



SSRO

Single Source
Regulations Office

Single Source Cost Standards

Statutory Guidance on Allowable Costs
Response to Consultation

Introduction

1. Background

The Defence Reform Act 2014 provides a new legislative basis for the Single Source Procurement Framework. The Act makes the Single Source Regulations Office (SSRO) responsible for issuing statutory guidance on Allowable Costs.

The draft guidance produced by the SSRO is for use by contractors and the Ministry of Defence (MOD) when determining whether costs are Allowable under qualifying defence contracts and qualifying sub-contracts. To support this, the Act states that Allowable Costs must be 'Appropriate, Attributable to the contract, and Reasonable in the circumstances' (Section 20(2)(a)-(c)).

2. Our Approach

In producing the draft guidance on Allowable Costs, the following approach was taken:

- reviewing all relevant sections of the Act, Regulations and Single Source Procurement Framework and the background to these;
- reviewing the responses to the SSRO's consultation exercise on Allowable costs;
- reviewing guidance from the USA - The Federal Acquisition Regulations;
- reviewing guidance from Canada - The Standard Acquisition Clauses and Conditions;
- reviewing the MOD's interim guidance;
- reviewing the existing Government Accounting Conventions – the 'Yellow Book';
- drafting the document around a logical structure based on 'best practice' examples; and
- using plain English.

The draft guidance produced was principle, rather than rules, based and sought to provide users with assistance in assessing whether a cost meets the three criteria of Appropriate, Attributable and Reasonable in order to be considered Allowable.

The Consultation

3. Consultation Process

On 26 November 2014, we issued our draft Statutory Guidance on Allowable Costs.

In carrying out this consultation we sought to ensure that as many people and groups as possible had the opportunity to contribute their views and publicised it on the on the [gov.uk](http://www.gov.uk) website (www.gov.uk/government/consultations/single-source-cost-standards-sscs-statutory-guidance-on-allowable-costs), and emailed our existing stakeholder contacts. To aid the consultation process, we provided a consultation response form at the same time.

In total, we invited 129 stakeholders to respond to our consultation, including government bodies, defence industry contractors, Members of Parliament, consultancies and regulatory bodies.

The consultation closed on 10 December 2014. This document summarises the feedback we received and the action we have taken.

It should be noted that the draft guidance on Allowable Costs is the first guidance to be produced by the SSRO in line with its statutory duties. This new guidance, alongside the Act, Regulations and Single Source Procurement Framework, is replacing a framework that has been in place since 1968. Therefore we understand and expect there to be a high level of interest in any new guidance produced. We are grateful to all those stakeholders who provided responses to our consultation.

4. Breakdown of Responses

We are grateful to everybody who responded to our consultation. In total we received 19 responses from various stakeholders, the breakdown of which can be seen in Table 1 (page 4).

Whereas the majority of respondents used the consultation form provided, some elected to provide more detailed additional feedback. We have considered all the feedback received.

The responses gave the SSRO an understanding of individuals' and organisations' views on the draft *Statutory Guidance on Allowable Costs* and suggested some alternative approaches. It has not been possible to include and respond to every comment received in this document. However, we have tried to include as many as possible by grouping together the main themes and responding to these.

	Number of Stakeholders invited to comment	Total Number of Responses received	Percentage of responses received
Government	8	1	13
Members of Parliament	59	0	0
Industry	35	13	37
Regulators/ Other Government Bodies	6	0	0
Trade and Professional Associations and Think Tanks	8	1	13
Research/ Academics	3	1	33
Media	2	0	0
Consultants	9	3	33
Total	129	19	15

5. Key issues raised by the respondents

The responses were thorough and included views both on the consultation questions we asked on the draft guidance's structure, clarity and other areas included in our Statutory Guidance on Allowable Costs document.

Issue	Section	Description of Issue	Response
Perception of guidance exceeding legal remit	Various. Mainly introduction	Respondents felt that the draft document contained inconsistencies with the Act and the Regulations.	The guidance has been revised to ensure consistency with the Act and Regulations.
Misquoted references to other documents	Various. Mainly introduction	Respondents felt that the draft document contained inaccuracies in regard to the Act and Regulations. Some also felt there was no need to repeat the Act and Regulations.	The guidance has been revised to ensure consistency with the Act and Regulations. The SSRO considers it important that the Guidance on Allowable Costs is a stand alone document, and thus these references to other documents remain valid.
Misunderstanding of the concepts of 'Public Scrutiny' and 'Value for Money'	Various	Respondents felt that 'Public Scrutiny' and 'Value for Money' were not key considerations for Allowable Costs and the Single Source Procurement Framework.	The concepts of 'Public Scrutiny' and 'Value for Money' remain in the document. The SSRO considers that public scrutiny and value for money are well understood terms that are appropriate for use in the guidance.
Application of this Guidance	Introduction. Chapter 4	Respondents felt the Application of this Guidance contained errors.	The guidance has been revised to ensure consistency with the Act and Regulations.
The role of the QMAC	Chapter 8	Respondents felt the role of the QMAC was not understood and that the completion of the QMAC would determine that a cost was Allowable.	The Questionnaire on the Method of Allocation of Costs (QMAC) is only a disclosure of a contractor's allocation methods – it has no bearing on whether a cost is allowable.
Definitions of AAR	Chapter 9	Respondents felt the definitions of AAR were too rigid.	We have revised the sections regarding AAR, and no longer refer to them as 'definitions', but as 'criteria' to the principle of Allowable. The wording has been amended from being absolute to conditional.
Checklists	Chapter 9	Respondents felt the checklists included were too rigid.	We have revised the checklists from being absolute to being a tool 'to help assess whether a cost is.. .' either AAR. The intentions of the checklists were to be a helpful high-level guide to help users consider if a cost would meet one of the AAR criteria.
Marketing and Sales	Para 10.14	Respondents questioned the example given in this section.	We have removed the example and revised the paragraph.
Risk Contingency	Para 11.1	Respondents were unsure and disagreed with the section around Risk Contingency.	We have revised this example.

6. Overall response to feedback

We are grateful for all the feedback we received. In making its decision about whether to make any changes to the Statutory Guidance on Allowable Costs, the SSRO considered the intention behind the Act, Regulations and Single Source Procurement Framework. Namely:

- to address shortcomings which may arise from single-source procurement;
- to focus on areas where standardisation is of value;
- to be proportionate;
- to enable a fair and reasonable price is paid under the contract in question; and
- to support value for money.

The feedback received was helpful. We have taken a balanced approach to our revised guidance to ensure that future defence contracting, from a single source perspective, is supported, and that a fair and reasonable price is paid to the contractor whilst also ensuring value for money for the UK tax payer.

Many respondents commented on the use of the terms ‘value for money’ and ‘withstanding public scrutiny’ within the guidance, and that these were new notions, or indeed ultra-vires. In relation to value for money, it is worth noting that in the foreword to Lord Currie’s report,¹ the Minister for Defence Equipment, Support and Technology stated ‘it is essential that the arrangements for single source procurement ensure value for money for the UK taxpayer in today’s commercial and economic environment’. This is not a criticism of the contractors or the MOD, but recognition that Single Source contracting is not always well understood and there is a perception that it may not achieve value for money.

It was evident that there was confusion concerning the definitions of Appropriate, Attributable and Reasonable and the associated checklists. Accordingly, we have amended the tone of the guidance supporting the Appropriate, Attributable and Reasonable criteria and no longer refer to these as ‘definitions’. We have also amended the wording for the checklists, to make clearer that these are intended to be an aid to help users of the guidance, not a definitive checklist in determining whether a cost met the criteria it related to.

All comments received were considered, and those of relevance have led to amendments to the document – especially where it was apparent that possible confusion could arise from the original wording.

Overall, we are confident that the Statutory Guidance on Allowable Costs is a more robust document, with clearer guidance on the principle of Allowable Costs and the criteria of Appropriate, Attributable and Reasonable that should assist contractors and the MOD in assessing whether a cost is an Allowable Cost.

¹ Review of Single Source Pricing Regulations: An independent report into the single source pricing regulations used by the Ministry of Defence

Next Steps

The statutory guidance on Allowable Costs was published as 'Final' on 26 January 2015.

It should be noted that the guidance on Allowable Costs does not cover:

- defining the pricing structure, both costs and metrics;
- supporting definitions and guidance to the defined pricing structure;
- issuing report templates; and
- publishing guidance/explanation on the report templates.

The items above will be drafted, consulted on and published separately in line with the SSRO's statutory duties.

The guidance on Allowable Costs also does not cover service level performance, which has been raised as an issue. We are currently considering how to address this and will consult separately on this issue.

The SSRO will formally review the guidance on an annual basis to take into consideration any lessons learnt and will provide supplementary guidance setting out examples of opinions and/or determinations or other issues on Allowable Costs as they arise. All updates will be published on the SSRO's website.

