

SSRO

Single Source
Regulations Office

Assuring value, building confidence

SSRO Opinion

Anonymised Opinion on qualifying contracts
related to a pre-regime contract

1. Introduction

- 1.1 The Single Source Regulations Office (SSRO) received a joint request for an opinion from the Ministry of Defence (MOD) and a contractor (collectively, the Parties) regarding a contract that was awarded before the regime established by the Defence Reform Act 2014 (the Act) and the Single Source Contract Regulations 2014 (the Regulations) came into force and related future contracts that are proposed to be qualifying defence contracts (QDCs) or qualifying sub contracts (QSCs).
- 1.2 After considering the information provided and undertaking a preliminary jurisdictional assessment in accordance with the SSRO's guidance¹, the SSRO accepted the request for an opinion under section 35(3) of the the Act. The Parties did not contest the basis on which the SSRO agreed to accept the referral.
- 1.3 The SSRO appointed a Referrals Committee to consider the referral. The committee comprised two non-executive members of the Board and an independent member who is not a member or employee of the SSRO, as required by Schedule 4 to the Act.
- 1.4 The SSRO reviewed material provided to it by the Parties and received confirmation from them of its understanding of the facts and assumptions related to the referral. The SSRO specified that its opinion may be different should the facts and assumptions upon which the opinion has been based change.
- 1.5 The SSRO's opinion on the matters referred to it by the Parties was produced within the 40 working-day timetable set out within the SSRO's guidance. The opinion was issued in full to the referring parties. In accordance with the procedure published in the SSRO's guidance, this document provides an anonymised summary of the SSRO's opinion.
- 1.6 The work undertaken on this referral has been in accordance with the SSRO's general obligation under Section 13 of the Act to aim to ensure that good value for money is obtained in government expenditure on QDCs and that persons (other than the Secretary of State) who are parties to QDCs are paid a fair and reasonable price under those contracts.

2. The Opinion

- 2.1 The Parties proposed to amend the pre-regime contract, but confirmed to the SSRO during the process that the amended contract would not be a QDC. This was because the requirement in paragraph 14(4)(d) of the Act would not be met.
- 2.2 The SSRO considered the extent to which the requirements of the Act and the Regulations would apply to payments made under the pre-regime contract given an identified relationship between those payments and the proposed QDCs or QSCs. In particular, the SSRO considered the requirements of the following:
 - the contract reports required by Part 5 of the Regulations; and
 - the overhead reports, strategic industry capacity reports or small or medium enterprises (SME) reports required under Part 6 of the Regulations.

¹ Guidance on the SSRO's referral procedures for opinions under the Defence Reform Act 2014: <https://www.gov.uk/government/publications/guidance-on-the-ssros-referrals-procedures-under-the-defence-reform-act-2014-and-single-source-contract-regulations-2014>

- 2.3 The SSRO's opinion is that the contractor should not be required to include payments made under the amended pre-regime contract in contract reports submitted under Part 5 of the Regulations in respect of the associated future contracts, but may be required to submit reports under Part 6 of the Regulations in which such payments would be included. This is because in some instances Part 6 places obligations on defence contractors to report revenue without reference to the particular contract under which it has been generated, such as those set out in the following table.

Reporting requirement under Part 6 of the Regulations	Reference
A QBU's financial accounting statements and supporting accounting schedules for the relevant accounting period are required to be included in the Actual Rates Claim Report.	Regulation 34(3)(d)
The revenue for a qualifying business unit is required to be reported in the QBU Actual Cost Analysis Report, the QBU Estimated Cost Analysis Report and the Strategic Industry Capacity Report.	Regulations 35(7)(c), 37(7)(c) and 41(e)
The budget for a QBU is required in the Estimated Rates Claim Report, including a quantified analysis by the categories used in the QBU's financial statements and supporting accounting schedules.	Regulation 36(3)(d)
A description of the facts and assumptions used in calculating the budget for a QBU and the associated quantified analysis is required in the Estimated Rates Agreement Pricing Statement.	Regulation 38(6)(c)
An estimate of the total revenue from defence contracts is required in the SME Report.	Regulation 45(4)(c)

- 2.4 If such payments are included in Part 6 reports, then the contractor will also have an obligation to keep records in respect of those payments.
- 2.5 The SSRO was not asked to require that one party pay costs to the other under section 35(4) of the Act. The SSRO considers that it would not be appropriate to require such a payment in the circumstances of the referral.
- 2.6 The anonymised summary has been prepared having regard to the commercial sensitivity of matters the subject of the opinion and the SSRO's obligations under Schedule 5 to the Act.

3. Status of the Opinion

- 3.1 Paragraph 4.4 of the SSRO's 'Guidance on the SSRO's referral procedures for opinions under the Defence Reform Act 2014' provides that:
- "the purpose of opinions issued by the SSRO is to inform and advise and, in this regard, they are not legally binding"*.
- 3.2 The SSRO would expect, were it to be called upon to give an opinion or make a determination at a future date, to take a prior opinion into account. The SSRO would be likely to deal with a later referral in a manner consistent with an earlier opinion, subject to any change in circumstances or further information being made available.
- 3.3 The Parties may refer further questions to the SSRO for opinion or determination in relation to the matters which are the subject of this opinion.

