SSRO

Single Source Regulations Office

Assuring value, building confidence

SSRO Opinion

Opinion on costs agreed prior to conversion to a QDC

Contents

1. Executive summary

1.1 The Permanent Secretary at the MOD requested that the SSRO give an opinion in relation to the following question:

"The extent to which firm priced tasks or packages of work, agreed prior to conversion of the contract to a Qualifying Defence Contract (QDC), are considered to be committed sunk costs, and may therefore be treated as 'Allowable' under the Defence Reform Act 2014 (DRA)".

1.2 Following receipt of the request, having conducted due diligence in line with its guidance[1], the SSRO acknowledged and formally accepted the referral. The SSRO reviewed the written submissions and other evidence gathered from the contracting parties.

1.3 In accordance with the procedure published in the SSRO's referrals guidance, this document provides an anonymised summary of the opinion recently issued by the SSRO.

The Opinion summary

Costs

1.4 The Authority has used the term "committed sunk costs" in the referral, merging "committed" with the term "sunk costs" used in the SSRO's guidance. The SSRO can see merit, however, in maintaining a distinction between the concepts of "committed costs" and "sunk costs" for the purposes of the referral. The SSRO understands that a number of tasks that will continue into the term of the proposed QDC will include:

- sunk costs, meaning costs that have been incurred at the time of amendment; and
- committed costs, meaning costs that have been agreed through a task approval process approved by the Authority under the contract prior to the amendment, but which have not been incurred at the time of amendment.

1.5 The SSRO has provided its opinion using the terms "sunk costs" and "committed costs" instead of "committed sunk costs".

1.6 The approach to sunk costs set out in paragraphs 7.9 and 7.10 of the SSRO's guidance may equally be applied to the committed costs of the proposed QDC. The SSRO expects that the parties would satisfy themselves at the time of amending the contract as to whether the sunk and committed costs are Allowable. In the SSRO's opinion, they may be Allowable, depending on the application of the AAR test[2], having regard to the SSRO's *Single Source Cost Standards*.

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1 Guidance on the SSRO's referrals 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 Section 20(2) of the Act requires the parties to be satisfied that a cost is *Appropriate*, *Attributable* and *Reasonable* in the circumstances in order to be an *Allowable* Cost.

1.7 The SSRO was not asked to give an opinion on the extent to which individual costs comprised in tasks or packages of work are Allowable and it was provided with limited information about those costs. In the circumstances, the SSRO gives no further opinion on the extent to which sunk or committed costs under the proposed QDC satisfy the AAR test.

Profit

1.8 The referral made to the SSRO concerned "firm priced tasks or packages of work". The MOD referred in its submissions to "committed sunk prices" being treated as "allowable prices". The prices of tasks approved under the contract include both costs and profit, so a degree of clarification is required as to what has been referred and what is covered by this opinion.

1.9 The referral relied expressly on section 35(1)(a) of the Act and regulation 51(1)(d), which require an opinion to be given on the extent to which a particular cost would be an Allowable Cost under a proposed QDC. The SSRO's opinion concerns the extent to which the costs of tasks that have been approved under the contract may be Allowable, but does not address the profit component of the prices of those tasks.

2. Background

2.1 The Permanent Secretary at the MOD requested that the SSRO give an opinion in relation to the following question:

"The extent to which firm priced tasks or packages of work, agreed prior to conversion of the contract to a QDC, are considered to be committed sunk costs, and may therefore be treated as 'Allowable' under the DRA".

2.2 Following receipt of the request, having conducted due diligence in line with its guidance, the SSRO acknowledged and formally accepted the referral. The SSRO accepted the referral on the basis of material submitted by the MOD, having regard to the matters set out below.

2.3 The referral was made under section 35(1)(a) of the Act, which provides that:

"(1) The SSRO must, on a reference made to it by a person mentioned in subsection (2) –

(a) give an opinion on a matter relating to a qualifying defence contract or a proposed qualifying defence contract, where the matter is specified for the purposes of this paragraph."

2.4 The persons mentioned in subsection 35(2) of the Act who may make referrals under section 35(1)(a) of the Act include "the Secretary of State". In this case, the Permanent Secretary made the referral on behalf of the Secretary of State.

2.5 The supporting information provided by the MOD stated that the referred question was raised in relation to a proposed qualifying defence contract (QDC). The contract in question is an existing contract that is not a QDC, but is proposed to be amended and to become a QDC upon amendment. For the amended contract to become a QDC, it must satisfy the requirements of section 14(2) of the Act and, based on the information provided, it must also satisfy the requirements of section 14(4) of the Act. In summary, the amended contract may be a QDC if:

a. it is a contract under which the Secretary of State procures goods, works or services for defence purposes (14(2)(a));

b. it has a value of £5 million or more (14(2)(b));

c. it is not in an excluded category (14(2)(c));

d. the award of the contract was not the result of a competitive process (14(4)(b));

e. it was entered into before 18 December 2014 (14(4)(a));

f. it is amended on or after 18 December 2014 (14(4)(c)); and

g. in amending the contract, the Secretary of State and the primary contractor agree that it is to be a QDC (14(4)(d)).

2.6 Based on information provided, the SSRO can see that, following amendment, it will satisfy (a), (b) and (e) above. The timing is such that (f) will also be satisfied. The SSRO is informed by the MOD that (c) and (d) are also satisfied and has assumed that this will be case. The MOD has further advised that (g) above will be satisfied as, upon amendment, the Authority and the primary contractor will agree that it is to be a QDC, as required by paragraph 14(4)(d) of the Act.

2.7 The MOD identified that the referred question is based on regulation 51(1)(d), which provides that a matter on which the SSRO must give an opinion in relation to a proposed QDC is as follows:

"(d) the extent to which a particular cost would be an Allowable Cost".

2.8 The referred question is concerned with the extent to which particular costs would be Allowable, but its scope must be properly understood. The SSRO has not been asked to give an opinion on the extent to which individual costs comprised in tasks or packages of work are Allowable. The costs concerned are described as "firm priced tasks or packages of work, agreed prior to conversion of the contract to a QDC". The question raised as to the extent to which these costs may be Allowable, is whether they are "committed sunk costs" and may therefore be treated as Allowable' under the Act.

2.9 Subsequent to submitting the referral, the MOD advised that tasks and packages of work are the same. The SSRO has proceeded on this assumption and used the term "tasks" throughout the opinion.

The proposed QDC

2.10 In its consideration of the facts relating to the referral, the SSRO noted:

- There is an existing enabling contract which is to continue until 2020 or until such time as the Authority has accepted all items authorised under the contract, whichever is later. It is proposed that the enabling contract will become a QDC when it is amended later in 2017;
- The work required to fulfil the enabling contract is commissioned in two distinct ways:

  i. Core support is contained in an agreed work programme (AWP) which is refined and agreed for each year allowing the Contractor to provide a firm price proposal. Each agreed AWP is recorded in an Annex to the enabling contract. The core support for the proposed amendment to become a QDC is expected to be agreed in a similar manner.

  ii. In addition to the core support, the Authority and the Contractor may agree additional tasks to be carried out. The enabling contract provides for approval to carry out tasks to be obtained through a task approval process in accordance with a specified procedure. The process covers a proposal and quotation for the proposed work. The Authority approves tasks and certifies completion and that a claim may be submitted for full and final payment against the task. Approved tasks are recorded in Annexes to the enabling contract.

2.11 There are a number of tasks that have been approved under the enabling contract that are expected to continue into the term of the proposed QDC. The SSRO made observations about the tasks, based on information provided, which included that:

- The value of the tasks reflects the approved price of each task, which includes both costs and profit.
- Each task is understood to have an individually agreed profit rate. All tasks are agreed using CAAS profit rates. Where work falls in more than 1 year, the applicable profit rate for each year is used to calculate the overall price.

- Where firm priced tasks are agreed, there is no variation to the agreed price other than following change to scope. If there is a change in the scope of a task this will result in a separately priced amendment to the task or a new task.

Relevant legislation

The pricing formula

2.12 Section 15 of the Act requires the Regulations to make provision about determining the price payable under a QDC.[3] It further specifies that the Regulations must provide for the price payable to be determined in accordance with the following formula:

(CPR x AC) + AC.[4]

2.13 Section 15(4) specifies that CPR is the contract profit rate for the contract, and AC means the primary contractor's Allowable Costs under the contract. Specific reference is made to section 20 of the Act, where further provision is made in relation to Allowable Costs.

2.14 Regulation 10 implements the pricing regulation required by section 15 of the Act. It provides in paragraph 10(1) that:

(1) The price payable under a qualifying defence contract to the primary contractor must be determined in accordance with the formula -

(CPR x AC) + AC

where –

a. "CPR" is the contract profit rate for the contract, determined in accordance with regulation 11; and

b. "AC" means the primary contractor's Allowable Costs (see section 20), determined in accordance with one of the six regulated pricing methods described in paragraphs (4) to (11) below.

2.15 The language used in regulation 10(1) is mandatory in nature. It requires that the price of a QDC must be determined in accordance with the formula. Regulation 10(1) does not permit a QDC to be priced according to some means other than the formula, nor does it provide for the formula to be applied to only part of the contract.

The contract profit rate

2.16 Section 17 of the Act sets out that Single Source Contract Regulations (the Regulations) must make provision for determining the contract profit rate for a QDC.[5] It further requires that the regulations must provide for the contract profit rate to be determined by a six-step process that begins at step 1 with taking the baseline profit rate at the time of agreement and then making successive adjustments to it at steps 2 to 6. The Regulations may provide for the disapplication or modification of steps 2 to 6 in specified cases.[6]

3 Defence Reform Act 2014, section 15(1).
4 Defence Reform Act 2014, section 15(2) and (4).
5 Defence Reform Act 2014, section 17(1).
6 Defence Reform Act 2014, sections 17(2) and 18(2).

2.17 Regulation 11 prescribes the six steps for determining the contract profit rate for a QDC. A detailed description of the six steps is not provided here, as the referral is concerned with the extent to which specified costs are Allowable, not with the contract profit rate.

Allowable Costs

2.18 Regulation 10(1) specifies that the Allowable Costs must be determined in accordance with one of six regulated pricing methods. Regulation 10 names each method in paragraphs (4) to (11) and specifies whether each method is based on estimated costs, actual costs or a combination of both. It further nominates the time at which the costs are to be determined. Regulation 10(3) provides that, if the parties to a QDC agree, different regulated pricing methods may be used for defined components of the contract.

2.19 The tasks under the enabling contract that are to be carried forward into the term of the proposed QDC, are priced according to two of the regulated pricing methods: firm pricing method and cost-plus pricing method. These pricing methods are dealt with in paragraphs (4) and (6) of regulation 10, as follows:

Firm pricing method

(4) Under the firm pricing method, the Allowable Costs are the Allowable Costs as estimated at the time of agreement.

Cost-plus pricing method

(6) Under the cost-plus pricing method, the Allowable Costs are the actual Allowable Costs determined during the contract or after the contract completion date.

2.20 Section 20 of the Act specifies that in determining whether a cost is an Allowable cost under a QDC, the Secretary of State or an authorised person and the primary contractor must be satisfied that the cost is:

a. appropriate;

b. attributable to the contract; and

c. reasonable in the circumstances (the AAR test).[7]

2.21 This requirement must be understood in the overall context of the pricing regulation imposed by the Act and the Regulations. A QDC must be priced according to a formula based on a contract profit rate and Allowable Costs. In determining whether costs are Allowable, it is for the contracting parties to be satisfied that the AAR test is satisfied in relation to a particular cost.

2.22 In determining whether the AAR test is satisfied in relation to a particular cost, the parties must have regard to statutory guidance issued by the SSRO.[8] The Secretary of State or an authorised person may require the primary contractor at any time to show that the requirements of the AAR test are met in relation to a particular cost under a QDC.[9] This power to require evidence does not, however, remove the obligation on both parties to be satisfied that the AAR test is satisfied in relation to each cost.

7 Defence Reform Act 2014, section 20(2).
8 Defence Reform Act 2014, section 20(3).
9 Defence Reform Act 2014, section 20(4).

Referral to the SSRO

2.23 The circumstances in which questions may be referred to the SSRO for an opinion or a determination are set out in the Act and the Regulations. In some instances, the SSRO is required to give the opinion or make a determination and in others the SSRO has discretion whether to do so. The provisions relevant to referrals about the costs and profit of a QDC or a proposed QDC are set out below.

2.24 The SSRO may give an opinion on any matter relating to a QDC if the reference is made jointly by the Secretary of State and the primary contractor.[10] The same is true of a proposed QDC, although the joint referral must be made by the Secretary of State and the other proposed party to the contract.[11]

2.25 The SSRO must give an opinion on the following matters, if a reference is made in the circumstances set out in the paragraph below:

- the appropriate amount of adjustment that should be made to the baseline profit rate under step 2, 3 or 6, when determining the baseline profit rate;
- the appropriate amount of a group cost risk adjustment, group POCO adjustment or group capital servicing adjustment;
- any question relevant to the cost recovery rates that should be used to estimate likely Allowable Costs;
- the extent to which a particular cost would be an Allowable Cost.[12]

2.26 The SSRO is required to give an opinion in relation to such matters, if the reference is made by a prescribed person in relation to:

- a proposed QDC;[13] or
- an existing QDC in respect of which the price is to be re-determined under regulation 14 (following an amendment that affects the price).[14]

2.27 The SSRO may determine the following matters in relation to a QDC, if asked to do so by the Secretary of State, an authorised person, or the primary contractor:

- whether the amount of an adjustment to the baseline profit rate agreed under step 2, 3 or 6 is appropriate;[15]
- the extent to which a particular cost is an Allowable Cost.[16]

2.28 If such a referral is made, it appears from use of the word “may” in sections 18(3) and 20(5) of the Act that the SSRO has discretion whether to make the determination sought.

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10 Defence Reform Act 2014, section 35(3(a).
11 Defence Reform Act 2014, section 35(3(a).
12 Defence Reform Act 2014, section 35(1) and Single Source Contract Regulations 2014, regulations 51(1) and 51(2)(a).
13 Defence Reform Act 2014, section 35(1)(a). The persons who may make such a referral are the Secretary of State, an authorised person and the person who proposes to enter into the contract with the Secretary of State: Defence Reform Act 2014, section 35(1) and (2).
14 Defence Reform Act 2014, section 35(1)(a). The persons who may make such a referral are the Secretary of State, an authorised person, and the primary contractor: Defence Reform Act 2014, section 35(1) and (2).
15 Defence Reform Act 2014, section 18(3).
16 Defence Reform Act 2014, section 20(5).

Relevant guidance

2.29 Section 20(1) of the Act requires the SSRO to issue guidance about determining whether costs are Allowable Costs under QDCs. The SSRO has issued the S*ingle Source Cost Standards: Statutory Guidance on Allowable Costs* (the Guidance) in accordance with this requirement. The current version of the *Single Source Cost Standards* was issued on 1 July 2016.[17]

2.30 The Guidance states at paragraph 6.4 that:

"This guidance applies to both estimated and actual costs. Those costs that are incurred in advance of a contract becoming a qualifying defence contract or qualifying sub-contract may also be subject to the regime and this guidance."

2.31 The Guidance states the following at paragraphs 7.9 and 7.10:

"7.9 If costs have already been incurred, referred to here as 'sunk' costs when the amended contract becomes a qualifying defence contract or qualifying sub-contract, the SSRO expects that the parties would make appropriate arrangements such that it should be unnecessary for any question to be raised with the SSRO in relation to the sunk costs[18].

"7.10 Such arrangements may include stating in the amended contract that:

- *the parties agree that the sunk costs are Allowable Costs; and*
- *the parties will not seek to reclaim costs or to claim additional costs in respect of the period prior to the amended contract becoming a qualifying contract or qualifying subcontract."*

2.32 The SSRO notes that there is no reference in the Act to sunk costs. The guidance given by the SSRO at paragraphs 7.9 and 7.10 of the Single Source Cost Standards recognises two matters. First, it is incumbent on the parties to a QDC to be satisfied that each cost is Allowable. Secondly, that the SSRO may only determine the extent to which a cost is Allowable Cost under a QDC if it is asked to do so by the Secretary of State, an authorised person, or the primary contractor.

Responses to SSRO consultations

2.33 The pricing of contracts that are brought within the regime established by the Act and the Regulations following an amendment is a matter on which the SSRO has previously sought feedback. It has done so when carrying out its functions of keeping under review the provision of Part 2 of the Act and the Regulations and for the purpose of preparing guidance on Allowable Costs. It has also been the subject of comments made in response to the SSRO's consultations in 2016 and 2017 as part of its review of the Single Source Cost Standards.

17 https://www.gov.uk/government/publications/single-source-cost-standards-statutory-guidance-on-allowable-costs-july-2016

18 Sunk costs not subject to the regime will still need to be notified in accordance with the reporting requirements.

2.34 The SSRO carried out public consultation from 30 January 2017 to 23 March 2017 on proposed changes to the regulatory framework. The SSRO's consultation document recognised that as the legislation is presently framed price control will apply retrospectively when an amended contract becomes a QDC. This is because the whole contract price must comply with the price formula, even the part that pre-dated the amendment. The SSRO recognised this could impede amended contracts becoming QDCs. In addition, although the SSRO's Single Source Cost Standards published in July 2016 recommend an approach that parties may take to sunk costs when amending a contract, the SSRO recognised that the guidance does not remove the legislative requirement that all costs forming part of the contract price must satisfy the test of being Allowable, nor does it prevent one of the parties from referring a cost to the SSRO to determine the extent to which it is Allowable, even though it may have been incurred prior to the amendment and the parties may have agreed between themselves that it should not be referred.

2.35 The SSRO consulted on the following proposed amendments to the Act and the Regulations:

A new section 15(6) should be inserted in the Act to permit the regulations to provide that the price formula may be applied to only a defined component of a contract.

A new regulation 10(1a) should be added to specify that where a contract becomes a QDC by reason of an amendment, the price payable under the amended contract must be determined in accordance with the formula but excluding any amount committed by reason of performance of the contract up to the time of agreement.

2.36 The SSRO received responses to this proposal from a range of stakeholders including primary contractors and industry representatives. There was broad support for the SSRO's proposal. However, the law remains as summarised in section 4 above and the SSRO must give its opinion in accordance with the current legislative provision.

The SSRO's aims

2.37 In carrying out its functions under Part 2 of the Act, the SSRO must aim to ensure:

a. that good value for money is obtained in government expenditure on QDCs; and

b. that persons (other than the Secretary of State) who are parties to QDCs are paid a fair and reasonable price under those contracts.

The SSRO has considered these aims when giving its opinion on the question referred by the Permanent Secretary and summarised below.

3. The Opinion

3.1 In forming this opinion, the SSRO has had regard to the representations submitted by the parties, current legislation and guidance, and relevant background information from the SSRO's engagement with stakeholders.

3.2 The SSRO was asked to give an opinion on the extent to which firm priced tasks or packages of work, agreed prior to conversion of the contract to a QDC, are considered to be committed sunk costs, and may therefore be treated as 'Allowable' under the Act.

Costs

3.3 The term "committed sunk costs" is not used in the Act and Regulations, nor are other terms used in relation to this referral such as "committed costs" or "sunk costs". The clear requirement of the Act and the Regulations is that all costs, however described, must be Allowable Costs if they are to form part of the price payable to a contractor under a QDC. The Secretary of State, or an authorised person, and the primary contractor must be satisfied that the costs satisfy the AAR test in order to be Allowable. In determining whether a cost satisfies the AAR test, the parties must have regard to the guidance issued by the SSRO (the *Single Source Cost Standards*).

3.4 The SSRO's guidance, set out in paragraphs 7.9 and 7.10 of the *Single Source Cost Standards*, refers to "sunk costs" even though the term is not used in the legislation. The term "sunk costs" used in the guidance is intended to refer to costs that have been incurred at the time of amendment. As used in the Guidance, this recognises that there may, in fact, be sunk costs in circumstances where a contract is being converted to a QDC on amendment.

3.5 The SSRO's guidance recognises that it is the responsibility of the contracting parties to be satisfied as to whether sunk costs that are to be included in the contract price of a QDC are Allowable Costs. This obligation falls, on one side, on the Secretary of State or an authorised person and, on the other side, on the primary contractor. The Guidance encourages the parties to reach agreement at the time of amendment as to whether any sunk costs are Allowable. This is a matter of timing and convenience and not a deviation from the pricing requirements of the Act and the Regulations.

3.6 The Authority has used the term "committed sunk costs" in the referral, merging "committed" with the term "sunk costs" used in the SSRO's guidance. The SSRO can see merit, however, in maintaining a distinction between the concepts of "committed costs" and "sunk costs" for the purposes of the referral. The SSRO understands that the tasks in the referral question that will continue into the term of the proposed QDC will include:

- sunk costs, meaning costs that have been incurred at the time of amendment; and
- committed costs, meaning costs that have been agreed through a task approval process approved by the Authority under the enabling contract prior to the amendment, but which have not been incurred at the time of amendment.

3.7 The SSRO has provided its opinion using the terms “sunk costs” and “committed costs” instead of “committed sunk costs”.

3.8 The approach to sunk costs set out in paragraphs 7.9 and 7.10 of the SSRO’s guidance may equally be applied to the committed costs of the proposed QDC. The SSRO expects that the parties would satisfy themselves at the time of amending the enabling contract as to whether the sunk and committed costs are Allowable. In the SSRO’s opinion, they may be Allowable, depending on the application of the AAR test, having regard to the SSRO’s *Single Source Cost Standards*.

3.9 The SSRO was not asked to give an opinion on the extent to which individual costs comprised in tasks or packages of work are Allowable and it was provided with limited information about those costs. In the circumstances, the SSRO gives no further opinion on the extent to which sunk or committed costs under the proposed QDC satisfy the AAR test.

Profit

3.10 The referral made to the SSRO concerned “firm priced tasks or packages of work”. The MOD referred in its submissions to “committed sunk prices” being treated as “allowable prices”. The prices of tasks approved under the enabling contract include both costs and profit, so a degree of clarification is required as to what has been referred and what is covered by this opinion.

3.11 The referral relied expressly on section 35(1)(a) of the Act and regulation 51(1)(d), which require an opinion to be given on the extent to which a particular cost would be an Allowable Cost under a proposed QDC. The SSRO’s opinion concerns the extent to which the costs of tasks that have been approved under the enabling contract may be Allowable, but does not address the profit component of the prices of those tasks.

3.12 The term “allowable price” that the MOD used in its submission is not used in the Act or the Regulations. The price formula is based on the contract profit rate for a QDC and the Allowable Costs, as further detailed in section 4 above.

Status of the opinion

3.13 Opinions, unlike determinations (for example, under section 20(5) of the Act in relation to a particular cost), are not binding. Paragraph 4.4 of the SSRO 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”.

3.14 The SSRO would however expect, were it to be called upon to give an opinion or make a determination at a future date, to both take a relevant opinion into account and to be likely to decide in accordance with that opinion, subject to there being any change in circumstances, such as changes to the legislation, or to a proposed or actual QDC or QSC.

3.15 The guidance issued by the SSRO in paragraphs 7.9 and 7.10 of the *Single Source Cost Standards* and this opinion cannot operate to prevent referrals being made to the SSRO for opinions or determinations in circumstances permitted by the Act and Regulations. Relevant circumstances in which referrals may be made about the prices of QDCs are summarised in section 4 above. The SSRO considers however that if the parties can be satisfied at the time of amendment that the sunk costs satisfy the AAR test, and if their agreement on this matter is duly recorded, there should be a reduced prospect of the SSRO being asked to make a subsequent determination of the extent to which those costs are Allowable.

3.16 The only instance in which the SSRO may determine the extent to which a cost is an Allowable Cost is if it is asked to do so by one of those parties. Should a referral be made on grounds where the SSRO has a discretion to accept or refuse, the SSRO's referrals guidance indicates that the SSRO may take into account:

- any direct and indirect benefits for the parties and future parties to qualifying contracts,
- the strategic significance of the matter referred, and
- the resources required to carry out the investigation when deciding whether to accept.

3.17 In deciding whether to accept or refuse such a referral, the SSRO would aim to ensure that good value for money is obtained in government expenditure on QDCs and that contractors are paid a fair and reasonable price under those contracts.

3.18 If an application is made in future for the SSRO to determine the extent to which a committed cost under the enabling contract is an Allowable Cost under the amended enabling contract that has been converted to a QDC, the SSRO would have discretion whether to make that determination. In deciding whether to accept a referral in such circumstances, it would be relevant (as part of the considerations outlined at 7.4 and 7.5 above) to consider whether the cost referred was already committed at the time the contract converted to a QDC and whether the parties were satisfied at the time of amendment that it was Allowable.