
STATUTORY INSTRUMENTS

2024 No. 420

The Single Source Contract (Amendment) Regulations 2024

Insertion of Chapter 3 (alternative pricing of contracts)

24. After regulation 19 insert—

“Chapter 3

Alternative pricing of contracts

Commercial pricing

19A.—(1) The commercial pricing method of determining the price of a qualifying defence contract or a component of such a contract may be used in the circumstances specified in paragraph (3).

(2) Where the commercial pricing method is used, the price is determined in accordance with paragraph (6).

(3) Unless paragraph (4) applies, the commercial pricing method may be used if—

(a) the Secretary of State is satisfied that the primary contractor has supplied goods, works or services under a contract to the same or substantially the same specifications—

(i) to the Secretary of State under a contract awarded as a result of a competitive process;

(ii) to another party under a contract placed following a process which would satisfy the requirements of regulation 59 had the party purchasing the goods or services been a contracting authority; or

(iii) to any other person in an open market where such goods, works or services are offered for sale; or

(b) the Secretary of State is satisfied that a supplier (who may be the primary contractor) has supplied goods, works or services under a contract to the same or substantially the same specifications to other parties in a competitive environment.

(4) This paragraph applies if the proposed contract is for the supply of goods, works or services and the Secretary of State has made any direct payment for the development of those goods, works or services.

(5) Where the commercial pricing method may be used by virtue of more than one contract described in paragraph (3) (“the relevant contracts”), the Secretary of State must determine a reasonable price for the goods, works or services—

(a) by reference to all of the relevant contracts; or

(b) where it is not practicable to determine a reasonable price by reference to all of the relevant contracts, by reference to a representative sample of the relevant contracts.

(6) The method of determining the price is—

- (a) take—
 - (i) the price for which the goods, works or services were supplied under the contract described in paragraph (3); or
 - (ii) where paragraph (5) applies, the reasonable price determined under that paragraph;
 - (b) add or subtract from that price a reasonable adjustment in respect of differences in—
 - (i) volume;
 - (ii) specification;
 - (iii) other terms of supply;
 - (iv) a change in economic conditions;
 - (v) a change in technology;
 - (vi) a change in performance of the goods, works or services.
- (7) The primary contractor must provide to the Secretary of State all information within its possession that is relevant for the purposes of establishing—
- (a) whether goods, works or services have been supplied as described in paragraph (3) (a) or (b); and
 - (b) whether any price determined under paragraph (5) or adjustment determined under paragraph (6)(b) is reasonable.

Prices determined in accordance with law

19B.—(1) The price determined in accordance with law method of determining the price of qualifying defence contract or component of such a contract may be used if the Secretary of State is satisfied that the price of the goods, works and services must be set in accordance with a relevant law.

(2) Where there is an inconsistency between the pricing requirements of the relevant law and those of the Act and these Regulations, the price is to be determined in accordance with paragraph (3) or (4).

(3) Where the relevant law specifies the price which must be paid for the goods, works or services, the price is as so specified.

(4) Where the relevant law does not specify the price which must be paid for the goods, works or services, the price must comply with the pricing requirements of the relevant law and be as close as possible to the price which would have been agreed between the parties in compliance with the Act and these Regulations but for the application of the relevant law.

- (5) In this regulation—
- (a) “law” includes statutes, rules, regulations, codes of practice and requirements of regulatory authorities;
 - (b) “relevant law” means law, whether of the United Kingdom or otherwise, compliance with which is mandatory for at least one of the parties and which applies to the provision of goods, works or services under the contract or component.

Previously agreed price

19C.—(1) The previously agreed price method of determining the price of a qualifying defence contract or component of such a contract may be used in the circumstances specified in paragraph (3).

(2) Where the previously agreed price method is used, the price is determined in accordance with paragraph (4) or (5).

(3) The previously agreed price method may be used if—

- (a) the contract has become a qualifying defence contract by virtue of section 14(4) or (5); or
- (b) the parties to a qualifying defence contract (“contract A”) agree that an obligation to provide goods, works or services (“the transferred element”) under that contract is instead to be performed under another qualifying defence contract (“contract B”).

(4) Where paragraph (3)(a) applies—

- (a) for goods, works or services provided under the contract prior to the date on which the contract became a qualifying defence contract (“the date of conversion”), the price is that which was agreed between the parties before the date of conversion in respect of those goods, works or services;
- (b) for goods, works or services in respect of which the parties had agreed a price before the date of conversion but which have not been provided at that date, the price is, at the parties’ election, either—
 - (i) the price so agreed; or
 - (ii) the price re-determined at the date of conversion in accordance with another contract pricing method (“the relevant contract pricing method”).

(5) Where paragraph (3)(b) applies, the price for the transferred element under contract B is the price for that element under contract A immediately before it became a transferred element.

(6) Where the price of part of a contract is determined in accordance with—

- (a) paragraph (4)(a) or (b)(i), that part of the contract is a component the price of which is determined in accordance with this regulation;
- (b) paragraph (4)(b)(ii), that part of the contract is a component the price of which is determined in accordance with the relevant contract pricing method;
- (c) paragraph (5), that part of the contract is a component the price of which is determined in accordance with the contract pricing method under which the price of the transferred element was determined immediately before it became a transferred element.

Novated contract price

19D.—(1) The novated contract method of determining the price of a qualifying defence contract may be used in the circumstances specified in paragraph (3).

(2) Where the novated contract method is used, the price is determined in accordance with paragraph (4).

(3) The novated contract method may be used if—

- (a) a contract (B) replaced a contract (A);

- (b) the purpose of contract B is to ensure the performance of contractual obligations which were to be performed under contract A;
 - (c) contract A was a qualifying defence contract;
 - (d) at least one of the parties to contract A is also a party to contract B;
 - (e) at least one of the parties to contract B was not a party to contract A; and
 - (f) contract B is in all material respects (save for the identity of the parties to the contract) identical to contract A.
- (4) The price determined for contract B is the price payable in respect of contract A.
- (5) For the purposes of these Regulations—
- (a) contract B is to be treated as if its price was determined in accordance with the contract pricing method in accordance with which the price of contract A was determined; and
 - (b) where contract A contained components, each component of contract B is to be treated as if its price was determined in accordance with the contract pricing method in accordance with which the equivalent component of contract A was determined.

Competed rates applied to uncompleted volumes

19E.—(1) The competed rates applied to uncompleted volumes (“CRUV”) method of determining the price of a qualifying defence contract or component of such a contract may be used in the circumstances specified in paragraph (3).

(2) Where the CRUV method is used, the price is determined in accordance with paragraph (4).

(3) The CRUV method may be used if—

- (a) a framework agreement is entered into in accordance with regulation 9(1) or 60(1);
- (b) the contract is awarded in accordance with regulation 9(1) or 60(1);
- (c) in relation to the goods, works or services to be provided under the contract—
 - (i) the price will be agreed using the applicable unit prices or rates contained in the framework agreement (“the competed rates or prices”); and
 - (ii) the volume of the goods, works or services to be provided will not have been subject to a competitive process; and
- (d) the conditions in regulation 9(3) or 60(3) apply to the framework agreement.

(4) The method of determining the price is to—

- (a) estimate the volume of goods, works or services required in way which secures that the volume is—
 - (i) appropriate;
 - (ii) attributable to the contract; and
 - (iii) reasonable in the circumstances; and
- (b) apply that estimate to the relevant competed rates or prices in accordance with the terms of the framework agreement.

Agreed changes to the contract profit rate

19F.—(1) The agreed change to the contract profit rate price method of determining the price of a qualifying defence contract or component of such a contract may be used in the circumstances specified in paragraph (3).

(2) Where the agreed change to the contract profit rate price method is used, the price is determined in accordance with paragraph (4).

(3) The agreed change to the contract profit rate price method may be used if the contract price was originally determined or re-determined using a default pricing method, and either—

- (a) an error has been identified in the determination of the contract profit rate in accordance with regulation 11; or
- (b) the parties agree that an adjustment should be made to the contract profit rate in accordance with regulation 11(6) (“the step 3 incentive adjustment”).

(4) The method of determining the price is—

- (a) in the circumstances described in paragraph (3)(a), for the price to be adjusted by an amount which ensures that the contract profit rate is as it would have been if the error had not been made;
- (b) in the circumstances described in paragraph (3)(b), for the price to be adjusted to reflect the change to the step 3 incentive adjustment agreed between the parties.

(5) The price of the contract or component is to be treated for the purposes of these Regulations as if it was determined in accordance with the default pricing method which applied to the contract or component immediately before its price was determined in accordance with this regulation.

Aggregation of components

19G.—(1) The aggregation of components method of determining the price of a qualifying defence contract may be used where—

- (a) a contract contains two or more components; and
- (b) the parties agree to make an adjustment in accordance with paragraphs (3) to (7).

(2) The method of determining the price of such a contract is to add—

- (a) the price of each of the components (“the total component price”); and
- (b) the value of the adjustment agreed in accordance with paragraphs (3) to (7).

(3) Paragraph (4) applies where—

- (a) the contract requires the primary contractor to integrate outputs from different components of the contract; and
- (b) the parties are satisfied that the cost risk adjustments (see step 2 of regulation 11) made in respect of the components of the contract are insufficient to reflect the financial risks to the primary contractor of entering into the contract, taking account of the requirement to integrate outputs from different components of the contract.

(4) Where this paragraph applies, adjust the total component price by an amount (“the total cost risk adjustment”), so as to reflect the financial risks to the primary contractor under the contract, taking into account the particular types of activities to be carried out by the primary contractor under the contract, including the integration of outputs from different components of the contract.

(5) The total cost risk adjustment must, when added to the cost risk adjustments agreed in respect of all components of the contract, not exceed the sum of all costs risk adjustments under the contract had the parties agreed an adjustment of plus 25% of the baseline profit rate when pricing each component of the contract.

(6) Where the Secretary of State determines that the primary contractor should be given a particular financial incentive as regards the performance of provisions of the contract specified by the Secretary of State, the contract price may be increased by an amount (“the total incentive adjustment”) specified by the Secretary of State.

(7) The maximum amount of the total incentive adjustment is—

- (a) the total of any incentive adjustments (see step 3 of regulation 11) that might be made in respect of the individual components of the contract that have been priced in accordance with the default pricing method, less
- (b) the amount of all of the incentive adjustments that have been determined in accordance with regulation 11(6) in respect of that contract.”.