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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Procurement Act 2023. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 10

Section 117

SINGLE SOURCE DEFENCE CONTRACTS

1 The Defence Reform Act 2014 is amended as follows.

Commencement Information

- I1** Sch. 10 para. 1 not in force at Royal Assent, see [s. 127\(2\)](#)
I2 [Sch. 10 para. 1](#) in force at 19.1.2024 for specified purposes by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(i\)](#) (with [reg. 3](#))

Definition of qualifying defence contract

- 2 (1) Section 14 (regulations relating to qualifying defence contracts) is amended as follows.
- (2) In subsection (2)(a), after “goods, works or services” insert “wholly or substantially”.
- (3) After subsection (5) insert—
- “(5A) Single source contract regulations may specify circumstances in which a contract entered into by the Secretary of State with a primary contractor is or is not to be treated as amending an existing contract between those parties for the purposes of this section.”
- (4) After subsection (8) insert—
- “(8A) The regulations may also specify when a contract is to be treated as substantially for defence purposes.”

Commencement Information

- I3** Sch. 10 para. 2 not in force at Royal Assent, see [s. 127\(2\)](#)
I4 [Sch. 10 para. 2](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(ii\)](#) (with [reg. 3](#))

Pricing of qualifying defence contracts

- 3 (1) Section 15 (pricing of qualifying defence contracts) is amended as follows.
- (2) In subsection (1), after “qualifying defence contract” insert “, and, where the contract is divided into components, each component of that contract,”.
- (3) For subsection (2) substitute—
- “(2) The regulations must provide for the price payable under the contract, or any component, to be determined—
- (a) in accordance with the formula in subsection (4), or

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- (b) in such circumstances as may be specified in the regulations, in accordance with another method.
- (2A) The regulations must only specify circumstances for the purposes of subsection (2)(b) if the Secretary of State is satisfied that the factors referred to in section 13(2) may be ensured in those circumstances if another method is used.
- (2B) The regulations may also make provision requiring a particular method specified in the regulations to be used in certain of the circumstances specified for the purposes of subsection (2)(b).”
- (4) In subsection (3)(a)—
 - (a) after “contract” insert “or each amended component of that contract,”;
 - (b) for “the formula in subsection (4)” substitute “the method applicable by virtue of subsection (2)”.
- (5) In subsection (3)(b) for “formula” substitute “method”.
- (6) In subsection (4)—
 - (a) after “for the contract” insert “or component”;
 - (b) after “under the contract” insert “or component”.
- (7) In subsection (5), after “contract” insert “or component”.
- (8) After subsection (5) insert—
 - “(6) In this Part, “component”, in relation to a contract, means a part of the contract that is to be treated distinctly from other such parts in determining the price payable under the contract.
 - (7) For the purposes of subsection (6), a part of a contract is to be treated distinctly if—
 - (a) single source contract regulations contain provision to that effect, or
 - (b) the parties to the contract agree that it should.
 - (8) Single source contract regulations may make provision about when parts of a qualifying defence contract are or are not to be treated distinctly from other parts of the same contract.”

Commencement Information

- I5** Sch. 10 para. 3 not in force at Royal Assent, see [s. 127\(2\)](#)
- I6** Sch. 10 para. 3 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))

- 4 (1) Section 16 (pricing of contracts: supplementary) is amended as follows.
- (2) In subsection (1)(b)(i), after “contract” insert “or, where relevant, a component of that contract”.
- (3) After subsection (3) insert—
 - “(4) Single source contract regulations may provide that the SSRO—
 - (a) must, on an application by a person within subsection (5), determine whether the method used to determine the price payable under a

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qualifying defence contract or a component of that contract was appropriate;

- (b) may, in consequence of a determination under paragraph (a), determine that the price payable under the contract is to be adjusted by an amount specified by the SSRO.

(5) The following persons are within this subsection—

- (a) the Secretary of State,
(b) an authorised person, and
(c) the primary contractor.”

Commencement Information

I7 Sch. 10 para. 4 not in force at Royal Assent, see [s. 127\(2\)](#)

I8 Sch. 10 para. 4 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))

5 After section 21(2) (final price adjustment) insert—

“(2A) Provision made under subsection (2) may include provision dealing with how, in the case of a qualifying defence contract divided into components, the components are to be taken into account in determining the amount of any adjustments to the total price payable under such a contract.”

Commencement Information

I9 Sch. 10 para. 5 not in force at Royal Assent, see [s. 127\(2\)](#)

I10 Sch. 10 para. 5 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))

6 In section 22(1)(a) (recovery of unpaid amounts), after “section” insert “16(4),”.

Commencement Information

I11 Sch. 10 para. 6 not in force at Royal Assent, see [s. 127\(2\)](#)

I12 Sch. 10 para. 6 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))

7 (1) Section 42 (single source contract regulations: general) is amended as follows.

(2) In subsection (4)(b), omit the second “or”.

(3) After subsection (4)(b) insert—

“(ba) provision made by virtue of section 15(2)(b) (pricing of contracts), whether alone or with other provision, or”.

Commencement Information

I13 Sch. 10 para. 7 not in force at Royal Assent, see [s. 127\(2\)](#)

I14 Sch. 10 para. 7 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))

8 In section 43 (interpretation etc), at the appropriate place insert—

““component” has the meaning given by section 15(6).”

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- I15** Sch. 10 para. 8 not in force at Royal Assent, see [s. 127\(2\)](#)
I16 [Sch. 10 para. 8](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))

Commencement Information

- I5** Sch. 10 para. 3 not in force at Royal Assent, see [s. 127\(2\)](#)
I6 [Sch. 10 para. 3](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))
I7 Sch. 10 para. 4 not in force at Royal Assent, see [s. 127\(2\)](#)
I8 [Sch. 10 para. 4](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))
I9 Sch. 10 para. 5 not in force at Royal Assent, see [s. 127\(2\)](#)
I10 [Sch. 10 para. 5](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))
I11 Sch. 10 para. 6 not in force at Royal Assent, see [s. 127\(2\)](#)
I12 [Sch. 10 para. 6](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))
I13 Sch. 10 para. 7 not in force at Royal Assent, see [s. 127\(2\)](#)
I14 [Sch. 10 para. 7](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))
I15 Sch. 10 para. 8 not in force at Royal Assent, see [s. 127\(2\)](#)
I16 [Sch. 10 para. 8](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iii\)](#) (with [reg. 3](#))

Contract profit rate

- 9 (1) Section 17 (contract profit rate) is amended as follows.
- (2) In subsection (1) at the end insert “, or, where the contract is divided into components, any component of that contract”.
- (3) In subsection (2)—
- in step 2, for the words from “the risk” to “estimated allowable costs” substitute “the financial risks to the primary contractor of entering into the contract or component, taking into account the particular type of activities to be carried out by the primary contractor under that contract or component.”;
 - omit steps 3 and 4 (and, accordingly, renumber steps 5 and 6 as steps 3 and 4);
 - in new step 3, for “4” substitute “2”;
 - in new step 3, after “contract” insert “or component”;
 - in new step 3, before “Any increase” insert “In specifying provisions of the contract or component, the Secretary of State must comply with any requirements imposed by the regulations, and”;
 - in new step 4, for “5” substitute “3”;
 - in new step 4, after “contract”, in both places it occurs, insert “or component”.
- (4) In subsection (3) for “6”, in both places it occurs, substitute “4”.
- (5) In subsection (4)(b), for “6” substitute “4”.

Commencement Information

- I17** Sch. 10 para. 9 not in force at Royal Assent, see [s. 127\(2\)](#)
I18 [Sch. 10 para. 9](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iv\)](#) (with [reg. 3](#))

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- 10 (1) Section 18 (contract profit rate: supplementary) is amended as follows.
- (2) In subsection (2)(a)—
- (a) for “6” substitute “4”;
 - (b) after “paragraph” insert “, or a component of such a contract”.
- (3) In subsection (2)(b), after “contract” insert “or component”.
- (4) In subsection (2)(c), after “those contracts” insert “or components of those contracts”.
- (5) For subsection (3)(a) substitute—
- “(a) may, on an application by a person within subsection (4), determine whether—
 - (i) the baseline profit rate identified under step 1 in section 17(2) is correct in relation to a qualifying defence contract or a component of such a contract;
 - (ii) an adjustment agreed under any of steps 2 to 4 in section 17(2) is appropriate;
 - (iii) an adjustment agreed under step 3 in section 17(2) is in accordance with the regulations.”

Commencement Information

I19 Sch. 10 para. 10 not in force at Royal Assent, see [s. 127\(2\)](#)

I20 Sch. 10 para. 10 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iv\)](#) (with [reg. 3](#))

- 11 (1) Section 19 (rates etc relevant to determining contract profit rate) is amended as follows.
- (2) In subsection (1) omit “the SSRO funding adjustment”.
- (3) In subsection (2)—
- (a) omit “and the SSRO funding adjustment”;
 - (b) omit “or funding adjustment”.
- (4) In subsection (4) omit “, and the SSRO funding adjustment for that year”.
- (5) In subsection (5)—
- (a) omit “or the SSRO funding adjustment”;
 - (b) omit “or funding adjustment” in both places it occurs.
- (6) In subsection (6) omit “or the funding adjustment”.

Commencement Information

I21 Sch. 10 para. 11 not in force at Royal Assent, see [s. 127\(2\)](#)

I22 Sch. 10 para. 11 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iv\)](#) (with [reg. 3](#))

Commencement Information

I17 Sch. 10 para. 9 not in force at Royal Assent, see [s. 127\(2\)](#)

I18 Sch. 10 para. 9 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iv\)](#) (with [reg. 3](#))

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- I19** Sch. 10 para. 10 not in force at Royal Assent, see [s. 127\(2\)](#)
I20 [Sch. 10 para. 10](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iv\)](#) (with [reg. 3](#))
I21 Sch. 10 para. 11 not in force at Royal Assent, see [s. 127\(2\)](#)
I22 [Sch. 10 para. 11](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(iv\)](#) (with [reg. 3](#))

Allowable costs

- 12 (1) Section 20 (allowable costs) is amended as follows.
- (2) In subsection (2)—
- (a) after “qualifying defence contract” insert “, or, where the contract is divided into components, a component of that contract”;
- (b) in paragraph (b), after “contract” insert “or component”.
- (3) After subsection (2) insert—
- “(2A) Single source contract regulations may provide that the requirements set out in subsection (2)(a) to (c) are not met in relation to a cost where the cost arises from profits made by a person connected with the primary contractor.
- (2B) The regulations may specify the circumstances in which a person is connected with the primary contractor.”
- (4) In subsection (4) after “contract” insert “, or where the contract is divided into components, a component of that contract.”.
- (5) For subsection (5) substitute—
- “(5) Where a person within subsection (5A) applies to the SSRO for such a determination, the SSRO must determine—
- (a) the extent to which a cost is or would be an allowable cost under a qualifying defence contract or a component of such a contract, or
- (b) the extent to which a method which is used or may be used to determine a cost under a qualifying defence contract or a component of such a contract would result in that cost being an allowable cost under such a contract or component.
- (5A) The following persons are within this subsection—
- (a) the Secretary of State;
- (b) an authorised person;
- (c) a primary contractor under a qualifying defence contract;
- (d) a potential primary contractor.”
- (6) In subsection (6), for “the contract”, in the first place it occurs, substitute “a qualifying defence contract”.

Commencement Information

- I23** Sch. 10 para. 12 not in force at Royal Assent, see [s. 127\(2\)](#)
I24 [Sch. 10 para. 12](#) in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(v\)](#) (with [reg. 3](#))

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Reports

- 13 (1) Section 25 (reports on overheads and forward planning etc) is amended as follows.
- (2) For subsection (3)(a) substitute—
- “(a) where P is associated with one or more other persons—
- (i) the ultimate parent undertaking in relation to P and those other persons, or
- (ii) where permitted under the regulations in relation to a report mentioned in subsection (2), another person associated with P which that undertaking and the Secretary of State have agreed is to be a designated person in relation to that report, and”.
- (3) After subsection (8) insert—
- “(8A) In this section, “financial year” means a year beginning with 1 April or a year beginning with such other date as may be agreed between the Secretary of State and a designated person.”

Commencement Information

I25 Sch. 10 para. 13 not in force at Royal Assent, see [s. 127\(2\)](#)

I26 Sch. 10 para. 13(1)(2) in force at 19.1.2024 by S.I. 2024/61, [reg. 2\(1\)\(b\)\(vi\)](#) (with [reg. 3](#))

PROSPECTIVE

- 14 In section 43 (interpretation etc), in the definition of “financial year”, at the end insert “(but see section 25(8A) for the different meaning of “financial year” in that section)”.

Commencement Information

I27 Sch. 10 para. 14 not in force at Royal Assent, see [s. 127\(2\)](#)

Qualifying sub-contracts

- 15 (1) Section 29 (determining whether a contract is a qualifying sub-contract) is amended as follows.
- (2) After subsection (2)(b) insert—
- “(c) where the assessment is that the proposed contract would not be a qualifying sub-contract if it were entered into, to give notice in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the prospective sub-contractor.”
- (3) After subsection (4)(b) insert—
- “(c) where the assessment is that the proposed sub-contract would not be a qualifying sub-contract if it were entered into, to give notice

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in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the prospective sub-contractor.”

- (4) In subsection (5), in each of paragraphs (a) and (b), after “would”, insert “or would not”.

Commencement Information

I28 Sch. 10 para. 15 not in force at Royal Assent, see [s. 127\(2\)](#)

I29 Sch. 10 para. 15 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(vii\)](#) (with [reg. 3](#))

- 16 In section 30(4)(a) (application of single source contracts regime to qualifying sub-contracts)—
- (a) after “for the” insert “primary contractor or”;
 - (b) for “the sub-contractor’s opinion” substitute “their opinion”.

Commencement Information

I30 Sch. 10 para. 16 not in force at Royal Assent, see [s. 127\(2\)](#)

I31 Sch. 10 para. 16 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(vii\)](#) (with [reg. 3](#))

- 17 In section 31(3) (compliance notices)—
- (a) in paragraph (e), omit “, or”;
 - (b) in paragraph (f), at the end insert “, or
 - (g) in circumstances where P is required to give the notice mentioned in section 29(2)(c) or (4)(c) in respect of a proposed contract, P fails to give such a notice.”

Commencement Information

I32 Sch. 10 para. 17 not in force at Royal Assent, see [s. 127\(2\)](#)

I33 Sch. 10 para. 17 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(vii\)](#) (with [reg. 3](#))

Commencement Information

I28 Sch. 10 para. 15 not in force at Royal Assent, see [s. 127\(2\)](#)

I29 Sch. 10 para. 15 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(vii\)](#) (with [reg. 3](#))

I30 Sch. 10 para. 16 not in force at Royal Assent, see [s. 127\(2\)](#)

I31 Sch. 10 para. 16 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(vii\)](#) (with [reg. 3](#))

I32 Sch. 10 para. 17 not in force at Royal Assent, see [s. 127\(2\)](#)

I33 Sch. 10 para. 17 in force at 19.1.2024 by [S.I. 2024/61](#), [reg. 2\(1\)\(b\)\(vii\)](#) (with [reg. 3](#))

PROSPECTIVE

Powers of the Single Source Regulations Office (“SSRO”)

- 18 (1) Section 35 (opinions and determinations by the SSRO) is amended as follows.

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- (2) In subsection (1)(a), omit “qualifying defence” in both places it occurs.
- (3) For subsection (2)(c) substitute—
- “(c) a person who has entered into a contract with the Secretary of State (a “contractor”);”.
- (4) In subsection (2)(d)—
- (a) for “the”, in the first place it occurs, substitute “a”;
- (b) omit “(in the case of a proposed contract)”.
- (5) For subsection (3) substitute—
- “(3) The SSRO may, on a reference made to it by a person mentioned in subsection (2), give an opinion on any other matter relating to the application or interpretation of this Part or single source contract regulations.”.
- (6) In subsection (4)(a), omit “qualifying defence”.
- (7) In subsection (5), omit “primary” in both places it occurs.

Commencement Information

I34 Sch. 10 para. 18 not in force at Royal Assent, see [s. 127\(2\)](#)

19 After section 35 insert—

“35A Guidance

The SSRO may issue such guidance as it considers appropriate in relation to the application or interpretation of this Part or single source contract regulations.”

Commencement Information

I35 Sch. 10 para. 19 not in force at Royal Assent, see [s. 127\(2\)](#)

I36 Sch. 10 para. 20 in force at 19.1.2024 by S.I. 2024/61, [reg. 2\(1\)\(b\)\(viii\)](#) (with [reg. 3](#))

Commencement Information

I34 Sch. 10 para. 18 not in force at Royal Assent, see [s. 127\(2\)](#)

I35 Sch. 10 para. 19 not in force at Royal Assent, see [s. 127\(2\)](#)

I36 Sch. 10 para. 20 in force at 19.1.2024 by S.I. 2024/61, [reg. 2\(1\)\(b\)\(viii\)](#) (with [reg. 3](#))

20 In paragraph 10(3) of Schedule 4 (procedure of the SSRO), after “16(2)(b)” insert “or (4)”.

Commencement Information

I37 Sch. 10 para. 20 not in force at Royal Assent, see [s. 127\(2\)](#)

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Changes and effects yet to be applied to :

- Sch. 10 para. 1 coming into force by [S.I. 2024/61 reg. 2\(2\)\(b\)\(i\)](#)
- Sch. 10 para. 18 coming into force by [S.I. 2024/61 reg. 2\(2\)\(b\)\(ii\)](#)
- Sch. 10 para. 19 coming into force by [S.I. 2024/61 reg. 2\(2\)\(b\)\(iii\)](#)