Draft Order laid before Parliament under section 42(4) of the Defence Reform Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

PUBLIC PROCUREMENT

The Single Source Contract Regulations 2014

Made - - - - xx

To come into force in accordance with Regulation 1.

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 14(2)(b) and (c), (6) and (8), 15, 16(1), 17(1) and (2), 18(2)(c), (3) and (4), 21, 23(1), (4) and (5), 24(1) to (3) and (4)(a), 25(1), (2), (4) and (6), 27(1) and (3), 28(3)(c) and (d), (4)(c) and (d) and (5), 29, 30(2)(a) and (3) to (5), 31(3)(a) and (b) and (5), 32(5), 33(1) and (6), 35(1), 38, 41, 42(1) and (2), 43(2) of, and paragraph 1(1)(c) of Schedule 5 to, the Defence Reform Act 2014(**1**), makes the following Regulations:

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Single Source Contract Regulations 2014 and come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Defence Reform Act 2014, and references to sections and Schedules are references to sections of, and Schedules to, that Act;

"business unit" means either—

(a) a unit—

(i) which carries on any activities for the purposes of an undertaking; and

(**1**) 2014 c. 20.

(ii) for which separate financial accounting statements are produced; or

(b) an undertaking, or group of two or more undertakings, for which a single set of financial accounting statements is produced which is separate from the financial accounting statements of each of those undertakings;

"contract completion date" has the meaning given by regulation 4;

"contract price" means—

(a) the contract price determined in accordance with regulation 10; or

(b) if the contract price has been re-determined in accordance with regulation 14, the price as re-determined;

"cost recovery base" means the unit of measure to which a cost recovery rate is applied in order to calculate a cost under a contract;

"cost recovery rate" means a rate calculated for a business unit that is used to determine a cost payable under a contract, being a rate per unit of a cost recovery base that is multiplied by the quantum of that cost recovery base to determine the cost;

"deliverable" means any goods, works or services which—

(a) are provided under a contract; and

(b) can be described using an output metric;

"further group sub-contract" has the meaning given by regulation 12(6);

"group sub-contract" has the meaning given by regulation 12(5);

"output metric" means a quantifiable description of any goods, works or services (including a number, weight, dimension, time or physical capability, but not including a monetary value);

"parent undertaking" has the meaning given by section 1162 of the Companies Act 2006(**2**);

"regulated pricing method" means one of the six pricing methods described in paragraphs (4), (5), (6), (7) and (8), (9) and (10), or (11) of regulation 10;

"SME" has the meaning given in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises(**3**);

"TCIF adjustment" means an adjustment made under section 16(1)(b);

"the time of agreement" means—

(a) in the case of a contract which is a qualifying defence contract by virtue of section 14(3), or a qualifying sub-contract—

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

(ii) if the price payable under the contract is re-determined under regulation 14, the date of that re-determination;

(b) in the case of a contract which is a qualifying defence contract by virtue of section 14(4) or (5)—

(i) the date of the amendment mentioned in section 14(4)(c) or (5)(b); or

(ii) if the price payable under the contract is re-determined under regulation 14, the date of that re-determination;

"undertaking" has the meaning given by section 1161(1) of the Companies Act 2006;

"working day" means any day excluding—

(**2**) 2006 c.46.
(**3**) O.J. L 124, p. 36-41, of 20 May 2003.

(a) Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(**4**); and

(b) where a person gives the Secretary of State and the SSRO no less than 30 days' written notice of its intention to treat a day as a holiday, that day.

(2) A reference to a report provided under Part 5 includes a contract pricing statement (regulation 23), a contract reporting plan (regulation 24), a contract costs statement (regulation 29), and information provided under regulation 30 (on-demand contract report).

Meaning of "defence purposes"

3. "Defence purposes" means the purposes of defence (whether or not of the United Kingdom), or related purposes.

Meaning of "contract completion date"

4.—(1) The "contract completion date", in relation to a contract, means—

(a) the date described in the contract as the contract completion date; or

(b) if no such date is described in the contract, the date on which the contractor completes all obligations which entitle it to final payment under the contract;

(c) if the contract is terminated before the date described in sub-paragraph (1)(a) or (b) (as the case may be), the date on which the contract is terminated.

(2) For the purposes of paragraph (1)(b), final payment under a contract does not include—

(a) any payment relating to the effect of specified indices or rates (regulation 10(5) or (10));

(b) any TCIF adjustment;

(c) any payment under regulation 16 (final price adjustment); or

(d) any amount which is determined by the SSRO to be payable.

Calculating the value of a contract

5.—(1) The value of a contract is to be determined—

(a) by the contracting authority; and

(b) in accordance with this regulation.

(2) For the purposes of the Act and these Regulations, the value of a contract means the consideration (net of value added tax) which the contracting authority expects will be payable under the contract.

(3) The contracting authority must determine the value of a contract—

(a) in the case of a proposed contract under regulation 12(1) (calculation of POCO adjustment) or 61 (assessing whether a contract would be a qualifying sub-contract), either—

(i) at the date of the assessment under regulation 12(1) or 61 (as the case may be), or

(ii) at any later date on which it is proposed to enter into the contract,

whichever is the higher;

(b) in the case of a contract which is a qualifying defence contract by virtue of section 14(4) or (5), at the date of the amendment mentioned in section 14(4)(c) or (5)(b);

(c) in all other cases, the date the contract is entered into.

(**4**) 1971 c. 80.

(4) In making that determination, a contracting authority must—

(a) where appropriate, take account of—

(i) any option contained in the contract and the likelihood that it will be exercised;

(ii) any effect which changes in the value of money are likely to have on the allowable costs it expects to be included in the contract price;

(b) exclude the value of any land, buildings, equipment, information, personnel or other resource that is provided by the Secretary of State;

(c) convert any amounts payable under the contract in a foreign currency to sterling, using a rate consistent with the contracting authority's accounting policies.

(5) Subject to paragraphs (6) and (12), where—

(a) the purpose of the contract is to fulfil a requirement for goods, works or services, and

(b) the contracting authority has also entered into, or proposes to enter into, one or more other contracts with the same person (or persons associated with that person) for the purpose of fulfilling that requirement,

the value of the contract is the aggregate of the consideration which the contracting authority has paid or expects to be payable under the contract and all of those other contracts or proposed contracts.

(6) For the purposes of paragraph (5)(b)—

(a) the contracting authority may disregard a contract if conditions A and B are met in relation to it;

(b) the contracting authority may disregard a proposed contract if, were it entered into on the terms proposed, conditions A and B would be met in relation to it.

(7) Condition A is that the contract has a value of less than £1,000,000.

(8) Condition B is that the aggregate value of—

(a) that contract, and

(b) any other such contract within paragraph (5)(b), each of which has a value of less than £1,000,000,

is less than 20% of the aggregate of the consideration which the contracting authority has paid or expects to be payable under all contracts entered into, or to be entered into, for the purpose of fulfilling the requirement mentioned in paragraph (5)(a).

(9) Where the contract is one of a series of contracts entered into, or to be entered into, by the contracting authority with a person (or any person associated with that person) for the purpose of fulfilling a requirement over a period for goods, works or services, the contracting authority may determine the value of the contract in accordance with either paragraph (10) or paragraph (11).

(10) The contracting authority may determine the value of the contract by taking the aggregate of the consideration payable under the contract and all other contracts which—

(a) have similar characteristics to the contract,

(b) are for the purposes of the requirement mentioned in paragraph (9), and

(c) have been entered into in the period of 12 months ending immediately before the time of agreement,

and adjusting that amount to take account of any expected changes in quantity and cost of the goods, works or services to be provided in the period of 12 months starting at the time of agreement.

(11) The contracting authority may determine the value of the contract by estimating the aggregate of the value of the consideration which the contracting authority expects to be payable under the contract and all other contracts, or proposed contracts, which—

(a) have similar characteristics to the contract;

(b) are for purposes of the requirement mentioned in paragraph (9); and

(c) will be entered into in the period of 12 months starting at the time of agreement.

(12) Where—

(a) the contract is for goods, works or services which are required for the sole purposes of a discrete operating unit within the contracting authority,

(b) the discretion whether to procure those goods, works or services has been devolved to that unit, and

(c) the decision to procure them is taken independently by that unit,

references in this regulation to other contracts and proposed contracts include only contracts entered into, or proposed to be entered into, for the sole purposes of that unit.

(13) In this regulation, "the contracting authority" means the party to the contract which is, or would be, liable to pay the contract price.

PART 2

Qualifying defence contracts

Threshold value for qualifying defence contracts

6.—(1) In the case of a contract to which section 14(3) applies, the amount specified for the purposes of section 14(2)(b) (threshold value for qualifying defence contracts) is—

(a) if the contract is entered into before 31 March 2015, £500,000,000;

(b) otherwise, £5,000,000.

(2) In the case of a contract to which section 14(4) or section 14(5) applies, the amount specified for the purposes of section 14(2)(b) is £5,000,000.

Contracts that may not be qualifying defence contracts

7. The contracts specified for the purposes of section 14(2)(c) (contracts that may not be qualifying defence contracts) are contracts—

(a) to which the government of any country other than the United Kingdom is party;

(b) made within the framework of an international cooperative defence programme; or

(c) made wholly for the purposes of one or more of the following—

(i) the acquisition of land (including existing buildings or other structures, and land covered with water), and any estate, interest, easement, servitude or right in or over such land;

(ii) the management or maintenance of any land or buildings or other structures; or

(iii) intelligence activities.

Competitive process for single contracts

8.—(1) Where the Secretary of State enters into a contract with a primary contractor, the award of the contract is the result of a competitive process if—

(a) the Secretary of State either—