
STATUTORY INSTRUMENTS

2024 No. 420

The Single Source Contract (Amendment) Regulations 2024

Insertion of regulation 7A (meaning of a new contract)

8. After regulation 7 insert—

“Meaning of a new contract

7A.—(1) For the purposes of section 14 of the Act, a contract between the Secretary of State and the primary contractor for additional goods, works or services is not to be treated as amending an existing contract (and therefore is a new contract) if paragraph (2) or (3) applies.

(2) This paragraph applies where—

- (a) the parties have an existing contract and wish the primary contractor to provide additional goods, works or services;
- (b) the same, or substantially the same, commercial outcome could be achieved either by—
 - (i) amending the existing contract to include the additional goods, works or services; or
 - (ii) procuring the additional goods, works or services under a separate contract without making disproportionately numerous or complex amendments to the existing contract;
- (c) procuring the additional goods, works or services under a separate contract would not give rise to unavoidable and material—
 - (i) additional commercial risk; or
 - (ii) duplication of costs or resource; and
- (d) the additional goods, works or services are not subject to a relevant pricing restriction.

(3) This paragraph applies if a contract is amended in such a way as to amount in effect to termination of that contract and the creation of a new contract.

(4) For the purposes of section 14(4)(d) and (5)(d) of the Act, the Secretary of State and the primary contractor may agree to treat a contract that they have entered into as amending an existing contract.

(5) For the purposes of paragraph (2)(b), any difference in commercial outcome which arises as a result of having to comply with the requirements of the Act and these Regulations is to be disregarded.

(6) For the purposes of paragraph (2)(d), a relevant pricing restriction exists if paragraph (7) or (8) applies.

(7) This paragraph applies if—

- (a) the award of the contract was the result of a competitive process;

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- (b) the contract specifies the way in which the price of the additional goods, works or services is to be determined;
 - (c) the manner of determining the price was agreed when the contract was entered into; and
 - (d) the way in which the price is determined is incompatible with the way in which the price may be calculated in accordance with the Act and these Regulations.
- (8) This paragraph applies if—
- (a) the award of the contract was not the result of a competitive process;
 - (b) the contract specifies the way in which the price of the additional goods, works or services is to be determined;
 - (c) the manner of determining the price was agreed prior to the relevant date⁽¹⁾; and
 - (d) the way in which the price is determined is incompatible with the way in which the price may be calculated in accordance with the Act and these Regulations.”.

⁽¹⁾ See section 14(9)(a) of the Defence Reform Act 2014 for the definition of “relevant date”.