



# Defence Reform Act 2014

## 2014 CHAPTER 20

### PART 2

#### SINGLE SOURCE CONTRACTS

##### *Transparency*

## 23 Records

- (1) Single source contract regulations must contain provision requiring a person (“P”) to keep relevant records.
- (2) “Relevant records” means accounting and other records (whether in hard or electronic form)—
  - (a) which P may reasonably be expected to keep, and
  - (b) which are sufficiently up-to-date and accurate for use by the Secretary of State or an authorised person for any of the purposes listed in subsection (3).
- (3) Those purposes are—
  - (a) auditing reports provided by P under section 24 or 25;
  - (b) where P is a primary contractor, verifying—
    - (i) whether a cost of P is an allowable cost,
    - (ii) the reason for any difference between an estimated and actual allowable cost of P, or
    - (iii) any other matter relating to the price payable to P under a qualifying defence contract;
  - (c) where P is a primary contractor, monitoring P’s performance of the obligations to which it is subject under a qualifying defence contract;
  - (d) where P is a primary contractor, determining whether a contract between P and another person is a qualifying sub-contract.
- (4) The regulations may provide for the requirement to keep relevant records—

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- (a) to begin at a time specified by or determined in accordance with the regulations (which may be before a qualifying defence contract is entered into), and
  - (b) to end at a time so specified or determined.
- (5) The regulations may provide—
  - (a) for the Secretary of State or an authorised person to be entitled to examine relevant records where reasonably required for a purpose listed in subsection (3);
  - (b) for the Secretary of State or an authorised person to require P to make copies available (in hard or electronic form) for the purpose of enabling relevant records to be examined;
  - (c) for any entitlement to examine relevant records to be exercisable subject to provision in the regulations—
    - (i) about the times at which relevant records may be examined, and
    - (ii) about notice to be given before they may be examined;
  - (d) for P to be required to comply with any reasonable request by the Secretary of State or an authorised person for further information or explanation relating to relevant records (whether after examination of the records by virtue of paragraph (a) or otherwise).
- (6) The SSRO may, on an application by P, review the way in which the Secretary of State or an authorised person has acted in exercising any function by virtue of subsection (5).
- (7) If, on a review under subsection (6), the SSRO considers that the Secretary of State or an authorised person has acted unreasonably in exercising the function, the SSRO may make a declaration to that effect.

## **24 Reports on qualifying defence contracts**

- (1) Single source contract regulations must require a primary contractor to provide reports relating to qualifying defence contracts to which the primary contractor is a party—
  - (a) to the Secretary of State or an authorised person, and
  - (b) to the SSRO.
- (2) The regulations—
  - (a) must specify the matters to be covered in reports;
  - (b) must make provision about when reports are to be provided (which may include provision for the Secretary of State or authorised person and the primary contractor to agree when particular reports are to be provided);
  - (c) may make provision about the form of reports (which may or may not be electronic);
  - (d) may require a primary contractor to have regard to guidance issued by the SSRO in preparing reports.
- (3) The regulations may provide for a requirement to provide a specified kind of report to apply, in the case of contracts of a specified kind, only at the request of the Secretary of State or an authorised person.
 

“Specified” means specified in the regulations.
- (4) The provision under this section that may, by virtue of section 42(2), be made by the regulations includes different provision—

- (a) in relation to contracts of different values;
- (b) in relation to different kinds of contract;
- (c) about the matters to be covered in reports provided at different times.

(5) Provision under this section does not apply in cases specified in the regulations.

## **25 Reports on overheads and forward planning etc**

(1) Single source contract regulations must require a designated person, for a financial year in relation to which the ongoing contract condition is met, to provide the reports mentioned in subsection (2)—

- (a) to the Secretary of State or an authorised person, and
- (b) to the SSRO.

(2) The reports referred to in subsection (1) are—

- (a) reports relating to the overhead costs and forward planning of—
  - (i) a person (“P”) who is a party to one or more qualifying defence contracts, and
  - (ii) any person with whom P is associated, where that person provides anything for the purposes of any qualifying defence contract to which P is a party, and
- (b) other reports of a specified description.

(3) In this section, “designated person” means—

- (a) where P is associated with one or more other persons, the ultimate parent undertaking in relation to P and those other persons, and
- (b) otherwise, P.

(4) A requirement imposed by virtue of subsection (1) does not apply unless—

- (a) in a case where P is associated with other persons, P or any of those other persons is a party to at least one qualifying defence contract the value of which is of or above the amount specified in the regulations, or
- (b) in a case where P is not associated with other persons, P is a party to at least one qualifying defence contract the value of which is of or above that amount.

(5) The “ongoing contract condition” is met in relation to a financial year if, at any time in that year, obligations relating to the supply of goods, works or services under one or more of the qualifying defence contracts referred to in subsection (4)(a) or (b) (as the case may be) are outstanding.

(6) The regulations—

- (a) must specify the matters to be covered in reports;
- (b) must make provision about when reports are to be provided (which may include provision for the Secretary of State or authorised person and the designated person to agree when particular reports are to be provided);
- (c) may make provision about the form of reports (which may or may not be electronic);
- (d) may require designated persons to have regard to guidance issued by the SSRO in preparing the reports.

(7) The requirement to provide a report does not apply in cases specified in the regulations.

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- (8) The Secretary of State may direct that a particular contract is not to be taken into account in determining whether the ongoing contract condition is met in relation to a financial year.
- (9) An undertaking is the “ultimate parent undertaking” for the purposes of subsection (3) in relation to two or more persons who are associated with each other, or in relation to itself and one or more persons who are associated with it, if the undertaking—
  - (a) is a parent undertaking of those other persons, and
  - (b) is not a subsidiary undertaking in relation to another undertaking.

“Parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the Companies Act 2006.

## **26 Duty to report relevant events, circumstances and information**

- (1) A primary contractor must notify the Secretary of State on becoming aware of—
  - (a) the occurrence, or likely occurrence, of an event that is likely to have a material effect in relation to a qualifying defence contract to which the primary contractor is a party,
  - (b) circumstances that are likely to have a material effect in relation to such a contract, or
  - (c) information that is likely to be materially relevant to such a contract.
- (2) For the purposes of this section—
  - (a) an event has a material effect in relation to a contract if it has a material effect in relation to any of the matters mentioned in subsection (3),
  - (b) circumstances have a material effect in relation to a contract if they have a material effect in relation to any of those matters, and
  - (c) information is materially relevant to a contract if it is materially relevant to any of those matters.
- (3) The matters referred to in subsection (2) are—
  - (a) the costs of the primary contractor under the contract,
  - (b) the total price payable to the primary contractor under the contract, and
  - (c) the primary contractor’s ability to perform a material obligation of the contract.

## **27 Records and reports: restrictions**

- (1) Single source contract regulations may disapply a requirement imposed by virtue of section 23(5), 24, 25 or 26 to the extent that compliance with the requirement would require a person (“P”) to contravene a relevant restriction.
- (2) A “relevant restriction” is—
  - (a) a prohibition or restriction imposed by an enactment, or
  - (b) an obligation of confidentiality owed by P to another person, unless that other person—
    - (i) is associated with P, or
    - (ii) gives consent to P’s complying with the requirement in question.

- (3) The regulations may provide, in relation to a case where the Secretary of State or an authorised person reasonably suspects that an obligation of confidentiality has been entered into otherwise than for genuine commercial reasons—
  - (a) for the SSRO to investigate the matter on a reference by the Secretary of State or authorised person, and
  - (b) for a requirement mentioned in subsection (1) to continue to apply (despite provision under that subsection) where the SSRO finds that the obligation was entered into otherwise than for genuine commercial reasons.
- (4) An obligation of confidentiality entered into wholly or partly for the purpose of avoiding any requirement imposed by virtue of section 23(5), 24, 25 or 26 is to be treated for the purposes of provision under subsection (3) as entered into otherwise than for genuine commercial reasons.