

## 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).

*Changes to legislation: There are currently no known outstanding effects for the The Single Source Contract (Amendment) (No. 2) Regulations 2018. (See end of Document for details)*

(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.

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(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—

**Changes to legislation:** There are currently no known outstanding effects for the The Single Source Contract (Amendment) (No. 2) Regulations 2018. (See end of Document for details)

- (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.”.

**Changes to legislation:**

There are currently no known outstanding effects for the The Single Source Contract (Amendment) (No. 2) Regulations 2018.