

SSRO

Single Source
Regulations Office

Assuring value, building confidence

Consultation on the compliance and review methodology

Consultation response - January 2017

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1. Introduction

Background

- 1.1 The SSRO launched a consultation on its updated compliance and review methodology in September 2016.
- 1.2 The consultation followed the SSRO's review of its model of regulation, which was undertaken in the light of its obligations, its experience to date and current regulatory best practice.
- 1.3 While the SSRO has a duty to ensure compliance with the Act and the Regulations, it is our view that doing so is not the sole responsibility of the SSRO, and there is a greater role for self-assurance. As a result, we updated our compliance rating methodology to propose an approach that:
 - makes the compliance methodology more closely aligned with best practice models of regulation;
 - makes clearer the distinction between the work / roles of the SSRO and the Cost Assurance and Analysis Service (CAAS);
 - makes clearer the legislative roles and responsibilities of the SSRO, the MOD and industry;
 - improves collaboration and understanding between the SSRO, the MOD and industry, whilst still maintaining the SSRO's independence;
 - reduces the overall 'compliance burden' on industry and the MOD; and
 - focuses on the actions taken by industry and the MOD, as the intermediary assurance authority, as a result of issues that are identified by the SSRO.
- 1.4 The consultation document was circulated widely and published on the SSRO's website. This document summarises the key comments raised by respondents and the SSRO's response to them.

Our approach

- 1.5 The SSRO has two review obligations that it relies upon to support its compliance methodology.
- 1.6 In accordance with Section 36(2) of the Act, the SSRO keeps under review the extent to which persons subject to reporting requirements are complying with them. In essence this means the SSRO considering if the required submissions:
- are delivered on time;
 - contain the information, including relevant explanations, prescribed in the Regulations and any relevant statutory guidance issued by the SSRO; and
 - do not contain obvious errors (for example internal reporting inconsistencies or arithmetical errors) and are not otherwise erroneous (for example containing incomplete or limited information on output metrics).
- 1.7 Secondly, under Section 39(1) of the Act, the SSRO is required to keep under review the provision of the regulatory framework established by Part 2 of the Act and the Single Source Contract Regulations 2014 (the Regulations). The pricing of contracts is a key aspect of the regulatory framework and requires that:
- contract prices are determined in accordance with one of the six regulated pricing methods and according to the formula “Contract Price = Allowable Costs + (Contract Profit Rate x Allowable Costs)”;
 - costs are only determined to be Allowable Costs where they satisfy the test of being Appropriate, Attributable to the contract and Reasonable in the circumstances (the AAR test); and
 - the contract profit rate for each contract is determined by a six step process that starts with the baseline profit rate set annually by the Secretary of State (the six steps).

2. The consultation

Process

- 2.1 The SSRO has sought feedback from stakeholders on its updated compliance and review methodology through a public consultation that closed on 8 November 2016. The consultation set out the updated methodology, alongside the SSRO's reasons for making the update. It focused on the SSRO's review obligations from Sections 36(2) and 39(1) of the Act and best practice models of regulation.
- 2.2 Consultees were asked to respond to the following four questions:
- What is your view on the SSRO's compliance approach to reporting?
 - What is your view on the SSRO's compliance approach to pricing controls?
 - What is your view on ratings? Do ratings have a value to Parliament and the public that should be retained?
 - What is your view of the format of the report?

Breakdown of responses

- 2.3 We are grateful to all those who responded to the consultation. We received a total of ten responses to the consultation as set out in Table 1:

Table 1 - consultation responses

	Government	Industry	Trade Associations	Other
Number	1	7	1	1

- 2.4 The responses gave the SSRO an understanding of some individuals' and organisations' views on the proposed compliance and review methodology and suggested alternative wording to some paragraphs, as well as alternative approaches for the SSRO to consider. We have grouped the comments received into key issues by each question and responded to them in this document.
- 2.5 Seven of the ten responses are published on our website alongside this response document. Three others were either marked confidential, or did not provide positive affirmation that the response could be published.

Key issues raised by respondents

The key comments raised in the responses are detailed in Table 2.

Table 2 - Key issues

Consultation questions	Key respondent comments
Q1. What is your view on the SSRO's compliance approach to reporting?	<ul style="list-style-type: none"> • The updated approach to monitoring compliance on reporting issues was broadly appropriate, but specific comments were made on ensuring that contractors understood what was meant by good quality data and explanations. • The SSRO should not comment on errors / omissions as this is for the MOD and CAAS to investigate and report on. Communications on such matters should therefore be direct with the MOD and not the contractor. • The outcome of the compliance reporting process was binary in nature and consideration of corrections and resubmissions was a complicating factor. More needs to be done to ensure that what is being submitted by contractors is actually being used by the MOD before producing a compliance report. • There was little support for naming contractors for reporting issues.
Q2. What is your view on the SSRO's compliance approach to pricing controls?	<ul style="list-style-type: none"> • Respondents were generally supportive of the approach to the review of pricing controls, subject to some specific comments. One specifically noted the greater emphasis on raising matters with the MOD as being positive. • Some respondents said that the MOD and CAAS should be satisfied of the explanations of whether costs were AAR and not the SSRO. • The MOD and contractors needed to be flexible in their approach as there were 'tensions, balances, and trade-offs' to be considered. The Regulations were a way in which 'the MOD achieve[d] its overall aim of setting realistic prices...rather than individual pricing issues of the pricing of a particular contract'.
Q3. What is your view on ratings? Do ratings have a value to Parliament and the public that should be retained?	<ul style="list-style-type: none"> • A number of respondents stated that ratings can be an appropriate way of presenting information in a simple and easy to digest manner. However, several stated that ratings in this area would not be appropriate. • None of the respondents considered the point on whether ratings add value to Parliament.
Q4. What is your view of the format of the report?	<ul style="list-style-type: none"> • The majority of respondents stated that the format of the compliance report seemed appropriate. Most also noted that, prior to publication, there should be a period of consultation with contractors.

Overall response to feedback

- 2.6 The SSRO is committed to maintaining a transparent compliance regime and welcomed comments that requested clarification on specific areas of the methodology. Where appropriate, amendments have been made to the compliance methodology document to clarify the process.
- 2.7 The SSRO works with contractors and the MOD to achieve high levels of compliance. Given that the single source procurement framework is in its early years of operation, the SSRO has devoted specific resources to assist stakeholders in complying with the Act and Regulations.
- 2.8 The sections below respond to the specific key issues raised as a result of the consultation.

Question 1

The SSRO's view remains that it has an obligation to monitor whether contractors are meeting their reporting obligations under Section 36(2) of the Act. The submission requirements are detailed in the Regulations. The SSRO's view is that its approach to querying obvious errors (such as internal inconsistencies or arithmetical errors) and raising queries on matters that appear to be erroneous (for example incomplete or limited information on metrics) directly with contractors, upon whom the reporting obligations fall, is appropriate.

Where matters are satisfactorily resolved, these will not be reported on in the compliance report. However, where it is clear that a mistake or omission has been made in the submitted reports, it is the SSRO's view that in the interests of transparency there may be merit in naming contractors for data quality issues on statutorily required reports.

Question 2

The SSRO has worked to update the methodology to ensure that it is fit for purpose and meets our obligation of keeping the provisions of the regulatory framework under review. It is worth noting that the responses were generally supportive of the proposed approach.

In making submissions in line with the Act and Regulations, contractors are obliged to report the "facts, assumptions, and calculations relevant to each element of the Allowable Costs". In order to keep the provisions of the framework under review, the SSRO may need to see and understand relevant explanations in relation to Allowable Costs, and specifically each element of the Allowable Costs. The SSRO has considered this point in its updated methodology, by noting that it will not determine whether costs are AAR (unless a referral is made to it). Instead it will raise issues for the MOD to consider and respond to and will report on the outcome of the MOD's response in the annual Compliance Report. In doing so, the categories proposed in the consultation have been split to make clear the difference between deviations from the statutory guidance and contraventions of the Act or Regulations.

While the SSRO does not intend to name contractors for any pricing issues identified, it reserves the right to do so if the circumstances are appropriate.

Question 3

The SSRO's view remains that while ratings can provide a simple overview, they do not provide the full picture. The SSRO does not intend to using ratings in the next compliance report.

Question 4

Consultees felt the format of the report was appropriate. A period of consultation with contractors named in the report and the MOD has already been built into the report timetable.

3. Next steps

- 3.1 The SSRO has commenced implementation of the updated compliance and review methodology. The SSRO has produced internal guidance to ensure that the compliance rating methodology application is objective and consistent.
- 3.2 Data produced from the compliance and review methodology will be collated ahead of the publication of the next compliance report, and used to analyse compliance trends.
- 3.3 While a report was proposed for January 2017, the SSRO considers that there are a number of benefits to amending the reporting cycle to align with the financial year. These include:
 - the flexibility to report on all QDCs notified in a full financial year;
 - additional time for parties to respond to SSRO queries raised;
 - additional time for regime compliance to improve; and
 - a better alignment with the SSRO's plans for statistical bulletins, which are based on financial years.
- 3.4 The SSRO will therefore publish its next compliance report in June 2017 covering all QDCs reported to the SSRO from the period 1 April 2015 – 31 March 2017.

