

2018 No. 1350

PUBLIC PROCUREMENT

**The Single Source Contract (Amendment) (No. 2) Regulations
2018**

Made - - - - *10th December 2018*

Laid before Parliament *17th December 2018*

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 15(3) and (5), 30(2)(a), 42(1) and (2) of the Defence Reform Act 2014(a).

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Single Source Contract (Amendment) (No. 2) Regulations 2018.

(2) This Part and Part 2 of these Regulations come into force on 31st January 2019.

(3) Part 3 of these Regulations comes into force on 1st April 2019.

Interpretation

2. In these Regulations, “the 2014 Regulations” means the Single Source Contract Regulations 2014(b).

PART 2

Determinations by the SSRO

Amendment of the 2014 Regulations: determinations by the SSRO

3. The 2014 Regulations are amended in accordance with regulations 4 and 5.

4. In regulation 52, for paragraph (2) substitute—

(a) 2014 c. 20.

(b) S.I. 2014/3337: to which there are amendments but none is relevant to this instrument.

“(2) A reference to the SSRO for a determination in relation to any of those matters must be made—

- (a) where the contract is a qualifying defence contract by virtue of section 14(3)—
 - (i) no later than 6 months after the contract is entered into, or
 - (ii) if the contract is amended after it is entered into in a way that affects any of those matters, no later than 6 months after the contract is so amended;
- (b) where the contract is a qualifying defence contract by virtue of section 14(4) or (5)—
 - (i) no later than 6 months after the amendment mentioned in section 14(4)(c) or (5)(b) (as the case may be) is made, or
 - (ii) if the contract is subsequently amended in a way that affects those matters, no later than 6 months after the contract is so amended.”.

5. In regulation 65, after paragraph (14), insert—

“(15) Regulation 52 has effect as if—

- (a) in paragraph (2)(a) for “qualifying defence contract by virtue of section 14(3)”, there were substituted “qualifying sub-contract”;
- (b) paragraph (2)(b) were omitted.”.

PART 3

Repricing of contracts

Amendment of the 2014 Regulations: repricing of contracts

6. The 2014 Regulations are amended in accordance with regulations 7 to 13.

7. In regulation 2, in paragraph (1)—

- (a) for the definition of “the Act” substitute—

““the Act” means the Defence Reform Act 2014, and references to sections are to sections of that Act;”;
- (b) for the definition of “contract price” substitute—

““contract price”, in relation to a qualifying defence contract, means—

 - (a) the price payable under the contract to the primary contractor as determined in accordance with regulation 10, or
 - (b) if the contract is amended in a way that affects the price payable under it, the price payable under the contract to the primary contractor as determined or, as the case may be, last determined in accordance with the Schedule;”;
- (c) in the definition of “the time of agreement”, for “under regulation 14”, in both places it occurs, substitute “in accordance with the Schedule”.

8. For regulation 14 substitute—

“Re-determination of contract price

14. The Schedule makes provision for the re-determination of the contract price for a qualifying defence contract.”

9. In regulation 39, in paragraph (4)(d), for “under regulation 14” substitute “in accordance with the Schedule”.

10. In regulation 51, in paragraph (2)(a), for “(regulation 14)” substitute “(see the Schedule)”.

11. In regulation 56, in paragraph (1), after “Schedule 5”, insert “to the Act”.

12. In regulation 65—

(a) omit paragraph (7);

(b) after paragraph (15) (as inserted by these Regulations), insert—

“(16) The Schedule (re-determination of contract price) has effect as if, in the definition of “the parties”, for “Secretary of State” there were substituted “contracting authority”.”

13. At the end, insert the Schedule (re-determination of contract price) set out in the Schedule to these Regulations.

Transitional provisions

14.—(1) Where the price payable under a qualifying defence contract^(a) or qualifying sub-contract^(b) is re-determined under regulation 14 of the 2014 Regulations before 1st April 2019 (“the existing price”), the existing price is to be treated, on and after that date, for the purposes of those Regulations as if it had been determined in accordance with the Schedule to those Regulations (as inserted by these Regulations).

(2) In addition, for the purposes of the following provisions of the 2014 Regulations as they apply to that contract on and after 1st April 2019, any reference in those provisions to the time of agreement is to be read as a reference to the date on which the existing price was determined—

(a) regulation 16(9)(a);

(b) regulation 18(3)(a);

(c) regulation 19(3)(a).

(3) But paragraph (2) ceases to apply if the price payable under the contract is re-determined in accordance with the Schedule to the 2014 Regulations on or after 1st April 2019.

10th December 2018

Stuart Andrew
Minister for Defence Procurement
Ministry of Defence

(a) “Qualifying defence contract” has the meaning given by section 14(2) of the Defence Reform Act 2014.

(b) “Qualifying sub-contract” has the meaning given by section 28(2) of the Defence Reform Act 2014.

SCHEDULE

Regulation 13

Re-determination of contract price

This Schedule sets out the new Schedule to the 2014 Regulations to be inserted at the end of those Regulations—

“SCHEDULE

Regulation 14

Re-determination of contract price

PART 1

Introductory

Application of Schedule

1.—(1) This Schedule applies if the parties to a qualifying defence contract propose to amend the contract in a way that would affect the original contract price.

Such an amendment is referred to in this Schedule as a “pricing amendment”.

(2) In this Schedule—

“original contract price”, in relation to a qualifying defence contract, means—

- (a) the price determined in accordance with regulation 10, or
- (b) where the contract has previously been amended in a way that affects the price payable under the contract, the price determined or, as the case may be, last determined in accordance with this Schedule;

“the parties”, in relation to a qualifying defence contract, means—

- (a) the Secretary of State, and
- (b) the primary contractor.

Interpretation

2.—(1) In this Schedule—

“contract profit rate for an amendment” has the meaning given in sub-paragraph (2);

“contractual requirement”, in relation to a qualifying defence contract, means a provision of the contract setting out—

- (a) the specification of,
- (b) quantity of, or
- (c) time or place for delivery of,

the goods, works or services procured under the contract;

“cost-plus method” means the regulated pricing method described in regulation 10(6);

“original contract price” has the meaning given in paragraph 1(2);

“the parties” has the meaning given in paragraph 1(2);

“pricing amendment” has the meaning given in paragraph 1(1).

(2) For the purposes of this Schedule, the contract profit rate for an amendment is to be determined in accordance with regulation 11 as it applies for the purpose of determining the contract profit rate for a contract but with the modifications specified in sub-paragraph (3).

- (3) The modifications to regulation 11 are—
- (a) in paragraph (3), for “under the contract” substitute “associated with the amendment”;
 - (b) in paragraph (4), for “under the contract” substitute “associated with the amendment”.

PART 2

Single pricing amendment to a qualifying defence contract

Application of Part 2

3.—(1) If the parties propose to make a single pricing amendment to a qualifying defence contract, the price payable under the amended contract is to be determined in accordance with this Part.

(2) For the purposes of sub-paragraph (1), it does not matter whether the parties also propose to make any other amendment to the contract at the same time as making the pricing amendment.

Change of regulated pricing method

Amendment of the regulated pricing method used for a qualifying defence contract

4.—(1) This paragraph applies where the proposed pricing amendment will change the regulated pricing method used for the contract to another regulated pricing method (the “new regulated pricing method”).

(2) The price payable in respect of the pricing amendment must be determined in accordance with the following formula—

$$(CPR \times AC) + AC$$

where—

- (a) “CPR” is the contract profit rate for the amendment, and
 - (b) “AC” means the primary contractor’s allowable costs after the time of agreement, determined in accordance with the new regulated pricing method.
- (3) The price payable under the amended contract is the total of—
- (a) the price payable in respect of performance under the contract on or before the time of agreement, and
 - (b) the price payable in respect of the amendment.

Amendment of a regulated pricing method used for a defined component of a contract

5.—(1) This paragraph applies where the proposed pricing amendment will change the regulated pricing method used for a defined component of the contract to another regulated pricing method (the “new regulated pricing amendment”).

(2) The price payable in respect of the pricing amendment must be determined in accordance with the following formula—

$$(CPR \times AC) + AC$$

where—

- (a) “CPR” is the contract profit rate for the amendment, and

- (b) “AC” means the primary contractor’s allowable costs under the defined component after the time of agreement, determined in accordance with the new regulated pricing method.
- (3) The price payable under the amended contract is the total of—
 - (a) the price payable for performance under the contract (other than performance under the relevant defined component),
 - (b) the price payable for performance under the relevant defined component on or before the time of agreement, and
 - (c) the price payable in respect of the amendment.

Change to an element of allowable costs

Amendment affecting a defined element of allowable costs

- 6.—(1) This paragraph applies where—
- (a) the proposed pricing amendment will change a defined element of allowable costs under the contract or a defined component of the contract, and
 - (b) the regulated pricing method used for the contract or the defined component (as the case may be) is a qualifying regulated pricing method.
- (2) In this paragraph “qualifying regulated pricing method” means a pricing method described—
- (a) in regulation 10(4) (firm pricing method),
 - (b) in regulation 10(5) (fixed pricing method),
 - (c) in regulation 10(9) and (10) (volume-driven pricing method), or
 - (d) in regulation 10(11) (target pricing method).
- (3) The price payable in respect of the amendment must be determined in accordance with the following formula—

$$(CPR \times AC) + AC$$

where—

- (a) “CPR” is the contract profit rate for the amendment, and
 - (b) “AC” means the defined element of allowable costs after it is changed, determined in accordance with the qualifying regulated pricing method used for the contract or defined component.
- (4) The price payable under the amended contract is the total of—
- (a) the original contract price less the adjustment amount, and
 - (b) the price payable in respect of the amendment.
- (5) For the purposes of sub-paragraph (4), “the adjustment amount” is the amount of the original contract price which can be attributed to the defined element of allowable costs that is being changed.

Change to a contractual requirement

Change to a contractual requirement: contract or defined component not using cost-plus method

- 7.—(1) This paragraph applies where—
- (a) the proposed pricing amendment will change a contractual requirement of the contract or of a defined component of the contract, and

- (b) the regulated pricing method used for the contract or defined component (as the case may be) is not the cost-plus method.

(2) The price payable in respect of the amendment must be determined in accordance with the following formula and may be a negative amount—

$$(CPR \times AC) + AC$$

where—

- (a) “CPR” is the contract profit rate for the amendment, and
- (b) “AC” means the amount (which may be a negative amount) by which the amendment will change the original allowable costs.

(3) For the purposes of sub-paragraph (2), “original allowable costs” means the allowable costs under the contract or defined component, as determined for the purposes of calculating the original contract price.

(4) The price payable under the amended contract is the total of—

- (a) the original contract price, and
- (b) the price payable in respect of the amendment.

Change to a contractual requirement: contract or defined component which uses cost-plus method – distinguishable costs

8.—(1) This paragraph applies where—

- (a) the proposed pricing amendment will change a contractual requirement of the contract or of a defined component of the contract,
- (b) the regulated pricing method used for the contract or defined component (as the case may be) is the cost-plus method, and
- (c) the allowable costs resulting from the amendment can be distinguished from the original allowable costs.

(2) For the purposes of sub-paragraph (1)(c), “original allowable costs” means the allowable costs under the contract or defined component before the contract is amended.

(3) The price payable in respect of the amendment is to be determined in accordance with the following formula—

$$(CPR \times AC) + AC$$

where—

- (a) “CPR” is the contract profit rate for the amendment, and
- (b) “AC” means the primary contractor’s allowable costs resulting from the amendment, as determined in accordance with the cost-plus method.

(4) The price payable under the amended contract is the total of—

- (a) the original contract price, and
- (b) the price payable in respect of the amendment.

Change to a contractual requirement: contract or defined component which uses cost-plus method – costs not distinguishable

9.—(1) This paragraph applies where—

- (a) the proposed pricing amendment will change a contractual requirement of the contract or of a defined component of the contract,
- (b) the regulated pricing method used for the contract or defined component (as the case may be) is the cost-plus method, and

(c) the allowable costs resulting from the amendment cannot be distinguished from the original allowable costs.

(2) For the purposes of sub-paragraph (1)(c), “original allowable costs” means the allowable costs under the contract or defined component before the contract is amended.

(3) The price payable in respect of the amendment is to be determined in accordance with the following formula—

$$(CPR \times AC) + AC$$

where—

(a) “CPR” is the contract profit rate for the amendment, and

(b) “AC” means the primary contractor’s allowable costs under the contract, or defined component, after the time of agreement, as determined in accordance with the cost-plus method.

(4) For the purposes of sub-paragraph (3), no account is to be taken of any costs incurred by the primary contractor before the contract is amended.

(5) The price payable under the amended contract is the total of—

(a) the price payable under the contract on or before the time of agreement, and

(b) the price payable in respect of the amendment.

Other amendments

Other amendments

10.—(1) This paragraph applies if none of paragraphs 4 to 9 applies in relation to the amendment that the parties propose to make to the contract.

(2) The price payable under the amended contract must be re-determined in accordance with the formula in regulation 10(1).

(3) The parties—

(a) may agree which of the regulated pricing methods is to be used for the amended contract;

(b) may agree that defined components of the contract will be priced by different pricing methods.

PART 3

Multiple pricing amendments to a qualifying defence contract

Scope of Part 3

11.—(1) This Part sets out how the price payable under a contract is to be re-determined, if the parties propose to make two or more pricing amendments to the contract at the same time.

(2) For the purposes of sub-paragraph (1), it does not matter whether the parties also propose to make any other amendment to the contract at the same time as making the pricing amendments.

Re-determination of the contract price

12.—(1) Where two or more pricing amendments are to be made to a contract at the same time—

- (a) those amendments are to be treated separately and dealt with in turn (but see sub-paragraphs (2) and (3)),
 - (b) Part 2 of this Schedule applies in relation to each such amendment as it applies to a single pricing amendment, and
 - (c) the price payable under the amended contract is the price as determined after the last of the amendments has been dealt with.
- (2) If the parties propose a pricing amendment which—
- (a) changes the regulated pricing method used for the contract, or
 - (b) changes the regulated pricing method used for a defined component of the contract,
- that pricing amendment must be dealt with first.
- (3) If the parties propose a pricing amendment to which paragraph 10 applies, that pricing amendment must be dealt with last.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Single Source Contract Regulations 2014 (“the 2014 Regulations”) (S.I. 2014/3337).

Section 15(3) of the Defence Reform Act 2014 (c. 20) (“the Act”) requires regulations to make provision for the re-determination of the price payable under a qualifying defence contract (“QDC”) if the contract is amended in a way that would affect that price. That section requires that regulations make provision either for the price payable under the QDC as amended to be re-determined or for the price of the amendment to be determined.

This provision is currently made by regulation 14 of the 2014 Regulations. Regulation 14 provides for the method to be used for repricing a QDC to be determined by severability of costs.

These Regulations replace regulation 14 of the 2014 Regulations with a new Schedule which sets out how the price of a QDC is to be re-determined by reference to the type of amendment being made to the contract, the pricing method used and the number of amendments being made to the contract (see regulation 8 of and the Schedule to these Regulations). The new Schedule to the 2014 Regulations will also apply in relation to qualifying sub-contracts (see section 30(1) of the Act and the modifications made to regulation 65 of the 2014 Regulations (regulation 12(b) of these Regulations)).

These Regulations also make various consequential changes to the 2014 Regulations and transitional provisions in connection with contracts which were amended before 1st April 2019.

Regulation 52 of the 2014 Regulations specifies, for the purposes of section 35(1)(b) of the Act, the matters relating to a QDC on which the Single Source Regulations Office must make a determination. Regulation 52(2) currently provides that a person must make a reference in relation to the matters specified in regulation 52(1) no later than 6 months after the contract is entered into. These Regulations amend regulation 52(2) so that such a reference may also be made after a contract is amended to become a QDC, or if any amendments are made to a contract which affects the specified matters. Such a reference must be made within 6 months of the conversion to a QDC or the date of amendment (as the case may be) (regulation 4). Modifications are made to regulation 52, as it applies to qualifying sub-contracts, as a contract cannot become a qualifying sub-contract on amendment (regulation 5).

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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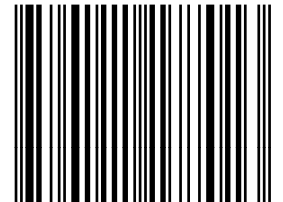
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK201812111024 12/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/1350>

ISBN 978-0-11-117701-3



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