

Tendering for Defence Projects

Overview of some key contract, policy and legislative requirements



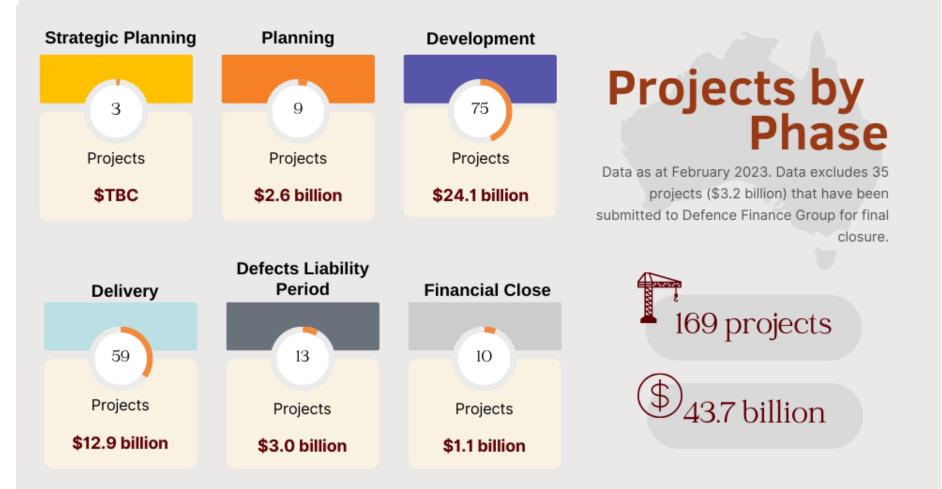
Ese Rainey, Director Program Assurance

20 April 2023

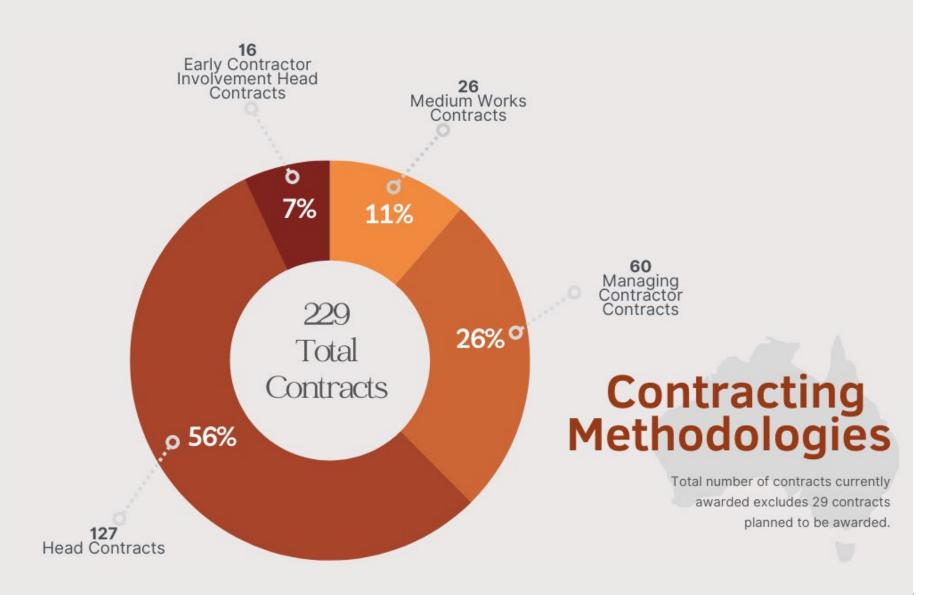
To defend Australia and its national interests in order to advance Australia's security and prosperity www.defence.gov.au



Australian Government Defence









18 Indigenous Prime Contracts Awarded ò 11% 89% 221 Non-Indigenous Prime Contracts

Awarded

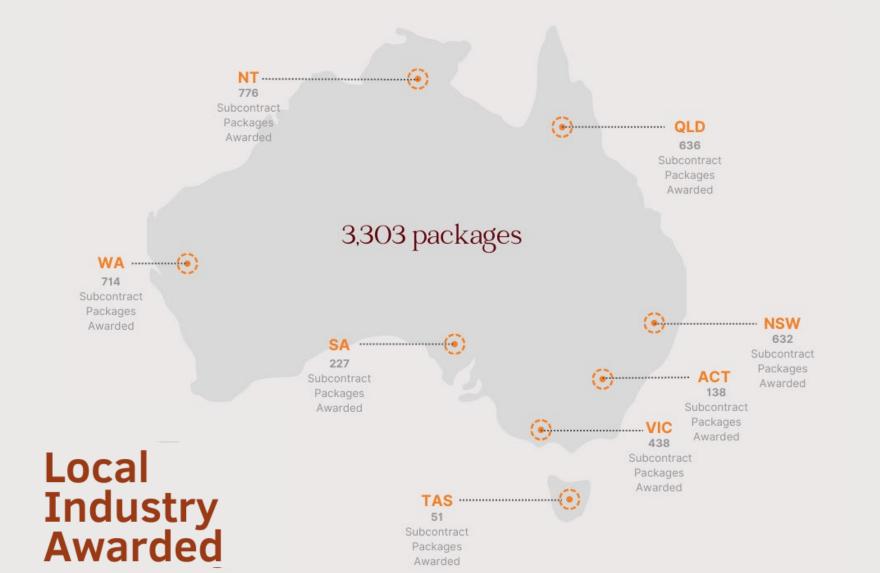
Industry Engagement Indigenous Procurement Policy

Total number of prime contracts awarded under the Indigenous Procurement Policy (IPP).

18 Contracts

\$)_{633.1} million

Australian Government Defence



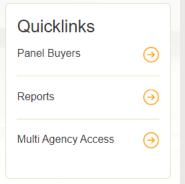


Business Opportunities

All open Approaches to Market are published on AusTender by Australian Government agencies.

Free Notification: Include your area of business interest in your AusTender registration to receive automatic email notification of matched business opportunities as they are published.

Find Business Opportunities



AusTender



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The Consultant must undertake market sounding activities for the purposes of determining the appropriate project delivery methodology and generating market awareness and gauging market interest in the Project. The Consultant must:

- undertake supply chain analysis for the purposes of informing the market sounding activities to be undertaken;
- prepare market sounding documentation in accordance with the format/template provided by the Commonwealth;
- arrange for the upload of the market sounding documentation onto AusTender;
- review and consider all responses received from the market; and
- reflect the outcome of the market sounding activities in the procurement planning documentation for the Project.

Market Sounding



Australian Government

Defence

CFI-2210

ATM ID: CFI-2210 Agency: Department of Defence - DSRG Category: 72100000 - Building construction and support and maintenance and repair services Close Date & Time: 31-Jan-2023 12:00 pm (ACT Local Time) Show close time for other time zones Publish Date: 14-Oct-2022

Location: ACT, NSW, VIC, SA, WA, QLD, NT, TAS Canberra, Sydney, Melbourne, Adelaide, Perth, Brisbane, Darwin, Hobart

ATM Type: Notice

Multi Agency Access: No Panel Arrangement: No Multi-stage: No

> Description: The attached notice provides information on planned upcoming approaches to market that may be released on AusTender by the Department of Defence's Capital Facilities and Infrastructure Branch (CFI) for capital facilities and infrastructure projects (projects).

> > CFI is responsible for planning, developing and delivering projects across the Defence Estate. CFI operates an outsourced model where it procures industry to manage, design, construct and provide specialist skills in support of each project. This typically includes Design Services Contractors, Head Contractors, Medium Works Contractors and Managing Contractors.

Other Instructions: The notice can be accessed by clicking the 'ATM Documents' button. Please note that a response is not required to this notice.

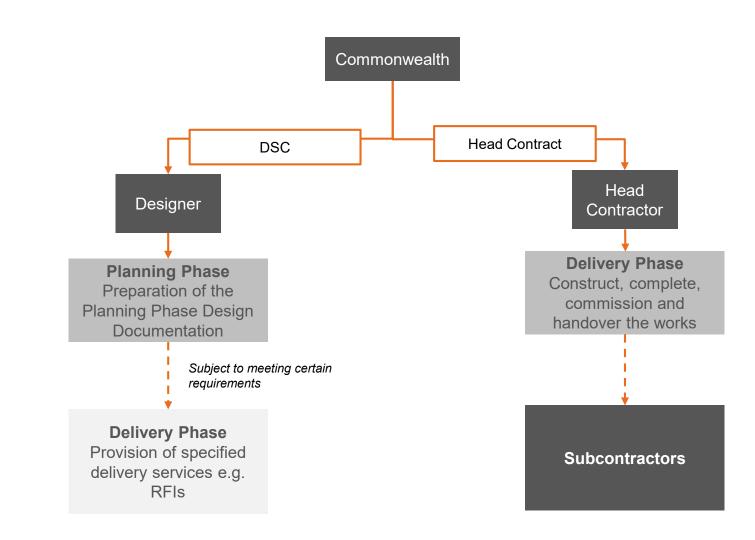
Conditions for Participation: Not applicable

Timeframe for Delivery: Not applicable

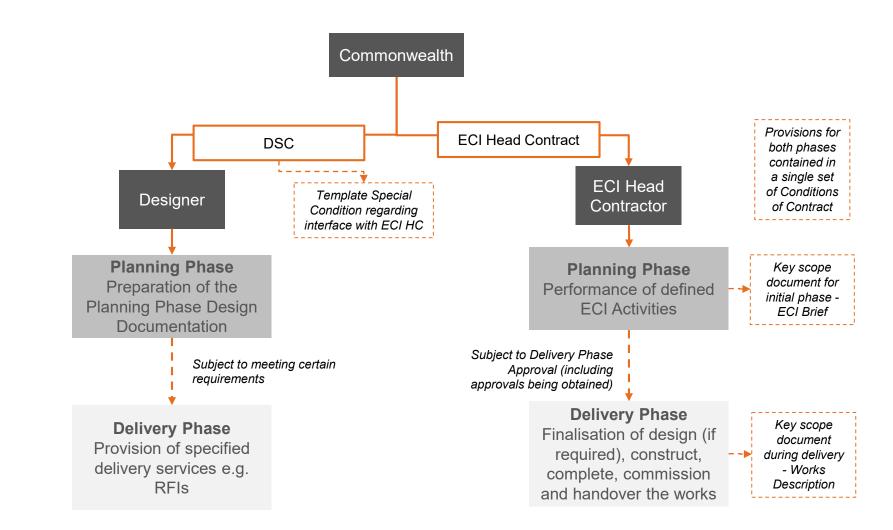
Address for Lodgement: Not applicable

Approaches to Market

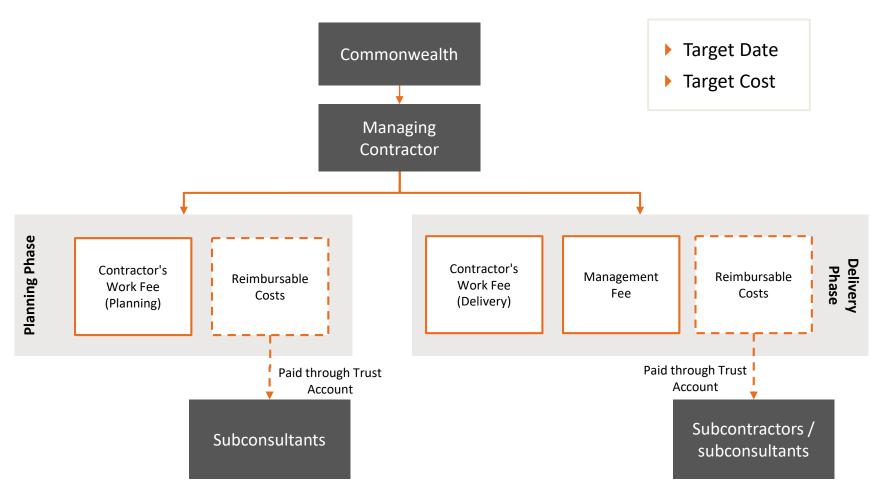












Note:

• Incentives may also be included

• In certain limited circumstances Reimbursable Costs can be paid to the Managing Contractor



Head Contract (HC-1) / Medium Works Contract (MW-2)

Managing Contractor Contract (MCC-1) Early Contractor Involvement Head Contract (ECI HC-1)

- Fixed time regime
- Generally lump sum (with an optional schedule of rates in the HC only)
- D&C and Construct Only options (and "Document and Construct" option in the HC only)

Two phase

- Best endeavours time regime
- Lump sum and reimbursable costs
- D&C

Two phase

- Fixed time / lump sum for the Delivery Phase
- Primarily "Construct Only" with early contractor involvement in the Planning Phase



Key policies / requirements

Commonwealth Procurement Rules (CPRs)	
Indigenous Procurement Policy	
Local Industry Participation	
Shadow Economy Procurement Connected Policy	
Workplace Gender Equality Act	
WHS Accreditation	
Payment Times Procurement Connected Policy	



Commonwealth Procurement Rules (CPRs)

What is the CPRs?

- The foundation of the Commonwealth procurement framework
- The CPRs reflect the Government's policies and expectations for procuring officials and underpin the approach to procurement.

Key requirements

• For particular procurements, the CPRs specify minimum time limits the tendering period, procedures for receipt and opening as well as approach in regards to required conditions and evaluation criteria for tenders.





Local Industry Capability

Defence's expectations

Local industry participation is an expected outcome of Commonwealth expenditure. This expectancy builds on the CPRs, which require procurement practices that do not unfairly discriminate against Small and Medium Enterprises (SMEs) and provide appropriate opportunities for SMEs to compete for Commonwealth funded work.

Local Industry Capability Plan

The Head Contractor / Managing Contractor tenderer will be required to submit a Local Industry Capability Plan as part of its tender

That contractor will need to comply with the proposed approach set out in this plan



Indigenous Procurement Policy (IPP)

What is the IPP?

- Administered by the National Indigenous Australians Agency (NIAA)
- Primary purpose: to stimulate Indigenous entrepreneurship, business and economic development

Policy requirements

- (1) Annual targets for volume and value of contracts awarded to Indigenous Enterprises
- (2) Mandatory Set asides
- (3) Mandatory Minimum Requirements

What this means

 The Managing Contractor / Head Contractor likely have a Indigenous Participation Plan in place, which will impact on the way those contractors will approach the market

Shadow Economy Policy

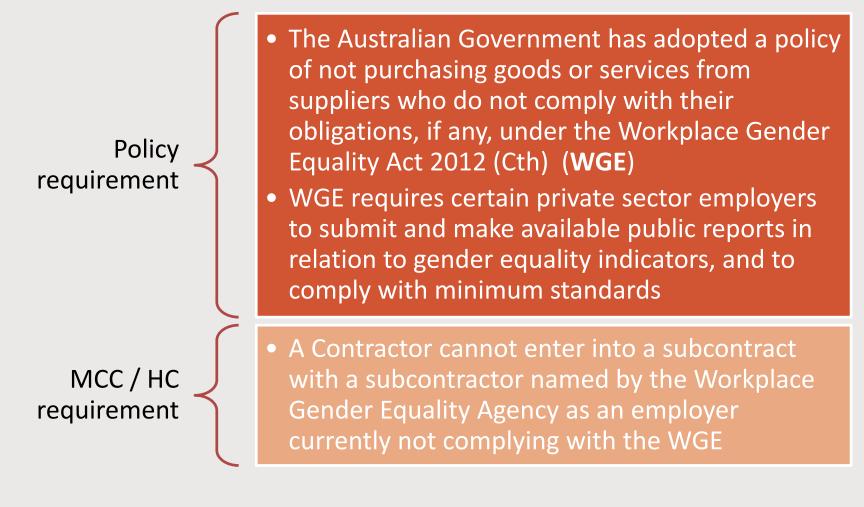
When does it apply?	 All Commonwealth procurements through open tender with an estimate value of over \$4m (incl. GST)
Policy Requirements: Tenderer	 Provide a satisfactory STR valid at time of tender closing; or Provide STR receipt demonstrating STR requested from ATO no later than 4 days from close of tender
Policy Requirements: Subcontractors	 Tenderer must hold copies of satisfactory and valid STRs for first tier sub-contractors that will be engaged to deliver goods and services with an est. value over \$4m (incl. GST)
How to apply for an STR?	 See ATO website for requirements: <u>www.ato.gov.au/business/bus/statement-of-tax-record/</u>

Australian Government

Defence

Workplace Gender Equality

Australian Government Defence



See: www.wgea.gov.au/what-we-do/reporting#tendering-for-government-contracts



WHS Accreditation Scheme

What is it?

• The WHS Accreditation Scheme described in section 43 of the *Federal Safety Commissioner Act 2022* (Cth)

For Managing / Head Contractor Tenderers:

 As at the Award Date, the successful Tenderer must be fully accredited in accordance with the WHS Accreditation Scheme where the value of the works exceed \$4 million

For subcontractors

• Subcontractors do not need to be accredited but will need to comply with the Contractor's WHS management system

See: www.fsc.gov.au/scheme-accreditation



Payment Times Procurement Connected Policy

Aim of policy

 Ensuring suppliers operating in the supply chains of Australian
 Government procurement contracts are not left waiting for payments from large businesses

Requirement of policy

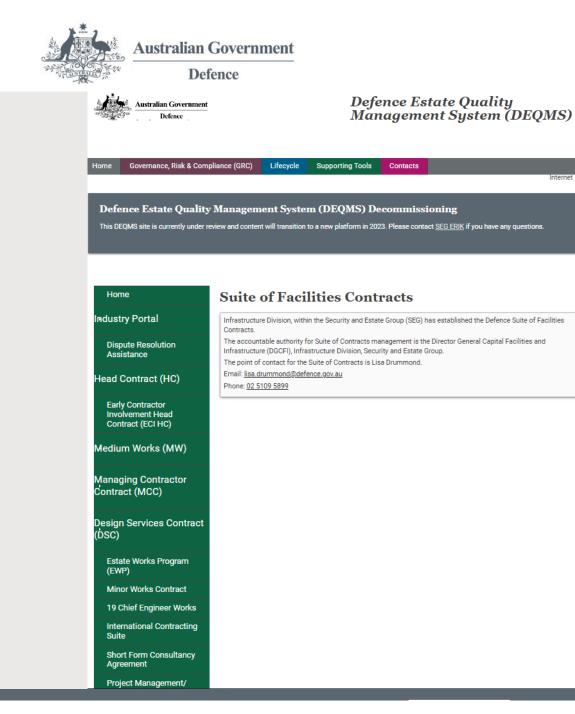
 Large businesses

 (annual income of over \$100 million) awarded
 government contracts
 of over \$4 million will
 be required to pay their
 new subcontracts (up
 to \$1 million) within 20
 calendar days



- Project Approvals
- Spatial Information Management
- Systems / Tools
- <u>Templates</u>

Resources DEQMS



Resources Suite of **Facilities** Contracts

Internet Versior



- Tender Schedule A Draft Project Plans
- Tender Schedule B Proposed Resources
- Tender Schedule C Local Industry Capability Plan
- Tender Schedule D Previous Performance
- Tender Schedule E Program and Minimum Resource Schedule
- Tender Schedule F Indigenous Procurement Policy
- Tender Schedule G Commonwealth Procurement Rules Compliance
- Tender Schedule H Financial
- Tender Schedule I Alternative Proposals
- Tender Schedule J Miscellaneous Matters for Evaluation
- Tender Schedule K Statement of Tax Record
- Tender Schedule L WHS Accreditation Scheme Accreditation





The Tender must be **lodged electronically via AusTender** at tenders.gov.au



The Tender must be **received before the ATM Close Date and ATM Close Time**



The Tender must satisfy each minimum form and content requirement



The Tenderer must, at the time of lodging its Tender, satisfy **each condition for participation** (if any)



- The Tender must remain valid for the duration of the Tender Validity Period, during which period the Tenderer cannot withdraw its Tender
- > The Tenderer must complete and lodge Tender Schedule F Indigenous Procurement Policy
- If clause 32.1 applies, the Tenderer must complete and lodge Tender Schedule L Statement of Tax Record
- The Tenderer is responsible for lodging its Tender in accordance with clause 3.1(a) and managing all surrounding risks, including the use of AusTender and all information technology risks
- The Tenderer must accept (without departure, qualification, amendment, limitation or exclusion) the Contract in Part 5, except:
 - A. subject to subsubparagraph B, to the extent provided for under clause 3.2 and expressly set out by the Tenderer in Tender Schedule I Alternative Proposals; and
 - B. in respect of clauses 5.4 5.9 of the Conditions of Contract only, as expressly set out by the Tenderer in item 1 of Tender Schedule J Miscellaneous Matters For Evaluation



The Commonwealth offers the Tenderer the opportunity to provide alternative proposals in the pursuit of greater value for money

Subject to the Commonwealth's absolute discretion under clause 3.3(b), the Tenderer must lodge a conforming Tender before an alternative proposal will be considered

If the Tenderer wishes to provide any alternative proposals, it must be expressly set out in Tender Schedule I - Alternative Proposals. **This is a minimum form and content requirement for its Tender**

If the Commonwealth (in its absolute discretion) selects or accepts any alternative proposal, the Commonwealth will make any necessary alterations to the Contract in Part 5



The Contractor must provide security to the Commonwealth:

- in the form of Approved Security
- in the amounts specified in the Contract Particulars for the Works or a Stage, and
- within 14 days of the Award Date

Release <u>50%</u> of security held for the Works or a Stage	Release further amount as the Contract Administrator determines to be reasonable	Release the <u>balance</u> of security	
Within 14 days of the issue of a Notice of Completion for the Works or a Stage	Within 14 days of the expiration of the Defects Liability Period for the Works or a Stage (excluding extensions)	Following the latest of: The expiry of the last Defects Liability Period + The Contractor has complied with all its obligations under the Contract	

Subject to any other rights or remedies of the Commonwealth under the Contract or otherwise at law or in equity (including the right of set-off in clause 12.15)



PMCA AS AGENT OF THE COMMONWEALTH

The Contract Administrator will give directions and carry out all of the other functions of the Contract Administrator under the Contract as the **agent** of the Commonwealth (and not as an independent certifier, assessor or valuer)

(Clause 3.1 of the HC-1)



- Variations (clauses 11 and 16.1)
- Delayed Site access (clause 2.3)
- Latent Conditions (clause 7.4) and Latent Hazardous Substances (SC 1)
- Change / variance in Statutory Requirements (clause 8.4)
- Valuable / archaeological items found on Site (clause 8.21)
- Pandemic Adjustment Event (clause 8.29)
- Specified imported items (if applicable) (clause 8.24)
- Testing (in certain circumstances) (clause 9.5)
- Rectification of Defects (in certain circumstances) (clause 9.9(b)(ii)B)
- Delay damages (clause 10.10)
- Provisional Sum Work (clauses 8.7 8.12)
- Suspension (clause 10.11)
- Acceleration (clause 10.14)



Categories to be adjusted	The Special Condition provides for a specified component of the Contract Price (the Labour Component and the Materials Component) to be adjusted
Initial Adjustment Date	Indexation will only apply from the specified date (the proposed default position for new procurements being 12 months from the Award Date)
Adjustment Mechanism	The Special Condition uses a formula/index based approach ABS indices are used as they are well regarded and used by industry, publicly available, frequently updated and relevant to Defence projects and the categories to be adjusted
Timing for adjustment	The Special Condition calculates the Indexation Amount by applying a formula that multiplies the amount of the applicable portion of the Contract Price paid in the previous Quarter by reference to the agreed indices

Clause 22 of the Special Conditions of the HC-1

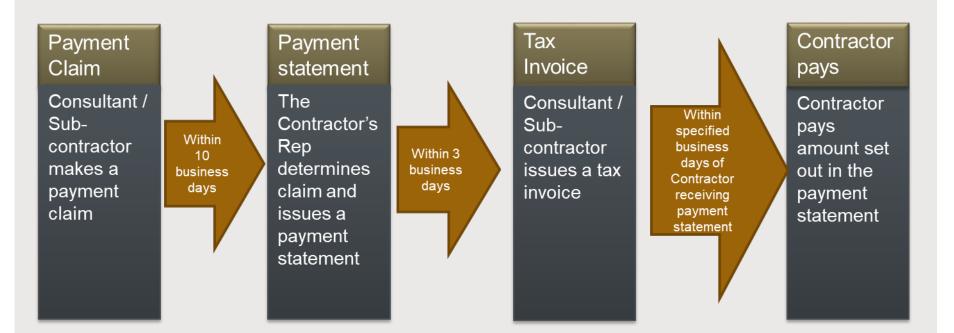


Extension of Time Provisions

- Statewide industrial disputation or other industrial disputation caused by the Commonwealth
- Change or variance in respect of a Statutory Requirement after the Award Date
- Commonwealth Risks
- Latent Conditions
- Valuable / archaeological items found on Site
- Latent hazardous substances
- Pandemic Adjustment Events
- A bushfire, a flood, an earthquake or a cyclone which directly impacts the carrying out of the Contractor's Activities



Payment process under the template subcontracts





Australian Government

Defence

Defence Estate Quality Management System (DEQMS)

Internet Versio

Governance, Risk & Compliance (GRC) Lifecycle Supporting Tools Contacts

Defence Estate Quality Management System (DEQMS) Decommissioning

This DEQMS site is currently under review and content will transition to a new platform in 2023. Please contact SEG ERIK if you have any questions.

Home Industry Portal

Dispute Resolution

Head Contract (HC)

Early Contractor

Involvement Head

Contract (ECI HC)

Medium Works (MW)

Managing Contractor Contract (MCC)

Design Services Contract

Estate Works Program (EWP)

Minor Works Contract

(DSC)

Assistance

Industry Portal

What is the Industry Portal?

The Department of Defence is committed to supporting local industry and SMEs to tender for, and carry out, Defence funded works and services.

The Industry Portal provides information and guidance on particular template contracts used by Defence, as well as certain template subcontracts used by Defence's Managing Contractor to procure works and services.

For completeness, Defence also uses a range of other contract templates to procure works and services, these can be found in the <u>Suite of Contracts page</u>.

Important note: The information provided in the Industry Portal is based on the form of template contract on DEQMS. You should carefully review the provisions in your own contract — which may differ from the template contract. The industry portal is intended to provide general information and is not intended to be relied on as legal advice. Always seek your own legal advices as appropriate.

How will the Industry Portal help you?

If you are submitting a tender for works or services (or are engaged to carry out works or services) under a form of contract listed below - this portal is for you.

Clicking on the links below will take you to a page containing a user manual, an online training video, Frequently Asked Questions and other information.

Template Contracts

19 Chief Engineer Works International Contracting

Suite

Short Form Consultancy Agreement

Project Management/ Contract Administration (PMCA) Minor Works Contract
Short Form Consultancy Apreement

Subcontracts used with the Managing Contractor Contract

Major Works Subcontract (MASC)

Medium Works Subcontract (MESC)

Design Services Subcontract (DSSC)

Industry Portal

"The Department of Defence is committed to supporting local industry and SMEs to tender for, and carry out, Defence funded works and services."



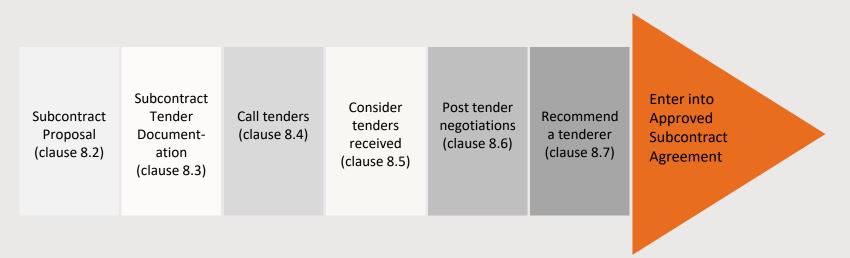
Design Services Subcontract (**DSSC**)

Medium Works Subcontract (**MESC**)

Major Works Subcontract (**MASC**)



- Reimbursable Costs are the aggregate of all amounts properly and actually incurred and payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontract Agreements (subject to certain exceptions)
- Process for engagement of Subcontractors (subject to certain exceptions):





Tendering as a consultant/subcontractor

Issues to consider

- Eligibility to tender as a subcontractor
- How the Managing Contractor/Head Contractor will:
 - liaise with potential consultants / subcontractors during the Managing Contractor/Head Contractor Contract tendering period
 - conduct its tendering process under the Managing Contractor/Head Contractor Contract



Head Contract – Request for Tender

Tender Schedule A - Draft Project Plans

The extent to which the Tenderer has demonstrated that it comprehends key issues and will implement appropriate solutions and management strategies in performing the Contractor's Activities to which the relevant Project Plans relate if it is the successful Tenderer.

Tender Schedule E - Program and Minimum Resource Schedule

The extent to which the Tenderer has demonstrated that it will satisfactorily program and resource the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer.

Response to Industry

Procurement Changes

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Managing Contractor – Request for Tender

Tender Schedule A - Project Understanding

The extent to which the Tenderer has demonstrated that it comprehends key issues, risks and opportunities and will implement appropriate solutions, resources and management strategies in performing the Contractor's Activities, achieving Completion of the Works and otherwise meeting its obligations under the Contract in Part 5 if it is the successful Tenderer, being:

- A. issues, risks and opportunities*; and
- B. draft project plans.

*Limited to 40 A4 Pages or 20 A3 Pages

Tender Schedule E - Program and Minimum Resource Schedule

The extent to which the Tenderer has demonstrated that it will satisfactorily program and resource the Contractor's Activities, achieve Completion of the Works and otherwise meet its obligations under the Contract in Part 5 if it is the successful Tenderer.

Response to Industry

Procurement Changes

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Australian Government

Defence

Business Domain Service Offer

Defence Industry Support

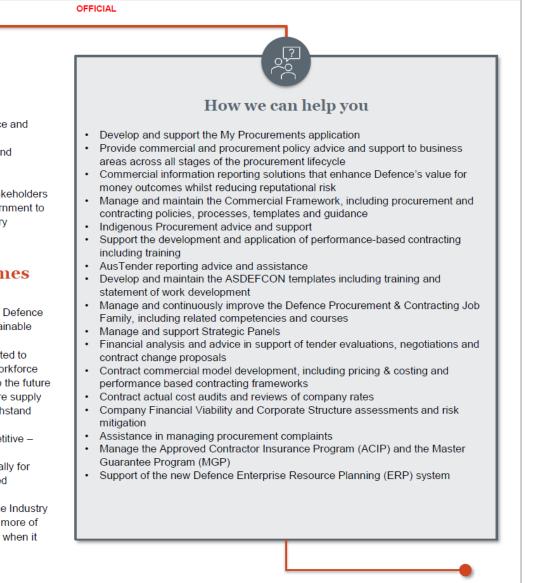
Our purpose is to maximise opportunities for Australian industry, focusing on small to medium enterprises (SMEs) becoming a fundamental input to capability (FIC) to support achievement of Australian Sovereign Industrial Capability Priorities.



- Agile, innovative and responsive to Defence and Industry needs
- Advisory, guidance and mentoring services
- Communication and collaboration with stakeholders in Defence and government to build defence industry capability

Key outcomes

- A stronger Australian Defence Industry – more sustainable and more secure
- Robust well supported to develop the skilled workforce needed now, and into the future
- Resilient with secure supply
- chains that help it withstand future shocks
- Internationally competitive fostering new export opportunities, especially for small-to-medium sized businesses
- An Australian Defence Industry that is able to deliver more of what the ADF needs, when it needs it





Defence Infrastructure Delivery Northern Australia

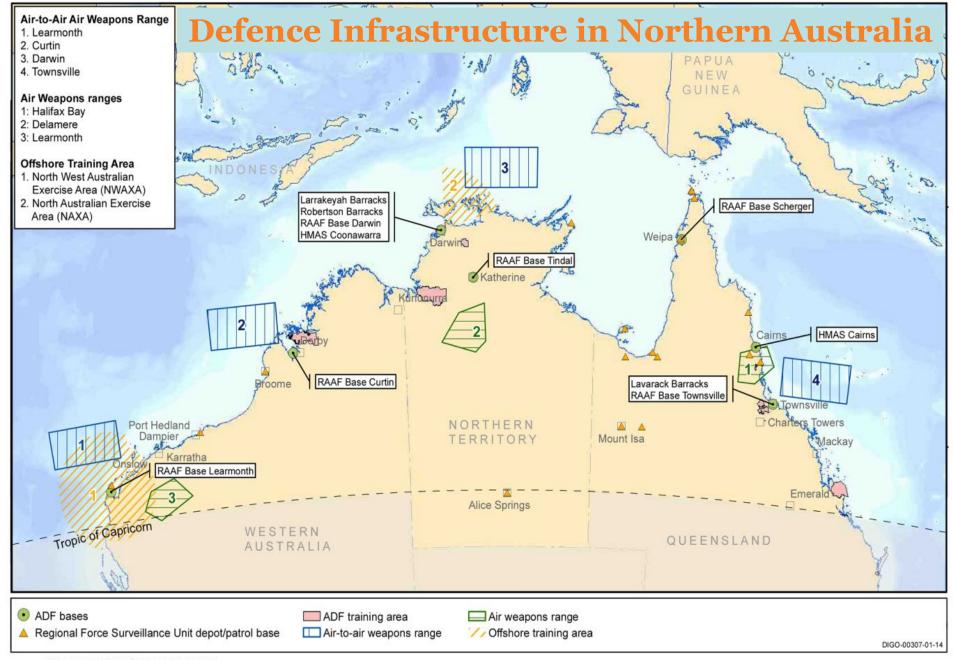


COL Matt Quinn: Director North, Capital Facilities and Infrastructure

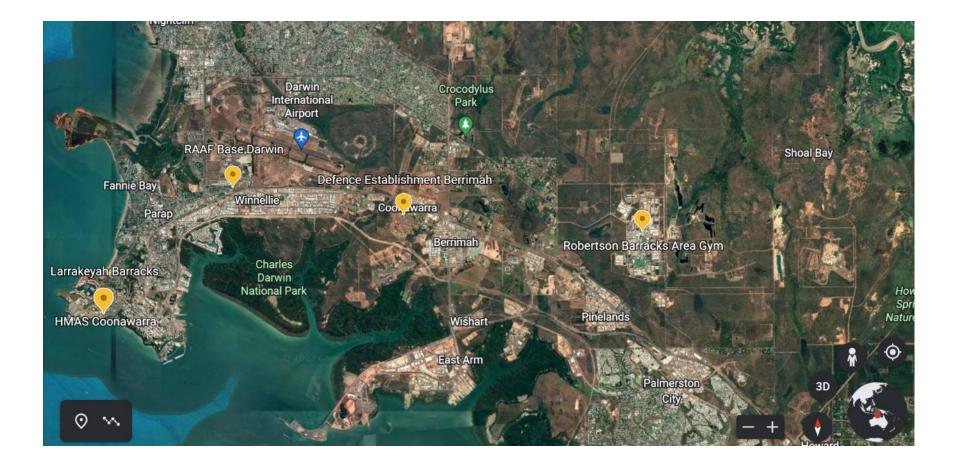
Security & Estate Group, Department of Defence







Darwin Defence Bases



NT Forward Works Program

Major Projects	FY 21/22	FY 22/23	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FY 27/28	
AIR7000 Ph2B P-8A Poseidon	\$143m (RAAF Darwin)								
Larrakeyah Redevelopment	(Larrak	\$520m (Larrakeyah / Coonawarra)							
SEA 1180 Offshore Patrol Vessels	HMAS	\$240m HMAS Coonawarra & RAAF Darwin (EO Storage)							
RAAF Tindal Redev USFPI Airfield Works	\$1,118m RAAF Base Tindal								
USFPI NT Training Areas	\$711m Robertson Barracks, Kangaroo Flats, Mt Bundey, Bradshaw								
AIR7000 PH 1B MQ-4C Triton		\$146m RAAF Base Tindal					*Unapproved projects are indicative only and remain subject to Government 2 nd Pass and Parliamentary		
Robertson Bks Base Improvements		\$338m Robertson Barracks						provals	ary
RAAF Darwin Mid-term Refresh		\$148m RAAF Darwin							
National Airfields Capital Works		\$300m RAAF Darwin / Robertson Bks / Mt Bundey							

Larrakeyah Defence Precinct

- Base Redevelopment (\$510m)
- Status: Construction
- Construction: Late 2018 late 2023
- Contractor: Laing O'Rourke (MC)
- Scope: NORFORCE, New Base Entry, Services Upgrade, Fuel facilities, Wharfing, Working Accn, Gym, Mess



HMAS Coonawarra

- SEA1180 Arafura Class OPV (\$240m) under NCIS Program
- Status: Procurement (NCIS 5 Fremantle Wharf) Development (NCIS 6B – Attack Wharf)
- Construction: Early 2023– mid 2026
- Contractor: NCIS-5 Duratech (HC) / NCIS-6B TBC



Defence Establishment Berrimah

- Base Redevelopment (\$TBC)
- Status: Planning
- Program: TBC
- Scope: TBC Services Upgrades



RAAF Base Darwin

- National Airfields Works RAAF Base Dawin/Mt Bundey (\$300-350m)
- Status: Development
- Construction: Mid 2023 Late 2025
- Contractor: Fulton-Hogan (ECI-HC)



RAAF Base Darwin

- <u>Base Mid-Term Refresh (</u>\$203.4m)
 <u>Secure Multi-User Facility (</u>\$57.4)
- Status: Design Development (30% CDR)
- Construction: Late 2024 to early 2027
- Contractor: Laing O' Rouke (MC)
- Scope: Upgrade Main & Heavy vehicle Entry precincts, Services Upgrade, New Secure Multi-User Facility



Robertson Barracks

- <u>Base Improvements Program (</u>\$389.1 m)
- Status: Design Development RFT May 23
- Construction: Mid 2023– end 2025
- Contractor: TBC (Multiple HC)
- Scope: Living-In Accommodation, Services, Messing Upgrades



Robertson Barracks

- <u>Project SANTAKA (\$218.9m TBC)</u>
- Status: Procurement RFT Release Aug 23
- Construction: Late 23 Late 24
- Contractor: TBC 2 x HC (Construct Only)
- Scope: Elec/Services upgrade, Building upgrades, secure compound extension

NT Training Areas & Ranges

- <u>NT Training Areas & Ranges upgrades</u> (\$747m)
- Status: Construction
- Construction: Feb 2022– Mid 2026
- Contractor: Sitzler (MC)
- Scope: Range and facilities upgrades to Robertson Bks, Kangaroo Flats, Mount Bundey & Bradshaw Field Training Areas



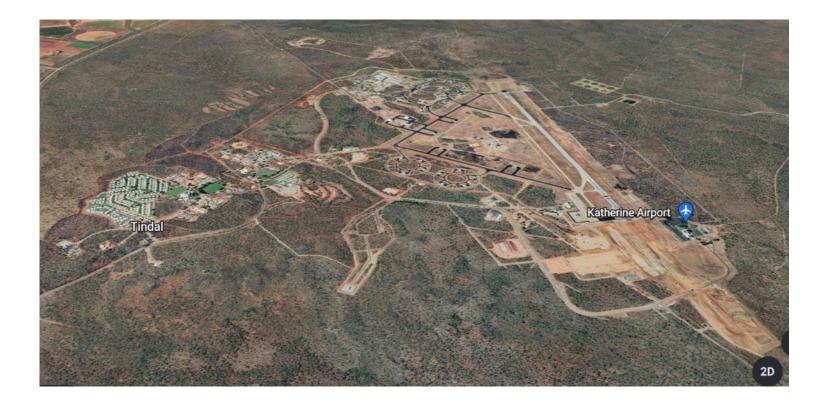
RAAF Base Tindal

- <u>Redevelopment/Airfield Wks</u> (\$1.5bn)
- Status: Construction
- Construction: Sep 2020 Late 2027
- Contractor: Lendlease (MC)
- Scope: Airfield Upgrades, Services, Fuel, Air Terminal, Military Working Dogs



RAAF Base Tindal

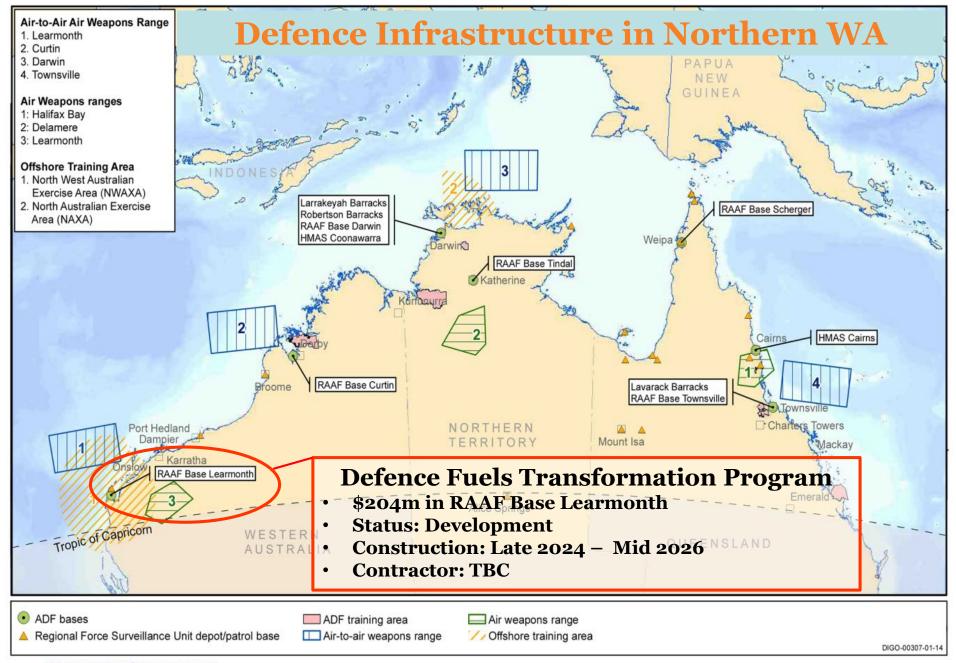
- <u>AIR7000 Ph1B MQ-4C FOB (</u>\$147m TBC at RAAF Base Tindal)
- Status: Procurement
- Construction: Early 2023 Mid 2026
- Contractor: TBC (HC)

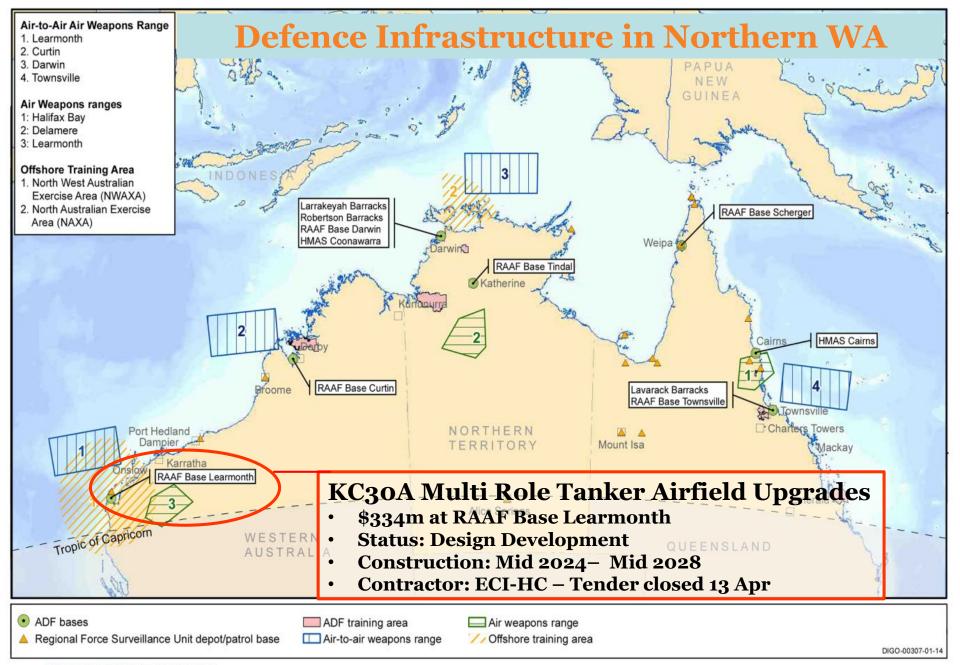


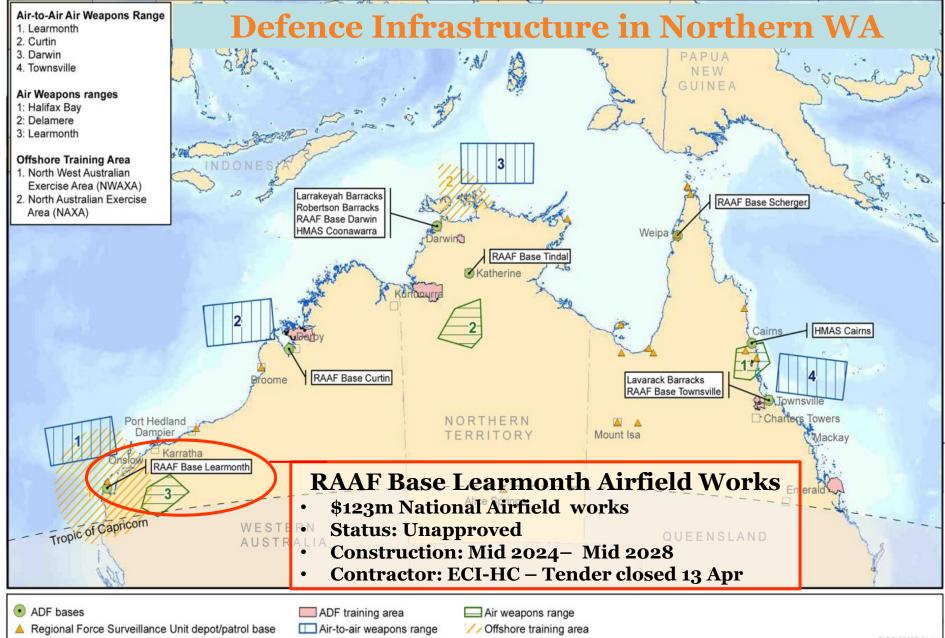
Northern WA Forward Works Program

Major Projects	FY	FY	FY	FY	FY	FY	FY
	22/23	23/24	24/25	25/26	26/27	27/28	27/28
RAAF Curtain Redevelopment			\$24 (RAAF Ba				
RAAF Curtin Airfield Works			(RA				
Defence Fuels Transformation Prog		\$204m DFTP (RAAF Base Learmonth)					
RAAF Learmnoth Airfield Works			(RAAF	23m ⁻ Base nonth)			
KC-30A Multi-role Tanker Upgrades		\$334m (RAAF Base Learmonth)					

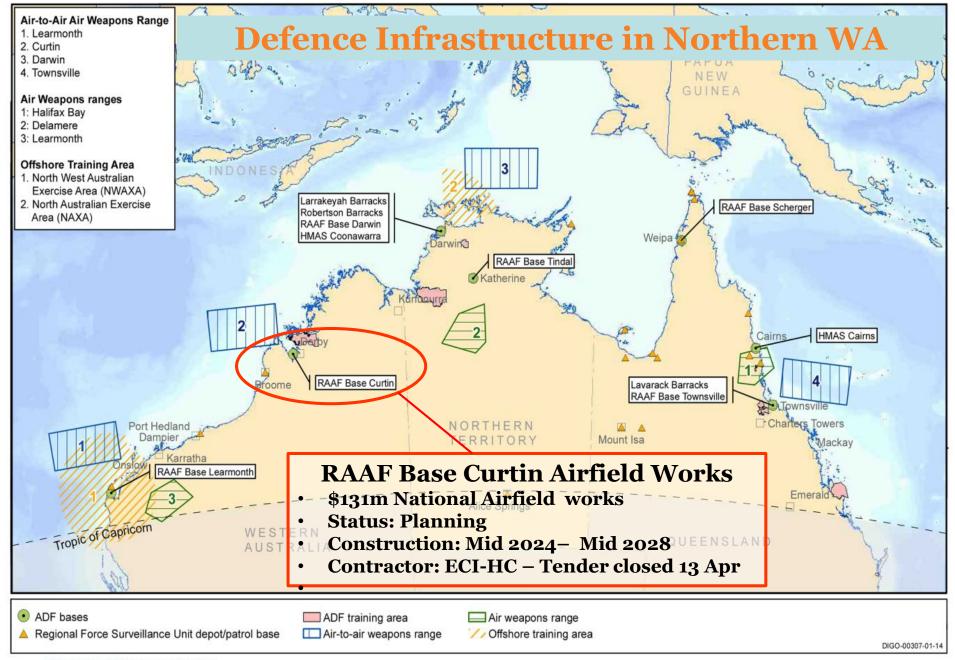
*Unapproved projects are indicative only and remain subject to Government 2nd Pass and Parliamentary Approvals

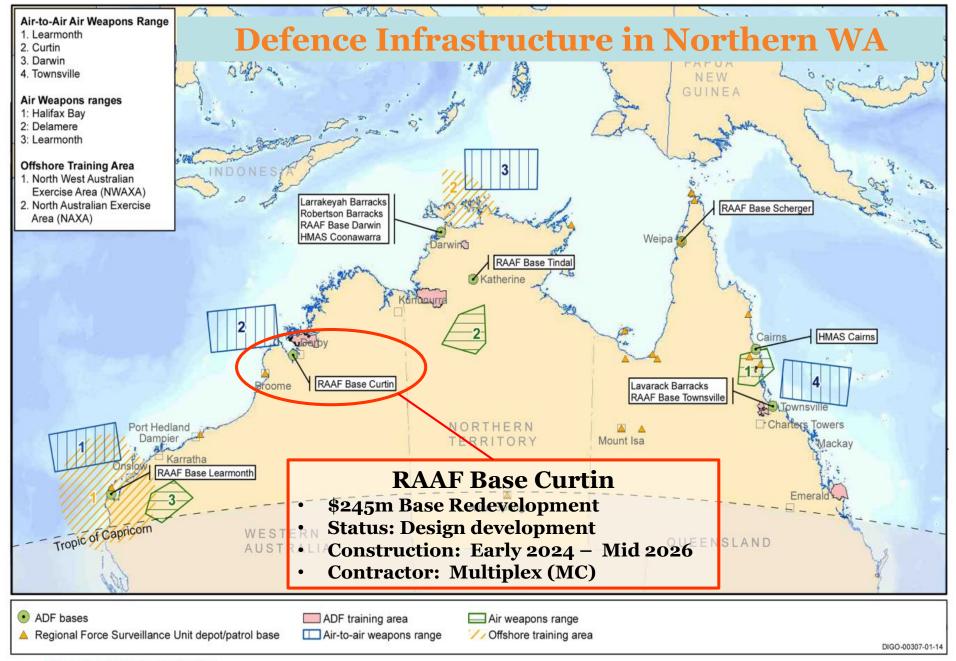






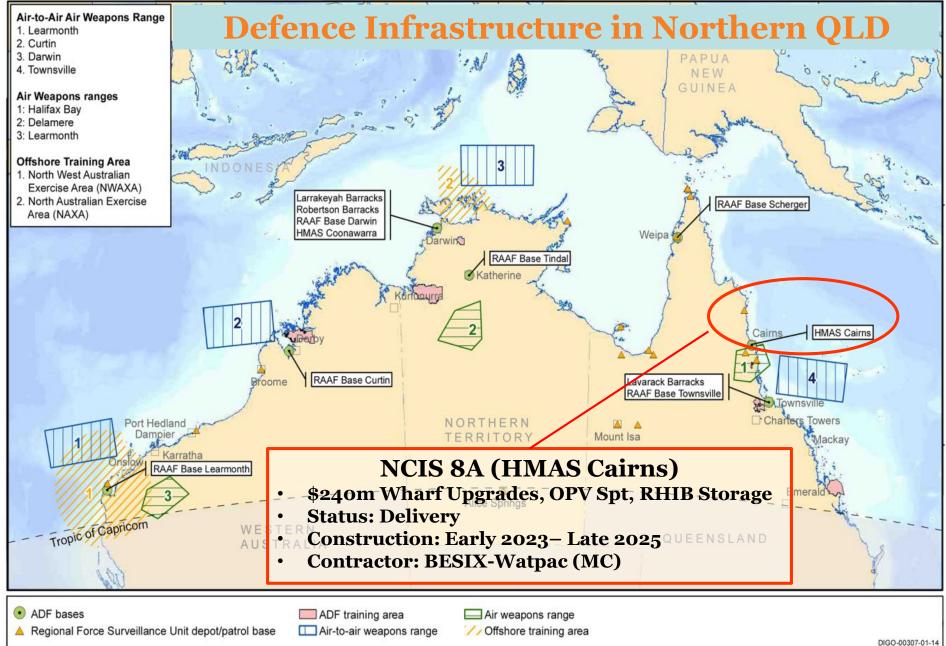
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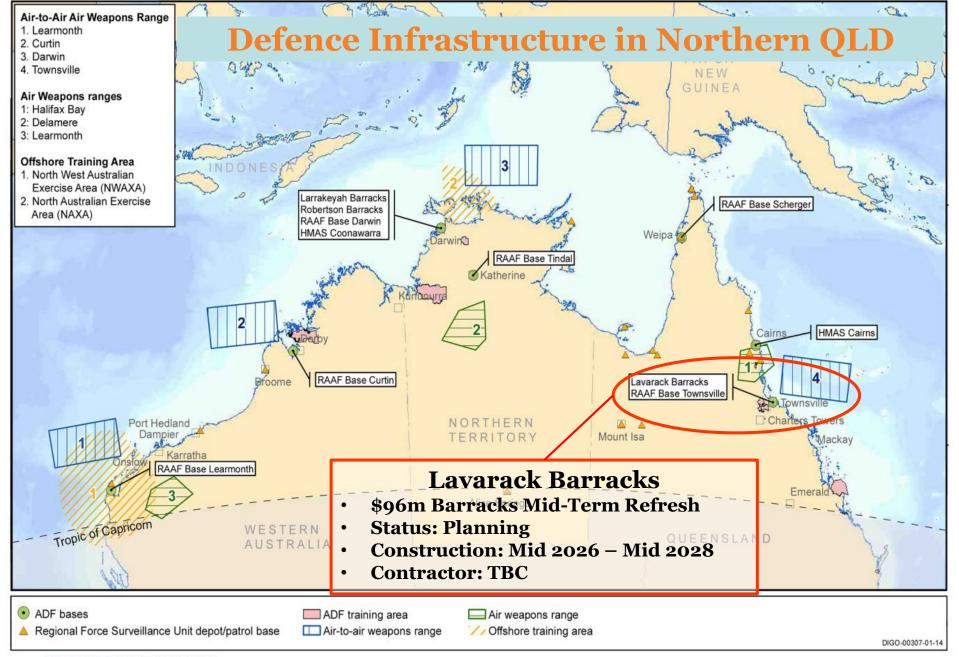


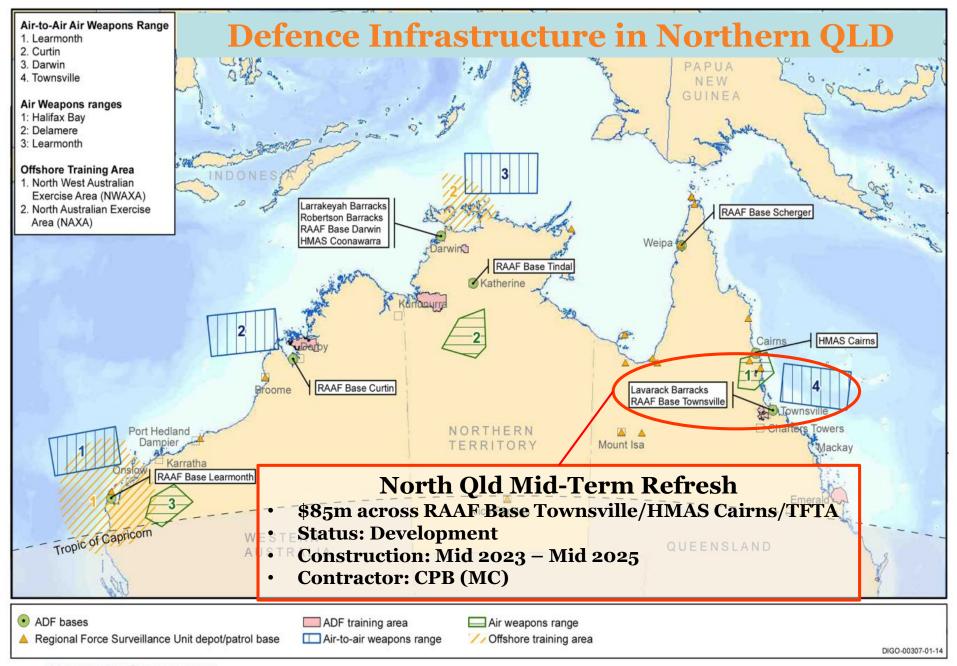


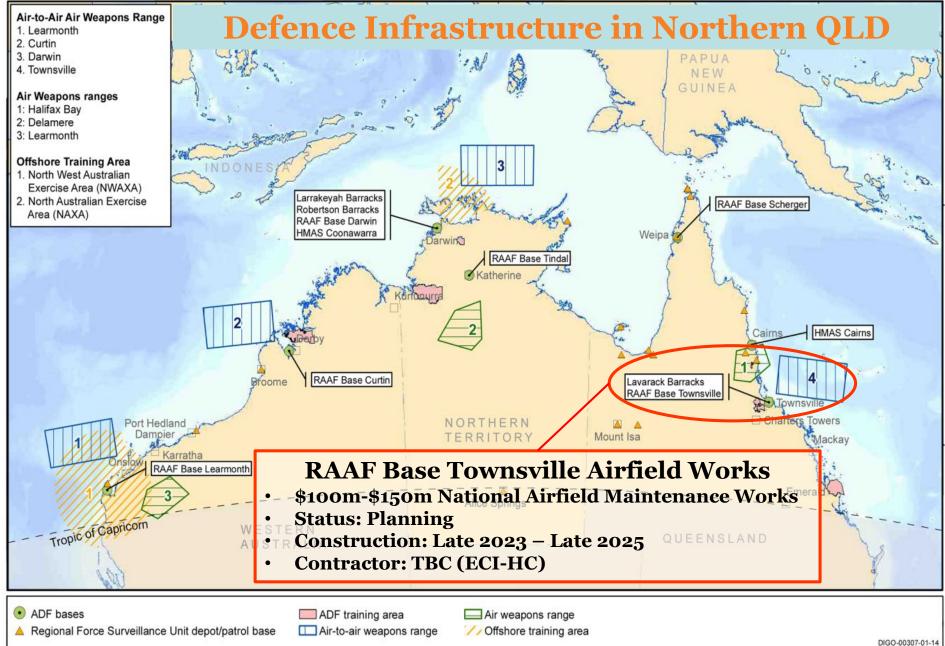
Northern QLD Forward Works Program

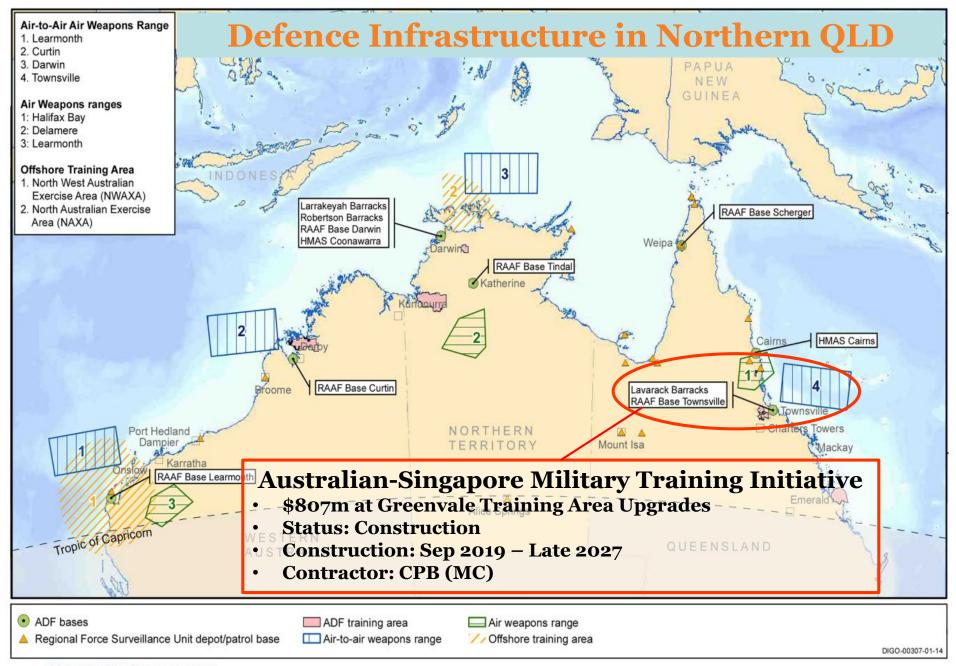
Major Projects	FY	FY	FY	FY	FY	FY	FY	
	22/23	23/24	24/25	25/26	26/27	27/28	27/28	
ASMTI Greenvale Training Area Upgrade								
NCIS 8A	\$240m							
HMAS Cairns	I	NCIS 8A (HMAS Cairns)				*Unapproved projects are indicative only and remain		
North Qld Mid-Term Refresh	\$85m (RAAF Base Townsville / Lavarack Barracks)					subject to Government Pass and Parliamenta Approvals		
National Airfields Capital Works			\$100m (RAAF Base Townsville)					
Lavarack Barracks Mid [.] Term Refresh								











Other CFI Project

- Cocos Keeling Islands Runway upgrades (\$567.6m)
- LAND 2110 CBRND Robertson Bks
- AIR6500 PH1 Joint Air Battle Management System (\$616m multiple sites) RAAF Darwin or Berrimah
- AIR6502 Medium Range Grd Based Air Defence RAAF Darwin or Berrimah
- AIR5349 PH6 Advanced Growler (\$158m across multiple sites) Delamere
- SEA5011 Ph1 Maritime Electro Magnetic Warfare Project –HMAS Coonawarra (402m across multiple sites)
- SEA 2273 Fleet Information Enviro (\$58.6m multi sites) HMAS Coonawarra
- Defence Fuels Transformation Program
 - RAAF Base Tindal (\$5.3m)/Darwin (\$3.7m)
- NCIS 6A EO Storage RAAF Darwin \$8.7m
- LAND8116 Self Propelled Artillery
- Incoming Projects
 - Northern Airbase Resilience (\$7b across Northern Aust)
 - LAND 8710 Phase 5 (\$1b to deliver facilities to support Army Watercraft)

Risks & Opportunities

- US Funded Projects
- Estate Works Program
- Defence Strategic Review Details TBC
 - Northern Australia Infrastructure a focus area
 - Potential for expedient schedules/approvals
- Resilience & Redundancy
- Workforce/Industry capacity constraints