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Department of Defence

ASDEFCON and Defence Procurement Review 2021



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ASDEFCON and Defence Procurement Review 2021

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ASDEFCON and Defence Procurement Review

Introduction by Reviewers

Context

Minister for Defence Industry commissioned the ASDEFCON and Defence Procurement Review (**Review**) at a critically important time for Australia, for the Department of Defence and for Defence Industry.

Defence must deliver the \$270 billion capital program through the 2020 Force Structure Plan in a challenging geopolitical environment, with competing demands for a skilled workforce nationally in Defence and Defence Industry and against a background of rapidly evolving technological change.

Defence's processes were improved significantly under the One Defence umbrella of the First Principles Review, but Defence must accelerate delivery of capability to equip and sustain the ADF to be able to meet this new security environment.

Defence and Defence Industry's recent achievements despite COVID-19 impacts have been significant. Although there are excellent examples of agile co-operative engagement, the Review has identified the need for further improvements.

Terms of Reference

The Terms of Reference are set out in Annex A.

Our key findings in relation to each question are set out below:

1	<p><i>Can Defence better identify and describe what the ADF war fighter needs?</i></p> <ul style="list-style-type: none"> ➤ <i>The Review input confirmed that the Capability Manager role under First Principles is effective and that the Environmental Working Groups are a valuable source of information.</i> ➤ <i>Industry expressed a strong desire for further detailed information for planning and investment to ensure that the Capability Managers' requirements are fully informed of what Defence Industry can offer before Defence approaches the market.</i> ➤ <i>The Review also received extensive feedback on the need to manage probity in this phase in a more constructive way.</i>
2	<p><i>Do Defence's processes and practices need to evolve to the new environment?</i></p> <ul style="list-style-type: none"> ➤ <i>Defence has made significant improvements in the ASDEFCON templates but the templates and processes must continue to evolve to meet technological changes, in particular to reflect a more agile and collaborative contracting model.</i> ➤ <i>The Review received extensive input on the need to streamline compliance processes, remove duplication and not ask for unnecessary information, particularly in the initial stages.</i>

- 3** ***Defence knows Time = Money, can timeframes be reduced?***
- *Defence and Industry recognised that some projects were managed through the Capability Life Cycle very effectively, but others less so, and provided the Review with opportunities to reduce the time taken for pre-Gate 0 capability definition and tender evaluation.*
 - *Industry considers that the timeframes for Defence Industry to respond to tenders on some projects are too short when compared to the time taken by Defence to evaluate them.*
 - *Defence recognises the objective of equipping and sustaining the ADF under efficient and effective processes that must also comply with PGPA requirements.*
- 4** ***Can Defence do anything to improve cash flow to the supply chain?***
- *Defence acknowledges that the payment models and milestone payment arrangements could be tailored to suit the nature of procurements.*
 - *Defence will develop improved guidance to allow Defence project teams to be able to develop and implement the appropriate payment model for the procurement.*
- 5** ***Does Defence understand risk and can it accept manageable risk?***
- *Defence has a framework to actively manage operational, capability and financial risks in procurement, on behalf of Government. This is also being strengthened.*
 - *Further cooperation between Defence and Industry will increase Defence's knowledge of risks assumed by Industry and how they are managed and priced. This should include means to reduce uncertainty with factors such as optimistic delivery schedules, developmental projects, integration and fixed price contracts.*
- 6** ***Does Defence ask for only the information it needs when it needs it?***
- *The Review identified that in some projects Defence has requested more information than it needs to evaluate a tender and formulate a contract.*
 - *Review input recommended increased use of available training, evolved guidance and direction to Defence project teams.*
- 7** ***Would a contractor accreditation program (centrally managed) help Industry?***
- *Defence and Defence Industry signalled their strong support for a centrally managed contractor accreditation program.*
 - *Such a program (expanding on the existing insurance, master guarantee and supplier analysis work) might provide opportunities to reduce the need for Defence Industry to provide such information with each tender response.*
- 8** ***Can Defence use technology solutions to support its template use and the development of appropriate tender and contractual artefacts?***
- *The Review identified the need for Defence to further utilise technology solutions supported by updated and targeted guidance, to assist Defence project teams to select the correct templates.*

- *Defence's internal guidance is being developed as online interactive tools to assist and offer the quickest medium for updating guidance and process.*

9 What can Defence do to gain a better understanding and develop its commercial acumen and skills to achieve capability outcomes?

- *In response to this question the Review received many suggestions including:*
 - *Look for more opportunities to improve commercial engagement with Defence Industry during procurement processes;*
 - *Partner with Defence Industry and review current probity practices, guidance and training to better understand Defence and Defence Industry's drivers;*
 - *Better understand reasons for flow down of requirements under head contract to subcontractors, particularly SMEs; and*
 - *Develop framework of training and accreditation for Defence and contracted workforce.*
- *A key underlying theme in the responses was that Defence, and some parts of Industry, have a need for an increased quantity of procurement professionals and a need for further skilling on the drivers of Defence and Industry.*

The answers to these questions have guided our consideration of the responses received from Defence and Defence Industry and the development of the Recommendations.

Structure of the report

The report is structured such that:

- Section 1 summarises the Recommendations and a number of Headline Recommendations which we recommend be implemented as a matter of urgency.
- Section 2 describes the background and context of the Review and the Report.
- Section 3 provides more detail on the Key Findings and Recommendations and addresses how each Key Finding and Recommendation addresses each question in the Terms of Reference.

Defence and industry feedback

We thank Defence and Defence Industry for their engagement in each of the elements of the Review.

We received 250 total survey responses – 106 from within Defence and 144 responses from Defence Industry.

Many of the Defence Industry participants provided very detailed, considered and constructive responses and then participated in a number of separate targeted engagement processes. These engagements revealed some of the most important insights to us.

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Most importantly across industry cohorts there were some clear common themes identifying improvements to ASDEFCON templates and processes. These consistent themes give us the confidence to be able to take the findings to Government and work to implement the recommendations in the Review. We estimate that implementation of the Recommendations, particularly those in relation to time, should deliver savings in the order of about one year to the overall process.

We also welcome further feedback on this review. Please contact us through ASDEFCON.review@defence.gov.au.



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Section 1 – Recommendations

Summary of Recommendations

The Review confirmed that Defence and Defence Industry are committed to a partnership in the critical task to equip and sustain the ADF.

The Review identified the following primary improvement areas:

- The need for urgency and outcomes focussed processes that respect time and its commensurate value to the taxpayer and Defence Industry.
- The level of Defence engagement and communication with industry varies:
 - Industry seeks increased cost and schedule detail for planning and investment.
 - Industry would value being able to brief Defence after submission of their tenders, and be provided project status updates during evaluation and decision phase.
 - Additionally Industry seeks a debrief as soon as practical if found unsuccessful, so that lessons may be applied to ongoing and future tender development.
- Need for a more agile or collaborative contracting template and process, and a process that only seeks tender information critical to enabling a Government decision.
- Implementation of industry accreditation program.
- Increasing Defence commercial and contracting expertise.

The Recommendations below focus on these headline issues as the Review Team believes that tackling these issues will deliver better outcomes for Defence, Defence Industry and improve the efficiency of the solicitation process to equip and sustain the ADF.

In addition to the headline issues, the Review has also identified a number of priority “business as usual” (BAU) recommendations to improve our processes and policies to further address the headline issues.

Headline Recommendations

1 Time – reduce the time it takes to get to contract and Gate 2 submission to Government

The Problem:
For some projects, the phases of Defence’s process take longer than they should to deliver the capability and therefore cost Defence and industry too much money.
➤ The “Strategy and Concepts Phase” to Gate 0 can often take many years.

- From Gate 0 to Tender Close – parts of this phase are generally not long enough. In particular the time given to Defence Industry to respond to a tender.
- From Tender Close to Gate 2 Submission – parts of this phase are too long. The period it takes for Defence to evaluate tenders is too long.

Recommendations:

Recommendation 1A:

- Defence will focus its pre-Gate 1 process to ensure its requests for tender are mature prior to release.

Recommendation 1B:

- Defence will target tender evaluation to be completed within a similar time to that provided to industry for their Tender response for ACAT III and ACAT IV projects, but not to exceed six months, and not more than double the industry consideration time for ACAT I and II, but not to exceed 12 months.
- The Defence tender evaluation period is from close of Tender to either Investment Committee consideration / delegate approval or formal approval to proceed with Offer Definition and Improvement Activities / Risk Mitigation Period if being undertaken.

Recommendation 1C:

- Defence will normally only use Offer Definition and Improvement Activities (ODIA) where appropriate for tenders in excess of \$20 million.

2 Improve communication

The Problem:

- Whilst used effectively on many projects, Defence must not use probity reasons as an excuse to limit effective communication and partnership with Defence Industry.

Recommendations:

Recommendation 2A:

- Defence will strengthen its Annual Procurement Plan on AusTender, to better signal upcoming procurements to industry and publish status updates at intervals not greater than quarterly, for all procurements in excess of \$20 million.

Recommendation 2B:

- Defence will facilitate an option for tenderers to also provide a verbal brief should they wish to do so at an appropriate time before, or as part of, tender evaluation.

Recommendation 2C:

- Upon selection of a preferred tenderer, Defence will debrief unsuccessful tenderers with sufficient information to implement lessons learned for future tenders. This may necessitate a more detailed debrief upon Government project approval.

Recommendation 2D:

- Defence will increase transparency when limited tenders are proposed.

3 Develop an agile template and process

The Problem:

- ASDEFCON templates must evolve to reflect best practice balance the need for sufficient information to award a contract and the need for delivering Defence capability efficiently.

Recommendations:

Recommendation 3A:

- Defence will develop an agile procurement/collaborative contract template model in conjunction with industry. This task will commence in Q4 2021.

Recommendation 3B:

- Defence will address SME concerns about over use of “flow down” contract terms and Conditions.

Recommendation 3C:

- Defence will continue to mature risk allocation management and commensurate contracting.

4 Contractor Accreditation Program

The Problem:

- Many respondents were concerned that Defence did not have One Defence approach to its contractor base. As a result, Defence Industry needed to provide the same information to multiple projects when tendering across the enterprise.

Recommendations:
Recommendation 4:
<ul style="list-style-type: none"> ➤ Defence will work with industry to develop a program (including capturing data from existing systems and initiatives) for contractor accreditation for progressive implementation from 1 July 2022.

5 Defence commercial and contracting experience and expertise

The Problem:
<ul style="list-style-type: none"> ➤ Many respondents expressed concern that Defence was not able to deploy a sufficient number of personnel with commercial expertise across the required range of procurements. Commercial expertise to support procurements was limited and in demand by Defence Industry and the Defence Industry ecosystem.

Recommendations:
Recommendation 5A:
<ul style="list-style-type: none"> ➤ Defence will continue to increase, broaden and deepen individual and collective commercial skills.
Recommendation 5B:
<ul style="list-style-type: none"> ➤ Informed by the underway review, Defence will also strengthen management of external service providers supporting Defence procurement and contracting activities.
Recommendation 5C:
<ul style="list-style-type: none"> ➤ Defence will establish a 'Procurement Improvement Cell', to provide an avenue for industry to comment on areas of good and bad practice. This cell will also mentor and develop Defence teams to develop better practice including where deficient practice is identified.

Recommendations to be implemented as priority business as usual activities

There were also a range of other opportunities for improvement identified in the Review.

A number of these will be progressed through continuous process improvements and some need longer-term investment of funding, resources and time.

Two suggestions of note resulted in Recommendations that will be implemented as a priority through Defence's business as usual activities:

6 Defence can improve guidance and mandate regular training for Defence and industry

Recommendation:
<i>Recommendation 6:</i> <ul style="list-style-type: none">➤ Defence will improve guidance, training and consistency in Defence Capability acquisition across Defence and partner in training with industry. This training will:<ul style="list-style-type: none">▪ enhance commercial competence;▪ improve Defence and Defence Industry’s shared understanding of both Defence’s requirements, obligations and expectations, and Defence Industry’s considerations and obligations; and▪ address matters including probity application, template selection and pricing models, and assessing when they each might apply.

7 Develop more agile/cost effective approaches to market

Recommendation:
<i>Recommendation 7:</i> <ul style="list-style-type: none">➤ Defence will develop more agile/cost effective approaches to market including a phased industry engagement and solicitation approach for the most efficient and effective delivery capability into the ADF as appropriate to the characteristics of the project.

Section 2 – ASDEFCON and Defence Procurement Review

2.1 Background to the Review

The Minister for Defence Industry's engagement with Australian Defence Industry identified a number of opportunities to strengthen and refine the way Defence undertakes acquisition and sustainment, and partners to build a more resilient Defence industrial base.

As a result the Ministers for Defence and Defence Industry announced, as part of the Government's Five Pillars support to Australian Defence Industry, the review of the Australian Standard for Defence Contracting (ASDEFCON) suite of tendering and contracting templates and relevant procurement processes and practices to support these objectives³.

On 26 August 2020 the Minister for Defence Industry wrote to the Secretary of the Department of Defence noting some of the potential opportunities to strengthen and refine Defence procurement contracting processes and practices including:

- simplifying and streamlining the ASDEFCON contracting templates;
- removing complexity and onerous flow down obligations that lead to additional cost and risk to the suppliers;
- developing subcontracting templates for industry to use;
- expanding Defence commercial acumen within its procurement practices;
- mandating Defence payment terms through the supply chain and considering partial payments of milestones to facilitate cash flow to industry, including Small to Medium Enterprises (SMEs); and
- relaxing some barriers to industry's (particularly SMEs') participation in Defence's supply chain.

On 4 December 2020 the Minister for Defence Industry released the Terms of Reference for the ASDEFCON and Defence Procurement Review (the Review)⁴. The Review seeks to investigate whether the ASDEFCON suite and associated processes are contemporary, and whether they properly balance the interests of Defence Industry and the interests of the Australian Defence Force as represented by the war fighter? This question is then elaborated on within the following Terms of Reference:

1. Can Defence better identify and describe what the ADF war fighter needs?
2. Do Defence's processes and practices need to evolve to the new environment?
3. Defence knows Time = Money, can timeframes be reduced?

³<https://www.minister.defence.gov.au/minister/melissa-price/media-releases/strengthening-how-defence-does-business-australian-industry>

⁴<https://www.minister.defence.gov.au/minister/melissa-price/media-releases/morrison-government-cut-red-tape-and-strengthen-defence>

4. Can Defence do anything to improve cash flow to the supply chain?
5. Does Defence understand risk and can it accept manageable risk?
6. Does Defence ask for only the information it needs when it needs it?
7. Would a contractor accreditation program (centrally managed) help Industry?
8. Can Defence use technology solutions to support its template use and the development of appropriate tender and contractual artefacts?
9. What can Defence do to gain a better understanding and develop its commercial acumen and skills to achieve capability outcomes?

The questions presented in the Terms of Reference are a fundamental part of the “Five Pillars” approach to support Australian Defence Industry, and build upon the recent initiatives in relation to the CDIC (Centre for Defence Industry Capability) Review and the “Enhanced AIC Contractual Framework” announcement by the Minister for Defence and the Minister for Defence Industry in September 2020. The Enhanced AIC Contractual Framework and AIC Audit Framework intend to strengthen the AIC contractual obligations to maximise the outcomes from the AIC (Australian Industry Capability) Program.

2.2 Defence Procurement & the History of the ASDEFCON Suite

Defence is the largest procurement agency in the Commonwealth and is responsible for some of Australia’s most complex procurement activities. Defence engages with Defence Industry to deliver value for money procurement outcomes in order to support departmental and Australian Defence Force capability.

The ASDEFCON suite provide a set of proforma documents for use by procurement officers when drafting solicitation documents and contracts for the acquisition of goods and services by Defence.

In early 2000, the Government directed Defence to revise the standard Defence Purchasing template suite to align with more contemporary drafting and develop the first standardised Statement of Work (SOW). This reform program resulted in the ASDEFCON suite of templates being issued in 2002. Further templates in the ASDEFCON suite have been released and are continually updated to align with Government policy and reflect a balanced outcome for Defence, including acceptance of particular risks in certain circumstances.

The ASDEFCON suite is developed and managed on the basis of extensive consultation with Defence stakeholders, other Government Departments, external subject matter experts, legal service providers and Defence Industry.

Most templates include: a covering letter to tenderers; conditions of tender with response volumes; a draft contract; and where appropriate a draft SOW. Associated handbooks and related training are available for most templates.

If the templates are used in accordance with the associated guidance and the Defence Procurement Manual, procurements using the ASDEFCON suite will be compliant with the legislative and policy

requirements of the Defence procurement environment. This includes the *Public Governance, Performance and Accountability Act 2013*⁵ and the *Commonwealth Procurement Rules*⁶.

2.3 Objective of the Review

The Objective of the Review was to explore the experiences and views of a range of stakeholders, predominately represented by Defence Industry and Defence personnel. The aim was to determine whether or not the ASDEFCON suite was fit for purpose and whether Defence procurement more broadly was efficient and effective. This Report proposes a number of Key Findings and associated Recommendations to further improve the ASDEFCON suite and Defence procurement processes and policy. This Report also details some improvements that Defence had already identified and is in the process of implementing potential changes to process or current policy but may be considered in future and changes that were suggested but were not recommended for further progression for various, valid reasons.

The Review sought to address as many elements of the ASDEFCON suite as possible during its conduct. Defence also considered its Policy and practices as part of the Review. Whilst lessons were considered under the feedback to the Review, specific projects were not considered. The Review did not consider any other Defence or Government contracting templates utilised by Defence such as the Commonwealth Contracting Suite and the templates used by the Digital Transformation Agency.

2.4 Conduct of the Review

The Reviewers (Andrew Staines, First Assistant Secretary, Procurement and Contracting and Francesca Rush, Acting First Assistant Secretary, Australian Industry Capability and Chief Counsel – Commercial) were appointed to conduct the Review. A Review Team consisting of Defence legal and commercial personnel and external contractors were tasked to support the Reviewers.

In order to address the Terms of Reference, through obtaining a comprehensive and balanced perspective of the status of the ASDEFCON suite and related practices and processes, and identifying improvement opportunities, data was gathered using three methods: a survey, targeted stakeholder consultation and independent research.

Survey

A survey was conducted to gain targeted and specific responses on the areas and issues identified in the Terms of Reference. The Survey was distributed to a broad range of users of the ASDEFCON suite and Defence procurement guidance on 15 December 2020, including to all Defence Groups, Defence Industry members, Defence Industry associations, Defence stakeholder groups and several other Government agencies. The Survey was also made publicly available on Defence's external website. All stakeholders were encouraged to respond, to ensure that a wide a range of inputs and opinions were obtained. Responses to the Survey closed on 14 March 2021.

⁵<https://www.legislation.gov.au/Details/C2017C00269>

⁶<https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

Targeted Stakeholder Consultation

A targeted stakeholder engagement process was undertaken to further explore information that was not collected by the Survey. This engagement sought the views of both Defence and Defence Industry in a series of meetings and workshops. Based on the Survey responses a range of companies were selected for further engagement. Six companies were approached from each company demographic (Micro, Small, Medium and Large) to participate in workshops and targeted meetings. Representatives from functional areas of Defence, including Program Management, Logistics and Engineering areas were also approached to provide feedback, as were the Capability Managers (or their representatives) for Land, Air, Navy, Force Design and Intelligence.

Independent Research

A targeted literature review of historic papers on Defence Contracting (domestic and international) was also conducted by the Review Team to determine whether there were synergies with the current review data collected, including whether Defence's approach met international best practice. The Review Team also engaged directly with State governments in an attempt to harness any other best practice procurement processes or solicitation documentation.

2.5 General Overview of Responses

The Review Team received a large number of responses to the Survey from both Defence Industry and within Defence, with approximately 250 total Survey responses. 106 respondents identified themselves as Defence employees, and 144 Survey respondents identified as Defence Industry. The responses shown at Figure 1 comprised: 42% Defence employees, 12% large companies (200+ employees); 18% medium (20-199 employees); and 12% small (6-19 employees) and 12% micro (0-5 employees). The mix of contractors providing professional services directly to Defence versus those that were delivering goods or Defence materiel was not identifiable. Defence also received a number of long form written responses, submitted independently from the Survey tool.

The volume and nature of information received suggests that both Defence and Defence Industry are committed to, and support, improvements to the ASDEFCON suite and Defence’s procurement processes to equip and sustain the ADF.

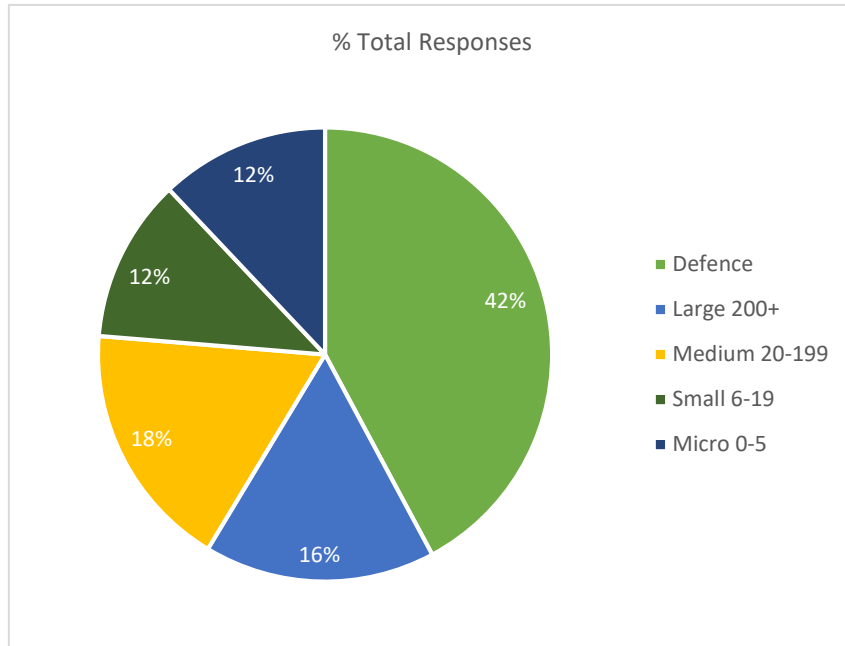


Figure 1: Demographic of Survey respondents

Figure 2 shows the breakdown of respondents by relevant Defence Group. A wide sample of Defence personnel and Defence Industry personnel that work directly with Defence provided input to the Survey. Defence respondents were primarily from Capability Acquisition and Sustainment Group (CASG) who are the main users of the ASDEFCON suite.

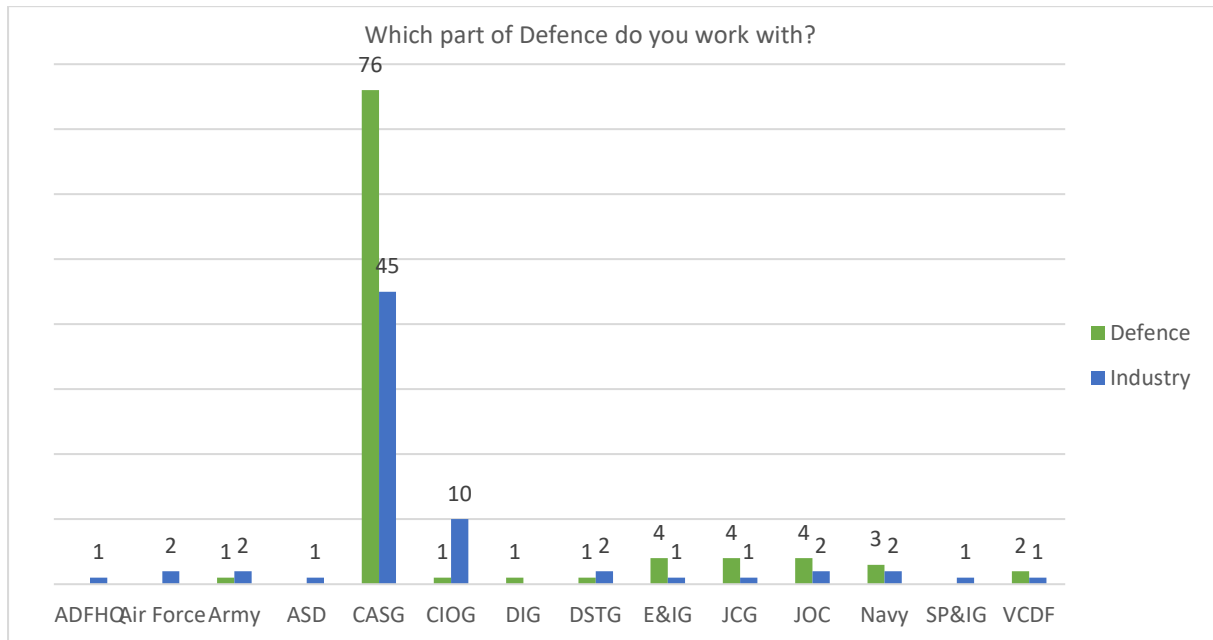


Figure 2: Survey Respondents by Group

Section 3 – Detailed Analysis

3.1 Term of Reference 1

“Can Defence better identify and describe what the ADF war fighter needs?”

To build an appropriate procurement framework, Defence needs to better understand what the ADF war fighter needs and how industry can meet those needs. Once understood, this needs to be translated into Defence’s contracts to ensure industry clearly understands what they are being asked to deliver.

This includes gaining a greater understanding of what industry can offer through broader and deeper industry engagement at all stages of the procurement process, including pre-Gate 0 and, through that engagement, assessing what industry needs to further develop; and for Defence to adapt its procurement and commercial strategies to meet those capability needs.

3.1.1 Summary of Findings

Defence is generally able to identify and describe the ADF war fighter needs both internally within Defence and externally to Defence Industry. However, several opportunities were identified for Defence to further increase Defence Industry information needed for investment decisions and strategies.

TOR 1 Summary of Findings:

- *The Review input confirmed that the Capability Manager role under First Principles is effective and that the Environmental Working Groups are a valuable source of information.*
- *Industry expressed a strong desire for further detailed information for planning and investment to ensure that the Capability Managers’ requirements are fully informed of what Defence Industry can offer before Defence approaches the market.*
- *The Review also received extensive feedback on the need to manage probity in this phase in a more constructive way.*

Detailed comments:

- Defence is generally able to appropriately identify and describe the ADF war fighter needs, however there are opportunities for Defence to improve the way it describes its needs to Defence Industry.
- Defence, on occasion, does not release appropriately mature Request for Tender documentation.
- Defence Industry expressed a view that Defence uses the Offer Definition and Improvement Activities (ODIA) process to complete or adjust immature tender requirements.
- Defence Industry also sought an opportunity to provide greater clarity on their response proposal to Defence during tender evaluation processes.

- Both Defence Industry and Defence have identified that increased awareness of and access to appropriate training and professionalisation would improve Defence’s ability to identify and describe the ADF war fighter’s needs.
- Internal stakeholders identified the lack of resourcing pre-Gate 0 as a significant impediment to Defence generating quality tender documentation.
- Defence Industry suggested that there should be more consistent and detailed engagement by Defence during the requirements development process.
- Both Defence Industry and Defence identified that communication and collaboration with Defence Industry was being restricted due to the way Defence implements probity.
- Review respondents suggested that Defence could better scope its requirements by engaging capability managers and technical staff early and often throughout the procurement process.
- Internal engagement identified that the process for developing the Joint Capability Needs Statements could be improved.

When asked “Do you think the request documentation derived from usage of the ASDEFCON templates appropriately describes Defence’s requirements?” the Survey found, as shown in Figure 2, that 33% of all respondents thought that the ASDEFCON suite was able to appropriately describe Defence’s requirements, whereas 25% believed it did not, and 42% were unsure.

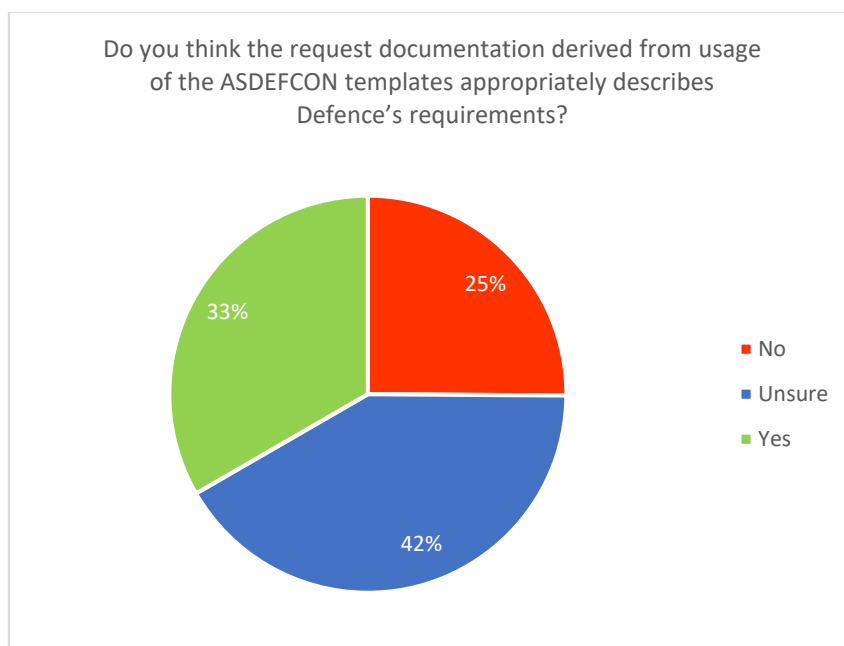


Figure 3: ASDEFCON templates appropriately describing Defence Capability requirements

3.1.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 1

- Defence will focus its pre-Gate 1 process to ensure its requests for tender are mature prior to release (Recommendation 1A).

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- Defence will normally only use Offer Definition and Improvement Activities (ODIA) where appropriate for tenders in excess of \$20 million (Recommendation 1C).
- Defence will strengthen its Annual Procurement Plan on AusTender, to better signal upcoming procurements to industry and publish status updates at intervals not greater than quarterly, for all procurements in excess of \$20 million (Recommendation 2A).
- Defence will facilitate an option for tenderers to also provide a verbal brief should they wish to do so at an appropriate time before, or as part of, tender evaluation (Recommendation 2B).
- Upon selection of a preferred tenderer, Defence will debrief unsuccessful tenderers with sufficient information to implement lessons learned for future tenders. This may necessitate a more detailed debrief upon Government project approval (Recommendation 2C).
- Defence will improve guidance, training and consistency in Defence Capability acquisition across Defence and partner in training with industry (Recommendation 6).
- Defence will develop more agile/cost effective approaches to market including a phased industry engagement and solicitation approach for the most efficient and effective delivery capability into the ADF as appropriate to the characteristics of the project (Recommendation 7).

3.2 Term of Reference 2

“Do defence’s processes need to evolve to a new environment?”

Defence recognises that the opportunity of this review is to look beyond the language in the templates.

Defence must also look at its procurement processes. Defence’s processes also need to respond to an evolving regulatory and threat environment. Defence’s processes must ensure that appropriate terms and conditions are applied to its procurements. Defence will consider if its existing processes can be better leveraged to achieve a better outcome for both Defence and its industry partners?

3.2.1 Summary of Findings

The Review identified that the ASDEFCON suite provides an effective basis for Defence procurement and is generally well understood and accepted by Defence Industry and Defence. However, the Review identified a number of opportunities for improvement to processes, which would be likely to enhance both experiences and outcomes for Defence and Defence Industry.

TOR 2 Summary of Findings:

- *Defence has made significant improvements in the ASDEFCON templates but the templates and processes must continue to evolve to meet technological changes, in particular to reflect a more agile and collaborative contracting model.*
- *The Review received extensive input on the need to streamline compliance processes, remove duplication and not ask for unnecessary information, particularly in the initial stages.*

Detailed Comments:

- The Review identified broad support for the ASDEFCON suite as an effective base for Defence procurement and that Defence has well defined processes around the procurements it conducts.
- Consistent with the Key Findings, the Review has found that accessibility of training and skilling of people is an area for improvement in how Defence conducts its procurement processes.
- Defence’s probity processes need to evolve to ensure effective communication and collaboration with Defence Industry can be achieved.
- Consistent with the theme of communication throughout the procurement process, Defence can better update Defence Industry on the status of up-coming tenders, and during the tender evaluation process. Defence Industry also seeks greater opportunities to clarify tender responses for Defence where appropriate.
- Defence Industry has identified that Defence requests the same tender information multiple times during a staged procurement process, or across multiple tender processes. Defence Industry has suggested that Defence look at opportunities to evolve its templates and processes to eliminate duplication.
- The Review found that procurement processes which lacked sufficient levels of commercial involvement from the outset resulted in schedule delay and poor outcomes across the procurement lifecycle.

- While the general feedback regarding the ASDEFCON suite was positive:
 - there is a perception that the ASDEFCON suite is too complex, particularly for smaller procurements; and
 - the suite is not well suited to procuring ICT Materiel.
- There is a Defence Industry view that Defence underutilises agile, evolutionary and collaborative contracting which was raised regularly throughout the Review.
- A number of Defence Industry responses suggested that Defence should examine opportunities to reduce the number of Data Item Descriptions in its contracts.

The Survey questions relating to Term of Reference 2 were numerous and wide ranging, aimed at obtaining a detailed understanding of how Defence and Defence Industry view and experience the Defence procurement lifecycle – and how they assess its performance. The questions aimed to elicit responses related to the level of inefficiencies, behaviours, communication, pre-qualification, shortcomings, training, Defence Industry knowledge, and practical issues with the ASDEFCON suite.

As shown in Figure 4, more than half of respondents from both Defence and Defence Industry self-assessed their knowledge of Defence’s procurement processes as having either a “full” or a “good” understanding – the respondents believed they had sufficient knowledge to speak to Defence’s processes.

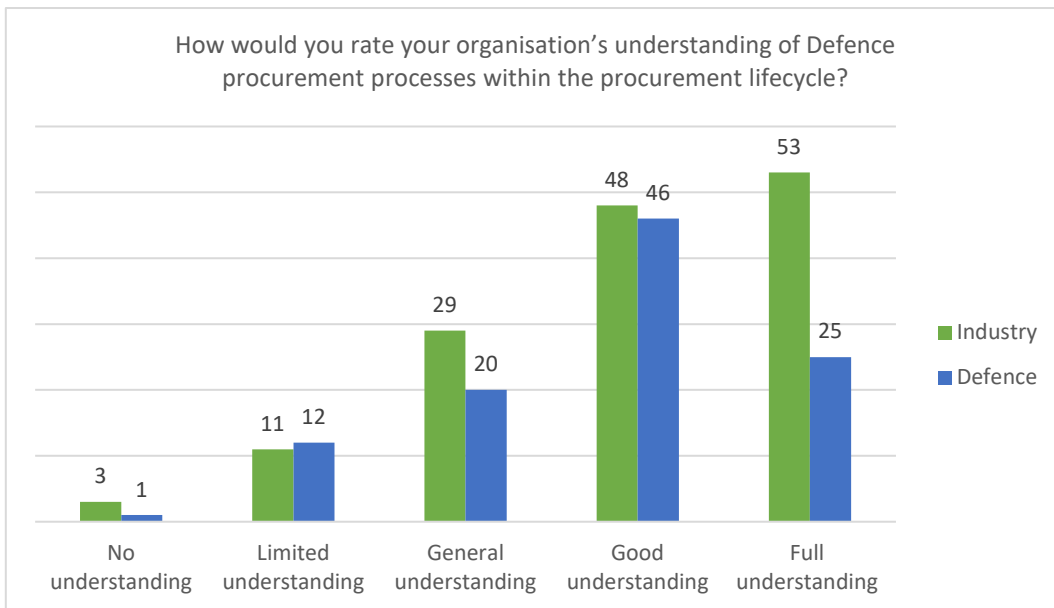


Figure 4: Survey Respondent Understanding of Defence procurement processes

Importantly, 45% of Defence Industry and 31% of Defence personnel respondents identified the existence of inefficiencies with Defence’s procurement processes as seen in Figure 5 below.

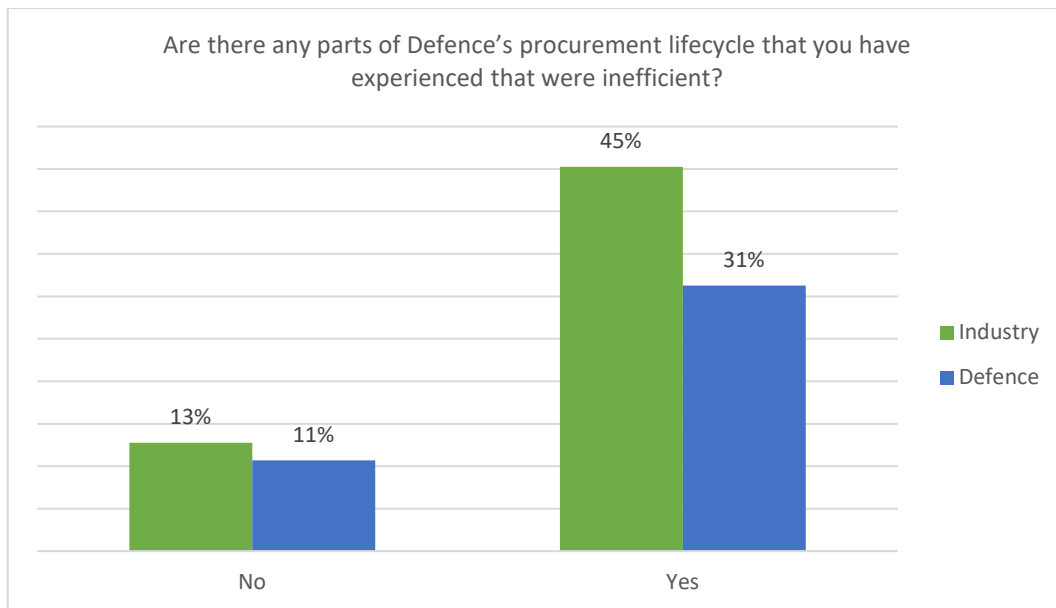


Figure 5: Experiencing Inefficiency in the procurement lifecycle

3.2.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 2

- Defence will focus its pre-Gate 1 process to ensure its requests for tender are mature prior to release (Recommendation 1A).
- Defence will facilitate an option for tenderers to also provide a verbal brief should they wish to do so at an appropriate time before, or as part of, tender evaluation (Recommendation 2B).
- Upon selection of a preferred tenderer, Defence will debrief unsuccessful tenderers with sufficient information to implement lessons learned for future tenders. This may necessitate a more detailed debrief upon Government project approval (Recommendation 2C).
- Defence will develop an agile procurement/collaborative contract template model in conjunction with industry. This task will commence in Q4 2021 (Recommendation 3A).
- Defence will continue to mature risk allocation management and commensurate contracting (Recommendation 3C).
- Defence will work with industry to develop a program (including capturing data from existing systems and initiatives) for contractor accreditation for progressive implementation from 1 July 2022 (Recommendation 4).
- Defence will continue to increase, broaden and deepen individual and collective commercial skills (Recommendation 5A).
- Informed by the underway review, Defence will also strengthen management of external service providers supporting Defence procurement and contracting activities (Recommendation 5B).
- Defence will improve guidance, training and consistency in Defence Capability acquisition across Defence and partner in training with industry (Recommendation 6).

ASDEFCON and Defence Procurement Review 2021

3.3 Term of Reference 3

“Defence knows Time = Money, can timeframes be reduced?”

Can the time from tender release to contract execution be shortened without compromising ADF capability needs? What greater flexibility can be provided to Defence personnel to shorten the length of tender evaluation without compromising ADF capability needs?

3.3.1 Summary of Findings

The Review identified some areas for further exploration and a number of suggestions that might result in shorter time periods between tender release and contract execution, or shorter tender evaluations.

TOR 3 Summary of Findings:

- *Defence and Industry recognised that some projects were managed through the Capability Life Cycle very effectively, but others less so, and provided the Review with opportunities to reduce the time taken for pre-Gate 0 capability definition and tender evaluation.*
- *Industry considers that the timeframes for Defence Industry to respond to tenders on some projects are too short when compared to the time taken by Defence to evaluate them.*
- *Defence recognises the objective of equipping and sustaining the ADF under efficient and effective processes that must also comply with PGPA requirements.*

Detailed comments:

- The capability and capacity of the Defence team conducting the process is identified as a key driver for the time taken between tender release and contract signature. Similarly the length of request documentation is also a factor.
- Defence personnel require appropriate professionalisation, courses and accreditation.
- There is a perception that Defence requires prime contractors to flow down unnecessary requirements to subcontractors.
- Defence Industry suggested that improved and earlier engagement may lead to higher quality tenders which take less time to evaluate.
- Probity practises could be improved to facilitate more efficient engagement between Defence and Defence Industry.
- Improving the maturity of Defence’s requirements in documentation that is released to market and reducing the instances of usage of Offer Definition and Improvement Activities should mean that some commensurate schedule reductions can be achieved.

The Survey responses as shown in Figure 6 below from Defence personnel (77%) and Defence Industry (69%) suggested that there is generally adequate time given to Defence Industry to respond to a tender, although 19% of Defence and 28% of Defence Industry thought that too little time was provided.

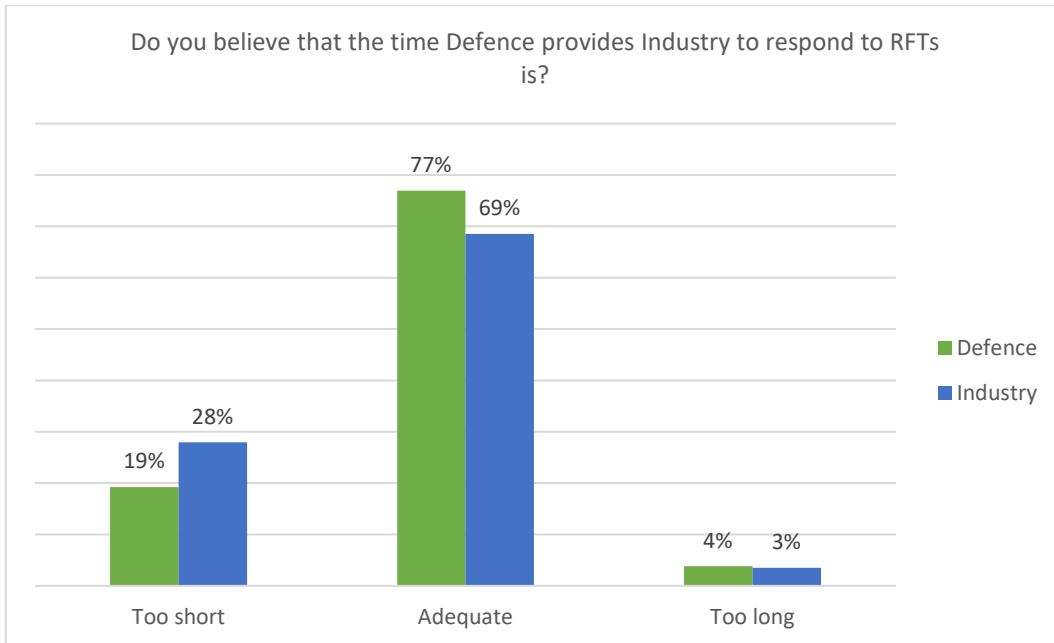


Figure 6: Response time for Tenders

Although it was generally thought that the tender response time was adequate, two key themes arose:

- earlier engagement by Defence helped Defence Industry to position itself to respond to tenders in a more timely and efficient manner, and
- the volume of material requested by Defence sometimes made it difficult to respond in the required timeframes.

A key issue in relation to this area of the Review is the time taken between tender submission and contract execution. As shown in Figure 7, 41% of Defence Survey respondents and 32% of Defence Industry identified that the time between tender submission and contract execution was adequate. However, 53% of Defence respondents and 64% of Defence Industry said that it was too long. An often cited reason for this was the lack of capacity and capability in Defence which led to protracted evaluation and negotiation activities. Other strong contributing factors to this long duration include internal Defence and Government approval processes. Only 6% of Defence respondents and 4% of Defence Industry responded that the time was too short.

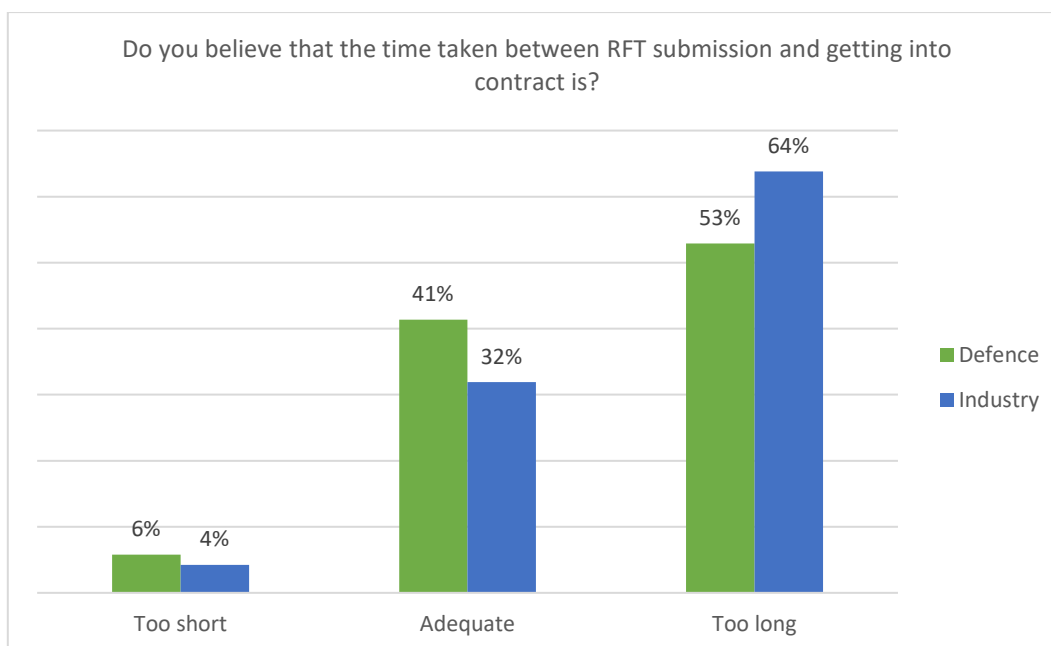


Figure 7: Time between tender submission and contract signature

There was also a view expressed that appropriate use of pre-tender processes such as Requests for Information or Requests for Proposal would be beneficial – effectively allowing Defence to reduce tender and subsequent evaluation time by better defining and communicating requirements prior to tender release.

3.3.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 3

- Defence will focus its pre-Gate 1 process to ensure its requests for tender are mature (Recommendation 1A).
- Defence will target tender evaluation to be completed within a similar time to that provided to industry for their Tender response for ACAT III and ACAT IV projects, but not to exceed six months, and not more than double the industry consideration time for ACAT I and II, but not to exceed 12 months (Recommendation 1B).
- Defence will strengthen its Annual Procurement Plan on AusTender, to better signal upcoming procurements to industry and publish status updates at intervals not greater than quarterly, for all procurements in excess of \$20 million (Recommendation 2A).
- Upon selection of a preferred tenderer, Defence will debrief unsuccessful tenderers with sufficient information to implement lessons learned for future tenders. This may necessitate a more detailed debrief upon Government project approval (Recommendation 2C).
- Defence will continue to increase, broaden and deepen individual and collective commercial skills (Recommendation 5A).
- Defence will improve guidance, training and consistency in Defence Capability acquisition across Defence and partner in training with industry (Recommendation 6).

- Defence will develop more agile/cost effective approaches to market including a phased industry engagement and solicitation approach for the most efficient and effective delivery capability into the ADF as appropriate to the characteristics of the project (Recommendation 7).

3.4 Term of Reference 4

“Can Defence do anything to improve cash flow to supply chain?”

Cash flow is one of the most important fundamentals of operating any business. Defence recognises that timely payment, particularly to SMEs is of primary importance. Defence intends to consider if it is possible to try and de-couple prime and subcontractor payments and potentially unbundle milestone payments.

3.4.1 Summary of Findings

Whilst the ASDEFCON suite has the flexibility to accommodate differing payment models, the Review identified that Defence Industry has a consistent view that the flexibility within the ASDEFCON suite payment models was not being appropriately utilised.

While some respondents suggested that Defence impose strict obligations on contractors to pay subcontractors, other responses urged Defence not to be drawn into issues governed by a contract Defence is not party to and suggested that leaving contractors and subcontractors to negotiate payment terms would lead to better outcomes for all.

TOR 4 Summary of Findings:

- *Defence acknowledges that the payment models and milestone payment arrangements could be tailored to suit the nature of procurements.*
- *Defence will develop improved guidance to allow Defence project teams to be able to develop and implement the appropriate payment model for the procurement.*

Detailed comments:

- The Review identified that many respondents expressed deep appreciation for Defence’s initiative during the COVID-19 Pandemic to make early payment to contractors.
- Defence Industry expressed the view that Defence’s tailoring of payment regimes does not always support adequate cash flow for contractors and subcontractors.
- The Review did not identify an acceptable means of de-coupling prime and subcontractor payments that is consistent with the Commonwealth’s payment policies.
- Engaging appropriate commercial and financial areas of expertise during the tender development process would assist in tailoring the appropriate payment model for a given procurement. More professionalisation and specialist skilled resources are required in this area.

Overall, a significant number of respondents (39%) indicated that the ASDEFCON suite payment regimes encouraged timely and efficient payment to contractors and subcontractors. Importantly, a significant number of respondents (40%) were unsure whether the ASDEFCON payment terms encouraged timely and efficient payment. This is shown in Figure 8 below.

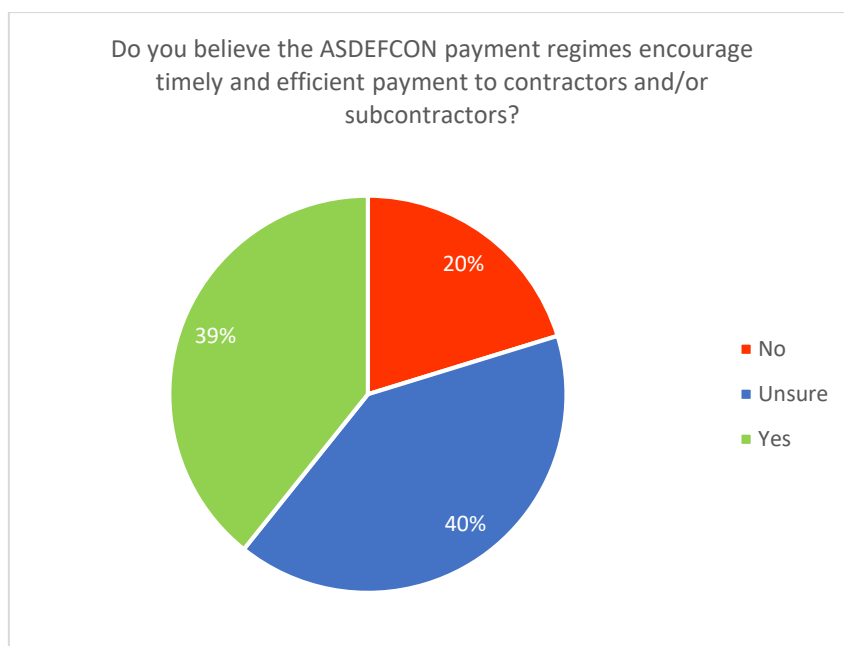


Figure 8: Payment timeframes

The key theme which emerged in response to this area of the Review is that Defence Industry has a significant, and understandable, focus on ensuring cash flow and that anything that increases cash flow (such as allowing payments to be made earlier and more regularly) would be welcomed by Defence Industry. The Review identified a consistent concern regarding the delay between performing work and receipt of payment. This was seen to be driven by the milestone-based payment regime in the ASDEFCON suite. The Review Team noted that the ASDEFCON suite could be tailored in such a way as to increase frequency of payment, however feedback received suggested underutilisation of the available flexibility within the ASDEFCON payment models.

3.4.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 4

- Defence will continue to increase, broaden and deepen individual and collective commercial skills (Recommendation 5A).
- Informed by the underway review, Defence will also strengthen management of external service providers supporting Defence procurement and contracting activities (Recommendation 5B).
- Defence will improve guidance, training and consistency in Defence Capability acquisition across Defence and partner in training with industry (Recommendation 6).

3.5 Term of Reference 5

“Does defence understand risk and can it accept manageable risk?”

Over time, Defence has tended to adopt a rigorous and detailed approach to try and better manage all risk regardless of project complexity. Overly complicated contracts (and subcontracts) can also make it more difficult for the project and Defence program offices to manage the delivery of ADF capability.

Defence needs to better assess risk early in the process, seek to appropriately allocate those risks and then look to manage risks through its engineering, project and contract management functions. Can the Smart Buyer framework be improved or be applied with greater flexibility? Additionally, are there any template terms that should be entirely common across the ASDEFCON suite, and which are non-negotiable (eg requirements to comply with laws and policy).

3.5.1 Summary of Findings

Allocation of risk will always be a cause of contention between Defence Industry and Defence. The Review identified the view held by Defence Industry and some areas of Defence, that Defence does not accept a sufficient share of risk. The Review Team found that Defence generally understands risk, has established appropriate risk frameworks and seeks to communicate that risk to Defence Industry. Defence seeks to accept risk when it is the party best suited to bear that risk in accordance with the Defence Liability Principles which reflect an agreed position between Defence and Defence Industry and which is incorporated into the ASDEFCON suite of templates.

TOR 5 Summary of Findings:

- *Defence has a framework to actively manage operational, capability and financial risks in procurement, on behalf of Government. This is also being strengthened.*
- *Further cooperation between Defence and Industry will increase Defence’s knowledge of risks assumed by Industry and how they are managed and priced. This should include means to reduce uncertainty with factors such as optimistic delivery schedules, developmental projects, integration and fixed price contracts.*

Detailed comments:

- Defence Industry and Defence have identified the level of risk acumen within Defence as an issue.
- Review respondents have suggested that the contractual risk allocation within the ASDEFCON suite is inappropriately apportioned.
- Defence Industry suggested that there should be more consistent and detailed engagement by Defence during the requirements development process to reduce risk throughout the procurement process.
- Review respondents consistently identified probity as a barrier to frank and open discussions which could reduce risk for Defence and the contractor.

3.5.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 5

- Defence will strengthen its Annual Procurement Plan on AusTender, to better signal upcoming procurements to industry and publish status updates at intervals not greater than quarterly, for all procurements in excess of \$20 million (Recommendation 2A).
- Defence will facilitate an option for tenderers to also provide a verbal brief should they wish to do so at an appropriate time before, or as part of, tender evaluation (Recommendation 2B).
- Upon selection of a preferred tenderer, Defence will debrief unsuccessful tenderers with sufficient information to implement lessons learned for future tenders. This may necessitate a more detailed debrief upon Government project approval (Recommendation 2C).
- Defence will improve guidance, training and consistency in Defence Capability acquisition across Defence and partner in training with industry (Recommendation 6).

3.6 Term of Reference 6

“Does Defence ask only for the information it needs when it needs it?”

Defence should only ask for what it needs when it needs it. Defence may be able to refine its processes to seek only the information it needs to evaluate for the purposes of shortlisting at an earlier stage. It may be appropriate to consider a two stage process and seek contract management artefacts only after shortlisting. Similarly, Defence should consider if it is asking for the right types of information, and in the right form, to best manage the relevant commercial and procurement risks.

3.6.1 Summary of Findings

The Review identified broad support for the ASDEFCON suite as a solid and effective base for Defence procurement. However there was also a consistent view that the ASDEFCON suite could be simplified and streamlined, and that Defence should request less information during the tendering process. Further consideration of whether data sought at tender submission could be reduced or staged without introducing unacceptable risk to the Commonwealth is necessary. Additionally investigation is needed into enhancing training around tender development and evaluation.

TOR 6 Summary of Findings:

- *The Review identified that in some projects Defence has requested more information than it needs to evaluate a tender and formulate a contract.*
- *Review input recommended increased use of available training, evolved guidance and direction to Defence project teams.*

Detailed comments:

- Respondents expressed the view that Defence asks for too much information during its tender process which drives up cost. Some of this information could either be asked for later in the process (once a down select has occurred) or not asked for at all.
- Defence Industry holds the view that the cost of tendering and contracting with Defence is too high. Defence should take more consideration of the high cost, especially for Small to Medium Enterprises, of an unsuccessful tender.
- Both Defence Industry and Defence raised the need to increase the availability of training and improve training uptake, upskilling both Defence Industry and Defence, including seeking opportunities to continuously improve training materials. This was identified as assisting in Defence only asking for the information it needs, when it needs it.
- Respondents identified a contractor accreditation program as proposed in Term of Reference 7, may provide the added benefit of addressing concerns raised under Term of Reference 6.

As shown in Figure 9 below, 56% of all respondents believed that there was an opportunity to “improve, combine or synergise parts of the ASDEFCON templates”, while only 5% thought there was no opportunity. Shown in Figure 10 below, approximately 85% of large companies believe the opportunity to improve, combine or synergise parts of the ASDEFCON suite exists.

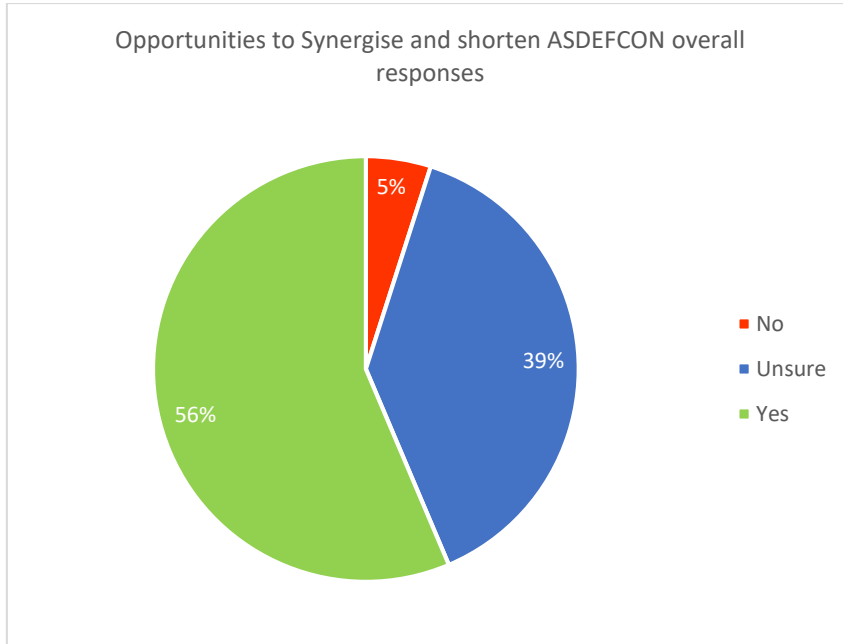


Figure 9: Synergising and Shortening ASDEFCON Overall Responses

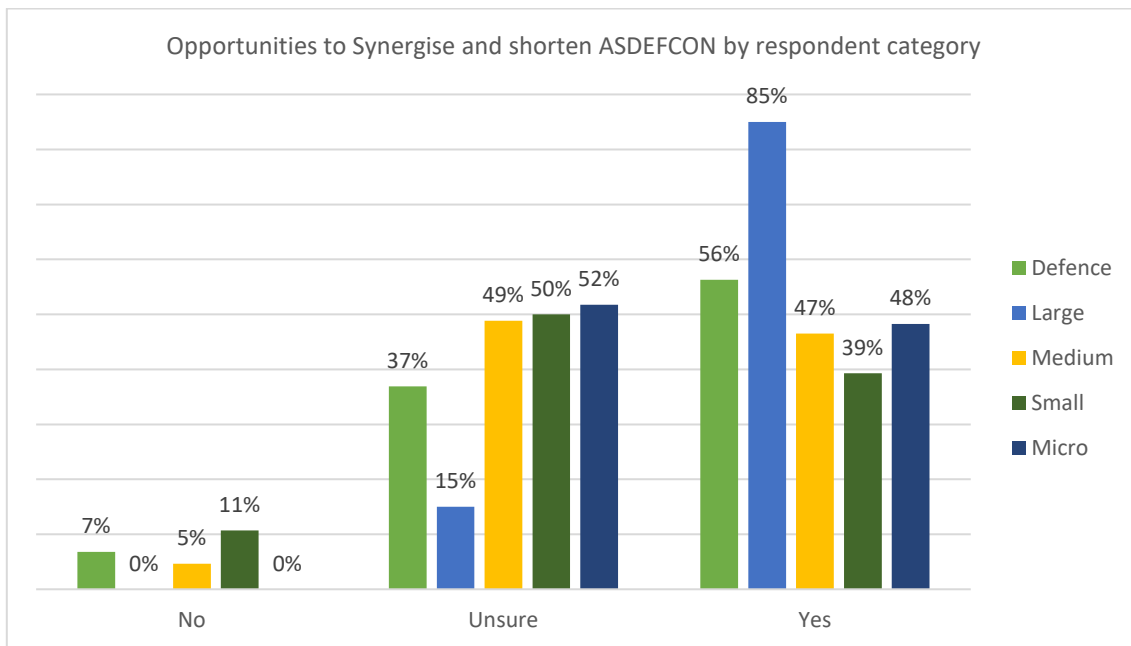


Figure 10: Synergising and Shortening ASDEFCON by Respondent Category

3.6.2 Recommendations to Address Key Findings

The Review did not put forward a firm recommendation to address these key findings. It is noted that other Recommendations if implemented will address these Findings to some extent, including Recommendation 1A in relation to ensuring mature tenders are released, Recommendations 5A and 6 regarding training, and Recommendation 4 concerning a contractor accreditation program.

3.7 Term of Reference 7

“Would a Contractor accreditation program (centrally managed) help industry?”

Could a better system be developed within Defence to centrally hold and manage these artefacts and oversee compliance functions? The responsible group could offer assurance to project teams through the evaluation process. This system could be used to identify primes and SMEs as “Defence ready”. This would require projects to operate on a more centralised basis rather than project-centric basis. Defence will examine ASDEFCON as it applies to Defence panels.

3.7.1 Summary of Findings

A centrally managed contractor accreditation program would be welcomed by Defence Industry if it resulted in lower cost of tendering.

TOR 7 Summary of Findings:

- *Defence and Defence Industry signalled their strong support for a centrally managed contractor accreditation program.*
- *Such a program (expanding on the existing insurance, master guarantee and supplier analysis work) might provide opportunities to reduce the need for Defence Industry to provide such information with each tender response.*

Detailed comments:

- Defence Industry is supportive of a centrally managed accreditation program, even if there is a cost to participate.
- The scope of such a program was not able to be identified during the Review, and the adoption of such a program is likely to have significant resourcing implications for Defence.

Through Survey and later discussions with Defence Industry it was clearly identified that an accreditation program would be welcomed by Defence Industry. Defence Industry generally held the view that such a program could be used to reduce the volume of information requested during tendering and the time it takes to respond. While there were many suggestions put forward as to what to include in such a program, these suggestions would need to be tested to ensure they met Defence’s requirements and to examine the extent to which they could be broadly applied to Defence Industry. No common theme on what would be included emerged.

The Review Team noted the existence of similar programs such as the Approved Contractor Insurance Program and the Master Guarantee Program, however these only apply to larger contractors due to the cost of participation.

3.7.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 7

- Defence will work with industry to develop a program (including capturing data from existing systems and initiatives), for contractor accreditation for progressive implementation from 1 July 2022 (Recommendation 4).

ASDEFCON and Defence Procurement Review 2021

3.8 Term of Reference 8

“Can Defence use technology solutions to support its template use and the development of appropriate tender and contractual artefacts?”

The current template selection guide may be able to be automated in a way to make it more useful to project teams. Also there are particular artefacts in the ASDEFCON contracting suite (eg data item descriptions (DID) and checklists) that may able to be automated.

3.8.1 Summary of Findings

The majority of Review feedback did not identify an off the shelf solution that would support Defence’s template use and development of tender and contractual artefacts.

Technology solutions that could assist Defence may already exist, but there were no responses to the Review, either from Defence personnel or Defence Industry, which identified the need, benefit or a clearly viable software solution.

TOR 8 Summary of Findings:

- *The Review identified the need for Defence to further utilise technology solutions supported by updated and targeted guidance, to assist Defence project teams to select the correct templates.*
- *Defence’s internal guidance is being developed as online interactive tools to assist and offer the quickest medium for updating guidance and process.*

Detailed comments:

- A variety of potential technologies that could improve Defence’s procurement processes may already exist, but none were clearly identified through the Review.
- Eliciting a clear course of action from responses to the Review was difficult.
- Defence should further investigate whether appropriate technology solutions could be made available to Defence personnel.

3.8.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 8

- Defence will work with industry to develop a program (including capturing data from existing systems and initiatives), for contractor accreditation for progressive implementation from 1 July 2022 (Recommendation 4).
- Defence will develop more agile/cost effective approaches to market including a phased industry engagement and solicitation approach for the most efficient and effective delivery capability into the ADF as appropriate to the characteristics of the project (Recommendation 7).

3.9 Term of Reference 9

“What can Defence do to gain a better industry understanding and develop its commercial acumen and skills to achieve better capability outcomes?”

Aligned to Defence’s broader reform programs, what practical steps can Defence take to improve its overall skills and industry acumen?

Would a more structured exchange of ideas and experience between Defence and Defence Industry, including secondments into businesses, help Defence better appreciate the perspective and objectives of Defence Industry and build trust and appreciation of each other’s perspectives.

Could any current courses or training administered by Defence be modified to facilitate greater commercial acumen and understanding of the Australian Defence Industry?

3.9.1 Summary of Findings

Consistent with the recurring Finding of the Review relating to training and professionalisation, the responses to this area of the Review also emphasised the need for Defence to invest more in procurement training and professionalisation to support complex procurement. The involvement of personnel with appropriate commercial skillsets is considered essential, more staff are required to meet the demands for such skillsets.

TOR 9 Summary of Findings:

- *In response to this question the Review received many suggestions including:*
 - *Look for more opportunities to improve commercial engagement with Defence Industry during procurement processes;*
 - *Partner with Defence Industry and review current probity practices, guidance and training to better understand Defence and Defence Industry’s drivers;*
 - *Better understand reasons for flow down of requirements under head contract to subcontractors, particularly SMEs; and*
 - *Develop framework of training and accreditation for Defence and contracted workforce.*
- *A key underlying theme in the responses was that Defence, and some parts of Industry, have a need for an increased quantity of procurement professionals and a need for further skilling on the drivers of Defence and Industry.*

Detailed comments:

- Defence Industry has the view that Defence needs to better understand their drivers and requirements.
- Both Defence Industry and Defence have identified that increased training and professionalisation will improve the commercial acumen of Defence personnel. The lack of suitably trained people has created skill gaps which lead to specific issues, for example the lack of understanding and management of commercial risk throughout the procurement process.

- There is a perception that Defence requires prime contractors to flow down unnecessary requirements to subcontractors.
- The Review found the underutilisation of experienced internal commercial personnel during the procurement process as a concern by both Defence and Defence Industry.
- Probity as applied was cited as creating a restrictive barrier to communication and collaboration with Defence Industry. This represents another area where the lack of training is impacting capability outcomes.
- Defence Industry identified that Defence releases tenders at inappropriate times (such as just before Christmas), which puts unreasonable pressure on Defence Industry.
- Defence can leverage its existing skilling initiatives to ensure Defence personnel are aware of Defence Industry's drivers and concerns, so that these can be taken into account by Defence's procurement teams.

As demonstrated in Figure 11 below, the view that Defence does not sufficiently understand the drivers for Defence Industry was held by just over half (53%) of all respondents. Defence personnel Survey respondents also held the view that Defence Industry does not adequately understand Defence.

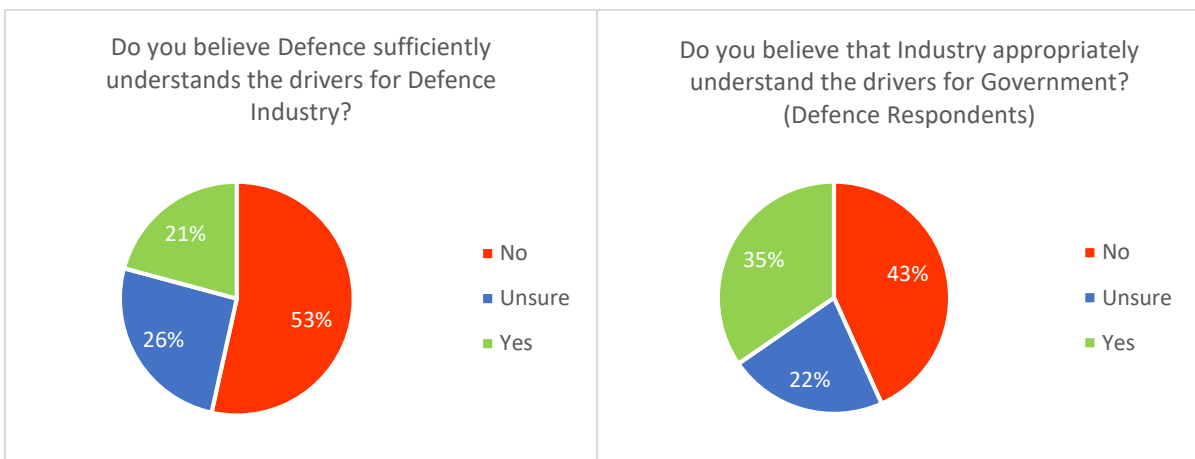


Figure 11: Understanding of Defence Industry Drivers

This data suggests that both Defence and Defence Industry would benefit from initiatives to foster better understanding of the drivers impacting procurement decisions for both parties.

In addition, Defence Industry also expressed the view that Defence does not invest enough effort in fostering mutual understanding and makes insufficient effort to understand the commercial issues affecting contractors. Improved training was the most frequent suggestion for improving Defence personnel's commercial acumen, their procurement skills and their understanding of Defence Industry.

3.9.2 Recommendations to Address Key Findings

Headline Recommendations relevant to TOR 9

- Defence will focus its pre-Gate 1 process to ensure its requests for tender are mature prior to release (Recommendation 1A).
- Defence will facilitate an option for tenderers to also provide a verbal brief should they wish to do so at an appropriate time before, or as part of, tender evaluation (Recommendation 2B).
- Upon selection of a preferred tenderer, Defence will debrief unsuccessful tenderers with sufficient information to implement lessons learned for future tenders. This may necessitate a more detailed debrief upon Government project approval (Recommendation 2C).
- Defence will increase transparency when limited tenders are proposed (Recommendation 2D).
- Defence will develop an agile procurement/collaborative contract template model in conjunction with industry. This task will commence in Q4 2021 (Recommendation 3A).
- Defence will address SME concerns about over use of “flow down” contract terms and conditions (Recommendation 3B).
- Defence will continue to mature risk allocation management and commensurate contracting (Recommendation 3C).
- Defence will continue to increase, broaden and deepen individual and collective commercial skills (Recommendation 5A).
- Informed by the underway review, Defence will also strengthen management of external service providers supporting Defence procurement and contracting activities (Recommendation 5B).
- Defence will establish a ‘Procurement Improvement Cell’, to provide an avenue for industry to comment on areas of good and bad practice. This cell will also mentor and develop Defence teams to develop better practice including where deficient practice is identified (Recommendation 5C).
- Defence will improve guidance, training and consistency in Defence Capability acquisition across Defence and partner in training with industry (Recommendation 6).
- Defence will develop more agile/cost effective approaches to market including a phased industry engagement and solicitation approach for the most efficient and effective delivery capability into the ADF as appropriate to the characteristics of the project (Recommendation 7).

Annex A - Terms of Reference

ASDEFCON and Defence Procurement Review Terms of Reference

Background

The Minister for Defence Industry engaged with the Australian Defence Industry which identified a number of opportunities to improve Defence engagement with industry and to build a more resilient Defence industrial base.

A key opportunity identified is that it may be timely for the Department of Defence (**Defence**) to conduct a review of the Australian Standard for Defence Contracting (**ASDEFCON**) suite of tendering and contracting templates and relevant procurement processes and practices to support these objectives.

Some of the opportunities for Defence procurement contracting processes and practices identified by the survey responses include:

- simplifying and streamlining the ASDEFCON contracting templates;
- removing complexity and onerous flow down obligations that lead to additional cost and risk to the suppliers;
- developing subcontracting templates for industry to use;
- expanding Defence commercial acumen within its procurement practices;
- mandating Defence payment terms through the supply chain and considering partial payments of milestones to facilitate cash flow to industry, including small to medium enterprises (SMEs); and
- relaxing some barriers to industry's (particularly SMEs) participation in Defence's supply chain.

Review Authority

On 26 August 2020 the Minister for Defence Industry (in conjunction with the Minister for Defence) wrote to the Department Secretary requesting the Review be undertaken by Andrew Staines (First Assistant Secretary, Procurement and Contracting) and Francesca Rush (Assistant Secretary, General Counsel – Commercial).

Mr Staines and Ms Rush will be described as the 'Reviewers' in these Terms of Reference.

Timing

The Review team will report to Government by the end of Q2 2021.

The Government will release a summary of the findings.

Review Governance

The Reviewers have established a Working Group (chaired by the Reviewers and supported by senior Defence personnel). The Working Group will comprise Defence personnel with legal, engineering,

project management (including materiel logistics project management) and commercial expertise. The Working Group will also include a number of non-Defence subject matter experts.

An advisory group comprised of senior Defence officials (drawn from the Capability Acquisition and Sustainment Group, Estate and Infrastructure Group and Defence capability managers) will be used to provide advice and guidance during the Review.

The Review will be overseen by the Minister for Defence Industry, the Hon Melissa Price MP.

Review Context

The Review is to consider:

Do the ASDEFCON contracting suite and Defence's procurement processes and practices remain contemporary and do they appropriately balance the needs of both the Australian defence industry and the Australian Defence Force (ADF) war fighter?

The Review should have regard to the following initial questions:

1. Can Defence better identify and describe what the ADF war fighter needs?

To build an appropriate procurement framework, Defence needs to better understand what the ADF war fighter needs and how industry can meet those needs. Once understood, this needs to be translated into Defence's contracts to ensure industry clearly understands what they are being asked to deliver.

This includes gaining a greater understanding of what industry can offer through broader and deeper industry engagement at all stages of the procurement process, including pre-Gate 0 and, through that engagement, assessing what industry needs to further develop; and for Defence to adapt its procurement and commercial strategies to meet those capability needs.

2. Do Defence's processes and practices need to evolve to the new environment?

Defence recognises that the opportunity of this review is to look beyond the language in the templates.

Defence must also look at its procurement processes and practices. Defence's processes also need to respond to an evolving regulatory and threat environment. Defence's processes must ensure that appropriate terms and conditions are applied to its procurements. Defence must also ensure it has evolved its procurement practices by further developing its commercial acumen. Defence will consider if its existing processes can be better leveraged to achieve a better outcome for both Defence and its industry partners.

3. Defence knows time = money, can timeframes be reduced?

Can the time from tender release to contract execution be shortened without compromising ADF capability needs? What greater flexibility can be provided to Defence personnel to shorten the length of tender evaluation without compromising ADF capability needs?

4. Can Defence do anything to improve cash flow to the supply chain?

Cash flow is one of the most important fundamentals of operating any business. Defence recognises that timely payment, particularly to SMEs is of primary importance. Defence intends to consider if it is possible to try and de-couple prime and subcontractor payments and potentially unbundle milestone payments.

5. Does Defence understand risk and can it accept manageable risk?

Over time, Defence has tended to adopt a rigorous and detailed approach to try and better manage all risk regardless of project complexity. Overly complicated contracts (and subcontracts) can also make it more difficult for the project and Defence program offices to manage the delivery of ADF capability.

Defence needs to better assess risk early in the process, seek to appropriately allocate those risks and then look to manage risks through its engineering, project and contract management functions. Can the Smart Buyer framework be improved or be applied with greater flexibility? Additionally, are there any template terms that should be entirely common across the ASDEFCON suite, and which are non-negotiable (eg requirements to comply with laws and policy).

6. Does Defence ask for only the information it needs when it needs it?

Defence should only ask for what it needs when it needs it. Defence may be able refine its processes to seek only the information it needs to evaluate for the purposes of shortlisting at an earlier stage. It may be appropriate to consider a two stage process and seek contract management artefacts only after shortlisting. Similarly, Defence will consider if it is asking for the right types of information, and in the right form, to best manage the relevant commercial and procurement risks.

7. Would a Contractor accreditation program (centrally managed) help industry?

Could a better system be developed within Defence to centrally hold and manage these artefacts and oversee compliance functions? The responsible group could offer assurance to project teams through the evaluation process. This system could be used to identify primes and SMEs as "Defence ready". This would require projects to operate on a more centralised basis rather than project-centric basis. Defence will examine ASDEFCON as it applies to Defence panels.

8. Can Defence use technology solutions to support its template use and the development of appropriate tender and contractual artefacts?

The current template selection guide may be able to be automated in a way to make it more useful to project teams.

Also there are particular artefacts in the ASDEFCON contracting suite (eg data item descriptions (DID) and checklists) that may be able to be automated.

9. What can Defence do to gain a better industry understanding and develop its commercial acumen and skills to achieve better capability outcomes?

Aligned to Defence's broader reform programs, what practical steps can Defence take to improve its overall skills and industry acumen?

Would a more structured exchange of ideas and experience between Defence and industry, including secondments into businesses, help Defence better appreciate the perspective and objectives of industry and build trust and appreciation of each other's perspectives.

Could any current courses or training administered by Defence be modified to facilitate greater commercial acumen and understanding of the Australian defence industry?

Targeted consultation

The Reviewers and the working group intend to engage across the Defence stakeholder groups, across industry and relevant agencies.

Within the scope of the Review and given the timing of the delivery of the report and recommendations to Government, there will be targeted consultation with:

- Defence industry participants – including participants headquartered overseas (via virtual engagement);
- Defence personnel (Capability Acquisition and Sustainment Group (CASG), Estate and Infrastructure Group (E&IG), Non-Materiel Procurement, Chief Information Officer Group (CIOG), Capability Managers (inc ADF) and Strategic Policy);
- Defence Industry associations and advocacy bodies at a national and state level;
- Relevant Commonwealth, State and Territory government agencies; and
- Ministers and officials from State and Territory governments.

Reviewers

Mr Andrew Staines – Andy leads the Commercial Division as First Assistant Secretary Procurement and Contracting. The Commercial Function provides procurement, contracting and commercial expertise and support across the procurement lifecycle. Before re-joining Defence in mid-2019 Andy held numerous roles in the Department of Finance with a focus on simplification and modernisation of the Commonwealth's procurement policy and its application to whole of Government procurement arrangements.

Francesca Rush – Fran is Defence's General Counsel – Commercial and leads the Defence Legal branch that supports Defence's Capability, Acquisition and Sustainment Group, CIO Group, Defence Science and Technology Group and Non-Materiel Procurement group. Before joining Defence in October 2019 Fran was a senior partner of a leading law firm specialising in big-ticket asset finance and procurement for private and public sector clients.

Mr Andrew Staines and Ms Francesca Rush will report directly to the Minister for Defence Industry.

Support to the Reviewers

The Reviewers will be supported by the Working Group as well as a secretariat, domiciled in the Department of Defence, consisting of staff from CASG, Defence Legal and the Associate Secretary's Group within the Department of Defence.

Annex B - Survey Questions

ASDEFCON and Defence Procurement Review Survey Questions

Part 1 - General

1. Are you a Defence employee? (APS or Military)
 - Yes
 - No

Part 1 - Industry

1. Which organisation/business are you from?

2. Is this response on behalf of an individual or is it on behalf of your organisation/business?
 - Individual
 - On behalf of organisation/business
3. What is the size of your business (Number of Employees)
 - Micro 0-5
 - Small 6-19
 - Medium 20-199
 - Large 200+
4. Where are you located?
 - Australia
 - Outside of Australia
5. Do you provide, or have you ever provided (directly or indirectly), goods or services to Defence?
 - Yes

- No
6. What is the primary nature of the goods or services provided? (Choose all that apply)
- Specialist Military Goods or Services
 - ICT Equipment and Service
 - Other Commercial off the Shelf Goods
 - Construction, Estate and Infrastructure Goods or Services
 - Outsourced service provider
 - Consultancy Services
 - Other, please specify
7. Do you have any current contracts (direct or indirect) with Defence?
- Yes
 - No
8. Do you have any current contracts with other federal (Non-Defence) government departments?
- Yes
 - No
9. **Approximately** how many Defence procurement processes were you involved in directly tendering to Defence over the past two years?
- 0
 - 1-2
 - 4-8
 - 9 or greater
10. **Approximately** how many Defence procurement processes were you involved in as a potential subcontractor over the past two years?
- 0

- 1-2
- 4-8
- 9 or greater

Part 1 - Defence

1. Which part of Defence do you work in?

- VCDF
- ADFHQ
- JCG
- JOC
- SP&IG
- DFG
- CIOG
- CASG
- DSTG
- E&IG
- DPG
- ASD
- DIG
- Navy
- Army
- Air Force
- Not Applicable

2. What is the primary nature of the goods or services you are involved in procuring? (Choose all that apply)

- Specialist Military Goods or Services
- ICT Equipment and Service
- Other Commercial off the Shelf Goods
- Construction, Estate and Infrastructure Goods or Services

- Outsourced service provider
- Consultancy Services
- Other
- Not Applicable

Part 2 - General

1. Explanatory note: *Procurement lifecycle, namely, Procurement Planning, preparing and release of the Request Documentation, releasing the Approach to Market, Evaluation of submissions, Negotiation and Contract Signature, Contract Management, and Disposal (in the case of goods).* How would you rate your organisation's understanding of Defence procurement processes within the procurement lifecycle?

- No understanding
- Limited understanding
- General understanding
- Good understanding
- Full understanding

2. Please provide further information regarding your response:

3. Explanatory Note: *The Terms of Reference (TORs) require Defence to examine whether the ASDEFCON template selection guide may be able to be automated in a way to make it more useful to project teams and determine whether particular artefacts in the ASDEFCON suite of tendering and contracting templates (eg, data item descriptions (DID) and checklists) may be able to be automated*

Have you used or observed technology or processes being used within Industry or other Government departments that would simplify or streamline the way that Defence does business with industry (such as procurement processes, drafting and managing contracts)?

- Yes :Please provide details _____
- No

4. Do you believe that the time Defence provides Industry to respond to RFTs is?

- Too short

- Adequate
- Too long

5. Please provide further information regarding your response:

6. Do you believe that the time taken between RFT submission and getting into contract is?

- Too short
- Adequate
- Too long

7. Please provide further information regarding your response:

8. Are there any aspects of Defence's procurement lifecycle that you have experienced that work particularly well?

- Yes
- No

9. Please provide details of what made the processes effective:

10. When or where in the procurement life cycle should Defence better engage with Industry to improve procurement outcomes?

11. Are there processes (such as probity) that constrain the interaction between Defence and industry?

- Yes
- No

12. Please provide further details regarding your response with emphasis on proposed process improvements.

13. Are there any parts of Defence's procurement lifecycle that you have experienced that were inefficient?

- Yes
- No

14. Please provide details as to what made the processes within the procurement lifecycle inefficient and what can be done to improve the outcome:

15. Are there any Defence behaviours (either by the Commonwealth itself or by above-the-line contractors supporting Commonwealth teams) that drive Defence procurement outcomes in a positive or negative way?

- Yes
- No

16. Please provide further information regarding your response:

17. Are there any Industry behaviours that drive Defence procurement outcomes in a positive or negative way?

- Yes
- No

18. Please provide further information regarding your response:

Part 2 - Industry

1. What are the main cost drivers (eg, process, unclear requirements) for your organisation when responding to Defence tenders?
-

2. Does Defence adequately communicate how it conducts its procurement processes, and keep your business informed as procurements progress?

- Yes
 No

3. Please provide further information regarding your response:
-

4. *Explanatory Note – The TORs require Defence to examine whether a centrally held and managed system could be developed within Defence to ‘pre-approve’ tenderer’s compliance with standard Defence requirements ([similar to the Approved Contractor Insurance Program](#)).*

Would your organisation be willing to participate in a ‘pre-approval’ or accreditation process for Defence to potentially streamline the procurement process?

- Yes
 No

5. Would you be willing to participate if it involved additional cost or provision of information on an ongoing basis?

- Yes
 No

6. What specific Defence requirements do you consider would be appropriate to include in a ‘pre-approval’ or accreditation process?
-

Part 3 - Industry

1. Has your organisation responded to an RFT based on ASDEFCON?
 - Yes
 - No

2. Please select which ASDEFCON Template the RFT was based on (Choose all that apply):
 - Strategic Materiel
 - Complex Materiel Volume 2
 - Complex Materiel Volume 1
 - Support
 - Support Short
 - Linkages Module
 - Services
 - Standing Offer for Services
 - Standing Offer for Goods
 - Standing Offer for Goods and Maintenance Services
 - Shortform Goods
 - Shortform Services
 - Other :Please specify _____
 - Not applicable

3. How well does your organisation understand the ASDEFCON suite of templates and how a template is structured and selected as the basis for an Approach to Market?
 - No understanding
 - Limited understanding
 - General understanding
 - Good understanding
 - Full understanding

4. Does your organisation understand how to access Defence training on ASDEFCON templates?

- Yes
 - No
5. Has your organisation ever received request documentation based on an ASDEFCON template that is not appropriate for the type of procurement being undertaken?
- Yes
 - No
6. Please provide details on the procurement and template:
-

Part 3 - Defence

1. Have you been involved in establishing an RFT or contract over the past two years?
- Yes
 - No
2. Did you use an ASDEFCON Template? (Choose all that apply)
- Strategic Materiel
 - Complex Materiel Volume 2
 - Complex Materiel Volume 1
 - Support
 - Support Short
 - Linkages Module
 - Services
 - Standing Offer for Services
 - Standing Offer for Goods
 - Standing Offer for Goods and Maintenance Services
 - Shortform Goods
 - Shortform Services
 - Other

Not applicable

3. Do you think there is sufficient guidance and training to enable you to select an appropriate ASDEFCON template for your procurement?

Yes

No

4. Could any of the existing guidance or training be made clearer, and if so, how?

5. Are there any 'gaps' between the current ASDEFCON templates that result in significant tailoring to make the template suitable for your procurement requirement?

Yes

No

6. Please provide details of the types of procurement that require significant tailoring.

Part 4 - General

1. Do you believe that the entire content of the ASDEFCON template suite is necessary/useful to Defence?

Yes

No

Unsure

2. Please provide more information on your answer, and if applicable, detail what parts of the documentation are not necessary and why?

3. *Explanatory Note – There may be improvement opportunities in Data Item Description rationalisation or Statements of Work for example. There may be domain (Air, Sea, Land, Joint) or Defence Group specific requirements that are better addressed in the templates.*

Other improvement opportunities may be related to the range of data sought in the tender or the timing of and the type of deliverables provided under contract. If necessary, separate responses can be attached to an email and sent to ASDEFCON.review@defence.gov.au If making specific comments about certain aspects of templates, please ensure the template names, versions and relevant document names/clauses are included.

Do you see any opportunity to improve, combine or synergise parts of the ASDEFCON templates?

- Yes
- No
- Unsure

4. Please provide more detail regarding your response.

5. Do you think the request documentation derived from usage of the ASDEFCON templates appropriately describes Defence's requirements (for example Capability Manager's needs)?

- Yes
- No
- Unsure

6. What requirements descriptions are done well/not done well and what improvements would you like to see in describing the Capability Manager's needs?

7. Do you believe the ASDEFCON payment regimes encourage timely and efficient payment to contractors and/or subcontractors?

- Yes
- No
- Unsure

8. Please provide details on what can be improved.

9. How can the processes linked to payment (eg, acceptance) in the ASDEFCON templates be changed to improve the cash flow to subcontractors upon achievement of their subcontract requirements?
-

10. Do you believe Defence accepts an appropriate level of risk in its contracts?

- Yes
- No
- Unsure

11. What risk would be better transferred to Industry or to Defence to drive cost savings?
-

12. *Explanatory Note: Defence has previously rolled out an initiative to reduce the cost of tendering through rationalising and reducing the amount of technical information that is requested as part of the tendering process in ASDEFCON (Strategic Materiel) and ASDEFCON (Complex Materiel Volume 2).*

Have you experienced any efficiency improvements in the tendering and source selection processes resulting from Defence requesting strategies rather than detailed draft plans in tenders based on ASDEFCON (Strategic Materiel) or ASDEFCON (Complex Materiel Vol 2) since the initiative was rolled out?

- Yes
- No
- Not applicable

13. Please provide more detail regarding your response or further suggested improvements.
-

14. Do you believe Defence sufficiently understands the drivers for Defence Industry?

- Yes
- No
- Unsure

15. How do you think Defence personnel can gain insight into Defence Industry?

16. Do you believe that Industry appropriately understand the drivers for Government (for example achieving benefit to the Australian economy)?

- Yes
- No
- Unsure

17. Please provide more detail regarding your response.

Part 4 - Industry

1. Which part of an RFT usually requires the most time to respond to (choose all that apply)?

- Tenderer's Deed of Undertaking
- Commercial
- Financial
- Project Strategies and Experience
- Solution Description
- Australian Industry Capability
- Other, please specify :Please specify _____

2. Please provide more detail regarding your response.

3. Which part of the RFT do you consider Defence spends the most time considering/evaluating? (Choose all that apply)

- Tenderer's Deed of Undertaking
- Commercial
- Financial

- Project Strategies and Experience
- Solution Description
- Australian Industry Capability
- Other, please specify :Please specify _____

4. Please provide more detail regarding your response.

5. What contract terms do you usually find most difficult to comply with or wish to negotiate on and why do these terms cause issues for your organisation specifically? Please provide detailed referencing information, for example (ASDEFCON Strategic Materiel) COC 6.11.2

6. Are there any aspects of Defence's procurement process that cause industry to incur costs that seem unnecessary?

- Yes
- No

7. If yes, what are they and why do you believe they are unnecessary?

Part 4 - Defence

1. Which part of the RFT response takes Defence the longest to evaluate and or negotiate?

- Tenderer's Deed of Undertaking
- Commercial
- Financial
- Project Strategies and Experience
- Solution Description
- Australian Industry Capability

- Draft Conditions of Contract and Attachments
- Draft Statement of Work and Annexes
- Other, please specify :Please specify _____

2. Please provide more detail regarding your response.

Part 4 - Final

1. What do you consider are the strengths/weaknesses of the documents and content requested in ASDEFCON templates?

2. *Explanatory Note – If necessary, separate responses can be attached to an email and sent to ASDEFCON.review@defence.gov.au If making specific comments about certain aspects of templates, please ensure the template names, versions and relevant document names/clauses are included.*

Do you have any further comments on how Defence could improve its ASDEFCON templates or procurement processes including any contract management processes?

3. *Your personal details will only be available to the review team and will not be provided to anyone outside of this process. All data and information will be collated and stored in accordance with the provisions of the Privacy Act 1988.*

Your participation in this survey is appreciated and the ASDEFCON Review team would like to be able to contact participants to seek clarification on comments if required. If you agree to us being able to contact you, please provide your Name, Email and Phone Number below.

Name _____

Email _____

Phone number _____

Annex C - Survey Response Statistics

ASDEFCON and Defence Procurement Review Statistics

High level details of ASDEFCON and Defence Procurement Review Survey:

- Survey closed on 14 March 2021
- Total responses – 250
- Defence Employees – 106
 - 55% of defence personnel are from Capability Acquisition and Sustainment Group
- Industry respondents – 144 – all located in Australia
 - Micro 0-5 30
 - Small 6-19 29
 - Medium 20-199 44
 - Large 200+ 41

Additional detail for ASDEFCON and Defence Procurement Review Survey:

- 130 of 144 industry respondents have provided goods or services to Defence
 - 116 with current contracts
 - 82 with other government contracts
- 36% of industry respondents have been involved in tendering on nine or more Defence procurements over the last two years
- 65% of industry respondents have tendered for a RFT based on ASDEFCON
- 56% of respondents have been involved in establishing a RFT or Contract over the last two years

Annex D - Glossary

Abbreviation	Description
ADF	Australian Defence Force
AIC	Australian Industry Capability
APS	Australian Public Service
ASDEFCON	Australian Standard for Defence Contracting
CASG	Capability Acquisition and Sustainment Group
CCS	Commonwealth Contracting Suite
CDIC	Centre for Defence Industry Capability
CMCA	Contractor Managed Commonwealth Assets
COC	Conditions of Contract
CPRs	Commonwealth Procurement Rules
DID	Data Item Description
DISER	Department of Industry, Science, Environment and Resources
DPM	Defence Procurement Manual
FMS	Foreign Military Sales
ICT	Information and Communication Technology
LRA	Liability Risk Assessment
ODIA	Offer Definition and Improvement Activities
PCP	Procurement Connected Policy
PEPPOL	Pan European Public Procurement Online
PT PCP	Payment Times Procurement Connected Policy
SME	Small to Medium Enterprises
SOW	Statement of Work
TOR	Terms of Reference

Term	Definition
Capability	means the ability resulting from the employment of the Mission System and the Support System to achieve a desired operational effect in a nominated

Term	Definition
	environment within a specified time and to sustain that effect for a designated period.
Contractor	means a company or business or individual who contracts directly with Defence.
Defence	means the Department of Defence and/or the Australian Defence Force.
Liability Risk Assessment	The Liability Risk Assessment is a process which captures and records the liability-related risks arising from a contractor's performance of a proposed contract.
Offer Definition and Improvement Activities (ODIA)	means an optional formal stage in the procurement process, which provides a mechanism for assisting procurement teams with dealing with the issues and risks of Defence not fully understanding each tenderer's offer. It follows an Initial Tender evaluation stage and precedes contract negotiations with one or more tenderers.
Sovereign Industrial Capability Priorities	means the industrial capabilities provided by Australian Industry that are considered so critical to Defence that Australia must have access to, or control over the associated skills, technology, IP, financial resources and infrastructure that underpin that capability.
Subcontractor	means any person (not the Commonwealth) that, enters a subcontract with a contractor to Defence on a contract for Defence.