

**Compliance and and review
methodology consultation 2019
Responses to the consultation**

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1. ADS Group

3. Consultation responses

- 3.1 The SSRO invites stakeholder views, together with supporting evidence where appropriate, on the following consultation questions:

Question 1) Does the methodology clearly demonstrate how the SSRO will exercise its s36(2) function and how its s39(1) function may be informed through our work in this area?

~~Clear / Not clear / Don't know~~ Clear in Parts (Delete as appropriate)

Comments

Whilst ADS believes the Compliance Methodology enables the SSRO to demonstrate it has fulfilled its obligations under §36(2), it will be more difficult to do this for §39(1) obligations as they are tenuous and lack criteria against which fulfilment can be validated. This makes it difficult to demonstrate how the SSRO's obligations under §39(1) have been informed by the output of §36(2).

Question 2) is the SSRO's approach sufficiently clear from the methodology?

Fairly Clear / ~~Not clear / Don't know~~ (Delete as appropriate)

Comments

ADS believes the methodology enables Contractors to identify the SSRO's approach in sufficient detail. Much will depend upon the ability of the SSRO and the Contractor to build the trust essential to underpin a collaborative working arrangement. The SSRO will need a flexible approach and to expect to tailor its stance for each relationship.

Comments and suggestions for clarifications are shown on the accompanying document 'Compliance Review Methodology'.

Question 3) Is the SSRO's review process sufficiently clear from the methodology?

Clear / ~~Not clear~~ / ~~Don't know~~ (Delete as appropriate)

Comments

Generally, 'Clear', however, ADS believes the 'significant input from suppliers' (paragraph 5.2) will only be required if reports are substantially non-compliant. Suggest this sentence is redrafted to reflect this position.

Question 4) Do you agree that the methodology appropriately identifies how the findings from the compliance reviews will inform the SSRO's other work?

Agree / ~~Don't agree~~ / ~~Don't know~~ (Delete as appropriate)

Comments

ADS agrees that the methodology generally identifies how the findings from the compliance reviews will inform the SSRO's other work.

In making this comment, ADS also hopes the SSRO's compliance findings will help it recognise the complexity of the reporting requirements for contractors with multiple pricing methodologies or several (many?) amendments or both. ADS suggests simplifying and streamlining reporting in these situations should form part of the 2020 Review.

Question 5) Do you agree that these additional activities can be reflected in the methodology without setting out the detail of how each may be undertaken?

Agree / ~~Don't agree~~ / ~~Don't know~~ (Delete as appropriate)

Comments

ADS believes its members expect the SSRO to conduct targeted or thematic or both reviews as part of its normal work. It is seen as inevitable that some aspects of the information provided will require further investigation or clarification to understand what was being reported, and to assure that bias or inaccuracies were not being inadvertently built into the reporting process.

ADS believes Section 4 of the methodology can be deleted without detriment. The implications for transparency in doing this are negligible.

Question 6) Do you agree that the SSRO should only review a submission having given the MOD sufficient time to undertake its own review in the first instance?

Agree / ~~Don't agree~~ / ~~Don't know~~ (Delete as appropriate)

Comments

ADS agrees that the SSRO should only review a submission having given MOD sufficient time to undertake its own review.

Key to this will be securing an undertaking from MOD to complete its review in a timely manner, say 15 days from receipt of the reports. Without this, the value of the SSRO's commitment is diminished as it will be unable to fix the start date for its activities. It also creates uncertainty for the Contractor as it will not know if or when MOD may query a report that requires it to perform additional work or incur additional cost.

ADS also strongly believes it is MOD's role to review the content and accuracy of the reports and the SSRO's to manage the reporting regime to ensure compliance.

Question 7) What is your view on the general approach to the notification of issues to the MOD as reflected in the methodology?

~~Support / Don't support / Don't know~~ Partial Support (Delete as appropriate)

Comments

ADS accepts that much of Section 6 – Raising Matters With MOD, is designed to ensure compliance. However, the tone of the Section is seen as the SSRO extending its role into areas that would enable it to become an active participant in 'enforcement', something which ADS and its members believe is MOD's exclusive preserve. It is also seen that if this occurs it will undermine the SSRO's independence and role as an arbiter, causing Contractors to hesitate before seeking an opinion or determination. The SSRO should not recommend to MOD the action it should take.

Question 8) Are there any other elements of support or engagement that should be reflected in the methodology?

Yes / ~~No~~ / ~~Don't know~~ (Delete as appropriate)

Comments

Members perceive the SSCR reporting regime as being overly complex. SSRO support for Contractors (particularly SMEs) is critical to their understanding the reporting requirements. Without this support MOD may find existing contractors exiting the defence market and it becoming difficult to engage with potential entrants.

Question 9) What are the key areas of feedback for the SSRO to provide to industry?

Comments

ADS members will be providing individual feedback on this question.

2. Babcock

3. Consultation responses

- 3.1 The SSRO invites stakeholder views, together with supporting evidence where appropriate, on the following consultation questions:

Question 1) Does the methodology clearly demonstrate how the SSRO will exercise its s36(2) function and how its s39(1) function may be informed through our work in this area?

Clear

Comments

We understand the SSRO function in this respect.

Question 2) is the SSRO's approach sufficiently clear from the methodology?

Clear

Comments

The SSRO approach seems clear.

It is questionable whether the reports can inform future procurements decisions and contract management. MoD already receive data in excess of the statutory reporting requirement separately and this would inform a better review process.

Question 3) Is the SSRO's review process sufficiently clear from the methodology?

Clear

Comments

The SSRO review process is clear but needs to follow its own rules in this respect. The SSRO often have questions or have completed their review before the 15 working days deadline after submission.

Question 4) Do you agree that the methodology appropriately identifies how the findings from the compliance reviews will inform the SSRO's other work?

Agree

Comments

We understand the SSRO role with regard to monitoring compliance with the regulations. A pragmatic approach should be adopted where the regulations do not allow for flexibility in reporting.

Question 5) Do you agree that these additional activities can be reflected in the methodology without setting out the detail of how each may be undertaken?

Don't agree

Comments

Setting out some of the detail would be beneficial. We need to be aware of the process being followed and that it is consistent throughout.

Question 6) Do you agree that the SSRO should only review a submission having given the MOD sufficient time to undertake its own review in the first instance?

Agree

Comments

See comments to 3 above. SSRO are sometimes too quick with their review and should allow MoD appropriate time to review. SSRO responses one week after submission are only acceptable if there are regulatory issues being raised. The SSRO need to observe their own rules.

Question 7) What is your view on the general approach to the notification of issues to the MOD as reflected in the methodology?

Support

Comments

Agree that SSRO can only advise MoD of potential compliance issues. MoD should then be able to make an informed decision on whether to take action. The SSRO needs to remain independent in this respect in order to conduct any appeals process.

The only exception would be persistent non submission of reports by a contractor.

Question 8) Are there any other elements of support or engagement that should be reflected in the methodology?

Don't know

Comments

A lot of work is carried out with the help of the Reporting and IT Sub Group. These sessions generally highlight limitations in the regulations and reporting on DEFCARS. Feedback is often supplied and there have been good suggestions regarding improvements that could be made. This process works well and will continue to do so.

Question 9) What are the key areas of feedback for the SSRO to provide to industry?

Comments

The personalised compliance report recently provided contained useful information of where we ranked alongside other companies who complete reports. We would be interested in feedback relating to common issues/error causes.

3. Leonardo MW Ltd

3. Consultation responses

- 3.1 The SSRO invites stakeholder views, together with supporting evidence where appropriate, on the following consultation questions:

Question 1) Does the methodology clearly demonstrate how the SSRO will exercise its s36(2) function and how its s39(1) function may be informed through our work in this area?

~~Clear~~/ Not clear-/ ~~Don't know~~ (Delete as appropriate)

Comments

Whilst we believe the methodology clearly explain the SSRO's approach, a desire to work in partnership and an approach to improving compliance (section 2.6), we believe there are areas in conflict with the SSRO's independence and role as adjudicator in the case of dispute.

- Part of the SSRO's role is to ensure the regime, as a whole, is working correctly and to do this as an independent regulatory office.
 - The SSRO are currently monitoring detail operational compliance in DefCARS and raising issues with the MOD. We believe this role should be performed by the MOD. If a contractor is to bring a dispute for adjudication to the SSRO, it ought not be the SSRO who raised the issue in the first place.
 - We would also welcome a review of the measurement of non-compliance to confirm it is reporting the number of non-compliances and not questions raised.
- Non-compliances/issues report against the contractor
 - The reporting would also benefit from ownership attribution. Some issues/actions are not the contractors to resolve, but all are currently flag and emailed as such.

Question 2) is the SSRO's approach sufficiently clear from the methodology?

~~Clear~~/ ~~Not clear~~/ Don't know (Delete as appropriate)

Comments

Please see our reply to question 1

Question 3) Is the SSRO's review process sufficiently clear from the methodology?

~~Clear~~ / Not clear / ~~Don't know~~ (Delete as appropriate)

Comments

Please see our reply to question 1

Question 4) Do you agree that the methodology appropriately identifies how the findings from the compliance reviews will inform the SSRO's other work?

Agree / ~~Don't agree~~ / ~~Don't know~~ (Delete as appropriate)

Comments

Yes, we think the explanations in section 1 and section 7 make this clear.

Question 5) Do you agree that these additional activities can be reflected in the methodology without setting out the detail of how each may be undertaken?

Agree / ~~Don't agree~~ / ~~Don't know~~ (Delete as appropriate)

Comments

We agree that explaining that, in addition to the routine and automated reviews, targeted and thematic reviews may also take place is transparent and adequate, without having to detail the specific approach of such reviews. Indeed, the methods employed in targeted or thematic reviews may vary according to topic being explored.

Question 6) Do you agree that the SSRO should only review a submission having given the MOD sufficient time to undertake its own review in the first instance?

Agree / ~~Don't agree~~ / ~~Don't know~~ (Delete as appropriate)

Comments

As discussed above we believe the MOD should conduct the review, the SSRO role being oversight of the regime to ensure compliance. We understand the MOD committed to a 15 day window to conduct their review. We are not aware if this is an achievable time frame. If the MOD do not achieve this target, for reasons discussed above, we do not believe the SSRO should step in to perform the MOD job.

Question 7) What is your view on the general approach to the notification of issues to the MOD as reflected in the methodology?

~~Support~~ / Don't support / ~~Don't know~~ (Delete as appropriate)

Comments

Whilst we understand that much of that set out in section 6 can be described as ensuring compliance, we remain concerned with section 6. This section seems to be putting the SSRO in a detailed "operational" compliance role, on behalf of the MOD, providing a traffic light and raising issues for their consideration.

We think a regulatory office, whose role includes both regime compliance and independent arbiter, should not be performing this role on half of the MOD. The SSRO role ought to be more independent, identifying broader compliance themes, looking to help all stakeholders and shape areas where compliance can be improved (as explained in your other sections).

Question 8) Are there any other elements of support or engagement that should be reflected in the methodology?

~~Yes~~ / No / ~~Don't know~~ (Delete as appropriate)

Comments

Question 9) What are the key areas of feedback for the SSRO to provide to industry?

Comments

- Feedback of contract and supplier report compliance issues and themes, by: contractor, QBU, contract/supplier report (including DefCARS 1 & 2) to help contractor governance.
 - o Currently information for DefCARS 1 is not visible and DefCARS 2 is contract or supplier - report by report.
- An action ownership code/flag on DefCARS would better attribute actions and non-compliance. Currently all non-compliance is attributed to the contractor. This could mean the correct parties are not prompted to take action and reporting statistics are incorrect (in terms of attribution).
- Non-compliance reporting, should be based on issues borne of the contractor where corrections have been required.
 - o Could DefCARS also flag which issue is being counted as a contractor non-compliance?

Other issues:

- Whilst DefCARS guidance provides instruction, it would be helpful if DefCARS included on the face of input screens, and reports, currency and reporting values i.e. £m to six decimal places.
- Could systematic error reporting due to roundings be reviewed?

. MOD

SSRO COMPLIANCE AND REVIEW METHODOLOGY

CONSULTATION ON COMPLIANCE AND REVIEW

This is the MOD responses to the SSRO Consultation paper on the Compliance and Review Methodology (14 October 2019).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838351/Compliance_methodology_consultation_October_2019.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838350/Compliance_methodology_consultation_draft_October_2019.pdf

General

The paper sets out a reasonable process. But to deliver the benefits, and minimise the burden on contractors and the MOD, it needs to be operated proportionately and by people.

1. Does the methodology clearly demonstrate how the SSRO will exercise its s36(2) function and how its s39(1) function may be informed by our work in this area?

Generally, yes. However, the indicators 2a) and 2b) should not include the words 'and relevant statutory guidance', as this is neither included in s36(2) nor s39(1).

2. Is the SSROs approach sufficiently clear from the methodology?

The general approach appears reasonably clear. While identifying whether reporting requirements are being met, setting out performance indicators and working with contractors and MOD to understand any issues arising, care needs to be exercised that this does not develop into an audit of contractor's reports. This is not the responsibility of the SSRO.

3. Is the SSROs review process sufficiently clear from the methodology?

The elements of the process which are aimed at helping to resolve issues, improve the timeliness and quality of reporting do appear to be reasonably clear. However, the line between reporting and pricing matters appears to be blurred and some of the review process starts to move into contract pricing and audit territory which should not be the focus of the SSRO.

It would also be helpful to include a diagram outlining the process

4. Do you agree that the methodology appropriately identifies how the findings from compliance reviews will inform the SSROs other work?

This does not appear very clear. There may well be information gained from these review activities which informs the review of the regulatory framework and

associated guidance, but the linkage is not explained. It appears to be a bit of 'tick box' exercise.

5. Do you agree that these additional activities can be reflected in the methodology without setting out the detail of how each may be undertaken?

Yes.

6. Do you agree that the SSRO should only review a submission having given the MOD sufficient time to undertake its own review in the first instance?

Yes, although it should be made clear that the MOD should pick up reporting issues as part of its use of the reports to manage the contracts.

7. What is your view on the general approach to the notification of issues to the MOD as reflected in the methodology?

The approach looks reasonable.

8. Are there any other elements of support or engagement that should be reflected in the methodology?

No.

9. What are the key areas of feedback for the SSRO to provide to Industry?

Feedback to individual contractors with reference to submission of their specific reports, both where they have single and multiple contracts, appears to be a sensible approach. The aim here should be to help clarify the process, the information required and the timing of submissions.

More widely the information gathered should be used to identify and fix issues with DefCARs and the Statutory Guidance. This process should be quicker and more responsive than at present.

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