

Single Source Contract Regulations 2014 Guidance

Chapter 11 The Single Source Regulations Office

Purpose

1. The guidance in this chapter relates to a Qualifying Defence Contract (QDC) and applies equally to a Qualifying Sub-contract (QSC), except where it explains the different treatment of a QDC and QSC. To assess whether you are dealing with a prospective or actual QDC or QSC you must read [Chapter 2 Qualifying Defence Contracts](#).
2. The guidance does not apply to other single source contracts (Non-qualifying contracts). If you assess that your contract is a Non-qualifying contract then you must read the [Pricing of Single Source Non-qualifying contracts](#) Commercial Policy Statement.
3. If you are dealing with a prospective or actual QDC then you must read this Chapter 11 to understand the role of the Single Source Regulations Office (SSRO). It details what the SSRO is, and what its main responsibilities are.
4. This chapter has been created as definitive guidance for MOD Commercial Officers so 'you' indicates an action on the Commercial Officer. However, as a Commercial Officer, it is unlikely that you will have direct contact with the SSRO as your route to the SSRO will be via the Single Source Advisory Team (SSAT). You can read more about the SSAT in [Chapter 12](#).

What is the Legal Framework?

5. The primary legislation applicable to QDCs is the [Defence Reform Act 2014 \(DRA\)](#). The following sections of the DRA refers to the SSRO:
 - a. Section 13 establishes the overall role of the SSRO;
 - b. Section 19 explains the responsibilities of the SSRO in determining contract profit rates;
 - c. Section 20 gives the SSRO the ability to determine whether a particular cost is an Allowable Cost, and to adjust the price of the contract accordingly;
 - d. Section 32 details the SSRO's role in the penalty regime;
 - e. Section 35 explains the role of the SSRO in giving opinions and making determinations;
 - f. Section 36 details the role of the SSRO in recording information on QDCs and QSCs, and reviewing and analysing this information;
 - g. Section 39 details the responsibility of the SSRO to review the DRA

and the [Single Source Contract Regulations 2014 \(SSCR\)](#); and

- h. Sections 18, 20, and 33 all include SSRO responsibilities to issue Statutory Guidance covering different aspects of the regulations, around pricing, reporting and compliance.
6. Schedule 4 of the DRA details the corporate functioning of the SSRO in further detail, such as the membership details, staff and annual reports.
7. The secondary legislation applicable to QDCs is the SSCR. Part 9 of the SSCR sets out the role of the SSRO in giving opinions and making determinations.

Confidentiality – Criminal Offence of Unauthorised Disclosure

8. The DRA requires contractors with QDCs to keep relevant records which the MOD may access. Contractors must also provide a range of standardised reports to the MOD and the Single Source Regulations Office (SSRO). Much of the information received will be commercially sensitive and you must handle it accordingly.
9. The Single Source Advisory Team (SSAT) within the MOD will receive the information and reports required from the contractor under the DRA. The SSAT is responsible for protectively marking the information on receipt, before distribution to the Commercial Officer identified in the DEFFORM 111. If you receive information or reports from the SSAT that is not marked with a security classification or handling instruction, you must inform the SSAT immediately.
10. Schedule 5 of the DRA details a list of ‘permitted disclosures’ in relation to this information, and information derived from it. Any disclosure of Schedule 5 protected information which is not a permitted disclosure is a criminal offence. Any individual convicted of committing an offence of unauthorised disclosure is **personally liable** to a fine, to imprisonment, or both. You can find detailed guidance on your confidentiality obligations in relation to Schedule 5 protected information at [Chapter 9 Confidentiality](#).

What is the SSRO?

11. The SSRO is an executive Non-Departmental Public Body (eNDPB), which means that it is independent of the MOD and Government. It operates from offices in London and has been established to ensure that value for money is obtained in government expenditure on QDCs and that contractors are paid a fair and reasonable price under those contracts. The Single Source Advisory Team (SSAT) will be responsible for the MOD’s obligations as the “sponsoring” Central Government Department for the SSRO.

How will the SSRO be Funded?

12. The operational costs of the SSRO will be directly funded from the MOD’s central budget until 1 April 2017. From this date onwards, the cost of operating the SSRO will be shared equally between the MOD and those defence contractors with QDCs. The 50% industry share of SSRO costs will be recovered from

contractors through a lower profit rate on QDCs, by a downward adjustment that you must apply when calculating the contract profit rate (see [Chapter 4 Pricing a QDC: the Profit Element](#)).

Main Responsibilities of the SSRO

13. The SSRO has five main areas of responsibility:
 - a. to keep under review the single source provisions made by the DRA and the SSCR, and where appropriate make recommendations to the Secretary of State for Defence (SofS) in relation to that;
 - b. to conduct an annual review of the Baseline Profit Rate (BPR) and the profit rate adjustments, and to make recommendations to the SofS in relation to that;
 - c. to provide statutory guidance on certain matters and to publish contract and supplier reporting templates;
 - d. to provide non-binding opinions and binding determinations on matters referred to it by one party or the other to a QDC (or both in cases where only joint referrals are permitted);
 - e. to monitor adherence to the DRA and SSCR by the MOD and defence contractors; and
 - f. to conduct analysis of reports when requested to do so by the MOD, and provide the results of such analysis to the MOD.

These matters are described in further detail in the rest of this chapter.

Review the DRA and the SSCR

14. The DRA requires the Secretary of State for Defence to review the single source provisions of the DRA and the SSCR within three years of the commencement date and every five years after that – these are known as the ‘review periods’. The SSRO has a legal duty to keep the DRA and SSCR under review and to recommend to the SofS any changes it believes appropriate. The DRA requires the SSRO to make such recommendations to the SofS at least 6 months before the end of the review period.

15. Once the SofS has considered the SSRO’s recommendations it may be necessary to make changes to the primary or secondary legislation and any Statutory Guidance. The SSRO will publish the outcomes of all reviews on the [SSRO website](#).

Review the BPR and Profit Rate Adjustments

16. The SSRO is responsible for establishing and recommending the Baseline Profit Rate (BPR) for use when pricing QDCs / QSCs; together with two adjustments to the BPR, the SSRO funding adjustment and the capital servicing adjustment. The SSRO is required to make its recommendations on these matters to the SofS, no later than 31 January each year.

17. The SSAT, on behalf of the SofS must consider the SSRO’s recommendations and must publish new profit rates in the London Gazette, no

later than the 15 March each year. The rates will also be published in the Commercial Toolkit and must be used from the following 1 April for any QDC / QSC work unpriced at that time. If the SSAT decides to publish rates that differ from those recommended by the SSRO then the SSAT is also required to publish the reasons for any differences. For more detail on the BPR and other adjustments, see [Chapter 4 Pricing a QDC: the Profit Element](#).

18. The SSRO will publish their recommendations and the SofS's justifications if not accepting the SSRO's recommended rates on the [SSRO website](#).

Provide Statutory Guidance and Templates

19. The DRA requires the SSRO to publish statutory guidance on certain aspects of the single source provisions made by the DRA and SSCR. The guidance will be published on the [SSRO website](#) and is expected to cover:

- a. how to determine if costs of a QDC / QSC are Allowable Costs;
- b. the defined pricing structure contractors should use in some of the mandated contract reports;
- c. the application of penalty amounts to be used in penalty notices served on contractors by the MOD for failure to comply with the DRA / SSCR;
- d. how to determine the Profit On Cost Once (POCO) adjustment to the BPR;
- e. negotiating an appropriate adjustment to the BPR for the level of financial risk being taken by the contractor; and
- f. when to apply the incentive adjustment to the BPR.

20. The SSRO will also publish electronic report templates in Microsoft Excel format for the contract reports required under the SSCR (see [Chapter 5 Contract Reporting](#)).

21. It is possible that the SSRO, which is forming in the latter half of 2014, will not be in a position to issue statutory guidance on or before the commencement date of the SSCR, which is expected to be December 2014 for QDCs¹ over £500M and 1 April 2015 for QDCs¹ of or above £5M. If you are pricing a QDC to be placed on or after the commencement date, you will be able to use MOD interim guidance in the absence of SSRO guidance.

Appeals, Opinions and Determinations

22. The SSAT (on behalf of the MOD) and / or the contractor may refer certain issues to the SSRO for them to issue an opinion or determination on the matter. Opinions are non-binding, while determinations are binding.

23. The matters that the SSRO must provide a **non-binding opinion** on, if requested to do so by a party to a QDC / QSC or a proposed QDC / QSC (as applicable) **before contract let**, include the following:

- a. the profit adjustments or group profit adjustments for risk, POCO and for capital servicing allowances (i.e. an opinion may be sought if the parties

¹ For QDCs only, not QSCs.

cannot agree that the statutory guidance has been followed);

- b. the cost recovery rates used to estimate allowable costs; and
- c. whether a cost would be an Allowable Cost.

24. The SSRO may give an opinion on whether the MOD has exercised reasonably its power to require the contractor to provide information in an on-demand contract report if requested to do so by a party to a QDC / QSC.

25. In addition, the SSRO may give an opinion on any other matter concerning a QDC or a QSC, if it is asked to do so in a joint request by both parties; but this is at the SSRO's discretion and is not a requirement (i.e. it may choose not to express an opinion).

26. The matters on which the SSRO must make a **binding determination** on, if requested to do so by a contractor who is party to a QDC or the MOD, include the following:

- a. adherence to pricing principles, including the profit adjustments for risk, POCO and for capital servicing allowances;
- b. on whether particular costs are Allowable Costs;
- c. contractor's appeals against a penalty notice;
- d. the appropriate final price adjustment under Protection against Excessive Profits and Losses (PEPL);
- e. the appropriate final Target Cost Incentive Fee (TCIF) adjustment;
- f. whether a potential sub-contract is a QSC;
- g. whether a current QSC is no longer a QSC;
- h. the defined pricing structure and output metrics which the contractor must use in their reports;
- i. whether the SofS has acted appropriately in exercising the MOD's open book rights; and
- j. whether the contractor entered into an obligation of confidence that would stop them providing information under open book or in the standard reports for genuine commercial reasons.

27. On receiving a request for an opinion or determination, the SSRO will consider the referral. If it is a MOD referral it will have been instigated by the SSAT, and, if concerning a contract (as opposed to a Supplier Report issue), in consultation with you as the contract owner. If it does concern your QDC, then the SSAT may need you to produce further evidence to support your case. You must submit all evidence to the SSRO within a month of the SSRO's initial request, although you will be sending this evidence via the SSAT, and not directly to the SSRO.

28. Once the SSRO has made its decision, it will inform the contractor concerned and the SSAT, who will let you know the outcome, if it concerns a contract referral matter. The timeframes within which the SSRO will aim to come to an opinion or determination will be set out in an SSRO Framework Document.

29. The SSRO will also publish an annual summary of the opinions and determinations it has made, and why. This will enable all parties to understand how the SSRO is likely to interpret the legislation.

30. The DRA gives power to the Secretary of State for Defence to issue compliance and penalty notices, a regime that will be managed for the MOD by the SSAT. The circumstances in which the SSAT may issue a compliance or penalty notice are outlined in [Chapter 10 Compliance and Remedies](#).

31. Contractors may appeal to the SSRO over the circumstances or amount of any civil penalty notice the MOD has issued using the provisions of the DRA / SSCR. The SSRO may overturn, uphold, increase, or decrease the civil penalty and the SSRO's determination is final however, any decisions can be appealed through a judicial review. You can find a list of the maximum penalty limits allowed in Chapter 10 Compliance and Remedies.

Analysis and Monitoring of Regulations

32. The SSRO will receive all SSCR contract and supplier reports from the contractor. The SSRO has a responsibility to carry out analysis on this data.

33. The SSRO Framework Document will set out the complete analysis that the SSRO will perform. This is currently expected to include:

- a. supplier portfolio analysis - the SSRO will analyse supplier reports on overhead spend, rates, capacity etc. and provide useful comparative management information to the MOD. For example highlighting where one contractor is spending consistently more on a particular category of costs than its competitors, looking at how overheads are allocated across a supplier's portfolio of contracts, and looking at possible future rationalisation and redundancy costs and capacity issues.
- b. defence benchmarks and parametrics - the SSRO will build a database of the estimating and outturn benchmarks and parametrics and make these available for independent cost estimating and to support price and rate negotiations.

34. The SSRO is expected to publish an Annual Adherence Report (AAR). There may be two versions of this report, one for the MOD and one for public release where some information is made anonymous. The AAR summarises the adherence to the framework by both the MOD and contractors.

Contacts, Training and Further Information

35. 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 chapters in the SSCR guidance and other relevant topics and information.

What are the Key Points to Remember?

1. The SSRO is an independent expert on MOD single source procurement, and is the custodian of the single source provisions created by the DRA and the SSCR.
2. Any dealings you have with the SSRO must be made via the MOD Single Source Advisory Team (SSAT).
3. The SSRO will produce Statutory Guidance on certain matters relating to QDCs / QSCs.
4. The SSRO will produce contract and supplier reporting templates and associated user guidance.
5. Either party can refer certain matters concerning QDCs / QSCs to the SSRO:
 - a. for a non-binding opinion, mainly before contract let; or
 - b. for a binding determination, after contract let.
6. You must be aware of the serious consequences of unauthorised disclosure of information protected under Schedule 5 of the DRA. There are penalties which apply to you personally, which may include a fine or imprisonment.