

Regulations 3 and 5 of this Statutory Instrument have been made in consequence of defects in SI 2014/3337 and so this Statutory Instrument is being issued free of charge to all known recipients of SI 2014/3337.

STATUTORY INSTRUMENTS

2018 No. 917

PUBLIC PROCUREMENT

The Single Source Contract (Amendment) Regulations 2018

Made - - - - 31st July 2018

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by sections 14(2)(c), 18(2)(c), 28(3)(d) and 43(2)(a)(i) of the Defence Reform Act 2014⁽¹⁾, makes the following Regulations.

In accordance with section 42(4)(b) of the Defence Reform Act 2014, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Single Source Contract (Amendment) Regulations 2018 and come into force on the day after the day on which they are made.

General

2. The Single Source Contract Regulations 2014⁽²⁾ are amended in accordance with regulations 3 to 6.

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

- 3.—(1) In regulation 5(3)(a), omit “12(1) (calculation of POCO adjustment) or”.
- (2) In regulation 5(3)(a)(i), for “12(1) or 61 (as the case may be)” substitute “61”.

Amendment of regulation 7 (contracts that may not be qualifying defence contracts)

- 4.—(1) In regulation 7(b), after “programme” insert “, except where the parties to any such contract agree that it is a contract which should be a qualifying defence contract”.
- (2) Omit regulation 7(c)(iii).

(1) 2014 c. 20.
(2) S.I. 2014/3337.

(3) After regulation 7(c) insert—

- “(d) in relation to which compliance with Part 4, 5 or 6 of the Regulations (records and reports), or section 26 of the Act (duty to report relevant events, circumstances and information), would require disclosure of information which the Secretary of State considers would create a risk to national security; or
- (e) falling within sub-paragraph (f) below;
- (f) a contract (B) falls within this sub-paragraph if—
 - (i) B is a contract to which the Secretary of State is a party,
 - (ii) B replaced a contract (A),
 - (iii) the purpose of B is to ensure the performance of contractual obligations which were to be performed under A,
 - (iv) the Secretary of State was a party to A, but it was not a qualifying defence contract, and
 - (v) B is in all material respects (save for the identity of any party to the contract other than the Secretary of State) identical to A.”.

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

5.—(1) In regulation 13(2), after “allowable costs under” for “any qualifying defence contract” substitute “any such qualifying defence contract”.

(2) In regulation 13(4), after “allowable costs under” for “any qualifying defence contract” substitute “any such qualifying defence contract”.

(3) In regulation 13(5), after “primary contractor to perform” for “any qualifying defence contract” substitute “any such qualifying defence contract”.

Amendment of regulation 58 (requirements for qualifying sub-contracts)

6.—(1) In regulation 58(2)(a), after “programme” insert “, except where the parties to the contract agree that it is a contract which should be a qualifying sub-contract”.

(2) In regulation 58(2)(b)(ii), after “other structures;”, for “or” substitute “nor”.

(3) Omit regulation 58(2)(b)(iii).

(4) After regulation 58(2)(b) insert—

- “(c) a contract in relation to which compliance with Part 4, 5 or 6 of the Regulations (records and reports), or section 26 of the Act (duty to report relevant events, circumstances and information), would require disclosure of information which the Secretary of State considers would create a risk to national security; nor
- (d) a contract falling within sub-paragraph (e) below;
- (e) a contract (B) falls within this sub-paragraph if—
 - (i) B replaced a contract (A),
 - (ii) the purpose of B is to ensure the performance of contractual obligations which were to be performed under A,
 - (iii) A was not a qualifying defence contract or qualifying sub-contract,
 - (iv) at least one of the parties to A is also a party to B,
 - (v) at least one of the parties to B was not a party to A, and
 - (vi) B is in all material respects (save for the identity of the parties to the contract) identical to A.”.

31st July 2018

Tobias Ellwood
Minister for Defence People and Veterans
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Single Source Contract Regulations 2014 (S.I. 2014/3337) (“the 2014 Regulations”) which are made under Part 2 of the Defence Reform Act 2014 (c. 20) (“the Act”). The Act creates a regulatory framework for single source contracts (that is, contracts which are not competed) in the defence area, and the 2014 Regulations implement the detail of that regulatory framework. The regulatory framework applies to qualifying defence contracts (contracts to which the Secretary of State is party, and which meet the criteria in section 14(2) of the Act), and also to qualifying sub-contracts (sub-contracts to qualifying defence contracts, which meet the criteria in section 28(3) or (4) of the Act).

Regulation 3 amends regulation 5 (calculating the value of a contract) of the 2014 Regulations to address a drafting deficiency. Regulation 61 of the 2014 Regulations requires a formal assessment (of which a record must be kept) of whether a contract is a qualifying sub-contract. By contrast, regulation 12(1) simply describes which contracts require a POCO adjustment (that is, an adjustment made to ensure that profit arises only once in relation to allowable costs under the contract). The effect of this amendment is that the value of the contract falling within regulation 12(1) must be calculated in accordance with regulation 5(3)(b) or (c).

Regulation 4 amends regulation 7 of the 2014 Regulations (contracts that may not be qualifying defence contracts). It narrows the criteria of the exemption for contracts made within the framework of an international co-operative defence programme, and replaces the exclusion of contracts made wholly for the purposes of intelligence activities with an exclusion of those contracts where there is a real risk to national security. It also excludes contracts which are new but in substance a continuation of older contracts which were not qualifying defence contracts.

Regulation 5 amends regulation 13 of the 2014 Regulations (rates agreed on a group basis) to address a drafting deficiency. The deficiency was that although regulation 13(1) limits the application of the regulation to those cases where the Secretary of State and a contractor are proposing to enter into two or more qualifying defence contracts within one year, it does not follow that the unqualified references to a qualifying defence contract in regulation 13(2), (4) and (5) necessarily fall to be construed as referring to such a qualifying defence contract. The effect of these amendments is to make it clear that those references are to such a qualifying defence contract.

Regulation 6 amends regulation 58 of the 2014 Regulations (requirements for qualifying sub-contracts) to make equivalent provision for qualifying sub-contracts to that which regulation 4 makes for qualifying defence contracts.

A full impact assessment of the effect that this instrument will have on the costs of business is available from the Ministry of Defence, MOD Main Building, Whitehall SW1A 2HB and is published alongside this instrument on www.legislation.gov.uk