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STATUTORY INSTRUMENTS

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**2024 No. 420**

**PUBLIC PROCUREMENT**

**The Single Source Contract (Amendment) Regulations 2024**

*Made - - - - 22nd March 2024*

*Coming into force - - 1st April 2024*

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The Secretary of State makes these Regulations in exercise of the powers conferred by sections 14(1), (2)(c), (5A), (8) and (8A), 15(1) to (3) and (5), 16(1) and (4), 17(1) to (3), 18(2) and (3), 20(2A) and (2B), 21(1) to (2A), 24(2) to (4), 28(1) and (5), 30(2)(a), 35(1), 41(1) and (2), 42(1) and (2) and 43(2) of the Defence Reform Act 2014(a).

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 42(4) of the Defence Reform Act 2014.

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Single Source Contract (Amendment) Regulations 2024.

(2) These Regulations come into force on 1st April 2024.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

#### **Amendment of the Single Source Contract Regulations 2014**

2. The Single Source Contract Regulations 2014(b) are amended in accordance with regulations 3 to 43.

#### **Amendment of regulation 2 (interpretation)**

3. In regulation 2(1)(c)—

(a) after the definition of “the Act” insert—

““alternative pricing method” means one of the contract pricing methods described in Chapter 3 of Part 3;”;

(b) after the definition of “business unit” insert—

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(a) 2014 c. 20. Sections 14 to 18, 20, 21, 35 and 42 of the Defence Reform Act 2014 were amended by Schedule 10 of the Procurement Act 2023 (c. 54).

(b) S.I. 2014/3337.

(c) Regulation 2 was amended by S.I. 2018/1350 and S.I. 2019/1106.

““competed rate” means the competed rate or price in accordance with the terms of the relevant framework agreement;

“component”, in relation to a contract, has the meaning given by regulation 9A;

“component completion date” has the meaning given by regulation 4(1A);”;

(c) in the definition of “contract completion date”, at the end insert “(1)”;

(d) for the definition of “contract price” substitute—

““contract price” has the meaning given by regulation 4A;”;

(e) after the definition of “contract price” insert—

““contract pricing method” means an alternative pricing method or a default pricing method;”;

(f) after the definition of “cost recovery rate” insert—

““default pricing method” means one of the contract pricing methods described in Chapter 2 of Part 3;”;

(g) in the definition of “further group sub-contract”, for “12(6)” substitute “13A(4)”;

(h) in the definition of “group sub-contract”, for “12(5)” substitute “13A(3)”;

(i) omit the definition of “regulated pricing method”;

(j) in the definition of “the time of agreement”, at the end insert—

“(c) in the case of a component of a qualifying defence contract—

(i) the date the component is entered into; or

(ii) if the price payable under the component is re-determined in accordance with the Schedule, the date of that re-determination;”.

#### **Substitution of regulation 3 (meaning of “defence purposes”)**

4. For regulation 3 substitute—

##### **“Meaning of “defence purposes” and “substantially for defence purposes”**

3—(1) “Defence purposes” means the purposes of defence (whether or not of the United Kingdom), or related purposes.

(2) A contract will be substantially for defence purposes if the contract fulfils a requirement for goods, works or services for defence purposes and paragraph (3) or (4) applies.

(3) This paragraph applies if the value of the goods, works and services for defence purposes is more than £5,000,000 and more than 30% of the total value of the contract.

(4) This paragraph applies if the value of the goods, works and services for defence purposes is more than £25,000,000.

(5) For the purposes of paragraphs (3) and (4), the value of goods, works and services for defence purposes is the difference between the total value of the contract and the value of the contract if it did not contain a requirement for such goods, works or services.”.

#### **Amendment of regulation 4 (meaning of “contract completion date”)**

5. In regulation 4—

(a) in the heading, at the end insert “and “component completion date””;

- (b) in paragraph (1)—
  - (i) omit sub-paragraph (a) (and the “or” at the end);
  - (ii) in sub-paragraph (b), omit “if no such date is described in the contract.”;
  - (iii) in sub-paragraph (c), for “(1)(a) or (b) (as the case may be)” substitute “(1)(b)”;
- (c) after paragraph (1) insert—
  - “(1A) The “component completion date”, in relation to a component of a contract, means—
    - (a) the date on which the contractor completes all obligations under that component which entitle it to final payment in respect of that component;
    - (b) if that component is terminated, but any other part of the contract is not terminated, before the date described in sub-paragraph (a), the date on which the component is terminated.”;
- (d) in the opening words of paragraph (2)—
  - (i) after “(1)(b)” insert “and (1A)(a)”;
  - (ii) after “contract” insert “or in respect of a component”.

### **Insertion of regulation 4A (meaning of “contract price”)**

- 6. After regulation 4 insert—

#### **“Meaning of “contract price”**

- 4A “Contract price” means—

- (a) in relation to a qualifying defence contract which does not contain components and in relation to a component of a qualifying defence contract—
  - (i) the price payable under the contract or component to the primary contractor as determined in accordance with a contract pricing method; or
  - (ii) if the contract or component is amended in a way that affects the price payable under it, the price payable under the contract to the primary contractor as determined or, as the case may be, last determined in accordance with the Schedule;
- (b) in relation to a qualifying defence contract which contains components—
  - (i) where the price has not been determined in accordance with regulation 19G (aggregation of components), the sum of the contract prices payable for each component of the contract; or
  - (ii) where the price has been determined in accordance with regulation 19G, the price of the contract as determined in accordance with that regulation (taking account of any adjustment to that price made in accordance with paragraph 18(3) of the Schedule).”.

### **Amendment of regulation 5 (calculating the value of a contract)**

- 7.—(1) In regulation 5(a), in each of the following places, insert “or component”—
  - (a) in the opening words of paragraph (1), after “contract”;
  - (b) in paragraph (2), after “contract” in both places it occurs;
  - (c) in paragraph (3)—

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(a) Regulation 5 was amended by S.I. 2018/917.

- (i) in the opening words, after “contract”;
- (ii) in sub-paragraph (c), after “contract”.

### **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;
- (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<sup>(a)</sup>; 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.”.

**Amendment of regulation 8 (competitive process for single contracts)**

9. In regulation 8, omit “(in the Official Journal or elsewhere)” in paragraphs (1)(a)(i) and (2)(a)(i).

**Amendment of regulation 9 (competitive process for contracts made under a framework agreement)**

10.—(1) Regulation 9(b) is amended as follows.

(2) In paragraph (1)—

- (a) in the opening words, omit “the Secretary of State”;
- (b) in sub-paragraph (a)—
  - (i) in the opening words, at the beginning insert “the Secretary of State or a person acting on behalf of the Secretary of State”;
  - (ii) in paragraph (i), omit “(in the Official Journal or elsewhere)”;
- (c) in sub-paragraph (b), at the beginning insert “the Secretary of State or a person acting on behalf of the Secretary of State”;
- (d) in sub-paragraph (c), at the beginning insert “the Secretary of State”.

(3) In paragraph (3)(b), after “Secretary of State” insert “or a person acting on behalf of the Secretary of State”.

**Insertion of regulation 9A (components of qualifying defence contracts)**

11. After regulation 9 insert—

**“Components of qualifying defence contracts**

9A—(1) A part of a qualifying defence contract is a component of the contract if—

- (a) that part uses a different contract pricing method to the contract pricing method used in any other part of the contract;
- (b) that part has a different contract profit rate to the contract profit rate used in any other part of the contract;
- (c) that part is a component by virtue of regulation 19C(6) or paragraph 14(7)(c) or 16(2)(b) of the Schedule.

(2) For the purposes of section 15(8), the parties to a contract may not agree that a part of a contract is a component of the contract unless they can demonstrate a commercial purpose for such agreement other than to affect the amount of any final price adjustment determined under regulation 16.”.

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

(b) Regulation 9 was amended by S.I. 2019/1106.

**Insertion of division headings and regulations 9B (contract pricing methods) and 9C (re-determination of contract price)**

12. After the title of Part 3 insert—

“Chapter 1

Contract pricing methods

**Contract pricing methods**

**9B.**—(1) The parties to a qualifying defence contract must use a contract pricing method for determining the price payable under that contract or a component of the contract.

(2) Unless the parties make an agreement in accordance with paragraph (3), the parties must determine the price payable in accordance with a default pricing method.

(3) If the circumstances described in an alternative pricing method pertain, the parties may agree to determine the price payable in accordance with that alternative pricing method.

**Re-determination of contract price**

**9C.** The Schedule makes provision for the re-determination of the contract price for a qualifying defence contract or a component of such a contract.

Chapter 2

Default pricing of contracts”.

**Amendment of regulation 10 (pricing of contracts)**

13. In regulation 10—

- (a) in the heading, for “Pricing” substitute “Default pricing”;
- (b) in paragraph (1)—
  - (i) after “qualifying defence contract” insert “or component of such a contract”;
  - (ii) in sub-paragraph (a), after the second instance of “contract” insert “or component”;
  - (iii) in sub-paragraph (b), for “regulated” substitute “default”;
- (c) omit paragraphs (2) and (3);
- (d) in paragraph (6), at the end insert “or component completion date”;
- (e) for paragraph (7) substitute—

“(7) Under the estimate-based fee pricing method, the allowable costs by which the CPR is multiplied are the allowable costs as—

- (a) estimated at the time of agreement; and
- (b) may be adjusted in accordance with changes in specified indices or rates between the time of agreement and a specified time (and different times, indices or rates may be specified in relation to different allowable costs).”;
- (f) in paragraph (8), at the end insert “or component completion date”;
- (g) in paragraph (9), at the end insert “or component”;
- (h) for paragraph (11) substitute—

“(11) Under the target pricing method, the allowable costs—

- (a) must be estimated at the time of agreement;

- (b) may be, or may include, allowable costs per unit of volume multiplied by the actual volume of output of the contract or component; and
- (c) may be adjusted in accordance with changes in specified indices or rates between the time of agreement and a specified time (and different times, indices or rates may be specified in relation to different allowable costs).”.

**Amendment of regulation 11 (steps in determining contract profit rate)**

**14.** In regulation 11—

- (a) in paragraph (1)—
  - (i) after “qualifying defence contract” insert “or component of such a contract”;
  - (ii) omit “six”;
- (b) in paragraph (3), for the words from “risk” to the end substitute “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”;
- (c) omit paragraphs (4) and (5) (including their headings);
- (d) in paragraph (6)—
  - (i) in the heading, for “5” substitute “3”;
  - (ii) for “4” substitute “2”;
  - (iii) after “contract” insert “or component”;
- (e) in paragraph (7)—
  - (i) in the heading, for “6” substitute “4”;
  - (ii) for “5” substitute “3”;
  - (iii) at the end insert “or component”;
- (f) in paragraph (8)—
  - (i) in sub-paragraph (b), after “contract insert “or component”;
  - (ii) in sub-paragraph (c), at the end insert “or component”.

**Omission of regulation 12 (calculation of profit on cost once (“POCO”) adjustment)**

**15.** Omit regulation 12.

**Amendment of regulation 13 (rates agreed on a group basis)**

**16.** In regulation 13(a)—

- (a) in paragraph (2), for the words from “risk of the primary” to the end substitute “financial risks to the primary contractor of entering into the contracts mentioned in paragraph (1), taking into account the particular type of activities to be carried out by the primary contractor under those contracts”;
- (b) in paragraph (4), for “the POCO adjustment (regulation 12(3))” substitute “the deduction from costs associated with group profits (regulation 13A))”.

**Insertion of regulation 13A (costs associated with group profits)**

**17.** After regulation 13 insert—

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- (a) Regulation 13 was amended by S.I. 2018/917.



### **“Costs associated with group profits**

**13A**—(1) The requirements in section 20(2)(a) to (c) (allowable costs to be appropriate, attributable to the contract or component, and reasonable) will not be met if—

- (a) the primary contractor is a party to or proposes to enter into a group sub-contract; and
  - (b) a deduction from the allowable costs has not been made in accordance with paragraph (2).
- (2) Where paragraph (1)(a) applies to a qualifying defence contract—
- (a) the allowable costs of that qualifying defence contract that relate to the price payable under any group sub-contract must be reduced by an amount equal to the attributable profit on that group sub-contract; and
  - (b) the allowable costs of the qualifying defence contract that relate to the price payable under any further group sub-contract which relates to the group sub-contract described in sub-paragraph (a) must be reduced by an amount equal to the attributable profit on that further group sub-contract.
- (3) “Group sub-contract” means a contract—
- (a) the price payable under which includes an amount of profit;
  - (b) which is made between the primary contractor and any person connected with the primary contractor;
  - (c) the value of which is no less than £250,000;
  - (d) the award of which was not the result of a competitive process (within the meanings given in regulation 59 or 60);
  - (e) the price of which is not determined in accordance with regulation 19A (commercial pricing) or 19B(3) (prices determined in accordance with law); and
  - (f) where the goods, works or services to be provided under the contract are necessary to enable the performance of the qualifying defence contract.
- (4) “Further group sub-contract” means a contract—
- (a) the price payable under which includes an amount of profit;
  - (b) which is made between the two or more persons, each of which is associated with the primary contractor or a group sub-contractor;
  - (c) the value of which is no less than £250,000;
  - (d) the award of which was not the result of a competitive process (within the meanings given in regulation 59 and 60);
  - (e) the price of which is not determined in accordance with regulation 19A (commercial pricing) or 19B(3) (prices determined in accordance with law); and
  - (f) where the goods, works or services to be provided under the contract are necessary to enable the performance of the qualifying defence contract.
- (5) The attributable profit is—
- (a) where all of the output of a group sub-contract or further group sub-contract is necessary to enable the performance of the qualifying defence contract, all the profit element in the price payable under that group sub-contract or further group sub-contract;
  - (b) where only part of the output of a group sub-contract or further group sub-contract is necessary to enable the performance of the qualifying defence contract, that part of the profit element in the price payable under that group sub-contract or

further group sub-contract which relates to the output necessary for that performance.

(6) Attributable profit does not include—

- (a) any appropriate sub-contractor profit;
- (b) any capital servicing adjustment made under regulation 11(7);
- (c) any profit which is received by a person who is not connected with the primary contractor.

(7) In determining the value of a contract for the purposes of sub-paragraph (3)(c) or (4)(c), paragraphs (5) to (8A) of regulation 5 do not apply.

(8) In this regulation, “appropriate sub-contractor profit” means an amount of profit in the price of a group sub-contract or further group sub-contract which the Secretary of State is satisfied is not duplicated by the values calculated by applying step 1 (baseline profit rate) and step 2 (cost risk adjustment) of regulation 11.

(9) A person is connected with another person for the purposes of this regulation if they are associated with each other.”.

#### **Omission of regulation 14 (re-determination of contract price)**

18. Omit regulation 14(a).

#### **Amendment of regulation 15 (target cost incentive fee adjustment)**

19. In regulation 15—

- (a) in paragraph (a)(i), for “(or any defined component of the contract)” substitute “or component”;
- (b) in paragraph (b), for “(or those defined components)” substitute “or component”.

#### **Amendment of regulation 16 (procedure for determining final price adjustment)**

20. In regulation 16(b)—

- (a) in paragraph (1)(b), omit “defined” where it appears in the opening words and in paragraph (ii);
- (b) in paragraph (2A)—
  - (i) omit “defined”;
  - (ii) for “regulated” substitute “contract”;
- (c) in paragraph (8)—
  - (i) in sub-paragraph (a), after “date” insert “or, where the reference relates to a component, after the component completion date”;
  - (ii) in sub-paragraph (b), at the end insert “or, where the reference relates to a component, after the component completion date”.

#### **Amendment of regulation 17 (calculation of final price adjustment)**

21. In regulation 17(c)—

- (a) in paragraph (2)—

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- (a) Regulation 14 was substituted by S.I. 2018/1350.
  - (b) Regulation 16 was amended by S.I. 2019/1106.
  - (c) Regulation 17 was amended by S.I. 2019/1106.

- (i) for “5%” substitute “5 percentage points”;
- (ii) for “10%” substitute “10 percentage points”;
- (b) in the opening words of paragraph (3)—
  - (i) for “10%” substitute “10 percentage points”;
  - (ii) for “15%” substitute “15 percentage points”;
- (c) in the opening words of paragraph (4), for “15%” substitute “15 percentage points”;
- (d) after paragraph (5) insert—
 

“(5A) For each component of a qualifying defence contract that is not subject to an agreement in accordance with paragraph (5B), the final price adjustment is to be calculated in relation to that component alone.

(5B) The parties may agree to treat two or more components as aggregated for the purpose of calculating the final price adjustment in relation to those components.”;
- (e) in paragraph (6)—
  - (i) in each of sub-paragraphs (a), (b), (c), (d) and (e), after “under the contract” insert “or component”;
  - (ii) in sub-paragraph (i), for “5” substitute “3”;
  - (iii) omit sub-paragraphs (k) and (l).

**Amendment of regulation 18 (determination of contract profit rate adjustments)**

22. In regulation 18—

- (a) for paragraph (1) substitute—
 

“(1) This regulation applies to—

  - (a) any baseline profit rate identified under step 1 of regulation 11 in relation to a contract or a component of such a contract;
  - (b) any adjustment agreed under step 2 or 4 of regulation 11 (including an adjustment agreed on a group basis under regulation 13);
  - (c) any adjustment agreed under step 3 of regulation 11.”;
- (b) for paragraph (2) substitute—
 

“(2) The SSRO may, on an application by the Secretary of State or the primary contractor made within two years after the contract completion date or, where the application is made in respect of a component, the component completion date—

  - (a) determine whether the baseline profit rate mentioned in paragraph (1)(a) is correct in relation to the contract or component;
  - (b) determine whether the amount of any adjustment mentioned in paragraph (1)(b) is appropriate;
  - (c) determine whether the adjustment mentioned in paragraph (1)(c) is in accordance with these Regulations.”;
- (c) for paragraph (5) substitute—
 

“(5) If the SSRO determines that—

  - (a) the baseline profit rate mentioned in paragraph (1)(a) is incorrect;
  - (b) any adjustment mentioned in paragraph (1)(b) is inappropriate; or

- (c) the adjustment mentioned in paragraph (1)(c) is not in accordance with these Regulations,

it may determine that the contract price is to be adjusted by a specified amount.”.

#### **Amendment of regulation 19 (determination of allowable costs)**

23. In regulation 19(2), at the end insert “or, where the application is made in respect of a component, the component completion date”.

#### **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.”.

#### **Amendment of regulation 20 (duty to keep relevant records)**

**25.** In regulation 20—

- (a) in paragraph (4), omit “(in the Official Journal or elsewhere)”;
- (b) in paragraph (5)(b)—
  - (i) after “State” insert “last”;
  - (ii) after “published” insert “a transparency notice or”;
- (c) for paragraph (11) substitute—

“(11) In this regulation—

  - (a) “transparency notice” means a notice published pursuant to section 44 of the Procurement Act 2023;
  - (b) “voluntary transparency notice” has the meaning given by regulation 60(4) of the Defence and Security Public Contracts Regulations 2011(a).”.

#### **Amendment of regulation 22 (general reporting requirements and interpretation)**

**26.** In regulation 22—

- (a) in paragraph (2)—
  - (i) for sub-paragraph (i) substitute—

“(i) the expected contract completion date (or, if the contract completion date is known, that date);”;
  - (ii) in sub-paragraph (k), for “regulated” substitute “contract”;
- (b) after paragraph (2) insert—

“(2A) Where the qualifying defence contract contains components, every report provided under this Part must contain the following information in relation to each component except where the information is the same in relation to that component as it is in relation to the contract—

  - (a) the name, position and contact details of—
    - (i) the individual submitting the information in relation to the component;

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(a) S.I. 2011/1848. Regulation 60(4) was amended by S.I. 2019/697.

- (ii) the civil servant who is responsible for managing the component on behalf of the Secretary of State;
  - (b) any unique identifying number allocated to the component by the contractor;
  - (c) any unique identifying number allocated to the component by the Secretary of State;
  - (d) any title for the component set out in the contract;
  - (e) a brief description of the goods, works or services that are to be provided under the component;
  - (f) the date on which the component was entered into;
  - (g) the expected component completion date (or, if the component completion date is known, that date);
  - (h) the date and reference number of the most recent amendment which affects the price payable under the component (if any);
  - (i) the contract pricing method used in determining the price payable under the component;
  - (j) any business unit in relation to which a cost recovery rate has been used in determining the price payable under the component.”;
- (c) in paragraph (6)—
- (i) in the opening words, after “costs” insert “, actual price payable or actual volumes”;
  - (ii) in sub-paragraph (a), after “costs”, in both places it occurs, insert “, price payable or volumes”;
  - (iii) in sub-paragraph (b)—
    - (aa) in the opening words, after “costs”, in each place it occurs, insert “, price payable or volumes”;
    - (bb) in paragraph (i), after “costs” insert “, price payable or volumes”;
    - (cc) in paragraph (ii), after “costs” insert “, price payable or volumes”;
- (d) after paragraph (6) insert—
- “(6A) Where estimated costs, price or volumes are provided in accordance with paragraph (6)(b), the primary contractor must provide the actual costs, price or volumes as soon as reasonably practicable after that information becomes available.”;
- (e) after paragraph (7) insert—
- “(7A) Where a regulation requires reporting of the costs or profit of a component which was created because of a pricing amendment to which paragraph 7 of the Schedule applied, the parties may agree that the costs or profit are to be reported as the costs or profit originally determined in accordance with that paragraph (irrespective of any variance to the costs or profit which has occurred since).
- (7B) Any requirement to report information split by defined pricing structure does not apply in relation to a contract or component the price of which was determined entirely in accordance with a contract pricing method under which costs are indistinguishable from profits.”;
- (f) in paragraph (10), after sub-paragraph (a) insert—
- “(aa) a reference to a contract pricing method under which costs are indistinguishable from profits is a reference to a contract pricing method described in regulation 19A, 19B(3), 19C or 19E;

- (ab) where the price of a contract or component was determined in accordance with a contract pricing method under which costs are indistinguishable from profits, a reference to the costs of the contract or component is to be treated as a reference to the price of the contract or component;”.

### **Substitution of regulation 23 (contract pricing statement)**

27. For regulation 23 substitute—

#### **“Contract pricing statement**

**23**—(1) The primary contractor must provide—

- (a) a contract pricing statement for the qualifying defence contract within one month of the initial reporting date; and
- (b) if the contract is amended so as to create a new component under the contract or if the contract or a component of the contract is repriced in accordance with regulation 19F, a revised contract pricing statement—
  - (i) where the amendment has a value of £10,000,000 or more, within one month of the amendment;
  - (ii) where the amendment has a value of less than £10,000,000, at the same time as the next report is provided in relation to the contract under regulation 26 (quarterly contract report), regulation 27 (interim contract report) or regulation 28 (contract completion report).

(2) For every qualifying defence contract or component of such a contract, a contract pricing statement must—

- (a) set out the date and version of any statutory guidance made under section 18(1), 20(1) or 35A in force at the time of agreement;
- (b) describe any known deviation from that statutory guidance made in determining the contract price; and
- (c) describe any other information which was material to the pricing of the contract.

(3) If the contract price for the contract or component is determined in accordance with regulation 10 (default pricing of contracts) a contract pricing statement must—

- (a) set out any allowable costs and the contract profit rate used to determine the contract price;
- (b) describe the calculation that was made under regulation 11 to determine the contract profit rate, including all factors that were determined under each of the steps of that regulation; and
- (c) describe—
  - (i) the contractor's facts, assumptions and calculations relevant to each element of the allowable costs (including those relevant to any risk or contingency included in the allowable costs); and
  - (ii) any facts or assumptions provided by the Secretary of State and used by the contractor in those calculations.

(4) If the contract price for the contract or component is determined in accordance with regulation 19A (commercial pricing) a contract pricing statement must—

- (a) explain—
  - (i) the circumstances that allow the application of the commercial pricing method; and

- (ii) how the commercial price used was demonstrated to be reasonable; and
  - (b) describe the facts, assumptions and calculations relevant to the pricing of the item including—
    - (i) the basis on which each market price was determined; and
    - (ii) any adjustment made under regulation 19A(6)(b).
- (5) If the contract price for the contract or component is determined in accordance with regulation 19B (prices determined in accordance with law) a contract pricing statement must—
- (a) state a citation for the relevant legal provision and explain how that provision affects the price;
  - (b) state which of regulation 19B(3) or 19B(4) applies; and
  - (c) where regulation 19B(4) applies, explain the approach used to secure that the price is 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.
- (6) If the contract price for the contract or component is determined in accordance with regulation 19B (prices determined in accordance with law) and regulation 19B(4) applies, the contract pricing statement must—
- (a) explain the justification for using the price determined in accordance with law method;
  - (b) explain how the price used was demonstrated to be reasonable; and
  - (c) describe the facts, assumptions and calculations relevant to the pricing of the item including—
    - (i) the basis on which the price was determined; and
    - (ii) the facts, assumptions and calculations on which any variation was made.
- (7) If the contract price for the contract or component is determined in accordance with regulation 19C (previously agreed price) the contract pricing statement must describe any element that enables a variance in price and any mechanism put in place to prevent excessive profit or loss.
- (8) If the contract price for the contract or component is determined in accordance with regulation 19D (novated contracts), a contract pricing statement for contract B must contain the same information as was required in respect of contract A.
- (9) If the contract price for the contract or component is determined in accordance with regulation 19E (competed rates applied to uncompleted volumes) a contract pricing statement must—
- (a) describe—
    - (i) the contractor's facts, assumptions and calculations relevant to each element of the allowable costs (including those relevant to any risk or contingency included in the allowable costs); and
    - (ii) any facts or assumptions provided by the Secretary of State and used by the contractor in those calculations; and
  - (b) the facts referred to in paragraph (b)(i) must set out the volumes that are applied to the competed rates to arrive at the contract price.
- (10) If the contract price for the contract or component is determined in accordance with more than one contract pricing method, the contract pricing statement must comply with

all of the requirements in this regulation that apply to the contract pricing methods that have been used.

- (11) Where the contract contains components, the contract pricing statement must—
- (a) set out any cost risk adjustment determined under step 2 of regulation 11 or incentive adjustment determined under step 3 of regulation 11 in relation to the contract and each component;
  - (b) include an explanation of how—
    - (i) the total of all cost risk adjustments in relation to the contract and each component remain within the limit for the cost risk adjustment for the contract; and
    - (ii) the total of all incentive adjustments in relation to the contract and each component remain within the limit for the incentive risk adjustment for the contract; and
  - (c) where a component uses a contract pricing method under which costs are indistinguishable from profits, treat the costs under that component as the price of the component.”.

#### **Substitution of regulation 24 (contract reporting plan)**

**28.** For regulation 24 substitute—

##### **“Contract reporting plan**

**24—**(1) The primary contractor must provide—

- (a) a contract reporting plan for the qualifying defence contract within one month of the initial reporting date; and
- (b) if the contract is amended so as to create a new component under the contract, a revised contract reporting plan—
  - (i) where the amendment has a value of £10,000,000 or more, within one month of the amendment;
  - (ii) where the amendment has a value of less than £10,000,000, at the same time as the next report is provided in relation to the contract under regulation 26 (quarterly contract report), regulation 27 (interim contract report) or regulation 28 (contract completion report).

(2) Subject to paragraphs (3) to (6), for every qualifying defence contract, the contract reporting plan must contain the following information—

- (a) the price that the contracting authority is committed to paying for the contract and, where known, the value of the contract and each component calculated in accordance with regulation 5 (calculating the value of a contract);
- (b) a list of—
  - (i) every quarterly contract report (regulation 26), interim contract report (regulation 27), contract completion report (regulation 28) and contract costs statement (regulation 29) which will be required for the contract;
  - (ii) where the contract contains components, the information that will be required to be provided separately for each of the components in each of the reports mentioned in paragraph (i); and
  - (iii) the dates on which those reports will be due;

- (c) if the contractor has agreed that it will provide any of the information described in regulation 30(3) (on-demand contract reports) without a written direction, a description of what it has agreed to provide;
  - (d) a description of the defined pricing structure that the contractor will use in providing the reports required by this Part;
  - (e) a list of the output metrics that will be used to describe deliverables in the reports required by this Part, together with a description of which component or components the deliverables relate to; and
  - (f) a list of the cost recovery bases—
    - (i) that were used, or are expected to be used, in the determination of the contract price; and
    - (ii) that the contractor will use in making the reports required by this Part, together with a description of which cost recovery bases relate to which component or components.
- (3) If the contract price is determined in accordance with regulation 19A (commercial pricing) for—
- (a) the contract, the contract reporting plan need not contain the information referred to in paragraph (2)(d) or (f);
  - (b) a component of the contract, the contract reporting plan need not contain the information referred to in paragraph (2)(d) or (f) in respect of that component.
- (4) If the contract price is determined in accordance with regulation 19B(3) (prices determined in accordance with law) for—
- (a) the contract, the contract reporting plan need not contain the information referred to in paragraph (2)(d) or (f);
  - (b) a component of the contract, the contract reporting plan need not contain the information referred to in paragraph (2)(d) or (f) in respect of that component.
- (5) If the contract price for the contract or component is determined in accordance with regulation 19C (previously agreed price) the contract reporting plan need not contain the information referred to in paragraph (2)(d), (e) or (f).
- (6) If the contract price is determined in accordance with regulation 19E (competed rates applied to uncompleted volumes) for—
- (a) the contract—
    - (i) the contract reporting plan need not contain the information referred to in paragraph (2)(d);
    - (ii) paragraph (2)(f) has effect as if for “cost recovery bases” there were substituted “competed rates”;
  - (b) a component of the contract—
    - (i) the contract reporting plan need not contain the information referred to in paragraph (2)(d) in respect of that component;
    - (ii) paragraph (2)(f) has effect in respect of that component as if for “cost recovery bases” there were substituted “competed rates”.

## **Amendment of regulation 25 (contract notification report)**

### **29. In regulation 25(a)—**

- (a) in paragraph (2)—
  - (i) in the opening words, for “The report” substitute “Subject to paragraphs (3) to (6), the report”;
  - (ii) after sub-paragraph (b) insert—

“(ba) where the contract contains components, an explanation of which of those deliverables relate to which component;”;
  - (iii) in sub-paragraph (c)(i), at the end insert “and where the contract contains components, an explanation of which parts of any risk contingency element relate to which component”;
  - (iv) in sub-paragraph (c)(ii)—
    - (aa) after “profit” insert “for the contract and, where the contract contains components, for each component”;
    - (bb) for “5” substitute “3”;
  - (v) in sub-paragraph (c)(iii)—
    - (aa) for “5” substitute “3”;
    - (bb) at the end insert “and where the contract contains components, the maximum amount of profit in relation to each component resulting from such an adjustment”;
  - (vi) for sub-paragraph (d) substitute—

“(d) an annual profile of any estimated costs for the contract and, where the contract contains components, for each component of the contract at the initial reporting date (split by the defined pricing structure);”;
  - (vii) for sub-paragraph (e) substitute—

“(e) the total amount of non-recurring allowable costs (split by the defined pricing structure) for the contract and, where the contract contains components, for each component of the contract, except where the contract or component was priced using a contract pricing method under which costs are indistinguishable from profits;”;
  - (viii) in sub-paragraph (j)(i), after “contract” insert “, together with an explanation of whether, and if so how, each milestone relates to any component of the contract”;
- (b) after paragraph (2) insert—

“(3) If the contract price for the contract or component is determined entirely in accordance with regulation 19A (commercial pricing) the requirements in paragraph (2) are modified in respect of the contract or component as follows—

  - (a) the estimated quantum of deliverables required by paragraph (2)(b) need not be expressed using the output metrics set out in the contract reporting plan;
  - (b) the contract notification report need not contain the information specified in paragraphs (2)(c) to (f) and (k) to (m).

(4) If the contract price for the contract or component is determined entirely in accordance with regulation 19B(3) (prices determined in accordance with law), the estimated quantum

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(a) Regulation 25 was amended by S.I. 2019/1106.

of deliverables required by paragraph (2)(b) need not be expressed in respect of the contract or component using the output metrics set out in the contract reporting plan.

(5) If the contract price for the contract or component is determined entirely in accordance with regulation 19C (previously agreed price), the contract notification report need not contain the information specified in paragraphs (2)(a) to (f) and (j) to (m) in respect of the contract or component.

(6) If the contract price for the contract or component is determined entirely in accordance with regulation 19E (competed rates applied to uncompleted volumes), paragraph (2)(f) has effect in respect of that contract or component as if for “cost recovery base” there were substituted “competed rates”.

### **Amendment of regulation 26 (quarterly contract report)**

**30.** In regulation 26(a)—

(a) in paragraph (6)—

(i) in the opening words, for “The” substitute “Except where the price of the contract is determined entirely in accordance with a contract pricing method under which costs are indistinguishable from profits, the”;

(ii) for “5” where it occurs in sub-paragraphs (a)(ii) and (iii) and (c)(ii) and (iii), substitute “3”;

(b) after paragraph (6) insert—

“(6A) Where the contract contains a component which was not priced in accordance with a contract pricing method under which costs are indistinguishable from profits, the report must also contain the relevant component information.

(6B) Where a component mentioned in paragraph (6A) has a value of less than £50,000,000, the report need only contain the relevant component information—

(a) on each of—

(i) a date agreed between the primary contractor and the Secretary of State at the time of agreement which is no more than five years following the time of agreement; and

(ii) such further dates before the expected contract completion date as may be agreed between them, each date to be no more than five years after the date agreed under paragraph (i); or

(b) if no agreement is made under sub-paragraph (a)—

(i) on the date which is three years after the last day of the calendar quarter during which the initial reporting date fell; and

(ii) on the date which is each third anniversary of that date.

(6C) In paragraphs (6A) and (6B), “relevant component information” means the following information in relation to the component so far as it is different from the information provided in relation to the contract in accordance with paragraph (6)—

(a) an annual profile (or, if the contractor is of the view that it is not possible to express these matters in an annual profile, the total amount) of the following matters which have been, or are expected to be, taken into account in determining the contract price of the component—

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(a) Regulation 26 was amended by S.I. 2019/1106.



- (i) any risk contingency element included in the allowable costs of the component;
  - (ii) planned amounts of profit in respect of the component, excluding any amount resulting from an adjustment determined under step 3 of regulation 11; and
  - (iii) the maximum amount of profit in respect of the component resulting from an adjustment determined under step 3 of regulation 11;
- (b) an annual profile of the estimated costs of the component (split by the contractor reporting structure) at the time of agreement;
- (c) an annual profile (or, if the contractor is of the view that it is not possible to express these matters in an annual profile, the total amount) of the following matters—
  - (i) any risk contingency element in respect of the component;
  - (ii) planned amounts of profit in respect of the component, excluding any amount resulting from an adjustment determined under step 3 of regulation 11; and
  - (iii) the expected maximum amount of profit in respect of the component resulting from an adjustment determined under step 3 of regulation 11,

that reflect the costs already incurred in respect of the component and the forecast costs which are expected to be incurred in respect of the component, indicating for each year whether those costs have been incurred, are forecast, or a combination of both;
- (d) an annual profile of the costs already incurred in respect of the component and the forecast costs which are expected to be incurred in respect of the component, split by the contractor reporting structure and indicating for each year whether those costs have been incurred, are forecast, or a combination of both;
- (e) a breakdown of the costs already incurred in respect of the component and the forecast costs of the component by reference to the calendar quarters of each of—
  - (i) the financial year in which the calendar quarter to which the report relates falls;
  - (ii) the previous financial year; and
  - (iii) the next financial year,

split by the contractor reporting structure;
- (f) a quantified analysis of the causes of variance (explaining not less than 90% of the total variance) between any estimated costs used to determine the contract price for the component and the total actual and forecast costs of the component;
- (g) a forecast of any TCIF adjustment or any final price adjustment (regulation 16) which the contractor expects will be made in respect of the component;
- (h) a description of any event that has occurred, or circumstances which have arisen, since the component was entered into, that have had or are likely to have a material effect in relation to the component, including—
  - (i) the date on which the contractor became aware of the event or circumstances;
  - (ii) whether the event or circumstances are covered by any contingency element of the contract price of the component;
  - (iii) the effect that the event or circumstances have had on the costs already incurred in respect of the component; and
  - (iv) the forecast effect that the event or circumstances will have on the forecast costs of the component which it is expected will be incurred; and

- (i) an explanation of whether, and if so how, each delivery milestone set out in the contract relates to the component.

(6D) Where the price of the contract or a component of the contract is determined entirely in accordance with a contract pricing method under which costs are indistinguishable from profits, the report must contain the following information in relation to the contract or component—

- (a) the current estimate of the price; and
- (b) details of any variance between the current estimate of the price and previous estimates of the price, and the reasons for that variance.”;

- (c) in paragraph (7), after “contract” insert “or component”.

### **Amendment of regulation 27 (interim contract report)**

**31.** In regulation 27(a)—

- (a) after paragraph (3) insert—

“(3A) Where the contract contains components—

- (a) the primary contractor and the Secretary of State may agree different reporting dates for each component in accordance with whichever of paragraph (2)(a) or (3)(a) applies to the contract;
- (b) where no different reporting dates are agreed in accordance with sub-paragraph (a) in relation to a component, the reporting dates for that component are the same as the reporting dates for the contract under paragraph (2) or (3) (as the case may be).”;

- (b) in paragraph (4)—

- (i) in the opening words, for “The report” substitute “Subject to paragraphs (4B) to (4E), the report”;

- (ii) for “5” where it occurs in sub-paragraphs (c)(ii) and (iii) and (g)(ii) and (iii), substitute “3”;

- (iii) for sub-paragraph (e) substitute—

“(e) except where the component is priced using a contract pricing method under which costs are indistinguishable from profits, the total amount of non-recurring costs at the time of agreement (split by defined pricing structure).”;

- (iv) omit the “and” at the end of sub-paragraph (k);

- (v) in sub-paragraph (l), for “make.” substitute “make; and”;

- (vi) after sub-paragraph (l) insert—

“(m) where the report is provided on a reporting date for a component of the contract, the relevant component information in relation to that component.”;

- (c) after paragraph (4) insert—

“(4A) In paragraph (4)(m), “relevant component information” means the following information in relation to the component so far as it is different from the information provided in relation to the contract in accordance with paragraph (4)—

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(a) Regulation 27 was amended by S.I. 2019/1106.

- (a) an explanation of which of the key deliverables specified in the contract relate to the component;
  - (b) an annual profile (or, if the contractor is of the view that it is not possible to express these matters in an annual profile, the total amount) of the following matters which have been, or are expected to be, taken into account in determining the contract price of the component—
    - (i) any risk contingency element included in the allowable costs of the component;
    - (ii) planned amounts of profit in respect of the component, excluding any amount resulting from an adjustment determined under step 3 of regulation 11; and
    - (iii) the maximum amount of profit in respect of the component resulting from an adjustment determined under step 3 of regulation 11;
  - (c) an annual profile of the estimated costs of the component (split by the defined pricing structure) at the time of agreement;
  - (d) except where the component is priced using a contract pricing method under which costs are indistinguishable from profits, the total amount of non-recurring costs for the component at the time of agreement (split by defined pricing structure);
  - (e) an annual profile of the estimated amount of each cost recovery base set out in the contract reporting plan in respect of the component;
  - (f) an annual profile (or, if the contractor is of the view that it is not possible to express these matters in an annual profile, the total amount) of the following matters—
    - (i) any risk contingency element in respect of the component;
    - (ii) planned amounts of profit in respect of the component, excluding any amount resulting from an adjustment determined under step 3 of regulation 11; and
    - (iii) the expected maximum amount of profit in respect of the component resulting from an adjustment determined under step 3 of regulation 11,
 that reflect the costs already incurred in respect of the component and the forecast costs which are expected to be incurred in respect of the component, indicating for each year whether those costs have been incurred, are forecast, or a combination of both;
  - (g) an annual profile of the costs already incurred in respect of the component and the forecast costs which are expected to be incurred in respect of the component (split by the defined pricing structure) and indicating for each year—
    - (i) whether those costs have been incurred, are forecast, or a combination of both; and
    - (ii) the amount of each cost recovery base set out in the contract reporting plan in respect of the component; and
  - (h) a quantified analysis of the causes of variance (explaining not less than 90% of the total variance) between any estimated costs used to determine the contract price of the component and the total actual and forecast costs of the component.
- (4B) If the contract price for a contract or component is determined entirely in accordance with regulation 19A (commercial pricing)—
- (a) the requirements in paragraph (4) are modified as follows in relation to a contract—

- (i) the estimated quantum of deliverables required by paragraph (4)(b) need not be expressed using the output metrics set out in the contract reporting plan;
  - (ii) the report need not contain the information specified in paragraphs (4)(c)(i) and (ii), (d) to (f), (g)(i) and (h);
  - (iii) paragraph (4)(i) has effect as if for the words from “any estimated costs” to the end there were substituted “the estimated price of the contract determined in accordance with regulation 19A(5) (method of determining commercial price) and the current estimated price”;
- (b) the requirements in paragraph (4A) are modified as follows in relation to a component—
- (i) the report need not contain the information specified in paragraphs (4A)(b)(i) and (ii), (c) to (e), (f)(i) and (g);
  - (ii) paragraph (4A)(h) has effect as if for the words from “any estimated costs” to the end there were substituted “the estimated price of the component determined in accordance with regulation 19A(5) (method of determining commercial price) and the current estimated price”.

(4C) If the contract price for a contract or component is determined entirely in accordance with regulation 19B(3) (prices determined in accordance with law)—

- (a) the requirements in paragraph (4) are modified as follows in relation to a contract—
- (i) the estimated quantum of deliverables required by paragraph (4)(b) need not be expressed using the output metrics set out in the contract reporting plan;
  - (ii) the report need not contain the information specified in paragraphs (4)(c) to (h);
  - (iii) paragraph (4)(i) has effect as if for the words from “any estimated costs” to the end there were substituted “the estimated price of the contract determined in accordance with regulation 19B(3) (method of determining price determined in accordance with law) and the current estimated price”;
- (b) the requirements of paragraph (4A) are modified as follows in relation to a component—
- (i) the report need not contain the information specified in paragraphs (4A)(b) to (g);
  - (ii) paragraph (4A)(h) has effect as if for the words from “any estimated costs” to the end there were substituted “the estimated price of the component determined in accordance with regulation 19B(3) (method of determining price determined in accordance with law) and the current estimated price”.

(4D) If the contract price for a contract or component is determined entirely in accordance with regulation 19C (previously agreed price) the report need not contain the information specified in paragraph (4) (in relation to a contract) or (4A) (in relation to a component), and must instead contain the following information in relation to the contract or component—

- (a) the current estimate of the price; and
- (b) details of any variance between the current estimate of the price and previous estimates of the price, and the reasons for that variance.

(4E) If the contract price for a contract or component is determined entirely in accordance with regulation 19E (competed rates applied to uncompleted volumes), paragraphs (4)(f)

- and (h)(ii) (in relation to a contract) and (4B)(e) and (g)(ii) (in relation to a component) have effect as if references to “cost recovery base” were references to “competed rates”.”;
- (d) in the opening words of paragraph (5), for “If” substitute “Subject to paragraphs (7) to (9), if”;
- (e) omit the “and” at the end of sub-paragraph (e);
- (f) in sub-paragraph (f)(iii), for “sub-contract.” substitute “sub-contract; and”;
- (g) after sub-paragraph (5)(f) insert—
- “(g) where the report is provided on a reporting date for a component of the contract, the relevant component information in relation to that component.”;
- (h) after paragraph (5) insert—
- “(6) In paragraph (5)(g), “the relevant component information” means, subject to paragraphs (7) to (9), the following information in relation to the component so far as it is different from the information provided in relation to the contract in accordance with paragraph (5)—
- (a) a forecast of any TCIF adjustment or final price adjustment (regulation 16) which the contractor expects will be made in relation to the component;
- (b) a description of any event that has occurred, or circumstances which have arisen, since the component was entered into, that have had or are likely to have a material effect in relation to the component, including—
- (i) the date on which the contractor became aware of the event or circumstances;
- (ii) whether the event or circumstances are covered by any contingency element of the contract price for the component;
- (iii) the effect that the event or circumstances have had on the costs already incurred in respect of the component (paragraph (4A)(g)); and
- (iv) the forecast effect that the event or circumstances will have on the forecast costs which it is expected will be incurred in respect of the component (paragraph (4A)(g)); and
- (c) an explanation of which delivery milestones set out in the contract relate to the component.
- (7) If the contract price for a contract or component is determined entirely in accordance with regulation 19A (commercial pricing)—
- (a) the requirements in paragraph (5) are modified as follows in relation to a contract—
- (i) the report need not contain the information specified in paragraph (5)(a) and (d) to (f);
- (ii) paragraph (5)(b)(iii) has effect as if for “costs already incurred” there were substituted “price payable”;
- (iii) paragraph (5)(b)(iv) has effect as if for “costs which it is expected will be incurred” there were substituted “price payable”;
- (b) the requirements in paragraph (6) are modified as follows in relation to a component—
- (i) the report need not contain the information specified in (6)(a);
- (ii) paragraph (6)(b)(iii) has effect as if for “costs already incurred” there were substituted “price payable”;

(iii) paragraph (6)(b)(iv) has effect as if for “costs which it is expected will be incurred” there were substituted “price payable”.

(8) If the contract price for a contract or component is determined entirely in accordance with regulation 19B(3), (prices determined in accordance with law)—

(a) the requirements in paragraph (5) are modified as follows in relation to a contract—

(i) the report need not contain the information specified in paragraph (5)(a) and (d) to (f);

(ii) paragraph (5)(b)(iii) has effect as if for “costs already incurred” there were substituted “price payable”;

(b) the requirements in paragraph (6) are modified as follows in relation to a component—

(i) the report need not contain the information specified in paragraph (6)(a);

(ii) paragraph (6)(b)(iii) has effect as if for “costs already incurred” there were substituted “price payable”.

(9) If the contract price for the contract or component is determined in accordance with regulation 19C (previously agreed price)—

(a) the requirements in paragraph (5) are modified as follows in relation to a contract—

(i) paragraph (5)(b)(iii) has effect as if for “costs already incurred” there were substituted “price payable after the contract has become a qualifying defence contract”;

(ii) paragraph (5)(c)(i) has effect as if at the end there were inserted “after it became a qualifying defence contract”;

(iii) the report need not contain the information specified in paragraph (5)(d) to (f);

(b) paragraph (6)(b)(iii) has effect in relation to a component as if for “costs already incurred” there were substituted “price payable after the contract has become a qualifying defence contract”.

### **Insertion of regulation 27A (component completion report)**

**32.** After regulation 27 (interim contract report) insert—

#### **“Component completion report**

**27A—(1)** Subject to paragraph (2), the primary contractor must provide a report (a “component completion report”) containing the component completion information within 12 months after the component completion date of a component of a qualifying defence contract.

(2) A component completion report need not be provided if the component completion information is provided in a contract completion report under regulation 28 within 12 months after the component completion date of the component.

(3) In this regulation, “component completion information” means the information that would be required to be provided in relation to the component under regulation 28 if that information were not provided in a component completion report.”.

### **Amendment of regulation 28 (contract completion report)**

#### **33. In regulation 28(a)—**

- (a) in paragraph (2)—
  - (i) in the opening words, for the “The report” substitute “Subject to paragraphs (3) to (7), the report”;
  - (ii) after sub-paragraph (b) insert—

“(ba) where the contract contains components, an explanation of which of those deliverables relate to which component;”;
  - (iii) in sub-paragraph (c)(i), at the end insert “and, where the contract contains components, an explanation of which parts of any risk contingency element relate to which component”;
  - (iv) in sub-paragraph (c)(ii), after “element” insert “and, where the contract contains components, an explanation of which parts of any actual risk contingency element relate to which component”;
  - (v) in sub-paragraph (c)(iii)—
    - (aa) after “profit” insert “for the contract and, where the contract contains components, for each component”;
    - (bb) for “5” substitute “3”;
  - (vi) in sub-paragraph (c)(iv), at the end insert “for the contract and, where the contract contains components, for each component”;
  - (vii) in sub-paragraph (c)(v), after “profit” insert “for the contract and, where the contract contains components, for each component”;
  - (viii) in sub-paragraph (c)(vi), after “profit” insert “for the contract and, where the contract contains components, for each component”;
  - (ix) for sub-paragraph (d) substitute—

“(d) an annual profile of any estimated costs for the contract and, where the contract contains components, for each component at the time of agreement (split by the defined pricing structure);”;
  - (x) for sub-paragraph (e) substitute—

“(e) the total amount of non-recurring allowable costs (split by the defined pricing structure) for the contract and, where the contract contains components, for each component of the contract, except where the contract or component was priced using a contract pricing method under which costs are indistinguishable from profits;”;
  - (xi) in sub-paragraph (g), at the end insert “for the contract and, where the contract contains components, each component of the contract”;
  - (xii) in sub-paragraph (i), after “price” insert “of the contract and, where the contract contains components, each component of the contract”;
  - (xiii) in sub-paragraph (j)—
    - (aa) in the opening words, after “contract”, in the second place it occurs, insert “or, where the contract contains components, a component of the contract”;
    - (bb) in paragraph (ii), after “price” insert “for the contract or component”;

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(a) Regulation 28 was amended by S.I. 2019/1106.

- (cc) in paragraph (iii), at the end insert “or component”;
- (xiv) after sub-paragraph (o) insert—
  - “(oa) where the contract contains components, an explanation of which delivery milestones relate to which component;”;
- (xv) omit the “and” at the end of sub-paragraph (p)(ix);
- (xvi) in sub-paragraph (q)(iii), for “sub-contract.” substitute “sub-contract; and”;
- (xvii) after sub-paragraph (q) insert—
  - “(r) a description of any component completion reports provided under regulation 27A.”;
- (b) after paragraph (2) insert—
  - “(3) If the contract price for the contract or component is determined entirely in accordance with regulation 19A (commercial pricing) or regulation 19B(3) (prices determined in accordance with law) the requirements in paragraphs (2) are modified as follows in relation to the contract or component—
    - (a) the actual quantum of deliverables required by paragraph (2)(b) need not be expressed using the output metrics set out in the contract reporting plan;
    - (b) the report need not contain the information specified in paragraphs (2)(c)(i), (ii), (v) and (vi), (b) to (h), (k), (p) and (q);
    - (c) paragraph (2)(i) has effect as if for the words from “any estimated” to the end there were substituted “the contract price of the contract or component estimated at the time of agreement and the actual contract price of the contract or component”;
    - (d) paragraph (2)(j)(iii) has effect as if for “costs already incurred or forecast to be incurred under the contract or component” there were substituted “price payable, together with a quantified analysis of the variance”.
  - (4) If the contract price for the contract or component is determined entirely in accordance with regulation 19C (previously agreed price) the requirements in paragraphs (2) are modified as follows in relation to the contract or component—
    - (a) paragraph (2)(a) has effect as if at the end there were inserted “which were deliverable after the contract has become a qualifying defence contract”;
    - (b) paragraph (2)(b) has effect as if after “expressed” there were inserted “in respect of those deliverables that were deliverable after the contract became a qualifying defence contract”;
    - (c) the report need not contain the information specified in paragraph (2)(c), (e) and (p);
    - (d) paragraph (2)(i) has effect as if for the words from “any estimated” to the end there were substituted “the contract price for the contract or component estimated at the time of agreement and the actual contract price for the contract or component”;
    - (e) paragraph (2)(j) has effect as if for “was entered into” there were substituted “became a qualifying defence contract”;
    - (f) paragraph (2)(m) has effect as if at the end there were inserted “after the contract became a qualifying defence contract”;
    - (g) paragraph (2)(n) has effect as if at the end there were inserted “after the contract became a qualifying defence contract”;



- (h) paragraph (2)(o) has effect as if—
  - (i) in paragraph (2)(o)(i) at the end there were inserted “after the contract became a qualifying defence contract”;
  - (ii) paragraph (2)(o)(ii) were omitted.

(5) If the contract price for the contract or component is determined entirely in accordance with regulation 19E (competed rates applied to uncompleted volumes) in relation to the contract or component—

- (a) paragraph (2)(f) has effect as if for “cost recovery base” there were substituted “competed rates”;
- (b) paragraph (2)(h) has effect as if for “cost recovery base” there were substituted “competed rates”.

(6) The report need not separately identify any information in relation to a component which has been provided in a report under regulation 27A (component completion report).”.

### **Amendment of regulation 29 (contract costs statement)**

**34.** In regulation 29—

- (a) for paragraph (1) substitute—

“(1) The primary contractor must provide a contract costs statement—

- (a) within 12 months after the contract completion date of the contract; and
- (b) where the component completion date of a component of the contract is more than 12 months before the expected contract completion date of the contract, within 12 months after the component completion date of the component.”;

- (b) after paragraph (1) insert—

“(1A) Where a statement is provided in accordance with—

- (a) paragraph (1)(a), the statement must contain the information required by this regulation in relation to the contract and, where different, in relation to each component of the contract in respect of which no statement has been provided in accordance with paragraph (1)(b);
- (b) paragraph (1)(b), the statement must contain the information required by this regulation in relation to the component in respect of which the statement is provided.”;

- (c) in paragraph (2)—

- (i) in the opening words, for “The statement” substitute “If the contract or component is not priced entirely in accordance with a contract pricing method under which costs are indistinguishable from profits, the statement”;
- (ii) in the opening words of sub-paragraph (c), after “allowable costs” insert “for the contract or, where the statement is provided in relation to a component, for the component”;

- (d) after paragraph (2) insert—

“(2A) If the contract or component is priced entirely in accordance with a contract pricing method under which costs are indistinguishable from profits, the statement must contain the following information—

- (a) an annual profile of the actual price payable under the contract or component, and where the contract or component was priced in accordance with regulation

19E (competed rates applied to uncompleted volumes) the annual profile must show—

- (i) all competed rate costs showing each competed rate charged and the quantum of the corresponding volume; and
  - (ii) the actual volumes delivered under the contract or component; and
- (b) if there is any variance between the total price estimated at the time of agreement and the actual total price payable under the contract or component, an explanation of the reason for that variance.”;
- (e) for paragraph (3) substitute—
- “(3) Up to 2% of—
- (a) the actual allowable costs required by paragraph (2)(c) may, without explanation, be estimated costs;
  - (b) the actual price payable required by paragraph (2A)(a) may, without explanation, be estimated price;
  - (c) the actual volumes delivered required by paragraph (2A)(b) may, without explanation, be estimated volumes.”;
- (f) for paragraph (4) substitute—
- “(4) 2% or more of the actual allowable costs, actual price payable or actual volumes mentioned in paragraph (3) may be estimated costs, price or volumes, if an explanation is given of—
- (a) why it is not possible to provide actual costs, price or volumes at the time the statement is provided; and
  - (b) when the actual costs, price or volumes will be available.”;
- (g) after paragraph (4) insert—
- “(4A) Where estimated costs, price or volumes are provided in accordance with paragraph (4), the primary contractor must provide the actual costs, price or volumes as soon as reasonably practicable after that information becomes available.”;
- (h) in paragraph (5), after the opening words insert—
- “(za) “competed rate” means the competed rate or price in accordance with the terms of the relevant framework agreement;
  - (zb) “competed rate costs” means costs which—
    - (i) the contractor claims are allowable costs under the contract; and
    - (ii) have been calculated by applying a competed rate to a volume;”.

### **Amendment of regulation 30 (on-demand contract report)**

**35.** In regulation 30—

- (a) for paragraph (1) substitute—

“(1) Within one month of the initial reporting date of the qualifying defence contract, the Secretary of State may by written direction require the primary contractor to provide the information described in regulation 29(2) (contract costs statement) for one or more specified periods, each such period ending on a date before—

- (a) where the information is required in relation to the contract, the contract completion date;

- (b) where the information is required in relation to a component of the contract, the component completion date for that component.”;
- (b) in the opening words of paragraph (3), after “date” insert “or the component completion date of a component of the contract”;
- (c) in paragraph (4), at the end insert “or component”.

**Amendment of regulation 31 (application of Part 6, reports on overheads and forward planning)**

36. After regulation 31(2) insert—

“(2A) In determining the value of a qualifying defence contract for the purposes of this Part, any part of the contract the price of which was determined in accordance with a contract pricing method under which costs are indistinguishable from profits (within the meaning of regulation 22(10)(aa)) is to be disregarded.”.

**Amendment of regulation 32 (interpretation)**

37. For regulation 32(6)(a)(i) substitute—

“(i) any contract to which the Secretary of State is a party which is for, or substantially for, defence purposes (within the meaning of regulation 3); or”.

**Amendment of regulation 39 (rates comparison report)**

38. In regulation 39(4)(b)(v), for “regulated” substitute “contract”.

**Substitution of regulation 51 (matters on which the SSRO must give an opinion)**

39. For regulation 51(a) substitute—

**“Matters on which the SSRO must give an opinion**

**51—(1)** The matters relating to a proposed contract which are specified for the purposes of section 35(1)(a) (matters on which the SSRO must give an opinion) are—

- (a) where the proposed contract is to be priced using a default pricing method—
  - (i) the appropriate amount of adjustment that should be made under step 2 or 4 of regulation 11;
  - (ii) the appropriate amount of a group cost risk adjustment (regulation 13(2)), the deduction from costs associated with group profits (regulation 13(4)) or group capital servicing adjustment (regulation 13(5));
  - (iii) any question relevant to the cost recovery rates that should be used to estimate likely allowable costs;
  - (iv) the extent to which a particular cost would be an allowable cost;
- (b) where the proposed contract is to be priced using an alternative pricing method—
  - (i) whether the circumstances specified for the use of the alternative pricing method exist;
  - (ii) whether the price has been determined in accordance with the alternative pricing method;

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(a) Regulation 51 was amended by S.I. 2018/1350.

- (c) whether any part of the proposed contract should be treated as a component of the contract because the conditions in regulation 9A(1) are met in relation to that part.
- (2) The matters relating to a contract which are specified for the purposes of section 35(1)(a) are—
- (a) if the contract price were to be re-determined under Part 2 of the Schedule, the matters mentioned in paragraph (1)(a) (read as if a reference to the proposed contract were a reference to the contract);
  - (b) if the contract price were to be re-determined under Part 4 of the Schedule—
    - (i) whether the circumstances specified in Part 4 of the Schedule for the re-determination of the contract price exist;
    - (ii) whether the price has been re-determined in accordance with Part 4 of the Schedule or, where the Schedule requires the price to be re-determined using a contract pricing method, in accordance with that contract pricing method;
  - (c) if the contract is amended so as to add a new component and the price payable under the component is determined in accordance with an alternative pricing method, the matters mentioned in paragraph (1)(b) (read as if a reference to the proposed contract were a reference to the new component);
  - (d) if the contract price were to be re-determined under the Schedule, the matter mentioned in paragraph (1)(c) (read as if a reference to the proposed contract were a reference to the contract);
  - (e) whether the Secretary of State has acted reasonably in exercising a power to require the contractor to provide information under regulation 30 (on-demand contract report).”.

**Amendment of regulation 52 (matters in relation to which the SSRO must make a determination)**

**40.** In regulation 52(a)—

- (a) for paragraph (1) substitute—
  - “(1) The matters relating to a contract which are specified for the purposes of section 35(1)(b) (matters in relation to which the SSRO must make a determination)(b) are—
    - (a) the defined pricing structure and output metrics that the contractor must use in all reports provided under Part 5 for that contract;
    - (b) the matter mentioned in regulation 51(1)(c) (read as if a reference to the proposed contract were a reference to the contract).”;
- (b) in the opening words of paragraph (2), for “any of those matters” substitute “the matters mentioned in paragraph (1)(a)”;
- (c) after paragraph (2) insert—
  - “(3) A reference to the SSRO for a determination in relation to the matters mentioned in paragraph (1)(b) must be made within two years of the contract completion date or, if the

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(a) Regulation 52 was amended by S.I. 2018/1350.

(b) For further provision about matters in relation to which the SSRO must make a determination, see section 16(b)(ii) (determinations about adjustments to contract price) of the Defence Reform Act 2014, section 20(5) and (6) of the Defence Reform Act 2014 together with regulation 19 (determinations about allowable costs) and section 32(7) and (8) of the Defence Reform Act 2014 (determinations about penalty notices).

reference is made in respect of a component, within two years of the component completion date.

(4) The SSRO must, on an application by a person within section 16(5) in relation to a qualifying defence contract, or a component of such a contract, which has been priced using an alternative pricing method (“the applicable pricing method”)—

- (a) determine whether the price of that contract or a component has been properly determined in accordance with the applicable pricing method; and
- (b) if the price was not properly determined, determine as nearly as possible what the price of the contract or component would have been if the price were properly determined in accordance with the applicable pricing method.

(5) An application for a determination under paragraph (4) must be made within two years of the contract completion date or, if the application relates to a component, within two years of the component completion date.

(6) The SSRO may, in consequence of a determination under paragraph (4)(a), determine that the price payable under the contract or component is to be adjusted by the amount required to achieve the price determined under paragraph (4)(b).

(7) The Secretary of State may not make a reference under paragraph (1) or an application under paragraph (4) unless—

- (a) the Secretary of State has sent the primary contractor a written notice requiring the primary contractor to show that the requirements in relation to which the proposed reference or application is to be made have been met;
- (b) at least 20 working days have elapsed since the date of that notice; and
- (c) no response, or no response which the Secretary of State considers to be satisfactory, has been received.

(8) In making a determination under this regulation, the SSRO must have regard to—

- (a) the information that was available to each party at the time of agreement;
- (b) in the case of a contract which contains provision of the kind described in regulation 15 (TCIF adjustment), those provisions;
- (c) in the case of a contract priced in accordance with a default pricing method, whether the parties disclosed, in a timely manner, the facts and assumptions they used to determine the allowable costs or the contract profit rate.”.

#### **Amendment of regulation 53 (time limits for applications and opinions)**

41. In regulation 53(2)—

- (a) omit “(a)”;
- (b) after “opinion)” insert “which relates to a qualifying defence contract”;
- (c) omit “to which the reference relates”.

#### **Amendment of regulation 65 (modification of the Regulations)**

42. In regulation 65(a)—

- (a) for paragraph (3) substitute—  
“(3) Regulations 6, 7 and 8 to 9A do not apply.”;

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(a) Regulation 65 was amended by S.I. 2018/1350 and S.I. 2019/1106.

(b) after paragraph (3) insert—

“(3A) Regulation 7A has effect as if—

(a) in paragraph (1)—

(i) the words “For the purposes of section 14 of the Act,” were omitted;

(ii) for “Secretary of State” there were substituted “contracting authority”;

(b) paragraph (4) were omitted;

(c) in paragraphs (7)(a) and (8)(a), the references to “competitive process” have the meanings given in regulations 59 and 60.”;

(c) omit paragraph (5);

(d) after paragraph (9) insert—

“(9ZA) Regulation 19A (commercial pricing) has effect as if after “Secretary of State”, where it occurs in paragraphs (3)(a)(i) and (4), there were inserted “or the contracting authority”.

(9ZB) Regulation 19C (previously agreed price) does not apply.

(9ZC) Regulation 19G(5) (aggregation of components) has effect as if for each “Secretary of State” there were substituted “contracting authority”.”;

(e) in paragraph (10), for “sub-paragraphs (2)(a)(iii) and (2)(e)” substitute “paragraphs (2)(a)(iii) and (e) and (2A)(a)(ii) and (c)”;

(f) in paragraph (11), for “sub-paragraph (2)(e)(ii)” substitute “paragraph (3)(c)(ii)”;

(g) in paragraphs (12), for “sub-paragraphs (2)(g) to (i) do” substitute “paragraph (2)(g) to (i) does”;

(h) in paragraph (13), for “sub-paragraphs (4)(j) to (l) do” substitute “paragraph (4)(j) to (l) does”;

(i) in paragraph (14), for “sub-paragraphs 2(l) to (n) do” substitute “paragraph (2)(l) to (n) does”.

#### **Amendment of the Schedule (re-determination of contract price)**

**43.—**(1) The Schedule(a) is amended as follows.

(2) In the shoulder reference, for “14” substitute “9C”.

(3) In the title of Part 1, for “Introductory” substitute “General”;

(4) In paragraph 1 (application of Schedule)—

(a) in paragraph (1), at the end insert “of the contract or a component of the contract”;

(b) in sub-paragraph (2), in the definition of “original contract price”—

(i) in the opening words, after “defence contract” insert “or component of such a contract”;

(ii) in paragraph (a), for “regulation 10” substitute “a contract pricing method”;

(iii) in paragraph (b), after “contract”, in both places it occurs, insert “or component”.

(5) In paragraph 2(b) (interpretation)—

(a) in sub-paragraph (1)—

(i) immediately after the opening words insert—

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(a) The Schedule was inserted by S.I. 2018/1350.

(b) Paragraph 2 of the Schedule was amended by S.I. 2019/1106.

““contract profit rate”, in relation to a pricing amendment, means the contract profit rate that would be determined for the pricing amendment in accordance with regulation 11 as it applies for the purpose of determining the contract profit rate for a contract or component, and regulation 11(3) is modified for these purposes so that “under the contract or component” is to be read as “associated with the pricing amendment”,”;

(ii) in the opening words of the definition of “contractual requirement”—

(aa) after “defence contract” insert “or component of such a contract”;

(bb) after “of the contract” insert “or component”;

(iii) in the definition of “cost-plus method”, for “regulated” substitute “default”;

(iv) omit the definition of “pricing amendment”;

(b) omit sub-paragraphs (2) and (3).

(6) After paragraph 2 insert—

#### **“Pricing amendments not covered by Part 2 or 4**

**2A.**—(1) This paragraph applies if none of paragraphs 4 to 9 or 14 to 18 apply in relation to the pricing amendment.

(2) Where the pricing amendment creates a new component of a contract, the price payable under the component must be determined in accordance with a contract pricing method (and is to be treated for the purposes of these Regulations as if it was determined in accordance with that contract pricing method and not this Schedule).

(3) Where the pricing amendment does not create a new component, the price payable under the amended contract or, where the pricing amendment relates to an existing component, that component must be re-determined in accordance with a contract pricing method (and is to be treated for the purposes of these Regulations as if it was determined in accordance with that contract pricing method and not this Schedule).

(4) The parties—

(a) may agree which contract pricing method is to be used for the amended contract or component;

(b) may agree that components of the contract will be priced by different pricing methods.

#### **Multiple pricing amendments**

**2B.**—(1) This paragraph applies where the parties propose to make two or more pricing amendments to a contract or component at the same time (irrespective of whether the parties also propose to make, at the same time, any other amendment to the contract or component which is not a pricing amendment).

(2) Where this paragraph applies—

(a) the pricing amendments are to be treated separately and dealt with in turn,

(b) Part 2 or 4 (as the case may be) applies in relation to each pricing amendment as it applies to a single amendment, and

(c) the price payable under the amended contract or component is the price determined after the last of the pricing amendments has been dealt with.

(3) If the parties propose a pricing amendment which changes the contract pricing method used for the contract or component, that pricing amendment must be dealt with first.

(4) If the parties propose a pricing amendment to which paragraph 2A applies, that pricing amendment must be dealt with last.”.

(7) For the heading of Part 2 substitute—

## “PART 2

Re-determination of price using a default pricing method”.

(8) For paragraph 3 substitute—

### “Application of Part 2

3. This Part applies to determine the price payable under a contract or component if—

- (a) the parties propose to make a single pricing amendment to a qualifying defence contract (irrespective of whether the parties propose to make, at the same time, any other amendment to the contract which is not a pricing amendment), and
- (b) the price of the contract (if the pricing amendment does not relate to an existing component) or component (if the pricing amendment relates to an existing component) to which the pricing amendment relates was last determined in accordance with a default pricing method or with this Part.”.

(9) In the sub-heading immediately after paragraph 3, for “regulated” substitute “default”.

(10) In paragraph 4 (amendment of the regulated pricing method used for a qualifying defence contract)—

- (a) in the heading, for “regulated” substitute “default”;
- (b) in sub-paragraph (1), for “regulated”, in each place it occurs, substitute “default”;
- (c) in sub-paragraph (2)—
  - (i) in paragraph (a), after “for the” insert “pricing”;
  - (ii) in paragraph (b), for “regulated” substitute “default”;
- (d) in sub-paragraph (3), in paragraph (b), after “of the” insert “pricing”.

(11) In paragraph 5 (amendment of the regulated pricing method used for a defined component of a contract)—

- (a) in the heading—
  - (i) for “regulated” substitute “default”;
  - (ii) omit “defined”;
- (b) in sub-paragraph (1)—
  - (i) for “regulated”, in each place it occurs, substitute “default”;
  - (ii) omit “defined”;
- (c) in sub-paragraph (2)—
  - (i) in paragraph (a), after “for the” insert “pricing”;
  - (ii) in paragraph (b)—
    - (aa) omit “defined”;
    - (bb) for “regulated” substitute “default”;
- (d) in sub-paragraph (3)—
  - (i) in paragraphs (a) and (b), omit “defined”;



- (ii) in paragraph (c), after “of the” insert “pricing”.
- (12) In paragraph 6 (amendment affecting a defined element of allowable costs)—
- (a) in sub-paragraph (1)—
    - (i) in paragraph (a), omit “defined” in the second place it occurs;
    - (ii) in paragraph (b)—
      - (aa) for “regulated”, in both places it occurs, substitute “default”;
      - (bb) omit “the defined”;
  - (b) in sub-paragraph (2), in the opening words, for “regulated” substitute “default”;
  - (c) in sub-paragraph (3)—
    - (i) in the opening words, after “of the” insert “pricing”;
    - (ii) in paragraph (a), after “for the” insert “pricing”;
    - (iii) in paragraph (b)—
      - (aa) for “regulated” substitute “default”;
      - (bb) omit “defined” in the second place it occurs;
  - (d) in sub-paragraph (4)(b), after “of the” insert “pricing”.
- (13) In paragraph 7 (change to a contractual requirement: contract or defined component not using cost-plus method)—
- (a) in the heading, omit “defined”;
  - (b) in sub-paragraph (1)—
    - (i) in paragraph (a), omit “defined”;
    - (ii) in paragraph (b)—
      - (aa) for “regulated” substitute “default”;
      - (bb) omit “defined”;
  - (c) in sub-paragraph (2)—
    - (i) in the opening words, after “of the” insert “pricing”;
    - (ii) in paragraph (a), after “for the” insert “pricing”;
    - (iii) in paragraph (b), after “which the” insert “pricing”;
  - (d) in sub-paragraph (3), omit “defined”;
  - (e) in sub-paragraph (4)(b), after “of the” insert “pricing”.
- (14) In paragraph 8 (change to a contractual requirement: contract or defined component which uses cost-plus method - distinguishable costs)—
- (a) in the heading, omit “defined”;
  - (b) in sub-paragraph (1)—
    - (i) in paragraph (a), omit “defined”;
    - (ii) in paragraph (b)—
      - (aa) for “regulated” substitute “default”;
      - (bb) omit “defined”;
    - (iii) in paragraph (c), after “resulting from the” insert “pricing”;
  - (c) in sub-paragraph (2), omit “defined”;
  - (d) in sub-paragraph (3)—
    - (i) in the opening words, after “of the” insert “pricing”;

- (ii) in paragraph (a), after “for the” insert “pricing”;
  - (iii) in paragraph (b), after “from the” insert “pricing”;
  - (e) in sub-paragraph (4)(b), after “of the” insert “pricing”.
- (15) In paragraph 9 (change to a contractual requirement: contract or defined component which uses cost-plus method - costs not distinguishable)—
- (a) in the heading, omit “defined”;
  - (b) in sub-paragraph (1)—
    - (i) in paragraph (a), omit “defined”;
    - (ii) in paragraph (b)—
      - (aa) for “regulated” substitute “default”;
      - (bb) omit “defined”;
    - (iii) in paragraph (c), after “resulting from the” insert “pricing”;
  - (c) in sub-paragraph (2), omit “defined”;
  - (d) in sub-paragraph (3)—
    - (i) in the opening words, after “of the” insert “pricing”;
    - (ii) in paragraph (a), after “for the” insert “pricing”;
    - (iii) in paragraph (b), omit “defined”;
  - (e) in sub-paragraph (5)(b), after “of the” insert “pricing”.
- (16) Omit the sub-heading (“Other amendments”) immediately after paragraph 9.
- (17) Omit paragraph 10 (other amendments).
- (18) Omit Part 3 (multiple pricing amendments to a qualifying defence contract).
- (19) At the end insert—

## “PART 4

### Re-determination of price using an alternative pricing method

#### **Application of Part 4**

- 13.** This Part applies to determine the price payable under a contract or component if—
- (a) the parties propose to make a single pricing amendment to the contract or component (irrespective of whether the parties propose to make, at the same time, any other amendment to the contract or component which is not a pricing amendment), and
  - (b) the price of the contract (if the pricing amendment does not relate to a component) or component (if the pricing amendment relates to a component) was last determined in accordance with an alternative pricing method or with this Part.

#### **Pricing amendment of contract or component priced using regulation 19A (commercial pricing)**

- 14.—(1)** This paragraph applies where the proposed pricing amendment is to a contract or component the price of which was determined in accordance with regulation 19A or this paragraph.

- (2) Sub-paragraph (3) applies where—
  - (a) the pricing amendment will add a contractual requirement for the provision of goods, works or services (“the new goods, works or services”),
  - (b) if the pricing amendment were a new contract or component, the circumstances would exist for the price of the pricing amendment to be determined in accordance with regulation 19A, and
  - (c) the parties agree to determine the price of the pricing amendment in accordance with regulation 19A.
- (3) The price payable in respect of the pricing amendment is to be determined as follows—
  - (a) determine the price of the new goods, works or services in accordance with regulation 19A, and
  - (b) adjust that price by a reasonable amount to account for a change in the costs of providing the new goods, works or services as a consequence of any existing requirements under the contract to provide similar goods, works or services.
- (4) Sub-paragraph (5) applies where—
  - (a) the pricing amendment will remove a contractual requirement for the provision of goods, works or services (“the removed requirement”), and
  - (b) no costs have been, or will be, incurred in relation to the provision of the removed requirement.
- (5) The price payable under the contract or component to which the pricing amendment relates is to be determined as follows—
  - (a) determine what price payable would have been determined in accordance with regulation 19A in respect of the contract or component at the time of agreement taking into account the removed requirement, and
  - (b) adjust the price payable under the contract or component so that it is equivalent to the price determined in accordance with paragraph (a).
- (6) Sub-paragraph (7) applies where—
  - (a) the pricing amendment will remove a contractual requirement for the provision of goods, works or services (“the removed requirement”), and
  - (b) costs have been, or will be, incurred in relation to the reduced requirement (“the incurred costs”).
- (7) Where this paragraph applies—
  - (a) the price payable under the contract or component to which the pricing amendment relates is to be determined in accordance with paragraph (5),
  - (b) the price payable in respect of the incurred costs is to be determined in accordance with another contract pricing method as if the goods, works or services to which those costs relate were provided under a new component, and
  - (c) the provision of the goods, works or services and the price payable in respect of them are a new component the price of which has been determined in accordance with the contract pricing method mentioned in paragraph (b) (and not in accordance with regulation 19A or this Schedule).

**Pricing amendment of contract or component priced using regulation 19B (prices determined in accordance with law)**

**15.**—(1) This paragraph applies where the proposed pricing amendment is to a contract or component the price of which was determined in accordance with regulation 19B or this paragraph.

(2) Sub-paragraph (3) applies where—

- (a) the original contract price was determined in accordance with regulation 19B(3), and
- (b) regulation 19B(3) applies to the goods, works and services to which the pricing amendment relates.

(3) The price payable under the contract or component is to be re-determined in accordance with regulation 19B(3), taking account of the pricing amendment.

(4) Sub-paragraph (5) applies where—

- (a) the original contract price was determined in accordance with regulation 19B(4),
- (b) the relevant law in accordance with which the original contract price was determined has been amended (but still applies), and
- (c) the pricing amendment is made entirely in consequence of the amendment to the relevant law.

(5) The price payable under the contract or component to which the pricing amendment relates is to be adjusted by an amount which secures a price 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 amended relevant law.

(6) Sub-paragraph (7) applies where—

- (a) the original contract price was determined in accordance with regulation 19B(4),
- (b) regulation 19B(4) applies to the goods, works and services to which the pricing amendment relates, and
- (c) the pricing amendment is not made entirely in consequence of an amendment to the relevant law in accordance with which the original contract price was determined.

(7) The price payable under the contract or component is to be re-determined in accordance with regulation 19B(4), taking account of the pricing amendment.

(8) Sub-paragraph (9) applies where—

- (a) the pricing amendment will remove a contractual requirement for the provision of goods, works or services (“the removed requirement”), and
- (b) the Secretary of State is no longer satisfied that the price of the goods, works or services to be provided under the contract or component subject to the pricing amendment must be set in accordance with a relevant law (within the meaning of regulation 19B(5)).

(9) The price payable under the contract or component to which the pricing amendment relates is to be determined as follows—

- (a) determine what price payable would have been determined in accordance with regulation 19B in respect of the contract or component at the time of agreement taking into account the removed requirement, and
- (b) adjust the price payable under the contract or component so that it is equivalent to the price determined in accordance with paragraph (a).

**Pricing amendment of contract or component priced using regulation 19C (previously agreed price)**

**16.**—(1) This paragraph applies where the proposed pricing amendment is to a contract or component the price of which was determined in accordance with regulation 19C.

(2) The parties must agree to—

- (a) re-determine the price of the entire contract or component (taking account of any change to the contract or component as a result of the pricing amendment) in accordance with a contract pricing method other than that described in regulation 19C, or
- (b) create a new component containing the obligations to provide goods, works or services which have not yet been performed under the contract or component (taking account of any change to those obligations as a result of the pricing amendment), and determine the price of that component in accordance with a contract pricing method other than that described in regulation 19C.

(3) Where—

- (a) the price of a contract or component is re-determined under sub-paragraph (2)(a), the contract or component is to be treated for the purposes of these Regulations as a contract or component the price of which has been determined in accordance with the new contract pricing method (and not in accordance with regulation 19C or this Schedule);
- (b) a component is created in accordance with sub-paragraph (2)(b), the component is a new component the price of which has been determined in accordance with the new contract pricing method (and not in accordance with regulation 19C or this Schedule).

**Pricing amendment of contract or component priced using regulation 19E (competed rates applied to uncompleted volumes)**

**17.** Where the proposed pricing amendment is to a contract or component the price of which was determined in accordance with regulation 19E, the price of the contract or component is to be re-determined in accordance with regulation 19E (taking account of any change to the contract or component as a result of the pricing amendment).

**Pricing amendment of a contract priced using regulation 19G (aggregation of components)**

**18.**—(1) This paragraph applies where the price of a contract has been determined in accordance with regulation 19G or this paragraph.

(2) Where the price payable under a component of the contract has been re-determined under this Schedule, the price of the contract is to be re-determined in accordance with regulation 19G.

(3) Where the pricing amendment relates only to a change to an adjustment agreed in accordance with regulation 19G(3) to (7), the price payable under the contract is to be adjusted to take account of that change.”

### **Transitional provision**

**44.**—(1) The amendments made by the following provisions do not apply in relation to a qualifying defence contract entered into, or to any amendment to such a contract agreed, before 1st April 2024—

- (a) regulation 27;
- (b) regulation 28;
- (c) regulation 40(c) so far as it inserts new regulation 52(7) and (8) into the Single Source Contract Regulations 2014.

(2) The amendments made by regulation 30 do not apply until 1st April 2025 in relation to a qualifying defence contract which was entered into before 1st April 2024.

(3) Regulation 27(4A) of the Single Source Contract Regulations 2014 (as inserted by regulation 31(c) of these Regulations) has effect in relation to a qualifying defence contract entered into before 1st April 2024 as if sub-paragraphs (e) and (g)(ii) were omitted.

(4) Where the price of a qualifying defence contract was determined in accordance with Part 3 of the Schedule to the Single Source Contract Regulations 2014 as that Schedule had effect immediately before 1st April 2024, the price is to be treated on and after that date as if it was determined in accordance with Part 2 of the Schedule (as that Part has effect on and after 1st April 2024).

22nd March 2024

*James Cartlidge*  
Minister of State  
Ministry of Defence

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part 2 of the Defence Reform Act 2014 (c. 20) (“the Act”) establishes a regulatory framework for single source contracts (that is, contracts which are not subject to competitive tendering processes) to procure goods, works and services for defence purposes. The framework applies to qualifying defence contracts (that is, contracts to which the Secretary of State is a party and which meet the criteria in section 14(2) of the Act) and to qualifying sub-contracts (that is, contracts intended to secure the delivery of goods, works or services required under a qualifying defence contract and which meet the criteria in section 28(3) or (4) of the Act). The framework is overseen and monitored by the Single Source Regulations Office (“the SSRO”), a non-departmental public body established by the Act. The Single Source Contract Regulations 2014 (S.I. 2014/3337) (“the Principal Regulations”) were made to implement the detail of the Act’s framework.

Part 2 of the Act has been amended by Schedule 10 to the Procurement Act 2023 (c. 54) for three broad purposes—

- (a) to expand the definition of “qualifying defence contracts” to include contracts which procure goods, works and services which are substantially (as well as wholly) for defence purposes,
- (b) to authorise the introduction of a wider range of pricing methods (“alternative pricing methods”) to account for the range of commercial circumstances in which single source contracts operate, and
- (c) to more easily enable distinct parts of qualifying defence contracts to be separated into components of the contract so that they can be priced distinctly and managed appropriately.

These Regulations amend the Principal Regulations to implement the detail of these amendments to the Act. In particular—

- (a) regulation 4 substitutes regulation 3 of the Principal Regulations to provide a new definition of contracts which are “substantially for defence purposes”;
- (b) regulation 11 inserts new regulation 9A into the Principal Regulations to describe the circumstances in which a part of a contract becomes a component of the contract;
- (c) regulation 12 inserts new regulation 9B into the Principal Regulations to introduce the mechanism by which the parties to a qualifying defence contract may agree to price the contract (or a component of such a contract) using an alternative pricing method instead of an existing pricing method;
- (d) regulation 24 inserts into the Principal Regulations the descriptions of the new alternative pricing methods—
  - (i) new regulation 19A describes how to price a contract or component for the supply of goods, works or services which have previously been provided on a commercial basis;
  - (ii) new regulation 19B describes how to price a contract or component for the supply of goods, works or services the price of which is affected by law (whether of the United Kingdom or otherwise);
  - (iii) new regulation 19C describes how to price a contract which was not, but has become, a qualifying defence contract, and how to price the supply of goods, works or services which were to be provided under one qualifying defence contract and are now to be provided under another;
  - (iv) new regulation 19D describes how to price a contract which is novated;

- (v) new regulation 19E describes how to price a contract or component for the supply of goods, works or services the unit price or rate of which has been agreed pursuant to a competitive process, but the volume has not;
- (vi) new regulation 19F describes how to price a contract or component where there has been error in the calculation of the contract profit rate under regulation 11, or where the parties agree that a change should be made to the incentive adjustment element of contract profit rate;
- (vii) new regulation 19G describes how to price a contract which contains components where the parties wish to make an adjustment to the price to account for commercial risk arising from the aggregation of the components;
- (e) regulations 26 to 35 amend Part 5 of the Principal Regulations, primarily to modify and expand contract reporting requirements to secure that components of contracts are properly reported on;
- (f) regulations 39 and 40 amend regulations 51 and 52 of the Principal Regulations to expand the matters on which the SSRO is required to give an opinion or make a determination, primarily in consequence of the introduction of alternative pricing mechanisms;
- (g) regulation 42 amends regulation 65 of the Principal Regulations to secure that the amendments made by these Regulations are modified appropriately in their application to qualifying sub-contracts;
- (h) regulation 43 amends the Schedule to the Principal Regulations, primarily to add a new Part 4 of that Schedule which deals with the re-determination of the price of a qualifying defence contract, or a component of such a contract, which was originally priced under an alternative pricing mechanism and which is subsequently amended.

These Regulations make further minor amendments to the Principal Regulations in consequence of the amendments to the Act and to correct errors.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is published alongside this instrument on [legislation.gov.uk](http://legislation.gov.uk).

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