

2019 No. 1106

PUBLIC PROCUREMENT

The Single Source Contract (Amendment) Regulations 2019

Made - - - - *10th July 2019*

Laid before Parliament *15th July 2019*

Coming into force - - *1st September 2019*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 14(1), 15(1), 21(2) and (4)(a), 23(4)(b), 24(1), (2)(a) and (4)(a), 25(1) and (6)(a), 28(1), 29(2) and (4), 30(2)(a), 42(1) and (2) of the Defence Reform Act 2014(a).

PART 1

Introductory provision

Citation and commencement

1. These Regulations may be cited as the Single Source Contract (Amendment) Regulations 2019 and come into force on 1st September 2019.

PART 2

Amendments to the Single Source Contract Regulations 2014

2. The Single Source Contract Regulations 2014(b) are amended in accordance with regulations 3 to 23 of these Regulations.

Amendment of regulation 2 (interpretation)

3. In regulation 2, after paragraph (2), insert—

“(3) A reference to a report provided under Part 6 includes an estimated rates agreement pricing statement under regulation 38.”.

Amendment of regulation 5 (calculating the value of a contract)

4.—(1) Regulation 5 is amended as follows.

(2) In paragraph (4)—

(a) in sub-paragraph (b), for “the Secretary of State” substitute “the contracting authority”;

(a) 2014 c. 20.
(b) S.I. 2014/3337.

- (b) in sub-paragraph (c)—
 - (i) omit “accounting”;
 - (ii) after “policies” insert “or where no such policies exist, a rate of exchange derived on a just and reasonable basis”.
- (3) In paragraph (5)—
 - (a) for “paragraphs (6) and (12)” substitute “paragraph (6)”;
 - (b) in sub-paragraph (b), after “other contracts” insert “which are not the result of a competitive process”.
- (4) After paragraph (6)(b), insert—
 - “(c) the contracting authority must disregard a contract, or a proposed contract, which has a value of £250,000 or less where it is reasonably satisfied that the procurement has not been subdivided in order to avoid the requirements of the Act and these Regulations.”.
- (5) In paragraph (7), after “has a value of” insert “more than £250,000 but”.
- (6) In paragraph (8)(b), after “has a value of” insert “more than £250,000 but”.
- (7) After paragraph (8), insert—
 - “(8A) A contract which has a value of £1,000,000 or less shall not be treated as a qualifying defence contract by virtue of this regulation unless the contracting authority is reasonably satisfied that the procurement has been subdivided in order to avoid the requirements of the Act and these Regulations.”.
- (8) Omit paragraphs (9) to (12).

Amendment to regulation 9 (competitive process for contracts made under a framework agreement)

- 5.—(1) Regulation 9 is amended as follows.
- (2) In paragraph (1)(a)(i), for “framework contractor” substitute “framework supplier”.
- (3) In paragraph (3)(a)—
 - (a) for “framework contractor” substitute “primary contractor”;
 - (b) for “sub-paragraph (a)(i)” substitute “paragraph (1)(a)(i)”;
 - (c) for “sub-paragraph (a)(ii)” substitute “paragraph (1)(a)(ii)”.
- (4) In paragraph (3)(b), for “framework contractor” substitute “primary contractor”.
- (5) In paragraphs (1)(b), (2)(b) and (4)(a), each time it appears, for “framework contractors” substitute “framework suppliers”.

Amendment of regulation 16 (procedure for determining final price adjustment)

- 6. In regulation 16, after paragraph (2), insert—
 - “(2A) Where the price payable under the contract includes one or more defined components which use a regulated pricing method other than the firm pricing method, fixed pricing method, or volume-driven pricing method, the value of such component or components shall be disregarded for the purposes of paragraph (2).”.

Amendment of regulation 17 (calculation of final price adjustment)

- 7. In regulation 17, after paragraph (6)(j), insert—
 - “(k) where the contract contains at least one component which is not a relevant defined component, references to the contract price, the contract profit, the contract profit rate, the loss level and the outturn costs relate only to the relevant defined component or components of the contract;

- (1) references to the relevant defined component or components of a contract are to the component or components of the contract with a price determined by the firm pricing method, the fixed pricing method or the volume-driven pricing method.”.

Amendment of regulation 24 (contract reporting plan)

8. In regulation 24, for paragraph (2)(a), substitute—

“(a) the price that the contracting authority is committed to paying for the contract;”.

Amendment of regulation 25 (contract notification report)

9.—(1) Regulation 25 is amended as follows.

(2) In paragraph (2)(g), for “value” substitute “price”.

(3) In paragraph (2)(k), for “value” substitute “contract price”.

(4) In paragraph (2)(l), omit the words in brackets.

(5) After paragraph (2)(l), insert—

“(m) in relation to each sub-contract which the primary contractor has entered into, or intends to enter into, and which has or is expected to have a value of not less than £15,000,000, if the primary contractor has made an assessment that the contract would not be a qualifying sub-contract—

- (i) the outcome of the negative assessment;
- (ii) confirmation of whether the award of the contract is not, or would not be, the result of a competitive process; and
- (iii) confirmation of whether the contract enables the performance of contracts other than a qualifying defence contract or qualifying sub-contract.”.

Amendment of regulation 26 (quarterly contract report)

10.—(1) Regulation 26 is amended as follows.

(2) In paragraph (6)(j), for “value” substitute “contract price”.

(3) In paragraph (6)(k), omit the words in brackets.

(4) After paragraph (6)(k), insert—

“(l) in relation to each sub-contract which the primary contractor has entered into, or intends to enter into, and which has or is expected to have a value of not less than £15,000,000, if the primary contractor has made an assessment that the contract would not be a qualifying sub-contract—

- (i) the outcome of the negative assessment;
- (ii) confirmation of whether the award of the contract is not, or would not be, the result of a competitive process; and
- (iii) confirmation of whether the contract enables the performance of contracts other than a qualifying defence contract or qualifying sub-contract.”.

Amendment of regulation 27 (interim contract report)

11.—(1) Regulation 27 is amended as follows.

(2) In paragraph (4)(j), for “value” substitute “price”.

(3) In paragraph (5)(d), for “value of the qualifying defence contract” substitute “contract price”.

(4) In paragraph (5)(e), omit the words in brackets.

(5) After paragraph (5)(e), insert—

- “(f) in relation to each sub-contract which the primary contractor has entered into, or intends to enter into, and which has or is expected to have a value of not less than £15,000,000, if the primary contractor has made an assessment that the contract would not be a qualifying sub-contract—
- (i) the outcome of the negative assessment;
 - (ii) confirmation of whether the award of the contract is not, or would not be, the result of a competitive process; and
 - (iii) confirmation of whether the contract enables the performance of contracts other than a qualifying defence contract or qualifying sub-contract.”.

Amendment of regulation 28 (contract completion report)

12.—(1) Regulation 28 is amended as follows.

(2) In paragraph (2)(l), for “value” substitute “price”.

(3) In paragraph (2)(p), omit the words in brackets.

(4) After paragraph (2)(p), insert—

- “(q) in relation to each sub-contract which the primary contractor has entered into, or intends to enter into, and which has or is expected to have a value of not less than £15,000,000, if the primary contractor has made an assessment that the contract would not be a qualifying sub-contract—
- (i) the outcome of the negative assessment;
 - (ii) confirmation of whether the award of the contract is not, or would not be, the result of a competitive process; and
 - (iii) confirmation of whether the contract enables the performance of contracts other than a qualifying defence contract or qualifying sub-contract.”.

Amendment of regulation 35 (QBU actual costs analysis report)

13. In regulation 35, for paragraph (8)(b), after “any” insert “material”.

Amendment of regulation 36 (estimated rates claim report)

14. In regulation 36, for paragraph (3)(d), substitute—

- “(d) the QBU budgeted cost and budgeted volume data;”.

Amendment of regulation 37 (QBU estimated costs analysis report)

15. In regulation 37, in paragraph (8)(a), after “any” insert “material”.

Amendment of regulation 42 (strategic industry capacity report: activities, people and infrastructure)

16. In regulation 42, in paragraph (1)(b), for “£1,000,000” substitute “£10,000,000”.

Amendment of regulation 50 (maximum penalties)

17.—(1) Regulation 50 is amended as follows.

(2) In paragraph (5)(a), for “value of all qualifying defence contracts and qualifying sub-contracts” substitute “of all the contract prices for each qualifying defence contract and qualifying sub-contract”.

(3) In paragraph (5)(b), for “value” substitute “price”.

Amendment of regulation 60 (competitive process for sub-contracts made under a framework agreement)

18.—(1) Regulation 60 is amended as follows.

(2) Each time it appears, for “framework contractors” substitute “framework suppliers”.

(3) In paragraph (1)(a), for “framework contractor” substitute “framework supplier”.

(4) In paragraph (1)(c), for “framework contractor” substitute “sub-contractor”.

(5) In paragraph (3)(a)(ii), for “sub-contractor or sub-contractors” substitute “person or persons”.

Amendment of regulation 61 (assessing whether a contract would be a qualifying sub-contract)

19. In regulation 61, after paragraph (6), insert—

“(7) For the purposes of paragraphs (2) and (5), where the value of the proposed contract is not less than £15,000,000, the record of the assessment must contain an assessment of whether the proposed contract would be the result of a competitive process and any other reason relied upon to justify a negative assessment.

(8) Where A, C or E (as the case may be) makes a record of assessment, A, C or E must give notice in writing to the Secretary of State and the SSRO that an assessment has been made.”.

Amendment of regulation 64 (modifications of Part 2 of the Defence Reform Act 2014)

20. In regulation 64, after paragraph (5), insert—

“(5A) Section 21(1) has effect as if for “the Secretary of State” there were substituted “the contracting authority””.

Amendment of regulation 65 (modifications of the Single Source Contract Regulations 2014)

21.—(1) Regulation 65 is amended as follows.

(2) For paragraph (8)(a)(ii) substitute—

“(ii) for the words “an adjustment” to “(“final price adjustment”)” there were substituted “a payment of a specified amount (“a final price adjustment”) may be made to or by the Secretary of State”;”.

(3) After paragraph (9), insert—

“(9A) Regulation 20(7)(a) has effect as if after the words “contract completion date” there were inserted “or the date on which it is determined that the contract is no longer a qualifying sub-contract”.”.

22. After regulation 65, insert—

“Price adjustments for qualifying sub-contracts

66. Where the amount of an adjustment to the contract price of a qualifying sub-contract is determined by the SSRO under regulation 16(7) or calculated under regulation 17—

(a) the contract price is not to be adjusted by that amount; and

(b) a payment for that amount must be made by the Secretary of State to the sub-contractor or by the sub-contractor to the Secretary of State (whichever is appropriate).”.

Amendment to the Schedule(a)

23.—(1) The Schedule to the 2014 Regulations is amended as follows.

(2) In paragraph 2(1), omit the definition of “contract profit rate for an amendment”.

PART 3

Amendment of the Single Source Contract (Amendment) (No. 2) Regulations 2018

24.—(1) Regulation 14 of the Single Source Contract (Amendment) (No. 2) Regulations 2018**(b)** is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (b), for “18(3)(a)” substitute “18(3)”;

(b) in sub-paragraph (c), after “19(3)(a)” insert “and (b)”.

Stuart Andrew
Minister for Defence Procurement
Ministry of Defence

10th July 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Single Source Contract Regulations 2014 (S.I. 2014/1337) (“the 2014 Regulations”) and the Single Source Contract (Amendment) (No. 2) Regulations 2018 (S.I. 2018/1350) (“the 2018 Regulations”). The 2014 and 2018 Regulations were made under Part 2 of the Defence Reform Act 2014 (“the Act”). The Act creates a regulatory framework for single source contracts (that is, contracts which are not competed) in the defence area, and the 2014 Regulations implement the detail of the regulatory regime. The regulatory framework applies to qualifying defence contracts (contracts to which the Secretary of State is party, and which meet the criteria in section 14(2) of the Act), and also qualifying sub-contracts (sub-contracts to qualifying defence contracts, which meet the criteria in section 28(3) or (4) of the Act).

Part 2 of these Regulations makes a number of changes to the 2014 Regulations. Regulation 3 amends regulation 2 (interpretation) of the 2014 Regulation to correct an inconsistency between the treatment of Parts 5 and 6 of the 2014 Regulations in relation to what types document are considered to be a report under those Parts. Regulation 4 simplifies regulation 5 (calculating the value of a contract) of the 2014 Regulations, including by removing one of the ways of calculating the aggregate value of a contract.

Regulations 5 and 18 make changes to the nomenclature used in regulation 9 (competitive process for contracts made under a framework agreement) and regulation 60 (competitive process for sub-contracts made under a framework agreement) respectively of the 2014 Regulations in order to remove ambiguities caused by the original wording.

Regulation 6 inserts a new paragraph into regulation 16 (procedure for determining final price adjustment) of the 2014 Regulations to ensure that only defined contract threshold elements are taken into account when determining the final price adjustment. Regulation 7 amends regulation 17 (calculation of final price adjustment) of the 2014 Regulations to specify that where only a defined component or components of a contract has or have been determined by certain pricing

(a) The Schedule was inserted by S.I. 2018/1350.

(b) S.I. 2018/1350.

methods, the calculation of the final price adjustment should be applied to that component or components.

Regulations 8 to 12 amend regulations 24 (contract reporting plan), 25 (contract notification report), 26 (quarterly contract report), 27 (interim contract report) and 28 (contract completion report) of the 2014 Regulations to create new reporting obligations for primary contractors and thereby enable greater transparency of the supply chain.

Regulations 13 and 15 make minor changes to regulations 35 (QBU actual costs analysis report) and 37 (QBU estimated costs analysis report) respectively of the 2014 Regulations to ensure the burden of costs analysis reporting is appropriate. Regulation 14 makes a change to the reporting requirements under regulation 36 (estimated rates claim report) of the 2014 Regulations to ensure that the Secretary of State can better understand the driver of future contractor rates. Regulation 16 increases the threshold at which reporting obligations are engaged under regulation 42 (strategic industry capacity report: activities, people and infrastructure) of the 2014 Regulations.

Regulation 17 amends the wording of regulation 50 (maximum penalties) of the 2014 Regulations in order to remove an ambiguity in the language.

Regulation 19 inserts a new paragraph into regulation 61 (assessing whether a contract would be a qualifying sub-contract) of the 2014 Regulations to create new record-keeping obligations for contractors and thereby enable the supply chain to be more transparent. Regulation 20 inserts a new paragraph into regulation 64 (modifications of Part 2 of the Act) of the 2014 Regulations which modifies section 21 of the Act to permit adjustments to be made to the total price by contracting authorities where a qualifying sub-contract is involved. Regulation 21 makes changes to regulation 65 (modifications of the 2014 Regulations) of the 2014 Regulations which means that records only have to be kept by a contractor for two years after the date a contract ceases to be a qualifying sub-contract. Regulation 22 inserts a new regulation, regulation 66 (price adjustments for qualifying sub-contracts), into the 2014 Regulations. This new regulation requires that where a final price adjustment is made to the contract price of a qualifying sub-contract, any amounts payable as a consequence are dealt with directly between the Secretary of State and the sub-contractor.

The 2018 Regulations amended the 2014 Regulations to change the method by which the contract price of a qualifying defence contract is to be redetermined if the contract is amended in a way that affects that price. The provisions were set out in a new Schedule to the 2014 Regulations. Regulation 23 of these Regulations amends that Schedule to the 2014 Regulations to remove a superfluous definition.

The 2018 Regulations also made various transitional provision in connection with the changes to the contract pricing methodology. In Part 3 of these Regulations, regulation 24 amends those transitional provisions to ensure that the relevant “statutory guidance” is taken into account for the purposes of regulations 18 and 19 of the 2014 Regulations.

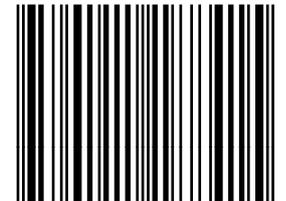
A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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UK201907101009 07/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/1106>

ISBN 978-0-11-118841-5



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