

SSRO

Single Source
Regulations Office

Consultation on proposed new guidance on the final price adjustment

3 October 2024

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1. Background

- 1.1 The final price adjustment (FPA) allows excess profits or losses arising from cost over- or underruns to be shared between the parties to a Qualifying Defence Contract (QDC) or Qualifying Sub-Contract (QSC), rather than falling entirely to the contractor or the MOD. The price of the contract or component may therefore be increased or decreased following contract or component completion, where certain conditions are met.
- 1.2 Schedule 10 of the Procurement Act 2023 added a new section 35A to the Defence Reform Act 2014 (the Act) on 1 April 2024. This empowers the SSRO to issue guidance as it considers appropriate in relation to the application or interpretation of the law governing the regulatory framework. In response to stakeholder feedback that parties to qualifying contracts would benefit from additional support in relation to the application of the Act and Single Source Contract Regulations 2014 (the Regulations) in relation to the FPA, the SSRO intends to issue new guidance on the FPA to apply from early 2025. The SSRO has not currently issued any guidance on this aspect of the regulatory framework.
- 1.3 We have today issued [draft guidance for consultation](#). We would appreciate hearing the views of any interested parties on this draft guidance. Any feedback we receive will be taken into account in finalising the guidance. The draft guidance is based on the legislative requirements of the FPA and feedback already received from stakeholders on their experiences of applying it. We have sought to ensure areas which are routinely found challenging are clearly covered, with comprehensive guidance provided to address them.
- 1.4 The consultation runs from 3 October 2024 to 14 November 2024.
- 1.5 Details of the consultation review period and how to respond are contained in section 3 of this document. We have allowed 6 weeks for responses, the deadline for receipt of which is 5pm, 14 November 2024. We intend to publish the final guidance by 1 February 2025.

2. Proposed guidance on the final price adjustment

Scope of the guidance and structure

2.1 The proposed guidance is comprised of the following sections.

- Introduction
- Eligibility Criteria
- Procedural requirements
- Calculating the FPA
- Reporting requirements
- Getting help and resolving issues
- Key questions and answers regarding the final price adjustment

2.2 We would welcome feedback from stakeholders on whether the correct areas have been covered in the draft guidance or whether other aspects should be included.

Question 1: Does the draft guidance cover the correct areas?

2.3 In developing this draft FPA guidance the SSRO is trialling a new approach, aiming to improve the user experience by:

- a. Providing more real-world scenarios to assist user's understanding and help with likely common issues; and
- b. Reducing the need to cross reference between multiple documents, such as the guidance and the Regulations; and
- c. Improving signposting for how to access further information or assistance if you have further questions or need additional clarification.

2.4 This is a new approach for the SSRO and, as such, we would welcome feedback from stakeholders on whether this approach has worked, and suggestions for how we can continue to provide the best support for guidance users.

Question 2: Do you support this new approach to SSRO guidance?

2.5 The remainder of this document summarises the content of the specific sections of the draft guidance upon which we are seeking feedback.

Introduction

- 2.6 This section provides an introduction and overview to the guidance. It also seeks to help the reader quickly determine whether the FPA guidance is relevant to them.

Question 3: Do you think this section will help users to quickly determine whether the guidance is applicable to the situation they are trying to understand?

Eligibility Criteria

- 2.7 This section explains the types of contract that are eligible for a final price adjustment: what contract pricing methods the final price adjustment applies to, the various financial thresholds that must be met for an FPA to be made, and the Secretary of State’s power to disapply the final price adjustment for contracts below a certain value. It also provides an “FPA checklist” to assist users in determining whether their contract or component is eligible for an FPA.

Question 4: Eligibility criteria - We welcome feedback on this section of the draft guidance, including on the presentation and content of the examples and the tables.

Procedural requirements

- 2.8 This section explains the timescales and milestones in the FPA process. In particular, what end of contract activities must be undertaken, the timescales for the submission of a notification of intent to make an FPA, how the process is affected where a contract has multiple components and the time limit for seeking a referral from the SSRO if agreement between the parties cannot be reached.

Question 5: Timescales – We welcome feedback on this section of the draft guidance. In particular we would welcome any views in relation to:

- The presentation of the timescales.
- Whether the end of contract activities that must be undertaken and their role in the FPA process is clear.
- Whether it is clear how multiple components can effect the timescales.
- The explanation of the deadline for making a referral to the SSRO.

Calculating the FPA

- 2.9 The draft guidance explains the way in which an FPA should be calculated, which is prescribed in the Regulations. Worked examples are provided to assist readers. We also intend to make an FPA calculator available on our website, [a draft version of which has been issued alongside this consultation](#).
- 2.10 This section explains what is meant by “excess profit” and “excess loss”, how the application of an FPA differs between a QDC and a QSC, and how an FPA may be calculated where some components are aggregated for the purposes of an FPA.
- 2.11 Finally, this section explains that the parties must attempt to agree the amount of the FPA once a notice of intent to make an FPA is given.

Question 6: Calculating the FPA – Is the explanation of the way in which the FPA is calculated accurate, clear and accessible? We welcome specific suggestions for improvement or identification of any areas that are not clear.

Question 7: Do you agree with the SSRO making available an FPA calculator and do you have any comments on the draft version accompanying this consultation?

Reporting requirements

- 2.12 The SSRO separately provides detailed guidance on statutory reporting requirements. We have included a brief overview of the reporting requirements in relation to the FPA in this draft guidance, but we direct readers to where they can find more detailed information.

Question 8: Reporting requirements – We welcome feedback on the draft guidance.

Getting help and resolving issues

- 2.13 The guidance sets out the three principal ways in which the SSRO can support both the MOD and contractors if they encounter difficulties in agreeing the FPA: the SSRO helpdesk, our non-referral advice service or raising of a referral for an opinion or determination.

Question 9: Getting help and resolving issues – We welcome feedback on the proposed guidance.

Key questions and answers regarding the FPA

- 2.14 The SSRO routinely receives requests for support in relation to the FPA, and we are proposing therefore to include within the guidance a specific Questions and Answers (Q&A) section which covers the most common issues we see encountered. The Q&A's have been included within individual sections of the guidance and there is also a focused Q&A section at the end.

Question 10: Key questions and answers regarding the FPA – We welcome feedback on the inclusion of questions and answers within the draft guidance. We would also welcome submissions of any further Q&A topics for inclusion.

3. Consultation timetable and how to respond

3.1 The timetable for this guidance is summarised in Table 1.

Table 1: Timetable

Date	Activity
03 October 2024	Consultation period begins
14 November 2024	Consultation closes
1 February 2025	Consultation response and final guidance issued for familiarisation
1 April 2025	Guidance applies

3.2 Consultees do not need to answer all the questions if they are only interested in some aspects of the consultation.

3.3 A consultation response form containing these questions has been published alongside this consultation document on the SSRO's website. Completed response forms should be sent:

- by email, including arranging an appointment to speak to the SSRO about the consultation to: consultations@ssro.gov.uk (preferred).
- by post to: Final price adjustment consultation, SSRO, G51/G52, 100 Parliament Street, London, SW1A 2BQ
- by telephone, including arranging an appointment to speak to the SSRO about the consultation: 020 3771 4767.

3.4 Responses to the consultation should be received by 5.00pm on 14 November 2024. Responses received after this date may not be taken into account in finalising the guidance, although we will endeavour to do so.

3.5 The SSRO also welcomes the opportunity to meet with stakeholders to discuss the proposals during the consultation period. If you wish to arrange such a meeting, please contact us at the earliest opportunity using the details above.

3.6 In the interests of transparency for all stakeholders, the SSRO's preferred practice is to publish responses to its consultations, in full or in summary form. Respondents are asked to confirm in their response form whether they consent to their response being published and to the attribution of comments made. Where consent is not provided comments will only be published in an anonymised form.

3.7 Stakeholders' attention is drawn to the following SSRO policy statements, available on its website,¹ setting out how it handles the confidential, commercially sensitive, and personal information it receives and how it meets its obligations under the Defence Reform Act 2014, the Freedom of Information Act 2000, the UK General Data Protection Regulation, and the Data Protection Act 2018.

- The Single Source Regulations Office: Handling of Commercially Sensitive Information; and
- The Single Source Regulations Office: Our Personal Information Charter.

¹ <https://www.gov.uk/government/news/handling-commercially-sensitive-information> & <https://www.gov.uk/government/organisations/single-source-regulations-office/about/personal-information-charter>