3 assessment and identify who is to fund the program.

### 29.5.3 CONTRACT NEGOTIATION PHASE

29.5.3.1 The tenderer shall :

- a. Resolve the work to be conducted in support of the S3 program.
- b. Prepare an S3 plan using OPSMAN 4 addressing the preparation of the Safety Case.
- c. Resolve with the AOC what data can be provided on the EO and its test history for read across to the S3 assessment.

29.5.3.2 The project office must determine:

- a. Compliance with the specification clauses relating to S3 and the justification for the acceptance if any non-compliances.
- b. A preliminary S3 program plan which is to detail the how the Contractor intends to meet the requirements of the S3 program, and how the Contract intends to integrate the S3 Program into the T&E and System Safety programs.
- c. A preliminary Safety Case which outlines the testing that has been conducted on the equipment to date and an abstract of the tests that have been conducted for the hazards that have been identified in the Prioritized Hazard List that have a risk level of either high or extreme.

### 29.5.4 CONTRACT EXECUTION PHASE

29.5.4.1 The tenderer shall :

- a. Deliver the S3 documentation.
- b. Conduct of trials necessary to form part of the acceptance process.

c. Provide data supporting the S3 assessment.

29.5.4.2 The Project Office is responsible for the Commonwealth oversight of the S3 program. This is to include the management of the delivery of the S3 documentation from the Contractor, witnessing S3 trials that form part of the acceptance of the equipment and the assessment of the Contractor's performance in relation to the conduct of the S3 program.

29.5.5 TRANSITION TO SUPPORT PHASE

29.5.5.1 Delivery of the completed Safety Case Certificate containing the independent S3 assessment by the AOC.

29.5.6 THROUGH LIFE SUPPORT PHASE

29.5.6.1 Ongoing liaison throughout the life cycle with the AOC and initiating a revised assessment should anything change in design or the environment in which the store is used which may affect the original S3 assessment.

### **30 LIFECYCLE THREAD - QUALITY ASSURANCE**

#### **30.1 Introduction**

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30.1.1 The Quality of the delivered Products is dependent on the quality of the systems and processes used in the delivery of the Products. This includes the application by the Contractor of a Quality Management Systems with mature processes covering (as applicable) design, development, manufacture, test, integration, set-to-work and In-Service support. Additionally the application of Quality Assurance activities by the Commonwealth ensures that the contractually agreed Quality requirements are implemented.

#### **30.2 Definitions**

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The following definitions are taken from ISO 9000:2000:

Quality: Degree to which a set of inherent characteristics fulfils requirements.

Quality Management: Coordinated activities to direct and control an organisation with regard to Quality.

Quality Assurance: Part of Quality Management focused on providing confidence that Quality Requirements will be fulfilled.

#### **30.3 Objective**

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30.3.1 DMO Contract Quality Assurance has the following objectives:

- a. to ensure Contractors with the appropriate Quality Management Systems, processes and capability are selected for Defence Contracts;
- b. to ensure that adequate Quality Requirements are embedded in Contracts;
- c. to ensure that adequate risk based audit and surveillance activities are conducted throughout the Contract.

#### **30.4 Applicability**

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30.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section to subsections and to all Approved Subcontractors.

#### **30.5 Lifecycle Phases for Quality Assurance**

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##### **30.5.1 SOLICITATION PHASE**

30.5.1.1 The tenderer shall provide:

- a. for open tenders – a response to the Annex F “Quality Statement” providing a description of the maturity of the Contractors QMS, copies of all relevant certificates and approvals, a statement of how the QMS scope relates to the scope of the project (identifying any out-of-scope activities) and details of the Subcontractors and Subcontractor controls; or
- b. for Sole source - a Draft Quality Plan in accordance with the approved CDR detailing how the Contractors QMS is applied to the specific requirements of the Contract; and
- c. a Statement of Compliance to all quality related SOW conditions and Contract Deliverable Requirements (CDR)s and details of any non-compliance or required changes to the QA requirements of the draft Contract.



### 30.5.2 OFFER DEFINITION PHASE

30.5.2.1 The Project Authority may request the following documentation for review prior to Contract Negotiation:

- a. For Open Tenders - a Draft Quality Plan in accordance with the approved CDR detailing how the Contractors QMS is applied to the specific requirements of the Contract. This draft will be reviewed and refined to provide an appropriate Contract deliverable Plan.
- b. For sole source - The Draft Quality Plan is refined to provide an appropriate Contract deliverable Plan.
- c. Further development of the Quality Aspects of the solution based on perceived risk areas (the risk areas may result from deficiencies in the original response).

### 30.5.3 CONTRACT NEGOTIATION PHASE

30.5.3.1 Any deficiencies in the Contract SOW Quality Clauses or Quality Plan are resolved and the Quality Plan agreed prior to Contract Signature.

### 30.5.4 CONTRACT EXECUTION PHASE

30.5.4.1 The Contractor shall maintain the agreed Quality Management System (QMS) and the Quality Plan over the life of the Contract and shall permit Project Authority access to audit the application of the Quality plan. The Contractor shall inform the Project Authority of any Changes to the QMS that will affect Contract performance (e.g. loss of certification) and shall submit for Project Authority agreement any amendments to the Quality Plan.

30.5.4.2 The Project Authority shall engage suitable competent QAR(s) to provide a risk based audit and surveillance program of the application of the QMS through the agreed Quality Plan.

### 30.5.5 TRANSITION TO SUPPORT PHASE

30.5.5.1 Where the Contractor will be involved in In-Service Support (ISS) activities the Contractor shall transition the QMS and the Quality Plan to the ISS activities (this may include assistance to any Subcontractors involved in ISS activities).

### 30.5.6 THROUGH LIFE SUPPORT PHASE

30.5.6.1 The Contractor shall maintain the agreed Quality Management System (QMS) and the Quality Plan over the life of the Contract and shall permit Contract Authority access to audit the application of the Quality plan. The Contractor shall inform the Contract Authority of any Changes to the QMS that will affect Contract performance (e.g. loss of certification) and shall submit for Contract Authority agreement any amendments to the Quality Plan.

30.5.6.2 The Contract Authority shall engage suitable competent QAR(s) to provide a risk based audit and surveillance program of the application of the QMS through the agreed Quality Plan.

## **31 LIFECYCLE THREAD - AUSTRALIAN INDUSTRY INVOLVEMENT MANAGEMENT**

### **31.1 Introduction**

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- 31.1.1 An effective Australian Industry Involvement (All) Program aims to ensure DMO has access to those industry capabilities needed to support and enhance the Australian Defence Force.
- 31.1.2 The All Program is the key tool for maximising the involvement of Australian industry development in Defence acquisition projects and for ensuring that in-country capacity exists to provide In-Service Support (ISS) to ADF capabilities. Implementation and management of the All Program is essential in achieving the above and focusing on changing Defence needs.

### **31.2 Definitions**

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Australian Industry Involvement Authority (AIIA). Head Industry Division (HID) is the AIIA and is to be consulted where any substantial deviation from current policy and/or procedures is sought.

The Project Manager is responsible for all aspects of the particular project including the All Plan.

All PSC Practitioner is the Industry Operations (IO) staff member assigned for assisting the Project Office in developing industry issues papers, the Industry Requirements for the project, preparation of tendering documentation, negotiating tenders and finalising the All Plan.

DCIC – Defence Capability and Investment Committee

HSA – Head Systems Acquisition

IWG – Interface Working Group

SER – Source Evaluation Report

TEWG – Tender Evaluation Working Group

IPT – Integrated Product Team

PSC - Policy and Support Centre

SIDA – Strategic Industry Development Activity

### **31.3 Objective**

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- 31.3.1 To ensure Government and Defence policies are adhered to and that the strategic requirements of Defence are addressed.

### **31.4 Applicability**

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- 31.4.1 The Contract should include appropriate requirements so that the conditions of this section have applicability to the Contractor and to all Approved Subcontractors. The Contractor should flow down all requirements of this section to subsections and to all Approved Subcontractors.

### **31.5 Lifecycle Phases for Australian Industry Involvement Management**

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#### **31.5.1 SOLICITATION PHASE**

- 31.5.1.1 Guidance and input of All at the Strategic Planning stage is the responsibility of All Policy Branch and Industry Operations Branch. Upon endorsement of the Capability Options Document by the DCIC, guidance and input is then the responsibility of Industry Operations Branch. All Policy Branch and Industry Operations Branch staff will form part of the IPT involving input from various stakeholders (i.e. DSTO, IO, and Capability

- Development staff). An Industry Issues paper will identify All issues in the options documentation.
- 31.5.1.2 Industry Operations staff will analyse and take cognizance of the All issues in the Capability Options documentation and then develop All Requirements. IO in conjunction with the PD will manage the implementation of the All requirements through the tendering, contracting and monitoring stages.
- 31.5.1.3 All information pertaining to tender responses will be assessed on behalf of the PD by IO staff forming a TEWG or being part of a Commercial TEWG. IO Branch will provide advice pertaining to policy and methodology only to members of the TEWG.
- 31.5.2 OFFER DEFINITION PHASE
- 31.5.2.1 As part of the tender evaluation team the IO staff will assist the PD in clarification of All issues and develop the outline of the All Plan for subsequent negotiations with the preferred tenderer.
- 31.5.3 CONTRACT NEGOTIATION PHASE
- 31.5.3.1 Generally the IO All Practitioner will negotiate the All Plan with his/her counterpart from the Contractor. Once the proposed All Plan is agreed, the All Plan is presented to the main negotiation team for endorsement. The All Plan will be amended as a consequence of negotiations (i.e. scope, specification changes, etc) and finalised where possible for inclusion in the Contract at Contract signature.
- 31.5.4 CONTRACT EXECUTION PHASE
- 31.5.4.1 Once in Contract, the All requirements of the Contract are to be monitored. Regular reporting by the Contractor ensures progress can be monitored and guidance provided where there are difficulties adhering to the All Plan. The IO All practitioner will analyse the All Reports and input data into the PROMIS data base. Any anomalies will be advised to the Project Authority and recommendation for any remedial action required. Periodically IO staff, in conjunction with the PO, will carry out All Performance Reviews to assess the accuracy and validate claimed achievement of activities in the All Plan.
- 31.5.4.2 In addition Contract Change Proposals may alter values and planned work in the All Plan. The All Practitioner through the Project Office will convene Workshops to assist the Contractor to meet the contracted All.
- 31.5.5 TRANSITION TO SUPPORT PHASE
- 31.5.5.1 An All Plan aims to meet Industry Requirements set for the project and to address the ADF's needs in both acquisition and In-Service support. Where the acquisition Contract has an All Plan that addresses both the acquisition and support elements, the All Practitioner will need to flow down the All requirements into the support Contract.
- 31.5.5.2 Where the acquisition strategy calls for a separate support Contract an All Plan needs to be developed that takes cognizance of the capabilities developed through the acquisition project.
- 31.5.6 THROUGH LIFE SUPPORT PHASE
- 31.5.6.1 Management of the Support Contract All Plan is similar to the acquisition phase. However, the All requirements may have been stipulated in the acquisition phase and therefore there is also the requirement to monitor the support activities to ensure All requirements are adhered to and enhanced where possible.

## **32 LIFECYCLE THREAD - AUSTRALIAN INDUSTRY INVOLVEMENT**

### **32.1 Introduction**

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- 32.1.1 An effective Australian Industry Involvement (All) Program aims to ensure DMO has access to those industry capabilities needed to support and enhance the Australian Defence Force.
- 32.1.2 The All Program is the key tool for maximising the involvement of Australian industry development in defence acquisition projects and for ensuring that in-country capacity exists to provide In-Service Support (ISS) to ADF capabilities.

### **32.2 Definitions**

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Local Content is that part of the Supplies that is value added by Australian and / or New Zealand industry.

Industry Requirements are developed for Defence procurements valued at \$5m or greater. Industry Requirements are detailed as Operational and Sectoral.

An All Plan for a project details the local content activities Strategic Industry Development Activities that are intended to achieve the Industry Requirements for the project. The All Plan forms part of the final Contract.

### **32.3 Objective**

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- 32.3.1 Defence policy for industry and the All Program takes as its starting point Defence's strategic priorities for the support and enhancement of ADF capability as well as Government broader industry , purchasing and economic objectives

### **32.4 Applicability**

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- 32.4.1 The Government and Defence purchasing initiatives encourage buying Australian and, through Procurement Reforms in 1994 and 1997, formed the catalyst for developing Australian industry. Policies have been further revised via the Defence and Industry Strategic Policy Statement 1998, which focused purchasing Officers to buy locally providing that value for money is not compromised. Defence, through the All Program, aims to develop and support capabilities. For all purchases over \$5m, an All Plan is required to enunciate Defences All needs.

### **32.5 Lifecycle Phases for Australian Industry Involvement**

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#### **32.5.1 SOLICITATION PHASE**

- 32.5.1.1 In order to demonstrate their capacity and commitment to Defence's industry policy, tenderers shall submit an All Plan that addresses the Defence Industry Requirements and accompanying appendices.
- 32.5.1.2 The Contractors All Plan shall form the basis of the negotiated All Plan in the Contract.
- 32.5.1.3 The tenderers shall provide
- a. an overview of the proposed All Plan describing additional advantages the All Plan will offer in terms of:
  - b. reduced acquisition and / or In-Service costs,
  - c. reduced turnaround time for repairs,
  - d. reduced supply times,
  - e. increased sustainability and self reliance through R & D and exports,
  - f. skills and employment generated by this acquisition and,
  - g. commercial benefits.

- 32.5.1.4 Tenderers are to describe the proposed arrangements for management of the All Plan including:
- a. The nominated All manager
  - b. The method to be used in monitoring and recording Local Content and Strategic Industry Development Activities (SIDA) achievement.
  - c. Confirmation that all Industry Requirements have been addressed or identify the industry
  - d. Requirements that have not been addressed and the reasons why.
  - e. Details on Local Content and Imported Content.
  - f. Completion of All activity Description Sheets for each line item of the All Schedule.
  - g. Completion of SIDA Activity Description Sheets for each proposed SIDA.
  - h. Values of the Local Content and SIDA activities that count towards the All Target.
  - i. Details of overseas Australian Subcontractors including Small to Medium Enterprises (SMEs) where the accumulated value of the work is expected to exceed \$250,000.
  - j. Information on the bidding teams overall commitment to Australian industry.
- 32.5.1.5 Industry Operations staff will form part of a TEWG to evaluate tenders and to input into the SER.
- 32.5.1.6 All Policy and IO Branch develop Industry Issues Papers or similar that analyse the options for sector and/ or strategic requirements for the capability being sought. ID staff are to participate, where appropriate, in the activities of the IWG and consult with industry to develop All initiatives and strategies.
- 32.5.1.7 Industry Operations staff are to further enhance the Industry Requirements in conjunction with the Project Director/Manager, the ILS working group and IP working group.
- 32.5.1.8 As part of the IPT, participate in developing acquisition capability documents (i.e. EAS, ITR, RFP, RFT, Tender Evaluation Plan).
- 32.5.1.9 At tender evaluation, IO staff are to evaluate the All requirements and provide input to the appropriate TEWG and the SER.
- 32.5.2 OFFER DEFINITION PHASE
- 32.5.2.1 The Project Authority may request further development of the All Plan to fulfil the needs of Defence and to clarify issues pertaining to the All Plan. This will ensure a quality All Plan that achieves the Industry Requirements.
- 32.5.3 CONTRACT NEGOTIATION PHASE
- 32.5.3.1 The tenderers proposed All Plan will be amended and developed where necessary in conjunction with the proposed Contractor to ensure an achievable, quality All Plan that meets the Industry Requirements. The outcome will be the agreed All Plan for incorporating into the Contract.
- 32.5.3.2 Industry Operations staff will participate in negotiations between the Contractor and the Project Office staff to ensure the best outcome for All is achieved.
- 32.5.4 CONTRACT EXECUTION PHASE
- 32.5.4.1 The Contractor shall maintain the All Plan over the life of the Contract, amending the All Plan as necessary brought about by Contract Change Proposals to the Contract or through enhancement of the activities in the All Plan.
- 32.5.4.2 The Contractor shall perform the All Plan activities and report progress at regular intervals according to the Contract.

- 32.5.4.3 Industry Operations staff will provide guidance and support to the Project Office in regards to:
- a. All policy;
  - b. effect on the All Plan due to CCPs;
  - c. comment and analysis of the All Reports; and
  - d. inputting all data collected into the ProMIS database.
- 32.5.4.4 To ensure satisfactory progress, All Performance Reviews will be arranged with the Contractor through the Project Office and where necessary DMORO staff. These reviews should be carried out within 6 months of Contract signature and 12 monthly thereafter.
- 32.5.5 TRANSITION TO SUPPORT PHASE
- 32.5.5.1 Where a support Contract follows on from an acquisition Contract, the Contractor is to ensure that the capabilities developed through the acquisition Contract are enhanced and/ or maintained.
- 32.5.6 THROUGH LIFE SUPPORT PHASE
- 32.5.6.1 The Contractor is to ensure that through the life of the support Contract Australian content is maximised and that developed capabilities are maintained. Where capability diminishes over time, or scope change etc the Project Authority is to be informed.

### 33 LIFECYCLE THREAD - INTELLECTUAL PROPERTY (MANAGEMENT)

#### 33.1 Introduction

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- 33.1.1 Defence and Australian Industry need rights to access and use technologies that enable them, jointly or separately, to:
- a. develop a capability edge and, therefore, a strategic advantage for Australia;
  - b. sustain self-reliance in peace and war through effective and efficient operation;
  - c. repair maintenance and development of capabilities throughout their lives; and
  - d. minimise the costs of operation, support and development.
- 33.1.2 These are all the factors in which Intellectual Property plays a critical role in the national defence capability. In relation to equipment, Defence needs the necessary IP to allow equipment to be operated, supported or even upgraded. That is the Project Authority acquiring a capability needs to ensure appropriate IP is acquired and managed properly throughout that capabilities life.

#### 33.2 Definitions

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Intellectual Property or IP means all copyright (including moral rights) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know how), and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Operate means to operate, use, work, or run the Supplies or part of the Supplies, and in the case of software and other copyright material, includes the right to reproduce in a material form.

Maintain means to maintain or otherwise keep the Supplies or part of the Supplies in an efficient working order and in a condition in which the performance and functionality of the Supplies or part of the Supplies is retained, including to repair, refurbish, integrate or otherwise correct any defect in the Supplies or any part of the Supplies, and in the case of software, includes undertaking corrective maintenance.

Modify means to modify, alter, including by extending, extrapolating, adapting, improving or redesigning, the form, quality, configuration, performance or functionality of the Supplies or part of the Supplies, and in the case of software, includes undertaking perfective, preventative and/or adaptive maintenance. The right to Modify includes the right to Maintain.

Develop means to develop, generate or evolve similar items in form, fit and functionality to the Supplies or part of the Supplies (including through research and design) and includes the right to use these items to:

- a. explore the creation of other capabilities and other potential uses of those Supplies; and
- b. develop any prototype, model or capability technology demonstrator based on the Supplies or part of the Supplies.

The right to Develop includes the right to Modify.

Manufacture means to manufacture, create, craft, construct or otherwise produce similar items in form, fit and functionality to the Supplies or part of the Supplies.

The right to Manufacture includes the right to Develop.

Dispose means to dispose or carry out the final discarding or transfer of the Supplies or part of the Supplies.

### **33.3 Objective**

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- 33.3.1 Defence IP management needs to be clear, consistent and traceable. In order to implement this, IP Management Strategies (IPMS) have been developed. An IPMS approach has been embodied into major capital equipment contracts by the use of an IP Needs Analysis and an IP Plan. The IP Plan will ensure that IP developed or procured can be traced and managed. Successful management of IP is an on-going process that relies upon the successful identification of IP, which in turn requires a sufficient awareness of what IP is and how it may be captured.
- 33.3.2 There are three implementation strategies that have been incorporated into the IP Policy:
- a. Defence will target its IP needs more effectively,
  - b. Defence will help promote sustainable Australian industry by cooperatively exploiting IP, and
  - c. Defence will improve awareness and management of IP.
- 33.3.3 Having proper IP management processes in place helps overcome problems with IP that can arise during any stage in the life cycle of a capability.
- 33.3.4 Under ASDEFCON (Strategic Materiel), the minimum rights which the Commonwealth will accept are to Operate and Maintain. As these rights are the essential elements Defence requires.

### **33.4 Applicability**

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- 33.4.1 The extent of applicability of these requirements would depend upon the nature the IP strategy, as documented in the Acquisition Strategy, and the nature and extent of In-Service support that is envisaged to be provided by the Contractor and /or Subcontractor.

### **33.5 Lifecycle Phases for Intellectual Property (Management)**

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#### 33.5.1 SOLICITATION PHASE

- 33.5.1.1 The tenderer shall respond to the Commonwealth's IP Requirements listed in the COT. They are to indicate their compliance or otherwise to each Commonwealth IP Requirement. In addition to this they are required to respond to four other sections. The tenderers response is designed to allow the Commonwealth to adequately assess their ability to meet the Commonwealth's IP needs.

#### 33.5.2 OFFER DEFINITION PHASE

- 33.5.2.1 The Project Authority may require further clarification / negotiation of the tendered IP. This includes any restrictions on ownership and/or licences that were highlighted during tender response. This is an appropriate time for a risk reduction phase.

#### 33.5.3 CONTRACT NEGOTIATION PHASE

- 33.5.3.1 The agreed IP Plan and associated deeds will be negotiated into the Contract (if not already determined during the offer definition phase). Any additional licences required by the Commonwealth will also be agreed during this phase.

#### 33.5.4 CONTRACT EXECUTION PHASE

- 33.5.4.1 During the Contract, the Contractor will comply with the IP Plan. They will also update and maintain the IP Plan. The Contract should also permit when requested, the Project Authority to undertake an audit of the Contractor's IP management and capture processes. IP Records shall be complied with, during the Contract.



### 33.5.5 TRANSITION TO SUPPORT PHASE

33.5.5.1 In addition to transition of the IP Plan to the support facility. The Commonwealth may require additional IP which had not been envisaged during acquisition. This phase is the appropriate time to acquire such additional IP from Contractors. As the Contractors systems would still be in place and access to IP could easily be costed and identified.

### 33.5.6 THROUGH LIFE SUPPORT PHASE

33.5.6.1 At this stage IP Management should be ongoing, with any changes being reflected in the IP Plan. Management and proper identification of IP during the acquisition phases is critical to the support phase. Having appropriate databases and licensing arrangements enables integration of new capabilities into current systems. This is especially important when a platform upgrade is being undertaken, as IP can be a major impediment to modifying equipment.







**ANNEX B – MIL-STD-1388 MAPPING**

The following table cross-references LSA Tasks from MIL-STD-1388-1A and LSA Activities from DEF(AUST)5691 to the ASDEFCON(Strategic Materiel) SOW and DIDs.

<b>MIL-STD-1388-1A Task/Subtask</b>		<b>DEF(AUST)5691 Activities</b>		<b>ASDEFCON(Strategic Materiel) Reference</b>
<b>101</b>	Development of an Early LSA Strategy	<b>LM1</b>	<b>LSA Strategy</b>	Not in SOW. Project Authority to develop for project specific aspects of Commonwealth analysis program, and to prepare for SOW LSA effort, define supportability trade studies, etc.
<b>102</b>	<b>Logistics Support Analysis Plan</b>	<b>LM2</b>	<b>Logistics Support Analysis Plan</b>	
102.2.1	LSA Plan	LM1.1	Prepare LSA Plan	SOW 5.1.2 DID-ILS-MGT-ISP (contains LSAP) Major subordinate plans (that may be annexes of ISP in smaller programs) for analysis and outcomes, include: DID-ILS-SUP-SSDP (supply support) DID-ILS-TNG-TSP (training) DID-ILS-TDATA-TDP (tech data) DID-ILS-S&TE-S&TEP (S&TE) DID-ILS-FAC-FACP (facilities) DID-ILS-SW-SWSP (software support)
102.2.2	Updates	LM1.2	Update	SOW 5.1.2.1.1 to include major updates of plans.
<b>103</b>	<b>Program and Design Reviews</b>	<b>LM3</b>	<b>Management and Analysis Reviews</b>	
103.2.1	Establish Review Procedures	LM3.1	Establish Review Procedures	SOW 3.9 SOW 4.1.4 DID-PM-MGT-AGENDA DID-PM-MGT-MINUTES
103.2.2	Design Reviews	LM3.2	Contribute to Design Reviews	Mandated System Reviews (SE with ILS contribution): SOW 4.2.3, 4.2.4 SOW 4.3 SOW 5.1.2.2 Support System Detailed Design Review: SOW 5.1.2.3
103.2.3	Program Reviews	LM3.3	Contribute to Program Reviews	Mandated System Reviews (ILS Program Reviews): SOW 5.1.2.2  Periodic/Routine ILS Management Reviews, refer: Progress Meetings SOW 3.9.1 Extraordinary Meetings SOW 3.9.2

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
103.2.4	LSA Review	LM3.6	Conduct LSA Reviews	Refer Progress Meetings SOW 3.9.1 LSA component of ILS meetings in SOW 5.1.2.2 to 5.1.2.10
103.2.5	LSA Guidance Conferences	LM3.5	Conduct LSA Guidance Conferences	To be held in "offer definition" period, pre-contract. The optional use of LSAGCs for project phases has not been included. May be required to obtain satisfactory ISP.
		LM3.4	Conduct ILS Reviews	SOW 5.1.2.2 to 5.1.2.10
201	Use Study	FL1	Use Study	Commonwealth Task, system level Use Study and LSC to be incorporated in the OCD. Standalone Use Study for Acquisition Phase (due to size). OCD in SOW 4.2.1 and 5.2.2.1 refer, SOW Annex B (OCD).
202	Mission Hardware, Software and Support System Standardisation	FL4	Standardisation Opportunities	Tender Response: TDID-ILS-DEF-PSSS; discussed further during "offer definition" period or during negotiations. Requirements: SOW Annexes A and B (FPS and OCD). DID-ILS-DEF-SSSPEC  DID-ILS-MGT-ISP (conduct of study; also 6.2.5.6) Mission System: SOW 4.6.3.1 Support System: SOW 5.2.2.3 (analyse as a Support System Alternative Task 302/FL6)  Support System Component DIDs: DID-ILS-S&TE-S&TEP DID-ILS-S&TE-S&TEPL DID-ILS-TNG-TSP DID-ILS-TNG-TEML DID-ILS-SUP-PACKPL  Analysis response as per Commonwealth-directed trade study, refer: SOW 2.6 DID-ILS-DES-SUPTSR Annex required to be attached to SOW for clause 2.6, template included in guidance/handbook  Directed trade studies into Standardisation and Interoperability (Mission and Support System) must be focussed on specific aspects of the individual project. Implementation IAW approved ISP or SEMP, as applicable.

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
203	Comparative Analysis	FL3	Comparative Analysis	<p>Comparative Analysis is an analytical process rather than producing a project outcome. Results evident through RM&amp;T study results (based on existing similar systems). Conduct via: DID-ENG-MGT-IRMTP.</p> <p>Used as baseline input to other trade studies for Standardisation and Technological Opportunities for Mission System.</p>
204	Technological Opportunities	FL5	Technological Opportunities	<p>DID-ILS-MGT-ISP (conduct of study) Mission System: SOW 4.6.1 and 4.6.3.2 Support System: SOW 5.2.2.3 (analyse as a Support System Alternative Task 302/FL6)</p> <p>Analysis response as per directed trade study, refer: SOW 2.6 DID-ILS-DES-SUPTSR Annex required to be attached to SOW for clause 2.6, template included in guidance/handbook</p> <p>Commonwealth-directed trade studies into Technological Opportunities (Mission and Support System) must be focussed on specific aspects of the individual project. Implementation IAW approved ISP or SEMP, as applicable.</p>
205	Supportability and Supportability Related Design Factors	FL8	Functional Requirements Definition	
205.2.1	Supportability Characteristics	FL8.1	Define Characteristics and Requirements	<p>Commonwealth: SOW Annexes A and B (FPS and OCD) Contractor: DID-ENG-DEF-SS for Mission System DID-ILS-DEF-SSSPEC for Support System</p>
205.2.2	Sensitivity Analysis	FL7.6	Perform sensitivity and Risk Analysis	<p>Commonwealth: SOW Annexes A and B (FPS and OCD) Contractor: DID-ENG-DEF-SS for Mission System DID-ILS-DEF-SSSPEC for Support System</p>
205.2.3	Identify Proprietary Data	FL8.3	Address Intellectual Property	<p>Commonwealth: SOW Annex A, see also SOW 3.15. Contractor: Conduct via DID-PM-IP-IPP, deliver under DID-PM-IP-IPR. System-level issues addressed in SSSPEC for Support System See also Technical Data SOW clauses and DIDs (e.g. SOW 5.3.3, particularly 5.3.3.8).</p>

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
205.2.4	Supportability Objectives and Associated Risks	FL8.2 FL7.6	Define Objectives and Risks Perform sensitivity and Risk Analysis	Commonwealth: SOW Annexes A and B (FPS and OCD) Contractor: Certain requirements in the specifications for the Mission System and Support System may be stated as objectives (e.g. reliability). Implement risk register via SOW 3.6 and deliver in accordance with DID-PM-RISK-RMP.
205.2.5	Specification Requirements	FL8.6	Document Requirements	Commonwealth: SOW Annex A and SOW Annex B, OCD including LSC, etc.  Contractor for Mission System: SOW 4.6.3.3 DID-ENG-DEF-SS  Contractor for Support System: SOW 5.2.2.1 and 5.2.2.2 DID-ILS-DEF-SSSPEC  Contractor for both Mission and Support Systems documented into LSAR: SOW 4.6.3.3.3 (MS) DID-ILS-TDATA-LSAR
205.2.6	NATO/Interoperability Constraints	FL8.4	Address joint forces and Interoperability	Commonwealth: SOW Annexes A and B (FPS and OCD) Contractor: DID-ENG-DEF-SS for Mission System DID-ILS-DEF-SSSPEC for Support System
205.2.7	Supportability Goals and Thresholds	FL8.5	Define Constraints and Other Requirements	Commonwealth: SOW Annexes A and B (FPS and OCD) Contractor: DID-ENG-DEF-SS for Mission System DID-ILS-DEF-SSSPEC for Support System
<b>301</b>	<b>Functional Requirements</b>	<b>FL2</b>	<b>Functional Requirements Identification</b>	
301.2.1	Functional Requirements	FL2.1	Identify Functional Requirements	Commonwealth: Analysis leading to SOW Annex A Specification, refer Task 205/FL8.  Contractor results delivered as: DID-ENG-DEF-SS for Mission System DID-ILS-DEF-SSSPEC for Support System.



MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
301.2.2	Unique Functional Requirements and Drivers	FL2.2 FL2.3	Determine Characteristics of Requirement Identify Drivers	Characteristics discussed between parties as part of System Requirements Analysis (SRA) and System Definition phases for both Mission System and Support System. Contractor subsequently documents agreed understanding in updated specifications (i.e. DID-ENG-DEF-SS and DID-ILS-DEF-SSSPEC) and in Requirements Traceability Matrix (RTM) (refer SOW 4.2.2.3 and 4.5.2). Drivers addressed as part of LCC program (refer SOW 3.11) and at each Mandated System Review.
301.2.3	Risks	FL2.5	Perform Risk Assessment	Implement via SOW 3.6
301.2.4	Operations and Maintenance Tasks	PL1.1	Task Identification	Operations, Maintenance and Supply Support tasks all delivered under: DID-ILS-DES-TAR (option 1) DID-ILS-TDATA-LSAR  Operations Tasks: SOW 5.2.3  Maintenance Tasks: SOW 5.2.5 Corrective Maintenance: SOW 5.2.5.1 and DID-ILS-DES-FMEAR Preventive Maintenance: SOW 5.2.5.2, DID-ILS-DES-RCMAR  Supply Support Tasks: SOW 5.2.6  Note: SOW also includes identification of Engineering Support and Training Support Tasks; refer SOW sections 5.2.4 and 5.2.7 respectively. These also apply DID-ILS-DES-TAR.
301.2.5	Design Alternatives			Conceptual design alternatives by Commonwealth, pre-specification: N/A.  Contractor: As normal part of system development Specific requirements contained in LCC clauses (SOW 3.11)  Review at Mandated System Reviews, refer Task 103 / LM3 above.
301.2.6	Updates	FL2.6	Update	DID-ENG-DEF-SS DID-ILS-DEF-SSSPEC DID-ILS-DES-TAR DID-ILS-TDATA-LSAR

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
302	Support System Alternatives	FL6	Support System Alternatives	<p>DID-ILS-MGT-ISP (conduct of study) SOW 5.2.2.3</p> <p>System-level design activities (leading through to SDR) will occur in conjunction with analysis of FPS/OCD, leading to finalisation of DID-ILS-DEF-SSSPEC and update to OCD. Support System Alternatives will be reviewed at Mandated System Reviews (particularly SRR and SDR).</p> <p>Normal analysis will be as per ISP; however, specific issues may be analysed as per Commonwealth-directed trade studies, refer: SOW 2.6 DID-ILS-DES-SUPTSR Annex required to be attached to SOW for clause 2.6, template included in guidance/handbook.</p> <p>Commonwealth-directed trade studies into Support System Alternatives must be focussed on aspects of the individual project. Implementation IAW approved ISP or SEMP, as applicable.</p>
303	Evaluation of Alternatives and Trade Off Analysis			<p>General: SOW 3.11 DID-PM-LCC-LCCMP DID-PM-LCC-LCCRM</p>
303.2.1	Tradeoff Criteria	FL7.1, PL2.1	Determine evaluation and Tradeoff Criteria, Determine Tradeoff Criteria	Identified through ISP, individual plans, LCC DIDs and, if specified, through Commonwealth-directed trade studies.
303.2.2	Support System Tradeoffs	FL7.3	Determine Support System Requirements	<p>Undertaken as part of system-design activities for the Support System IAW ISP. Ongoing liaison/discussion between Commonwealth and Contractor, with major review at Mandated System Reviews (SOW 5.2.2.3 refers).</p> <p>Specific issues may be addressed during Commonwealth-directed trade studies into the Support System.</p> <p>Results for Commonwealth-directed trade studies recorded via DID-ILS-DES-SUPTSR; otherwise, results recorded IAW Approved ISP.</p>
303.2.3	System Tradeoffs	FL7.2	Determine System Supportability Requirements	<p>Conducted as part of the SE program for the Mission System: SOW 4.6.1, 4.6.2, and 4.6.3.</p> <p>Results recorded IAW SEMP or ISP, as applicable.</p>

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
303.2.4	Readiness Sensitivities	FL7.2, FL7.6	Perform Sensitivity and Risk Analysis	<p>Impact on preparedness of the Mission System based on Supportability to be assessed through RM&amp;T section (SOW 4.6.2) and, if specified, through Commonwealth-directed trade studies. Results IAW DID-ENG-MGT-IRMTP and DID-ILS-DEF-SUPTSR, respectively.</p> <p>Preparedness aspects of the Support System are integral to the system design. Synthesis processes (particularly spares optimisation) are likely to result in cost/benefit/risk trade-off analyses being conducted with respect to preparedness.</p> <p>For risk, refer SOW 3.6 and DID-PM-RISK-RMP.</p>
303.2.5	Manpower and Personnel Tradeoffs	FL7, PL2	Requirements Evaluations and Tradeoffs and Resource Evaluations and Tradeoffs	<p>Personnel requirements defined through the design process for each of the Support System Constituent Capabilities. Results documented in DID-ILS-DES-TAR (option 2) or in LSAR.</p> <p>Tradeoffs between Mission System design and personnel requirements conducted as part of design activities for Mission System IAW SEMP.</p> <p>Tradeoffs for individual ILS elements considered through LORA, and IAW ISP and applicable ILS Element Plans, as well as through Commonwealth-directed trade studies for specific issues (if specified).</p> <p>Analysis through synthesis process (SOW 5.2.8.8 refers). Results via DID-ILS-PERS-PRRL</p>
303.2.6	Training Tradeoffs	FL7, PL2	Requirements Evaluations and Tradeoffs and Resource Evaluations and Tradeoffs	<p>Personnel competency requirements defined through the design process for each of the Support System Constituent Capabilities. Results documented in DID-ILS-DES-TAR (option 4) or in LSAR.</p> <p>Tradeoffs for individual ILS elements considered IAW ISP and DID-ILS-TNG-TSP, as well as through Commonwealth-directed trade studies for specific issues (if specified) (e.g. use of CBT).</p> <p>Analysis via SOW 5.2.7 and 5.2.8.4 Analysis/Tradeoffs via DID-ILS-DES-TNAR</p>
303.2.7	Level of Repair Analysis	PL1.4, PL2	Optimise Task Attributes	<p>SOW 5.2.5.3 Results via DID-ILS-DES-LORAR, and integration with other analysis through DID-ILS-TDATA-LSAR or DID-ILS-DES-TAR.</p>

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
303.2.8	Diagnostic Tradeoffs	FL7, PL2	Requirements Evaluations and Tradeoffs and Resource Evaluations and Tradeoffs	<p>Diagnostic trade-offs for the Mission System conducted as part of IRMT program IAW DID-ENG-MGT-SEMP and DID-ENG-MGT-IRMTP.</p> <p>Tradeoffs for individual ILS elements considered through LORA, and IAW ISP and applicable ILS Element Plans, as well as through Commonwealth-directed trade studies, for specific issues (if specified).</p> <p>Tradeoff results impact output product: DID-ILS-S&amp;TE-S&amp;TEPL.</p>
303.2.9	Comparative Evaluations	FL7.4	Determine Comparative Baseline	Related to Task 203/FL3, refer Task 203/FL3 above.
303.2.10	Energy Tradeoffs	FL2	Requirements Evaluations and Tradeoffs	<p>Energy trade-offs for Mission System conducted as part of normal design processes IAW DID-ENG-MGT-SEMP. If specified as a Mission System supportability-related design factor, conducted IAW clause 4.6.3.3.</p> <p>Energy trade-offs for Support System Components (e.g. S&amp;TE, Training Equipment, and Facilities) conducted as part of the design processes for the individual components.</p> <p>Specific issues may be addressed through Commonwealth-directed trade studies.</p>
303.2.11	Survivability Tradeoffs	FL7, PL2	Requirements Evaluations and Tradeoffs and Resource Evaluations and Tradeoffs	<p>If applicable to individual project, survivability trade-offs for Mission System conducted as part of normal design processes IAW DID-ENG-MGT-SEMP. If specified as a Mission System supportability-related design factor, conducted IAW clause 4.6.3.3.</p> <p>Survivability trade-offs for Support System Components (e.g. S&amp;TE, Training Equipment, and Facilities) conducted as part of the design processes for the individual components.</p> <p>Specific issues may be addressed through Commonwealth-directed trade studies.</p>

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
303.2.1 2	Transportability Tradeoffs	FL7	Requirements Evaluations and Tradeoffs	<p>Transportability trade-offs for Mission System conducted as part of normal design processes IAW DID-ENG-MGT-SEMP. If specified as a Mission System supportability-related design factor, conducted IAW clause 4.6.3.3.</p> <p>Transportability trade-offs for Support System Components (e.g. Spares and S&amp;TE) conducted as part of the design processes for the individual elements. (DID-ILS-DEF-SSSPEC includes Support System transportability requirements)</p> <p>Specific issues may be addressed through Commonwealth-directed trade studies.</p>
303.2.1 3	Support Facility Tradeoffs	FL7, PL2	Requirements Evaluations and Tradeoffs and Resource Evaluations and Tradeoffs	<p>Facilities elements are an optional component of ASDEFCON (Strategic Materiel) because Facilities are normally acquired by CSIG using Green Book funding. Nevertheless, the design process for both the Mission System and Support System will need to consider the constraints imposed by any externally provided Facilities.</p> <p>Facilities requirements defined through the design process for each of the Support System Constituent Capabilities. Results documented in DID-ILS-DES-TAR (option 2) or in LSAR. Synthesis through SOW 5.2.8.7.</p> <p>Tradeoffs between Mission System design and facilities requirements, if required, conducted as part of design activities for Mission System IAW SEMP.</p> <p>Tradeoffs for individual ILS elements considered through LORA and IAW ISP and Facilities Plan, DID-ILS-FAC-FACP, as well as through Commonwealth-directed trade studies for specific issues (if specified).</p> <p>Results via DID-ILS-FAC-FRAR.</p>

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
<b>401</b>	<b>Task Analysis</b>	<b>PL1</b>	<b>Task Analysis</b>	
401.2.1	Task Analysis	PL1.2	Determine Task Characteristics	Operations, Maintenance and Supply Support: DID-ILS-DES-TAR (options 3 to 4) DID-ILS-TDATA-LSAR  Operations Tasks: SOW 5.2.3.2 to 5.2.3.4  Maintenance Tasks: SOW 5.2.5.2 to 5.2.5.6  Supply Support Tasks: SOW 5.2.6.2 to 5.2.6.4  SOW also includes: Engineering Support: SOW 5.2.4.2 to 5.2.4.4 Training Support: SOW 5.2.7.2 to 5.2.7.4 DID-ILS-DES-TAR (options 3 to 4) applicable to these also.
401.2.2	Analysis Documentation	PL1.5	Document Task Analysis	As above.
401.2.3	New/ Critical Support Resources	PL1.3	Identify New and Critical Resources	Included in the following sections:  Operations Tasks: SOW 5.2.3.2  Maintenance Tasks: SOW 5.2.5.4  Supply Support Tasks: SOW 5.2.6.2  SOW also includes: Engineering Support: SOW 5.2.4.2 Training Support: SOW 5.2.7.3  Identify critical Support Resources through risk register SOW 3.6 and DID-PM-RISK-RMP. Also, LLTI analysis and review.

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
401.2.4	Training Requirements and Recommendations	PL1 PL3	Task Analysis  Definition of Resource Package  Both Activities includes all ILS element products, no Activity Steps for individual elements.	Requirements included in the following sections:  Operations Tasks: SOW 5.2.3.4  Maintenance Tasks: SOW 5.2.5.6  Supply Support Tasks: SOW 5.2.6.4  SOW also includes: Engineering Support: SOW 5.2.4.4 Training Support: SOW 5.2.7.5  Analysis via SOW 5.2.7 and 5.2.8.4, and recommendations delivered IAW DID-ILS-DES-TNAR, with recommended resources via DID-ILS-TNG-TEML and DID-ILS-PERS-PRRL.
401.2.5	Design Improvements	LM3	Management and Analysis Reviews	Through development (particularly SOW 5.2.8) and review process. Refer Mandated System Reviews.
401.2.6	Management Plans	PL3.4	Document in Management Plans.	New/critical items required are managed IAW ISP or ILS Element Plans, refer DID-ILS-MGT-ISP.  LLTIs subject to separate Mandated System Review: LLTIR.  Management of transition of these items through Commonwealth Transition Plan and, for Contractor, through DID-PM-TRANS-CTXP, refer also Task 402/PL4.
401.2.7	Transportability Analysis	PL1 PL3	Task Analysis  Definition of Resource Package  Both Activities includes all ILS element products, no Activity Steps for individual elements.	Analysis covered under normal system design activities for both the Mission and Support System, with results transferred to specification, either DID-ENG-DEF-SS or DID-ILS-DEF-SSSPEC. Operational Tasks SOW 5.2.3 and Supply Support Tasks SOW 5.2.6 are applicable.

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
401.2.8	Provisioning Requirements	PL3.3	Identify Provisioning Requirements	Contractor results of SOW 5.2.8 delivered via recommended resource lists: DID-ILS-SUP-RSPL DID-ILS-SUP-LLTIL DID-ILS- S&TE-S&TEPL DID-ILS-SUP-PACKPL DID-ILS-TNG-TEML DID-ILS-TDATA-TDL
401.2.9	Validation	SA2.3 SA3.3 SA3.4	Assess Requirements Allocation  Review Logistic Data  Review Logistic Products	DID-ILS-TDATA-LSAR DID-ILS-DES-TAR (option 2)  SOW Section 8, V&V  SOW Section 9, Quality Assurance  Includes involvement in Configuration Audits SOW 6.7.



MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
401.2.1 0	ILS Output Products	PL3		<p>Output products include provisioning lists, implementation plans, maintenance plans, technical manuals, training course material, etc. Delivery via:</p> <p>LSAR (which may be used in the production of output products): SOW 5.3.3.7 DID-ILS-TDATA-LSAR</p> <p>Personnel: SOW 5.2.8.8 DID-ILS-PERS-PRRL</p> <p>Supply Support (spares): SOW 5.2.8.2 DID-ILS-SUP-RSPL</p> <p>Packaging: SOW 5.2.8.3 DID-ILS-SUP-PACKPL</p> <p>Training and Training Support: SOW 5.2.8.4 DID-ILS-DES-TNAR DID-ILS-TNG-TEML</p> <p>Tech Data: SOW 4.5.1, 4.5.4, 5.2.8.5, 5.3.3.4, 5.3.3.6 and 6.2 DID-ENG-SOL-DOCTREE DID-ENG-SOL-DWGS DID-ILS-TDATA-TDL DID-ILS-TDATA-PUBPACK DID-ILS-TDATA-CDL DID-CM-DATA-MRI</p> <p>Support &amp; Test Equipment: SOW 5.2.8.6 DID-ILS-S&amp;TE-S&amp;TEPL</p> <p>Facilities: SOW 5.2.8.7 DID-ILS-FAC-FRAR</p>
401.2.1 1	LSAR Updates	PL1.6	Update	DID-ILS-TDATA-LSAR

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
401.2.1 2	Provisioning Screening			DID-ILS-TDATA-CDL Contractor input conducted IAW relevant ILS element plans.  RSPL Checklist (TBD) S&TEPL Checklist (TBD) TEML Checklist (TBD)
402	Early Fielding Analysis	PL4	Transition Analysis	Commonwealth task to prepare ADF units for transition. Contractor Transition tasks through SOW 3.12 "Transition into Operational Service". DID-PM-TRANS-CTXP
403	Post Production Support Analysis	PL5	Post Production Support Analysis	
403.2	Post Production Support Plan			Analysis process provides some input to: DID-PM-TRANS-CTXP.
501	Supportability Test, Evaluation and Verification	SA1-3	Supportability Assessments	<b>Note: In ASDEFCON, effectiveness and supportability are integrated in the one Verification and Validation program.</b>
501.2.1	Test and Evaluation Strategy	SA1	ST&E Strategy	SOW 3.10. Commonwealth ST&E Strategy documented in TCD translates (through SOW) to Contractor requirements in V&V Plan and VCRM for both Mission System (supportability related requirements) and Support System.  SOW 7.1.2 for DID-V&V-MGT-V&VP. SOW 7.1.3 for DID-V&V-DEF-VCRM.

MIL-STD-1388-1A Task/Subtask		DEF(AUST)5691 Activities		ASDEFCON(Strategic Materiel) Reference
501.2.2	System Support Package Component List	SA3.1		General: SOW 7, conducted IAW: DID-V&V-MGT-V&VP DID-V&V-TST-ATPLAN DID-V&V-TST-ATPROC DID-V&V-DEF-VCRM Results via: DID-V&V-TST-ATREP  Operational Support effectiveness conducted as part of Mission System Validation.  Engineering Support Effectiveness: SOW 7.2.3.2  Maintenance Support Effectiveness: SOW 7.2.3.3  Supply Support Effectiveness: SOW 7.2.3.4  Training Support Effectiveness: SOW 7.2.3.5
501.2.3	Objectives and Criteria	SA3.2		DID-V&V-MGT-V&VP DID-V&V-DEF-VCRM  Reviewed for test readiness at TRRs IAW SOW 7.1.4
501.2.4	Updates and Corrective Actions			DID-V&V-MGT-V&VP DID-V&V-TST-ATREP  SOW 7.1.6 (Failure Reporting and Analysis) and 7.1.7 (Regression Testing)
501.2.5	Supportability Assessment Plan (Post Deployment)	SA4		Support System Endurance, applicable to Acceptance V&V against performance guarantee, SOW 7.2.3.6. Does not apply to acceptance into service testing unless this has been made contractually binding on the Contractor.
501.2.6	Supportability Assessment (Post Deployment)	SA4		As above.
		<b>PL6</b>	<b>Disposal Analysis</b>	SOW 5.2.6.5 Provides input to DID-ILS-DES-DISP.



## ANNEX C – TECHNICAL DATA

This annex provides a more detailed life-cycle thread, looking at a specific process (i.e. Technical Data) through the capability development and acquisition phases of the life-cycle.

### Objectives

The objectives of the Technical Data requirements of the ASDEFCON (Strategic Materiel) RFT Template are to:

- a. integrate the Technical Data requirements with the Intellectual Property (IP) requirements to the maximum practicable extent (to ensure that there are no overlaps, gaps or inconsistencies);
- b. obtain visibility into each tenderer's Technical Data baseline at the time of tendering;
- c. ensure that the scope of development for Technical Data under the contract is understood by all parties and captured at the time of contract award;
- d. align with the principles of clear accountability in design between the Commonwealth and the Contractor;
- e. provide a manageable workload for each Commonwealth project office;
- f. provide visibility into, and enable monitoring of, the Contractor's developmental activities for both the Mission System and the Support System;
- g. ensure that the design and development of the Support System in the domain of Technical Data is complete, coherent and consistent, and meets the Commonwealth's requirements (e.g. with respect to delivery, format, content, etc) at a minimised Life Cycle Cost (LCC);
- h. ensure that the Commonwealth's In-Service support requirements are not compromised through lack of visibility into Technical Data as the designs of the Mission System and Support System progress or through lack of appropriate rights or access to Technical Data during the In-Service phase;
- i. ensure that the Technical Data baseline is updated regularly throughout the contract as the designs of the Mission System and Support System progress, and that the division of Technical Data between the Commonwealth, Contractors, Subcontractors, escrow, etc is understood and agreed by the Commonwealth as the Technical Data baseline develops; and
- j. determine that Australian Industry Involvement (AII) objectives and obligations will be met through appropriate access to Technical Data by in-country support contractors.

### Scope of Technical Data

Under the ASDEFCON (Strategic Materiel) RFT Template, the logistics concept of Technical Data has been unified with the Intellectual Property (IP) concept of Technical Information, with the following definition, which embraces both concepts, being utilised:

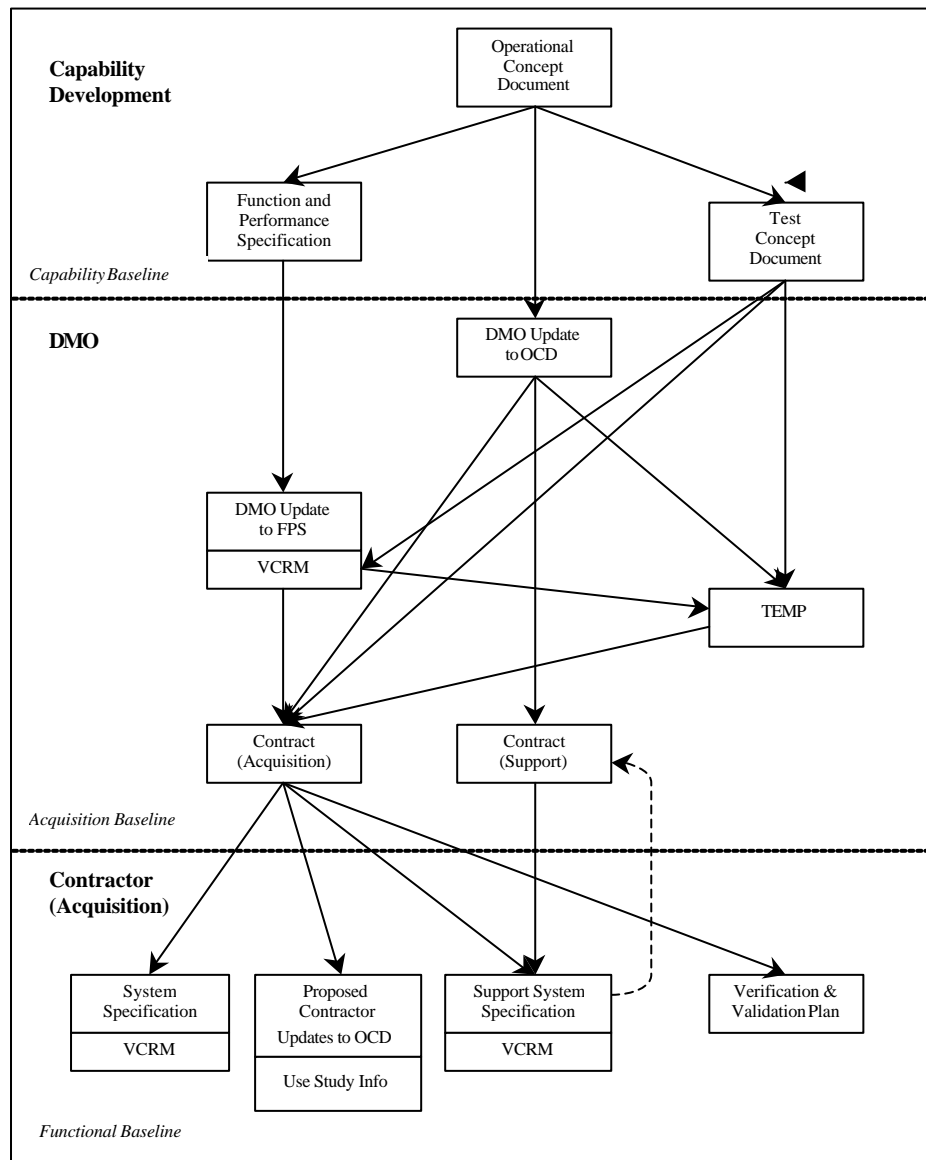
**“Technical Data** means all technical know-how and information reduced to material form produced or acquired by the Contractor or Subcontractors in relation to the Supplies and includes all data, manuals, handbooks, designs, standards, specifications, reports, writings, models, sketches, plans, drawings, calculations, software, Source Code, Software Design Data, Software Updates and other items describing or providing information relating to the Supplies or other operations.”

As can be seen from this definition, Technical Data embraces considerably more than the items listed in the contract Data Requirements List (CDRL), which only includes those items of Technical Data that are required to be delivered to the Commonwealth. Under the Support System concept embraced by the RFT Template, the supply chain is given increased emphasis. This focus on the supply chain provides an avenue for gaining increased visibility into the roles and responsibilities of all of the entities that will be responsible for the provision of support, including the Commonwealth, Contractors(LS) and Subcontractors(LS). Alignment of these roles and responsibilities with IP rights and/or access is an important consideration in the development of the Support System and, as such, the Technical Data provisions of the RFT Template have been drafted to provide the requisite insight as the designs of both the Mission System and Support System progress.

For all projects, other than those for which the complete Supplies are completely off-the-shelf (i.e. not just the components are off-the-shelf), the full scope of Technical Data associated with the Mission System and Support System will not be known at the time of contract award. As such, the RFT Template provides a number of mechanisms for documenting the known scope of Technical Data at strategic points in times (e.g. contract award) and allowing for regular updates as the contract progresses. In this way, Commonwealth project offices can better monitor and manage the Technical Data program, and can be more proactive in addressing issues because these issues can now be addressed as they arise.

#### Technical Data Processes – Introduction

The Technical Data processes are one element of the overall set of processes for the development of the Mission System and Support System, the early phases of which are illustrated in the following diagram:



In the pre-RFT stage of the acquisition process, the support concepts are documented in the Operational Concept Document (OCD), while the support requirements are documented in the Function and Performance Specification (FPS). These two key documents define, inter alia, the division of support responsibilities between the Commonwealth and industry, as well as defining any requirements for Australian Industry Involvement (AII). (Of note, the RFT Template utilises the default position that the Logistics Support Concept and the Use Study have been incorporated into the OCD.) The division of support responsibilities provides one of the key, initial inputs into the design of the Support System and, from a Technical Data perspective, provides the frame of reference for determining those items of Technical Data that must be delivered to the Commonwealth to enable it to undertake its defined support responsibilities, as well as to the In-Service Support contractors and subcontractors to enable them to undertake their required support responsibilities.

The OCD and FPS are included as part of the acquisition contract and provide inputs into the Contractor's system-level design processes. Initially, the Contractor will undertake a system-level requirements analysis to divide the FPS into two specifications: one for the Mission System and one for the Support System. The Contractor undertakes this requirements-analysis process to:

- k. ensure that there is a common understanding of the requirements between the parties;

- l. validate the requirements (i.e. to ensure that the requirements are sound and that the requirement set is complete, consistent, coherent, feasible, etc); and
- m. ensure that the specifications are consistent with the operational and support concepts documented in the OCD.

From a Technical Data perspective, therefore, this requirements-analysis process is essential in helping to refine and define the scope of the Technical Data program. Furthermore, the resultant Support System Specification (SSSPEC) is a key document in ensuring that the Technical Data needed by the Commonwealth to undertake its defined support activities will be provided:

- n. with the right content,
- o. in the right formats,
- p. in the quantities required, and
- q. at the locations required.

During the design processes for both the Mission System and the Support System, the Contractor is required at each Mandated System Review (e.g. SRR, SDR, PDR, DDR and SSDDR) to demonstrate to the Commonwealth that its developmental processes will result in a combined solution that minimises Life Cycle Cost (LCC) while meeting the other requirements of the contract (clause 3.11 of the SOW refers). As the design progresses, Technical Data becomes better defined (particularly the Technical Data that will be delivered under the CDRL) until, at SSDDR, it would be expected that the complete scope of Technical Data would be known. While the complete scope might be known at SSDDR, there will be a certain amount of Technical Data associated with the production of the Mission System and Support System, which will not be available until well after the design is “frozen” at DDR/SSDDR.

Given that the SOW is written in outcome terms, the Contractor is only required (under the non-IP sections of the SOW) to deliver to the Commonwealth those items of Technical Data that are necessary to enable the Commonwealth to meet its support responsibilities. In this context, delivery does not include placing any Technical Data into escrow. As such, the IP sections of the SOW need to define any additional Technical Data for which the Commonwealth could require access throughout the Life Of Type (LOT) of the Mission System.

At the other end of the design-and-development processes are the activities associated with Verification and Validation. The RFT Template incorporates a series of effectiveness demonstrations, which help to validate that the Technical Data delivered to the Commonwealth is both satisfactory and sufficient to enable the Commonwealth to undertake its defined support functions. Additionally, under these effectiveness demonstrations, the Contractor should be required to demonstrate that all other elements in the supply chain have the Technical Data that they need to perform their future support responsibilities.

#### Technical Data Processes – Mission System Design

The output from undertaking engineering processes is data and documentation. The RFT Template provides a number of mechanisms to enable Commonwealth project offices to gain insight into this engineering data and documentation as it is being developed. In particular, clauses 4.4 and 4.5 of the SOW specify requirements for:

- a. the delivery of a Technical Documentation Tree (DID-ENG-SOL-DOCTREE);
- b. the delivery of the Design Documentation specified in the Technical Documentation Tree (DID-ENG-SOL-DOC);
- c. the delivery of, and access to, a Requirements Traceability Matrix (DID-ENG-TRACE-RTM);

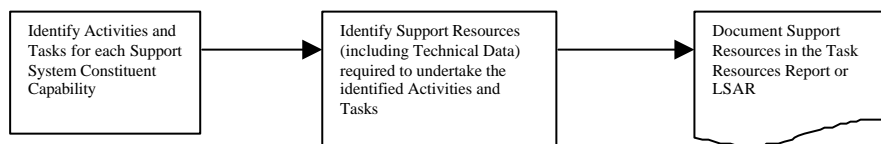


- d. access to an Engineering Information System (EIS);
- e. the delivery of Engineering Drawings (DID-ENG-HW-DWGS); and
- f. the delivery of a Software List (DID-ENG-SW-SWLST).

As can be seen, many of the items in the preceding list are formal CDRL deliverables; however, there are likely to be many items of Technical Data that would not be delivered and may not be maintained by the Contractor or Subcontractors (e.g. engineers' logbooks, trade study reports and the production data pack). A number of these items that would not be delivered would provide source data for the development of formal documentation (such as publications); however, many items are likely to be never used again. The ILS section of the SOW provides for two lists (the Technical Data List (TDL) and the Data Accession List (DAL)), which provide coverage of all Technical Data, including those items that may only have transient value.

#### Technical Data Processes – Support System Design

Once the SSSPEC has been agreed and the system-level architecture for the Support System has been defined, the design of the Support System essentially involves the design of the five Support System Constituent Capabilities of Operational Support, Engineering Support, Maintenance Support, Supply Support, and Training Support. Each of the Support System Constituent Capabilities follows a similar design process, which results in the initial identification of Support Resources (which includes Technical Data), as outlined in the following diagram:



As stated earlier, the Support System embraces the Commonwealth, Contractors(LS) and Subcontractors(LS); hence, this initial identification activity should result in the identification of Technical Data that is required by all of these entities. This outcome is realised through SOW clauses such as 5.2.3.2, 5.2.4.2, 5.2.5.4, 5.2.6.2 and 5.2.7.3, which refer to the definition of “Support Resources”. At this time, this definition only uses the term data, but it is intended to mean Technical Data.

Following the initial identification of Technical Data associated with each of the Support System Constituent Capabilities, clause 5.2.8.5 of the RFT Template requires the Contractor to analyse and synthesise the range and quantity of Technical Data to define a realisable implementation approach to meet the Support System Functional Baseline. Furthermore, clause 6.2.4 of the DID for the Technical Data Plan (TDP) specifies the following with respect to the conduct of the Technical Data requirements analysis:

The TDP shall describe the Contractor's strategy, methodology, and processes to be utilised to undertake a Technical Data requirements analysis, including:

- a. the system for categorising Technical Data based on its intended purpose, origin, management approach or other criteria;
- b. determining the appropriateness of existing Technical Data for use throughout the LOT of the Mission System;
- c. undertaking Continuous Acquisition and Life-cycle Support (CALs) cost-benefit analyses; and
- d. identifying and optimising the range and quantity of Technical Data required under the Contract, including:
  - (1) existing Technical Data that is expected to be suitable without modification,
  - (2) existing Technical Data that is expected to require modification, and

(3) proposed new Technical Data.

As written, this clause only pertains to Technical Data that forms a part of the Support System. As stated earlier, however, there is likely to be a considerable quantity of Technical Data that will not form a part of the Support System. Notwithstanding, the Technical Data List (TDL) and the Data Accession List (DAL) are intended to capture all Technical Data, not just the Technical Data that will form a part of the Support System.

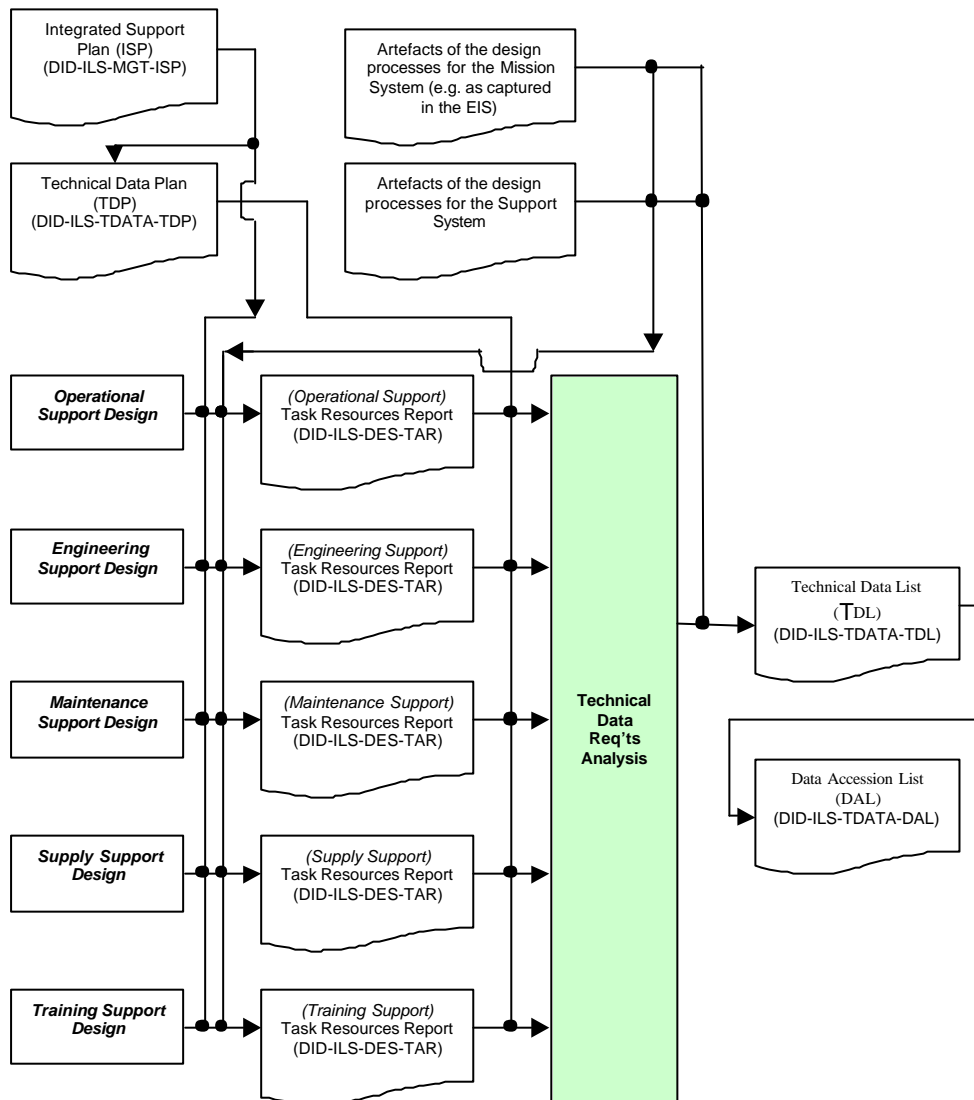
The TDL and the DAL are intended to provide two separate functions, as follows:

- a. The TDL is intended to provide a list of all of the Technical Data associated with the contract.
- b. The DAL is a subset of the TDL and is intended to provide a listing of Technical Data being generated under the Contract, which is not required to be delivered under the contract (with delivery in this context not necessarily including items that will be placed into escrow).

The DAL provides a mechanism for gaining insight into the Contractor's (and Subcontractors') developmental activities, without having formal CDRL items being delivered. The DAL enables the Commonwealth to gain access to those items of Technical Data that are the natural artefacts of the Contractor's developmental processes to assure itself that the design is progressing smoothly and in accordance with the Commonwealth's requirements.

As identified in the DIDs for the TDL and DAL, the Contractor is required to deliver these CDRL items "in database or spreadsheet format, with soft copy tabulated text documents generated as reports from the database or spreadsheet". This approach enables the Commonwealth to search the TDL or the DAL to identify items of interest (e.g. the Commonwealth could be interested, for All reasons, in knowing the set of Technical Data that would reside with a particular Australian Subcontractor(LS)).

The overall process for identifying and documenting Technical Data is illustrated in the following diagram:



The preceding diagram highlights that there are artefacts of the design processes for both the Mission System and Support System that provide inputs into the formal Technical Data developmental processes (and, therefore, will become manifest in engineering drawings and publications), while other artefacts will only be captured in the TDL and DAL. Additionally, there will be items of Technical Data, which will become part of the formal documentation set and will also be separately identified on the TDL and DAL.

While the preceding diagram suggests a highly sequential, top-down process, the actual process is much more likely to be iterative and a combination of both top-down and bottom-up. In practice, the standards for Technical Data (e.g. DEF(AUST) 5629A for technical publications and DEF(AUST) 5085B for engineering drawings) provide the structure and content of many items of Technical Data, and the actual process would be one of identifying which pieces of Technical Data would feed into (for example) a front-line maintenance manual.

Technical Data Processes – Support System Implementation

After all of the Technical Data has been identified, clause 5.3 of the SOW, “Support System Implementation”, requires certain items of Technical Data to be developed and delivered to the Commonwealth, including delivery into escrow (if included in the contract). As highlighted by the Note to Drafters under clause 5.3, this section of the SOW is only concerned with a subset of the Support System, namely:

- a. those Support System Components that will be delivered to the Commonwealth as Supplies under the contract; and
- b. those major Support System Components that will be implemented by the Contractor (or Subcontractors) but not delivered to the Commonwealth as Supplies under the contract; however, the components are considered to be of such significance to the Commonwealth that visibility into their development and implementation is required.

Clause 5.3.3, "Implementation of Technical Data Requirements", therefore, is really only interested in those items of Technical Data that will be delivered to the Commonwealth, including those items that will be placed into escrow. This clause has a number of sub-elements, including requirements for:

- a. General, which includes development or acquisition (as applicable), delivery and maintenance of Technical Data, as specified in the TDL;
- b. DAL (noting that this requirement is not related to the scope of clause 5.3 and, therefore, may be incorrectly located in the SOW);
- c. Publications;
- d. Interactive Electronic Technical Manuals (IETMs) (optional);
- e. Codification Data (optional);
- f. Logistics Support Analysis Record (LSAR) (optional); and
- g. Escrow (optional).

It should be noted that it is not expected that the Commonwealth would be involved in defining the format and content of items of Technical Data that would be placed into escrow; however, the SOW and associated DIDs do not clearly make this differentiation.

As currently drafted, there is a possibility that there will be an overlap between the Technical Data maintenance requirements under the acquisition contract and the equivalent requirements that are almost certain to exist under a Contract(LS). Notwithstanding, the SOW does not mandate that all items of Technical Data have to be maintained (i.e. the Commonwealth Approves the TDL), which enables:

- a. items of Technical Data, which would be the subject of a Contract(LS), to be excluded from the acquisition contract maintenance requirements; and
- b. items of Technical Data, which are only transitory in nature, to also be excluded from these maintenance requirements on agreement by the Project Authority.

Furthermore, given that the DAL is a subset of the TDL, there is no requirement for the DAL to specify Technical Data maintenance requirements because this aspect is covered by the TDL.