

Single Source Contract Regulations 2014 Guidance

Chapter 1 Overview

Introduction

1. Single source procurement (non-competitive) within the Ministry of Defence (MOD) is worth over £6 billion annually, accounting for around 45% of the MOD's total procurement¹. In the absence of competition from a potential alternative supplier, value for money (VFM) can often be at significant risk.
2. Following an independent review² of the MOD's existing single source arrangements³ by Lord Currie in 2011, the Government produced a White Paper (Better Defence Acquisition, 2013) which recommended strengthening the MOD's arrangements for single source procurement. This formed the foundations for the [Defence Reform Act 2014](#) (DRA) which provides the legislative base for the new arrangements.
3. The Defence Reform Act 2014 attained Royal Assent in May 2014. It will enable the Single Source Contract Regulations 2014 ([SSCR](#)), which are expected to come into effect in December 2014. The DRA and SSCR provide a new legal framework for single source procurement by the MOD.
4. The legislation has nothing to say about the **decision** to choose a single source procurement route, which is governed by [existing law](#). However, once you have made the decision to go single source, the DRA and SSCR introduce significant changes to the way you must price and manage qualifying contracts.
5. The DRA and SSCR define whether a single source contract is a Qualifying Defence Contract (QDC). As the legislation covers the pricing of QDCs, it is important to consider whether your contract is a **potential** QDC, and if it is, to price it in accordance with the SSCR. There is a full list of criteria and exclusions in Chapter 2 Qualifying Defence Contracts. The DRA and SSCR also define whether a sub-contract of £25M (ex VAT) or above is a Qualifying Sub-contract (QSC) and therefore within scope of the SSCR.
6. You can find a more comprehensive description of the new Single Source Procurement Framework in the [Single Source Procurement Framework \(SSPF\) Overview document](#). This document explains more about why the new framework was necessary, and how it has come about.

¹ The average is based on data from the 2007/8, 2008/9, 2009/10, 2010/11 and 2011/12 Financial Years.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35913/review_single_source_pricing_regs.pdf

³ The Government Profit Formula and Associated Arrangements, commonly called the 'Yellow Book' agreement.

SSCR Guidance

7. To assist the MOD to comply with its obligations under the DRA and SSPR the Commercial Policy Team has created this suite of guidance. The guidance has been created for MOD Commercial Officers, so “you” indicates an action on the Commercial Officer. It is split into 12 chapters, listed below, to make it easier to use.

Chapter	Title
Chapter 1	Overview
Chapter 2	Qualifying Defence Contracts
Chapter 3	Pricing a QDC – the cost element
Chapter 4	Pricing a QDC – the profit element
Chapter 5	Contract Reporting
Chapter 6	Open Book and MOD Audit Rights
Chapter 7	End of Contract Activities and Reports
Chapter 8	Supplier Reporting
Chapter 9	Confidentiality
Chapter 10	Compliance and Remedies
Chapter 11	The Single Source Regulations Office (SSRO)
Chapter 12	The Single Source Advisory Team (SSAT)

8. We have also created a [glossary of terms](#) to help you understand the Regulations and associated guidance.

9. This Chapter 1 summarises the suite of commercial guidance. A brief overview of the content of each chapter now follows.

Summary of Chapter 2 – Qualifying Defence Contracts

New Contracts

10. The DRA and the SSCR will apply to new contracts that meet the requirements of being a QDC. A contract is eligible to become a QDC if:
- it is a single source contract placed on or after the 'commencement date'⁴ of the SSCR but before 31st March 2015, with a value of over £500,000,000 (£500M) (ex VAT); or
 - it is a single source contract of £5M (ex VAT) or above, placed on or after the 31st March 2015. Chapter 2 provides the detailed criteria which a contract must fulfil in order to be a QDC.
11. A contract that meets the criteria of being a QDC, **is a QDC**, and its status cannot be changed by negotiation. The only way a QDC can become a contract that is **not** a QDC, is by obtaining a formal exemption from the Secretary of State for Defence. Chapter 2 explains what you must do if you believe it appropriate to seek an exemption.

Contract Amendments

12. The chapter explains in what circumstances the MOD will seek agreement to make an amended contract a QDC. You can agree with the prime contractor that the amended contract should be treated as a QDC:
- if you amend a contract, on or after the commencement date of the SSCR, that was entered into on a single source basis before that date and the amended contract has a value of £5M (ex VAT) or above and meets the other criteria of being a QDC;
 - if you amend a contract on a single source basis on or after the commencement date of the SSCR where that contract was entered into through competition either before or after that date, and the amended contract has a value of £5M (ex VAT) or above and meets the other criteria of being a QDC.

Sub-contracts

13. Chapter 2 also introduces the concept of a Qualifying Sub-contract (QSC). A QSC can only exist where it is linked to a QDC; the value threshold to be a QSC is £25M (ex VAT). It is the responsibility of the prime contractor to determine if a sub-contract is a QSC and to advise the sub-contractor and the MOD of that assessment. A sub-contractor with a QSC has similar obligations to a prime contractor holding a QDC, in respect of any sub-contract they place.

Other Matters

14. The chapter explains other matters, such as how to determine the value of a potential contract for assessing QDC status, and whether there has been a

⁴ The commencement date is expected to be mid December 2014.

competitive process or not. It also explains that if there is disagreement between the MOD and a contractor as to whether a contract is a QDC, you can refer the matter to the external Single Source Regulations Office (SSRO) for an advisory opinion.

Summary of Chapter 3 - Pricing a QDC: the cost element

Pricing Principles

15. The price to be paid with respect to a single source contract should be fair and reasonable to both parties. The DRA and the SSCR explain that the contract price for a QDC must in almost all cases be determined in accordance with the pricing formula:

$$\text{Contract Price} = (\text{Contract Profit Rate} \times \text{Allowable Costs}) + \text{Allowable Costs}$$

Allowable Costs

16. The chapter explains that the definition of Allowable Costs (AC) will vary between contract types (e.g. in firm pricing AC will be based on estimated costs, whereas in ascertained cost pricing AC will be based on actual costs). The DRA and the SSCR describe three principles on which to determine whether a cost is allowable - costs must be appropriate, attributable and reasonable. These principles cover both direct and indirect costs that are charged to the contract, and statutory guidance will be made available by the SSRO to help the MOD and contractors determine if costs are allowable. The prime contractor has a responsibility under the DRA, as has the MOD, to be satisfied that any cost of a QDC is an Allowable Cost.

Sub-contracts

17. A QSC must also be priced in accordance with the pricing principles. The extent to which a qualifying sub-contractor shares pricing information with the prime will be a matter of commercial judgement; however, this does not in any way reduce the legal obligation of the qualifying sub-contractor to price in accordance with the pricing principles. A QSC, after contract let, may be subject to a legally binding price adjustment if it was not priced in accordance with the DRA / SSCR.

Contract Amendments

18. Amendments to QDCs or QSCs must be priced in accordance with the pricing principles outlined in the chapter. The chapter explains what to do if you are dealing with a Non-qualifying contract becoming a QDC through an amendment, as well as what to do when amending an existing QDC.

Other Matters

19. The DRA does not change MOD policy, and you should approach the price negotiation in terms of the 'No Acceptable Price, No Contract' (NAPNOC) principle.

Summary of Chapter 4 - Pricing a QDC: the profit element

The Contract Profit Rate (CPR)

20. The CPR aims to provide a contractor with a fair and reasonable profit for a QDC. The CPR is expressed as a percentage and is applied to the agreed Allowable Costs of the contract to determine the contract price. There are six steps that you must follow to determine the CPR:

$$\begin{aligned} & \text{Baseline Profit Rate (BPR)} \\ & \pm \text{ Risk adjustment} \\ & - \text{ POCO adjustment} \\ & - \text{ SSRO funding adjustment} \\ & + \text{ incentive adjustment} \\ & \pm \text{ Capital Servicing Allowances adjustment} \\ & = \\ & \underline{\text{Contract Profit Rate (CPR)}} \end{aligned}$$

The Six Steps to Calculate CPR

21. The chapter explains each of the individual steps in more detail. The Baseline Profit Rate (BPR), the SSRO funding adjustment and the Capital Servicing Allowances are revised annually, taking effect from April each year. The Risk and Profit On Cost Once (POCO) adjustments are agreed between the MOD and the contractor on a contract-by-contract basis. The incentive adjustment is at the MOD's discretion, also on a contract-by-contract basis.

22. The CPR is the sum of the above six steps, and will be applied in the pricing formula outlined in Chapter 3. Note that some steps may result in a nil adjustment.

Groups of Contracts

23. The chapter explains what you should do when calculating the profit rate for groups of contracts, for example pricing numerous comparatively low value QDCs placed with one contractor within a particular period.

Summary of Chapter 5 – Contract Reporting

Contract Reporting

24. Chapter 5 outlines the purpose of contract reporting, and lists some of the benefits that the new reporting system will bring.

The Process

25. The chapter explains the process for completion and delivery of contract reports. The contractor (of the QDC or QSC) is solely responsible for completion of the reports, although some content will need to be agreed in advance with the Project Team. The chapter details the dates by which contractors must submit their reports, and who they must submit reports to.

Reporting Requirements at the Start of a Contract

26. There are a number of reports which the contractor is required to submit to the MOD and the SSRO at the start of the contract:

- a. Contract Pricing Statement (CPS) – this mandated report details the basis of the agreed price. The contractor should submit the CPS prior to contract award, but in exceptional circumstances it may be submitted within a month of the initial reporting date⁵.
- b. Contract Reporting Plan (CRP) – this mandated report records the timeframe for submitting reports required under the provisions of the DRA and SSCR. You should agree the CRP with the contractor prior to contract signing but in exceptional circumstances it may be submitted within a month of the initial reporting date.
- c. Contract Notification Report (CNR) – this mandated report must be submitted by the contractor within one month of the initial reporting date. It is effectively the baseline for the QDC against which subsequent contract reports will be measured.

Reporting Requirements During the Contract

27. There are three reports which may be required throughout the duration of your contract:

- a. Quarterly Contract Report (QCR) – this is a mandated report for any QDC with an estimated value of £50M (ex VAT) or more. The contractor must provide the QCR to the SSAT and SSRO within one month of the end

⁵ The initial reporting date is defined in the SSCR as the date of contract amendment, or in all other cases the date the contract was entered into.

of each calendar quarter, from the date of entering into the QDC until the contract is complete.

b. Interim Contract Report (ICR) – this report contains similar information to the QCR, and may be useful for contracts under £50M in value. ICRs must be provided by the contractor for all contracts below and above £50M either at intervals agreed between the MOD and Contractor, or if dates are not agreed the SSCR specify a default period.

c. On-demand contract reports - while the contract reports detailed in the chapter are mandated by the SSCR to be provided at specific times from the date you place your contract, you may also request further reports. The chapter details the procedure for requesting reports and what content you can request.

28. The chapter explains when you would require a QCR, an ICR or an on-demand contract report for your contract. It also includes information on the content of the three reports and what actions you need to take on receipt.

Supplementary Reporting Requirements

29. The DRA sets out and secures these **minimum** legal requirements for contract reporting - you do not need to include contract conditions to obtain these reports. However, it may be appropriate for you to seek additional reporting requirements for your contract. In these cases, you will need to include narrative contract conditions to obtain the additional reporting.

Summary of Chapter 6 – Open Book and MOD Audit Rights

Record Keeping

30. The DRA and SSCR place a statutory obligation on contractors to be transparent. Chapter 6 details which records a contractor may reasonably be expected to keep, when they must start keeping them, and how long they must retain them for.

Open Book Rights

31. Although not referred to directly as 'open book' within the DRA or the SSCR, the new legislation provides the MOD with rights to access and examine certain contractor records for QDCs and QSCs. Chapter 6 outlines the purpose for which you are able to examine relevant records, and the amount of notice you must give your contractor when requesting information.

32. Although you can use open book principles at any time, the chapter outlines the typical circumstances where it may be appropriate to examine relevant records. For example, you may wish to do so after contract award, where you have concerns regarding the pricing assumptions; or during the life of the contract, to better understand a contractor's explanation of a developing cost variance. The chapter also explains your open book rights beyond contract completion.

Post-Award Review

33. Under the new framework provided by the DRA and SSCR, the MOD will introduce a new audit approach, the Post Award Review (PAR). Chapter 6 explains that you can conduct a PAR at any time up to two calendar years after contract completion and there is no once-only limit. The PAR is primarily intended to be conducted early in the life of the contract, to test the pricing assumptions used in pricing the contract.

Inappropriate Use of Open Book Rights

34. If a contractor feels you have not acted reasonably in relation to your rights then they have the right to refer the matter to the SSRO. Example situations where this might arise are listed in Chapter 6.

Duty to Report Relevant Events

35. There is a requirement for contractors to proactively notify the MOD of any material change, or any risk of a change, to the performance, cost or schedule of a contract. The chapter outlines some examples where a contractor would be expected to notify the MOD.

Summary of Chapter 7 – End of Contract Activities and Reports

End of Contract Management

36. Carefully managing the process that occurs at the end of a contract (both for QDCs and QSCs) can be useful for numerous reasons, such as ensuring that contractor deliverables have been received and to the standards expected. Chapter 7 initially outlines some of the general purposes of end of contract management, and also the actions required specifically for a QDC.

End of Contract Reports

37. There are two mandatory SSCR reports at the end of a qualifying contract which must be submitted by the contractor to the SSRO and SSAT electronically:

- a. Contract Completion Report (CCR); and
- b. Contract Costs Statement (CCS).

Chapter 7 outlines the timeframe that these two reports should be submitted by, and what information they contain. On the face of it the reports contain very similar information however the rationale for the requirement for separate reports is detailed in the chapter.

Final Price Adjustments

38. Final price adjustments will differ depending on the pricing method used for the QDC.

39. If a QDC has been priced using firm / fixed pricing, the default position under the SSCR is that it is subject to Protection against Excessive Profits and Losses (PEPL) (it is possible to exempt QDCs valued at under £50M (ex VAT) from PEPL under exceptional circumstances). Chapter 7 explains how the end of contract reports can indicate whether a PEPL adjustment is required. Details of thresholds and a calculation for PEPL are included in Annex C to Chapter 3. An [Microsoft Excel calculator for PEPL](#) is available on the Commercial Toolkit.

40. In a QDC or a component of a QDC which is priced using the Target Cost Incentive Fee (TCIF) method, the target cost will have been calculated using the estimated Allowable Costs agreed at the date the contract was entered into. You will determine the final contract price at the end of the contract by reference to the actual Allowable Costs incurred by the contractor as detailed in the CCS. The final price is subject to an adjustment by the associated contract terms.

Post-costing

41. The MOD has the right to access a contractor's relevant records in order to compare the estimated contract costs with outturn costs. Chapter 7 details some of the reasons why you might carry out a formal post-costing investigation, and the amount of notice you must give the contractor if you require access to relevant records.

Duty to Keep Records

42. The SSCR place obligations on the contractor and the MOD to retain relevant records and the chapter details the specific retention periods. You should read this guidance in conjunction with the [Contract Administration Commercial Policy Statement](#) which gives retention periods specific to commercial records, as extracted from [Joint Service Publication \(JSP\) 441 Defence Records Management Policy and Procedures](#).

Compliance

43. Chapter 7 details the compliance regime linked to end of contract activities and record keeping including the SSRO's role in giving determinations about Allowable Costs and remedies.

Summary of Chapter 8 – Supplier Reporting

Purpose of Supplier Reporting

44. Chapter 8 introduces some of the main purposes of supplier reporting, as well as the basic terminology and procedures which the contractor is required to follow. You do not need a detailed understanding of these as the supplier reports will not be listed in the Contract Reporting Plan (see Chapter 5 Contract Reporting) and will not be sent to the Commercial Officer, although the output of any analysis can be made available to you by the SSAT.

Value Threshold for Supplier Reports

45. As soon as a supplier holds a QDC or QSC of over £20M (ex VAT) (for financial years 2015/16 and 2016/17) or £50M (ex VAT) (from 2017 onwards), then they will need to provide specific supplier reports. Chapter 8 provides more detail on who needs to provide these reports and when.

Supplier Reports

46. There are eight supplier level reports and these are briefly described in Chapter 8.

Summary of Chapter 9 - Confidentiality

Restrictions on Disclosure of Information

47. Chapter 9 explains what the new restrictions are, and why a new criminal offence has been introduced. Increased transparency and statutory obligations could create additional risks for contractors, and the potential unauthorised release of information is of genuine concern for industry.

Schedule 5 of the DRA

48. Schedule 5 covers the restrictions on disclosing information. Information is subject to restrictions on disclosure (and therefore is SSCR protected) if:

- a. it has been obtained by the Secretary of State for Defence by virtue of the DRA or it has been derived from such information (for instance analysis);
- b. it relates to the affairs of an individual or a business; and
- c. it falls under one of the categories set out in the SSCR.

SSCR Protected Information

49. Information you receive from the SSRO / SSAT should be security marked. You could also receive information directly from the contractor that would fall under Schedule 5 of the DRA. You can use the Annexes in Chapter 9 to help you determine if information you receive is protected under the SSCR.

Penalty for Unauthorised Disclosure of Information

50. If you are found guilty of the offence of an unauthorised release of SSCR protected information you could be liable to imprisonment of up to 2 years, or to a fine, or both. You can use the Annexes to help you establish when you need to protect information.

Disclosing Information

51. The chapter also describes the circumstances under which you would be able to disclose SSCR protected information.

Summary of Chapter 10 – Compliance and Remedies

Principles of the Compliance and Remedies Regime

52. The compliance and remedies regime of the SSCR is applied through a combination of the compliance notices and civil penalty notices issued by the SSAT. Any compliance notice or civil penalty may be challenged by a supplier, firstly to the SSAT but ultimately to the independent SSRO.

Role of the MOD Single Source Advisory Team (SSAT)

53. The roles and responsibilities of the SSAT in operating the compliance regime are outlined in Chapter 10.

Compliance with the Defence Reform Act 2014

54. The chapter goes on to list the areas in which contractors may be issued with a compliance / penalty notices if they are considered to have contravened the SSCR. These include but are not limited to:

- a. assessing QSC status i.e. a contractor has failed to make an assessment of a contract to determine if it is a QSC, or has made an incorrect assessment;
- b. contract and supplier reports (relating to the CPS and CNR outlined in Chapter 5 Contract Reporting) i.e. a contractor fails to submit their CPS within one month of entering a contract;
- c. post contract i.e. the contractor fails to submit the CCR within six months of the contract completion date;
- d. the duty to notify i.e. subsequent events indicate that a contractor failed to notify you at the time about an event that had a material effect on a contract; and
- e. the duty to keep relevant records for the required period.

You can find more detail about the contraventions in the corresponding chapters on the SSRO and SSAT.

Compliance Notices

55. The chapter explains what information the compliance notice must contain (i.e. details of the contravention), and the timeframes within which it must be issued by the SSAT.

Penalty Notices

56. The chapter also outlines that the SSAT may issue a penalty notice, and details the circumstances where a penalty might be appropriate. The chapter explains what information the penalty notice should contain, and the time limits in which a penalty notice must be issued by the SSAT.

Other Matters

57. The chapter highlights that QSCs are subject to the same reporting and record keeping requirements as QDCs. Annex A details the prescribed maximum penalties which the SSAT can issue to contractors in different circumstances, depending on the contract value.

Summary of Chapter 11 – The Single Source Regulations Office (SSRO)

The Role of the SSRO and its Responsibilities

58. Chapter 11 explains the role of the SSRO which is a new, executive Non-Departmental Public Body (eNDPB) expected to develop to become an expert body on single source defence procurement. It also explains the SSRO's responsibility as the custodian of the new, legislative Single Source Procurement Framework introduced by the DRA and the SSCR.

59. It covers how you will interact with the SSRO via the SSAT, who are the MOD's point of contact with the SSRO.

Periodic Review of the DRA and the SSCR

60. The SSRO is responsible for reviewing the primary and secondary legislation three years after it commences, and every five years after that, and for making recommendations to the Secretary of State for Defence arising from those reviews. The chapter explains the purpose of the review.

Annual Review the BPR and Adjustments

61. The chapter explains that the SSRO is responsible for proposing a Baseline Profit Rate, an adjustment for SSRO funding, and market capital servicing rates to Secretary of State for Defence no later than 31 January each year.

Provide Statutory Guidance and Templates

62. The DRA requires the SSRO to publish statutory guidance on certain aspects of the SSPF and Chapter 11 gives details of this guidance.

Appeals, Opinions and Determinations

63. The SSRO must issue an opinion or determination on matters referred to it by either the MOD or industry. The chapter details the circumstances in which the SSRO would issue an opinion or determination.

Analysis and Monitoring of Regulations

64. The SSRO has a responsibility to analyse the data it receives on QDCs and QSCs and the chapter describes the analyses that the SSRO is expected to undertake.

Summary of Chapter 12 – The Single Source Advisory Team (SSAT)

The Role of the SSAT and its Objectives

65. The main responsibilities of the SSAT are outlined in Chapter 12, with an emphasis on how you will interact with the SSAT.

Framework Development, Advice and Referrals

66. The chapter details the work the SSAT will carry out in this area, such as managing the MOD's input to the annual profit rate reviews and the more comprehensive periodic reviews, on behalf of the Secretary of State for Defence (i.e. the SSAT will coordinate MOD submissions to the SSRO on all these matters). It is expected that industry will make similar arrangements, to represent their views to the SSRO).

67. The referrals process between the SSAT and the SSRO is also described in the chapter, highlighting the action you need to take if referrals are made.

SSPF Data Management

68. The SSAT is expected to be the single point of contact into the MOD for submitting contract reports and supplier level reports. The chapter describes some of the communication that contractors are expected to maintain with the SSAT, for example, prime contractors are expected to notify the SSAT if they assess that a sub-contract is a QSC.

69. Other contractor responsibilities are also highlighted, such as the responsibility to keep relevant records and advising the SSAT of material events which could affect the contract delivery. The SSAT will be responsible for onward communication within the MOD so that the right information gets to the right people at the right time.

Compliance

70. The SSAT is the only part of the MOD that can issue a compliance notice to the contractor for a breach of the SSCR. The chapter lists some of the reasons a contractor might be issued with a compliance notice, and describes the process that follows. Penalty notices are also detailed, including what information the penalty notices should contain.

Other Matters

71. The SSAT may, in time, be required to perform analysis of reporting data, which will inform and enhance the way contracts are managed and negotiated in the future. The role of the SSAT in engaging MOD staff and raising awareness of the SSPF is also outlined in the chapter. The SSAT will also manage the SSRO as an eNDPB, providing governance and oversight.

Contacts, Training and Further Information

72. The [Web Access Page](#) for the DRA and SSCR contains a summary of the legislation, details of who you can speak to for advice, and what training is available. It also contains links to other relevant topics and information and to the individual chapters.