



# Defence Reform Act 2014

## 2014 CHAPTER 20

### PART 2

#### SINGLE SOURCE CONTRACTS

##### *Sub-contracts*

#### 28 Qualifying sub-contracts

- (1) Single source contract regulations may make provision in relation to qualifying sub-contracts.
- (2) For the purposes of this Part—
  - (a) “qualifying sub-contract” means a contract to which subsection (3) or (4) applies;
  - (b) references to a “sub-contractor” are to a person who provides anything under such a contract.
- (3) This subsection applies to a contract between a primary contractor and another person if—
  - (a) the contract involves the provision by the other person of anything for the purposes of a qualifying defence contract to which the primary contractor is a party,
  - (b) the award of the contract is not the result of a competitive process,
  - (c) the value of the contract is of or above the amount specified in the regulations, and
  - (d) the contract meets such other requirements as may be specified in the regulations.
- (4) This subsection applies to a contract (“contract B”) if—
  - (a) contract B involves the provision of anything for the purposes of another contract (“contract A”) where contract A is—
    - (i) a contract to which subsection (3) applies, or

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*Status: This is the original version (as it was originally enacted).*

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- (ii) another contract to which this subsection applies,
  - (b) the award of contract B is not the result of a competitive process,
  - (c) the value of contract B is of or above the amount specified in the regulations, and
  - (d) contract B meets such other requirements as may be specified in the regulations.
- (5) The regulations must make provision for determining for the purposes of this section whether the award of a contract is the result of a competitive process.
- (6) The Secretary of State may direct that a particular contract is not a contract to which subsection (3) or (4) applies even though the requirements of that subsection are met in relation to it.

## **29 Determining whether a contract is a qualifying sub-contract**

- (1) Single source contract regulations may provide that where—
- (a) a primary contractor proposes to enter into a contract with another person (the “prospective sub-contractor”), and
  - (b) the proposed contract involves the provision by the prospective sub-contractor of anything for the purposes of a qualifying defence contract to which the primary contractor is a party,
- the primary contractor must assess whether the proposed contract would be a qualifying sub-contract if it were entered into.
- (2) The regulations may require the primary contractor—
- (a) to keep a record of an assessment made by virtue of subsection (1), for the purpose of its inclusion in the records which the primary contractor would be required to keep in relation to the proposed contract, by virtue of section 23(3)(d) (records relating to whether a contract is a qualifying sub-contract), if the contract were entered into;
  - (b) where the assessment is that the proposed contract would be a qualifying sub-contract if it were entered into, to give notice in writing of that fact to the Secretary of State, an authorised person and the prospective sub-contractor.
- (3) Single source contract regulations may provide that where—
- (a) a person (“the prospective primary contractor”) proposes to enter into a qualifying defence contract with the Secretary of State (“the proposed qualifying defence contract”),
  - (b) the prospective primary contractor also proposes to enter into a contract (“the proposed sub-contract”) with another person (“the prospective sub-contractor”), and
  - (c) the proposed sub-contract involves the provision by the prospective sub-contractor of anything for the purposes of the proposed qualifying defence contract,
- the prospective primary contractor must assess whether the proposed sub-contract would be a qualifying sub-contract if it and the proposed qualifying defence contract were entered into.
- (4) The regulations may require the prospective primary contractor—
- (a) to keep a record of an assessment made by virtue of subsection (3), for the purpose of its inclusion in the records which the prospective primary

- contractor would be required to keep, by virtue of section 23(3)(d), if the proposed contracts were entered into;
- (b) where the assessment is that the proposed sub-contract would be a qualifying sub-contract if it and the proposed qualifying defence contract were entered into, to give notice in writing of that fact to the Secretary of State, an authorised person and the prospective sub-contractor.
- (5) Single source contract regulations may contain provision—
- (a) in relation to a case where an assessment is made by virtue of subsection (1), entitling the prospective sub-contractor to appeal to the SSRO against an assessment that a proposed contract would be a qualifying sub-contract if it were entered into;
- (b) in relation to a case where an assessment is made by virtue of subsection (3), entitling the prospective sub-contractor to appeal to the SSRO against an assessment that the proposed sub-contract would be a qualifying sub-contract if it and the proposed qualifying defence contract were entered into.
- (6) The regulations must contain provision about the procedure to be followed by the SSRO in determining an appeal by virtue of subsection (5).

### **30 Application of Part to qualifying sub-contracts**

- (1) This Part and single source contract regulations apply to qualifying sub-contracts (and to sub-contractors) as they apply to qualifying defence contracts (and to primary contractors).
- (2) In their application by virtue of subsection (1), this Part and single source contract regulations are subject to—
- (a) such modifications as may be set out in those regulations, and
- (b) subsection (5).
- (3) The regulations—
- (a) may provide for the application of this Part and the regulations, by virtue of subsection (1), to end at a time specified by or determined in accordance with the regulations;
- (b) may, in making such provision, provide for determining when this Part and the regulations cease to apply to a qualifying sub-contract which is—
- (i) partly for the purposes of a qualifying defence contract or another qualifying sub-contract, and
- (ii) partly for other purposes.
- (4) The provision that may be made under subsection (3)(b) includes provision—
- (a) for the sub-contractor to give notice to the SSRO that, in the sub-contractor's opinion, this Part and the regulations should cease to apply to the qualifying sub-contract, and
- (b) for the SSRO to be able to overrule such a notice (and accordingly for this Part and the regulations to continue to apply).
- (5) The regulations may contain provision excluding the application of this Part and the regulations, by virtue of subsection (1), to a qualifying sub-contract in respect of which no notice is given under section 29(2)(b) or (4)(b).