

SSRO

Single Source
Regulations Office

Consultation on proposed new guidance on the final price adjustment

Consultation responses

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1. MOD

Pricing Methods Section

Move example at 2.3 under para 2.4?

Timeline for issuing Intent to FPA:

Para 2.9 refers to 'notification of intent to perform an FPA' and the timeline in 3.3 gives a timeline for notification by the Contractor or the MOD of an intent to FPA (3 months post CCS receipt or 15 months of the contract completion date (whichever is sooner) and states that parties "*when considering notification of intent to perform an FPA, parties should use an estimated value*". At this point in the timeline we issue Annex D letter (copy attached). The letter does not make reference to estimated value of the FPA – it states: - "*the Authority intends to make a Final Price Adjustment in relation to the above contract. The Authority has not yet concluded its costs investigation. Once it has done so, it shall confirm whether a Final Price Adjustment is due and, if so, the quantum of that adjustment*". We do not think that the notice issued at this time should include an estimated value, and that the estimated value should be communicated in a later communication as set out in Para 3.11.

Para 3.11 - *A notification of intent to make an FPA should contain sufficient information to facilitate a discussion on the amount of the FPA as it is a legal requirement following notification for the parties to seek to reach agreement. Information that would help demonstrate an intent to reach agreement may include, for example, the basis on which the party issuing the notice believes an FPA is applicable and how the amount of the proposed FPA has been calculated.* At this point in the timeline we issue a version of Annex I letter (copy attached) with the notification that MOD intends to pursue an FPA and the adjustment that was identified and for this to be issued in a timely manner prior to the 2 year window post contract closure to allow time for negotiation.

Contract Completion Reports:

Could the links to what should be contained in the CCR and CCS be more direct, rather than to the SSRO Reporting Guidance main page relying on navigation to the correct area? Can we also highlight that the report should include (in attachments) the necessary information regarding assumptions behind the data construct e.g. reference to promulgated or not promulgated rates, hours, utilisation and supplier (sub Contract) costs and currency references.

FPA Calculator:

Appreciate that guidance is available on the website, but guidance in to what should be entered in to the input cells saved within the calculator would prevent the need for us to send separate guidance on completing an FPA calculator (as we need to do at the moment).

Componentisation

This is a more general observation, as I believe the amended regulations suggest there will need to be an agreement between MOD and the Contractor on how components will be FPA'd (either aggregated or separated) – How and where is this recorded? Will DefCARS be adapted for Contractors or MOD to track the agreed method for each component, if not, how will compliance be monitored? How will it known that a CCR or CCS are due?

2. BAE Systems PLC

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

Yes we believe the draft guidance document covers the correct areas.

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

The Regulations can often be difficult to navigate, and the SSRO utilising its new powers to issue guidance in relation to the application of the Final Price Adjustment (FPA) is a welcome step forward in providing a user friendly solution.

The draft guidance will help users understand how to navigate the process of an FPA adjustment, with the use of examples and 'key questions and answers' available to aide practical application in a number of contracting scenarios.

A suggested improvement would be to include additional references to the relevant parts of the Regulation and the SSRO's other guidance documents, specifically in relation to the differing treatment of QSCs.

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

We do not believe the introductory section would, in isolation, allow the reader to quickly determine if the guidance is applicable to their situation.

The introduction highlights “*The final price adjustment (FPA) provided for under section 21 of the Defence Reform Act 2014 allows the price of a qualifying defence contract (QDC) or qualifying sub-contract (QSC) to be increased or decreased following contract or component completion where certain conditions are met.*” However it makes no reference to what these conditions are, driving a need to read the subsequent sections in detail.

An introductory “FPA Checklist”, similar to that provided in Paragraph 2.10 of the draft guidance, may be helpful here. This would allow users to perform an initial assessment of if the base criteria for an FPA adjustment is met and therefore whether the remainder of the guidance may be applicable to them.

Criteria	Assessment (Yes/No)
Pricing method	Does the contract or at least one component use the firm, fixed or volume-driven pricing method?
Value	Is the contract value (excluding the value of any components using a pricing method to which the FPA cannot apply) over: <ul style="list-style-type: none"> • £5 million for a QDC? • £50 million for a QSC?
Amount of the FPA	Is the amount of the FPA over £250,000?
Disapplication	If the contract is a QDC with a value below £50 million has it been established that the MOD has not directed that the FPA provisions are to be disappplied?

However it may be useful to add two additional criteria to this table for the excess profit / loss requirements. Example below:

Criteria	Assessment
Excess Profit	The contractor may earn 5 percentage points (pp) additional profit, over that agreed in the Contract price, before an FPA can be applied. (See paragraph 4.6 – 4.7).
Excess Loss	The proportion of the loss that is shared depends on whether the amount of the loss is above or below the “loss level” (see paragraph 4.8 – 4.10).

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.

Reference to the area of the Regulations which sets the eligibility criteria would be a welcome improvement.

Paragraph 2.4: This section correctly highlights that components *“of the contract which use a pricing method to which an FPA cannot be applied (see 2.3) must be disregarded for the purposes of this value assessment. Therefore, after any such exclusion, the total value of all remaining components to which the FPA can apply, must exceed £5 million”*. This may be confusing to the reader as it doesn't reference the fact that an FPA adjustment can be applied separately to an individual component of the contract. The guidance does not clarify that an FPA can be applied to a component of a contract, rather than the whole contract (when necessary adjusted as described above), until Section 3. We believe this could be made clearer in the Eligibility Criteria section (Section 2) of the document.

Paragraph 2.5: We note a spelling mistake in this paragraph with the use of the word 'of' rather than 'or'.

*“A QSC must have a value of at least £50 million for an FPA to apply and use one **of** more of the firm, fixed or volume-driven contract pricing methods”*

Question 5: Procedural requirements – 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.

Figures 1 & 2 are helpful in demonstrating the timeline for FPA adjustments, however they are easier to understand once Paragraph 3.4 (Contract Completion) and Paragraph 3.5 (Component Completion) have been read. The document may flow more intuitively if Figures 1 & 2 are moved to follow these paragraphs.

Paragraph 3.10 states “*Failure to provide timely notice of the intention to apply an FPA to a component will mean no FPA can be applied to that component until after the contract has completed*”. This statement would seem to suggest whilst the right is initially lost it can be reinstated at contract completion as a component FPA or possibly as a part of the contract FPA? Clarity if this is the case would be helpful.

Paragraph 3.13: “*If the parties are unable to reach an agreement within two years after the contract (or component) completion date, either the MOD or the contractor or the sub-contractor may ask The SSRO to determine the amount of the FPA*”

Further clarity could be provided in this paragraph as to the meaning of “*within two years*”. The wording of Paragraph 3.13 would suggest the parties are required to wait until two years has elapsed before an application for an SSRO Determination can be made. However the example following Paragraph 3.14, and Question 7 in the Q&A section of the Guidance, implies this is a “two-year referral deadline”, suggesting parties must make an application within the two year window referenced?

In addition, should a referral to the SSRO for a determination be made, there doesn't appear to be a deadline by which the SSRO would be required to complete their referral activity. Would the timings and process for this be in line with the SSRO's Guidance on the SSRO's procedures for determinations under the Defence Reform Act 2014?

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.

Paragraph 4.1 would benefit from referencing the area of the Regulations which creates the “*legal requirement*” to use the specified methodology in the Guidance.

Paragraph 4.2: The link to the FPA calculator on the SSRO’s website does not work. A “*page not found*” error is returned.

We believe the list of data inputs in Paragraph 4.3 could be further simplified. All that is required is for the CPR to be adjusted to remove the Incentive Adjustment (where relevant), rather than having to detail all the CPR steps, which may cause confusion when working through a practical FPA adjustment.

Paragraph 4.10: We believe there is an error (£10M should read £11M?).

4.10 A contractor’s loss is shared with the MOD by increasing the price of the contract or components as follows:

Amount of loss	Amount by which the contract/component price must be increased (Final Price Adjustment)
Loss is below the loss level	25% of the amount of the loss up to the loss level
Loss is above the loss level	25% of the amount of the loss up to the loss level 50% of any loss above the loss level

Excess loss worked example

<p>A firm price contract where the estimated Allowable Costs (AC) are £90.91M with a 12% contract profit rate including a 2pp incentive adjustment (IA).</p> <ul style="list-style-type: none"> The contract price is set by the formula $(AC \times \text{profit rate}) + AC$. The incentive adjustment must be excluded so the contract price for the purpose of the FPA is $(£90.91 \times 10\%) + £90.91M = £100M$
<p>The actual outturn costs were £111M which meant the contractor made a loss of $(£100M - £111M) = -£11M$.</p>
<p>Firstly, calculate the loss level. The loss level is the loss that would have been made had the outturn costs been 5% higher than the contract price. The contract price (excluding IA) is £100M so the loss level is $(£100M - (£100 \times 1.05)) = -£5M$</p> <p>The loss made by the contractor (£10M) exceeds the loss level by £6M.</p>
<p>Where a loss has been made, the contract price is increased by:</p> <ul style="list-style-type: none"> 25% of the loss below the loss level: $0.25 \times 5 = £1.25M$ and 50% of the loss above the loss level: $0.5 \times 6 = £3M$
<p>The final price adjustment is therefore an increase in the contract price of £4.25M</p>

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?

We agree that the availability of an FPA calculator may be useful. However we believe this should remain a non-compulsory tool designed only to assist and guide contractors. Parties to the contract may already have tools in place which both are familiar with and agree are compliant.

We again question if the profit rate needs to be broken down into all component parts (all 4 / 6 steps)? Could it be simplified within the calculator to allow the CPR to be adjusted to remove the Incentive Adjustment (where relevant), rather than having to detail all the CPR steps, which don't appear to be used within the calculator.

The adjustment calculation is especially helpful, reducing the need to manually calculate the adjustment that applies to each of the 'excess levels'.

The 'Use Notes' could be expanded to aide users in the completion of the calculator. Where it is important that the calculator is used in tandem with the draft guidance, the calculator could be updated to include some basic definitions / guidance to reduce the need to cross reference between two files as frequently, e.g. key terms and definitions (from page 4 of the draft guidance) could be repeated here.

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

Paragraph 5.1 dictates that contractors must “*provide a forecast of any FPA which the contractor expects to be made in any update report.*” It would be useful if the guidance could clarify the precise reports, and where in these reports, this forecast is expected. We note that the paragraph does reference the Contract Reporting Guidance, but the relevant section of the Reporting Guidance could be referenced.

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

No specific feedback, the draft guidance adequately explains the options for seeking further clarity from the SSRO.

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?

The inclusion of a Q&A section is a welcome addition to the Guidance as it provides further clarity on areas of application. We would welcome feedback on how the SSRO intends to ensure this Q&A section remains topical and updated to reflect any queries they receive once the Guidance has been issued and tested in practical application.

The guidance is clear that in the case of a QSC the relationship in settling the FPA is between the MOD and the sub-contractor in question. A Q&A could be added to the document to clarify the role, if any, that the contractor to a QDC is required to play in this process when the QSC is in the QDCs contracting / supply chain.

Is there any further feedback you wish to provide?

It would be helpful if any tables / worked examples within the draft guidance were numbered in sequential order to allow them to be easily referenced. This appears to have been done in some instances, but not others.

We would invite the SSRO to consider including a reference to the role of cost recovery rates in the FPA process i.e. is profit made by the contractor assessed against fixed / firm, contracted labour rates or against actual labour rates.

3. Defence Single Source Advisory Group

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

Yes, the consensus view of the DSAG was that the draft guidance covered the correct areas.

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

Yes, the new approach is supported.

The draft guidance is a significant improvement on the existing guidance information and more 'user friendly'. It has been noted that the updated guidance clarifies some points which users had previously struggled with. The use of examples is helpful.

Members would like to see the inclusion of more references to the relevant regulation to aid the user incorporated into the guidance, including those which identify any different treatment for QSCs.

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

We are not sure the introductory section allows users to quickly determine whether the guidance is applicable to them without reading Section 2 Eligibility Criteria.

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.

Members' feedback is that this is a helpful section. The following clarifications have been proposed:

Section 2.7

Disapplication of the legal provisions of the FPA

2.7 The Secretary of State may direct that an FPA is not to be applied to a QDC whose value is £5 million or above but below £50 million, even though an FPA may otherwise have been permissible. Such a direction cannot be made for a QSC. The value of components of the contract which use pricing methods to which an FPA cannot be applied (see 2.3) must be excluded for this purpose.

It would be helpful in Section 2.7 to explain the following:

- When is it determined that a permissible FPA is not going to be applied? Is this at the beginning or end of the contract?
- Examples of why an FPA would not be applied would be helpful.

Additional References

As mentioned in the response to Question 3, an expansion of references to regulation would be helpful.

2.8 We agree with the paragraph but wonder whether the second sentence should add the word "seek" (i.e. "...unintentionally **seek** to fetter their legal rights...") as it is explained in the last sentence that contractual terms cannot override legislation.

2.9 We understand the FPA is a value to be agreed and therefore it will initially be an estimate to trigger the joint assessment/agreement, however, if the assessment then proves to be less than £250k an FPA would not apply. So, should there be a third sentence added to the paragraph such as:

"However, if the agreed value of the potential adjustment is less than £250k no adjustment to the price is made"?

The 'at a glance' tables provide a good overview (both page 5 & 6).

A suggestion for a build to the table at 2.10 is to spell out clearly that the 'FPA' is the final amount by which the contract would be adjusted.

Question 5: Procedural requirements – 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.

Whilst we find this section helpful, it has generated some questions:

3.1 “Yes, the parties to a QDC or QSC may agree to apply an FPA to a component or components of a contract or the contract as a whole.” (Also see similar reference in 3.10 and 4.12.)

We do not disagree with this statement, provided the criteria for an FPA is met in each case; however, it is requested the guidance is clearer:

- The FPA is calculated using relevant component by component (R17.5A) unless;
- Under R17.5B there is an agreement to aggregate specified components for FPA purposes under this regulation.
- At what point do Parties agree that components should be aggregated for the FPA? If there is a disagreement, it that something that is referred to the SSRO?

If no agreement is made, all relevant components are separate FPA calculations.

3.10 “Failure to provide timely notice of the intention to apply an FPA to a component will mean no FPA can be applied to that component until after the contract has completed”.

If there is no R17.5B agreement and there is no notification, or no notification within time limits, for a given component, is the ability to apply an FPA for that component lost?

The statement in 3.10 above would seem to suggest whilst the right is initially lost it can be reinstated at contract completion as a component FPA or possibly as a contract FPA (which could undo other component FPAs). Could the guidance clarify this point?

3.10 Highlighted example

The example does not discuss/explain the basis upon which the approach to FPA application is to be agreed e.g. agreed when the contract, or amendment is let, or agree/advised and FPA does not apply.

The example seems to suggest a party might consider FPAs and the approach to their application after component or contract completion, the latter possibly undoing agreements already made.

Whilst the text clarifies, further annotation of Figure 2 to show which party is responsible for each box could make it even clearer. It was also noted that there didn't appear to be a deadline by which the SSRO need to have completed their referral activity.

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.

The guidance is clear but is possibly asking for more information than the calculation requires.

A slightly simplified approach developed for use in training is offered for consideration. There will of course be greater detail in support of any calculation, the example focuses on that specifically needed to conduct the FPA, for a contract or its components. We articulate the required information and include tables and an Excel example.

Required information:

As contracted:

- Price
- CPR % excluding IA

At Outturn:

- Price (excluding LDs, or interest on overdue payments)
- CPR % excluding IA
- Actual allowable costs (excluding LDs, or interest on overdue payments)

We therefore wonder if the following should be reconsidered:

4.3 i

We understand the costs as contracted will be held as support information but do not think it is required for the calculation.

4.3 ii

It may be simpler for the user to record the CPR and make adjustment to remove the IA (where relevant) in the calculation, rather than having to detail all the CPR steps, especially as the CPR steps have changed.

4.3

Second bullet - we are not sure why the “value” (regulation 5?) of contracts or components are required, or where it is used in the calculation.

Third bullet – Should this say out turn allowable costs of the component, or contract?

An alternative table format previously found helpful is given below:

Final Price Adjustment Levels Actual Profit Rate compared to Contract Profit Rate (CPR)	Excess profit range (% points)	Final price adjustment applied by level
Excess level 1	CPR + 5%	n/a
Excess level 2	CPR +(>5% up to 10%)	25%
Excess level 3	CPR +(>10% up to 15%)	50%
Excess above level 3	CPR +(> 15%)	75%

An Excel example of the simplified calculation:

		QDC		
Contracted CPR			12.00%	
IA			2.00%	
Contracted profit rate for FPA purposes			10.00%	
Actual costs			90,000,000	
Contracted Price net of LD's and interest on overdue payments			110,000,000	
Actual profit			20,000,000	
Actual profit rate			22.22%	
Excess profit rate			12.22%	
		Level %	FPA %	FPA £
Contracted CPR-IA			10.00%	
Level 1		5%	0%	5.00%
Level 2		10%	25%	5.00%
Level 3		15%	50%	2.22%
> Level 3			75%	
			22.22%	2,125,000

An example excess loss table:

Final Price Adjustment Levels Loss compared to Contract Price	Excess loss range	Final price adjusted applied by level
Loss level up to contract price + 5%	Up to - 5%	25%
Loss level >5% above contract price	> -5%	50%

As indicated above, a suggested build for the table on page 13 is to add a line at the top to cover the less than 5pp greater than CPR scenario, for completeness.

4.10: There is potentially an error. (£10M should read £11M?)

4.10 A contractor's loss is shared with the MOD by increasing the price of the contract or components as follows:

Amount of loss	Amount by which the contract/component price must be increased (Final Price Adjustment)
Loss is below the loss level	25% of the amount of the loss up to the loss level
Loss is above the loss level	25% of the amount of the loss up to the loss level 50% of any loss above the loss level

Excess loss worked example

A firm price contract where the estimated Allowable Costs (AC) are £90.91M with a 12% contract profit rate including a 2pp incentive adjustment (IA).
<ul style="list-style-type: none"> The contract price is set by the formula (AC x profit rate) + AC. The incentive adjustment must be excluded so the contract price for the purpose of the FPA is (£90.91 x 10%) + £90.91M = £100M
The actual outturn costs were £111M which meant the contractor made a loss of (£100M - £111M) = -£11M.
Firstly, calculate the loss level. The loss level is the loss that would have been made had the outturn costs been 5% higher than the contract price. The contract price (excluding IA) is £100M so the loss level is (£100M - (£100 x 1.05)) = -£5M
The loss made by the contractor (£10M) exceeds the loss level by £6M.
Where a loss has been made, the contract price is increased by: <ul style="list-style-type: none"> 25% of the loss below the loss level: 0.25 x 5 = £1.25M and 50% of the loss above the loss level: 0.5 x 6 = £3M
The final price adjustment is therefore an increase in the contract price of £4.25M

4.15 The Final bullet point could be misleading because to achieve 5pp additional profit the outturn costs need to reduce not increase and we believe the £6.8m is not the correct figure. Relevant wording:

- The contractor can earn up to 5pp additional profit, without triggering a FPA so in this case the contractor could earn up to 14.71% profit on its outturn costs or the outturn costs to rise by £6.8M before the FPA would be triggered.

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?

We agree the SSRO could make a calculator available although its use not compulsory. It is a general improvement on the previous calculator. Parties to the contract may already have tools in place which both are familiar with and agree are compliant, for instance MOD have a PEPL calculator that could also be used.

Please also see our proposal at question 6

There was some uncertainty as to how Steps 5 & 6 (where relevant now) are to be added – unless it is the POCO and SSRO funding lines, but no longer ‘numbered’?

Those who have used the previous calculator, believe that the following table was useful and ought to be retained.

	Profit £m	MOD's Share %	Payment from Contractor to the MOD £m	
Profit between Tier 1 and Tier 2	0.179	25%	0.045	
Profit between Tier 2 and Tier 3	0.179	50%	0.089	
Profit above Tier 3	0.347	75%	0.260	
Loss up to Loss Level	-	25%	-	
Loss above Loss Level	-	50%	-	
Total			0.394	

It was also suggested that the ‘Use Notes’ box could be utilised better.

When components are being aggregated for the FPA calculation the Guidance explains how to find the aggregated profit rate – presumably this can be loaded into the calculator as a single value rather than spending time trying to work out a rate for all the steps – clarification of that would be good.

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

The draft guidance is helpful. In general reviewers found the guidance to be useful and a significant improvement to the exiting information available.

Section 5.1

Reporting requirements

- 5.1 Contractors with a firm, fixed or volume-driven priced contract must provide a forecast of any FPA which the contractor expects to be made in any update report.¹ This includes confirming whether they think an FPA will be made as well as the amount of the likely adjustment. The SSRO publishes [detailed guidance on completion of contract reports](#).

The guidance states the contract “must provide a forecast of any FPA which the contractor expects to be made in any updated report. Additional clarification on when this is required would be useful because although it is covered in the Q&A section, it seems to be an important aspect to reporting and therefore it would be helpful to be covered in this section.

The second sentence in this paragraph seems to be saying the same thing as the first sentence, which could be confusing. Propose the wording is adjusted to read “When confirming whether they think an FPA will be made Contractors must include the amount of the likely adjustment.”

Is the estimated FPA to be reported on the “Final Payments” tab in the QCR if you do not have an ICRL?

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

The draft guidance is helpful.

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?

The Q&A section is regarded as very helpful.

Some possible additional questions are:

Q1: What documentary evidence is required to establish the excess profit or loss?

Q2: If actual costs incurred have not yet been fully realised, to what extent can estimated costs be included in the calculation?

Q3: If actual labour & overhead rates are not (or will not be) agreed before the two year period has expired, is there a basis for referral to the SSRO?

Q4: When a reference has been made to the SSRO, what types of evidence will demonstrate “reductions in the actual costs under the contract are due to efficiency measures taken by the primary contractor”, referred to in regulation 16(9)(d)?

We welcome the opportunity to add further questions in the future, to keep the Guidance up to date.

Is there any further feedback you wish to provide?

No, all feedback is contained elsewhere in this document.

4. Babcock

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

The guidance covers the correct areas.

There are a couple of errors that require correction:

Para 4.10 the loss should read £11M not £10M before 'exceeds loss level by £6M'

Excess loss worked example

A firm price contract where the estimated Allowable Costs (AC) are £90.91M with a 12% contract profit rate including a 2pp incentive adjustment (IA).

- The contract price is set by the formula $(AC \times \text{profit rate}) + AC$. The incentive adjustment must be excluded so the contract price for the purpose of the FPA is $(£90.91 \times 10\%) + £90.91M = £100M$

The actual outturn costs were £111M which meant the contractor made a loss of $(£100M - £111M) = -£11M$.

Firstly, calculate the loss level. The loss level is the loss that would have been made had the outturn costs been 5% higher than the contract price. The contract price (excluding IA) is £100M so the loss level is $(£100M - (£100 \times 1.05)) = -£5M$

The loss made by the contractor (£10M) exceeds the loss level by £6M.

Para 4.15 bullet 5, for the contractor to earn 5pp above CPR it would need outturn costs to fall (not increase) by £3.05M to achieve 14.71% profit. The current text is confusing.

- 4.15 It should also be noted that if the FPA is calculated on the basis of the aggregate of several components it will be necessary to aggregate the relevant inputs from each component to perform the calculation. As an example:
- Original firm price contract: Estimated allowable costs £60M plus 10% profit (with no incentive adjustment) = £66m contract price.
 - Pricing amendment: Estimated allowable costs £10m plus 8% profit (with no incentive adjustment) = £10.8m amendment price.
 - In this case the FPA calculation would be based on the total estimated costs of £70m and a total redetermined contract price of £76.8m.
 - The aggregate contract profit rate of £6.8m on £70m cost would therefore be 9.71%.
 - The contractor can earn up to 5pp additional profit, without triggering a FPA so in this case the contractor could earn up to 14.71% profit on its outturn costs or the outturn costs could to rise by £6.8M before the FPA would be triggered.

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

We support this new approach to the guidance.

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

The introduction is fine but could be expanded to include the contract pricing methods that apply as these are listed in the Key Terms and Definitions table.

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.

The eligibility criteria is easy to understand.

Question 5: Procedural requirements – 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.

The presentation of the timescales is fine in Figure 1.

SSRO may want to consider Figure 2 in context with the whole contract when mentioning components. This would cover potential non-compliance of reporting in figure 2.

The guidance is generally clear.

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.

Corrections are required to this section and have been listed in our response to 1, above. This section is understood.

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?

It may assist on the FPA calculator to have values attached to each level of the calculation and summed up to a total. This will make the process clearer.

It should be noted that MoD have their own FPA calculator issued in Knowledge in Defence files. We have no objection to the SSRO producing their own calculator, but the outcome results should be the same for both files.

An SSRO version will be independent.

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

The SSRO have mentioned relevant reporting guidance. It may want to reference DefCARS as the Contract Reporting tool as no mention is made to this effect.

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

This is fine for when we encounter issues with the process.

We expect to utilise our 'in-house' expertise in the first instance.

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?

We fully support a Q&A section within the guidance upon initial issue.

We would expect any updates to be added via the quarterly Q&A update process. A separate section could be created for FPA queries that covers responses in some of the 6 categories currently published.

Is there any further feedback you wish to provide?

No, but we also support the DSAG response to this consultation.

5. Leonardo

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

Yes

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

Yes.

We would also like to see an expanded inclusion of references to the relevant regulations to aid the user, including those which identify any different treatment for QSCs.

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

We are not sure the introductory section allows users quickly determine whether the guidance is applicable to them without also reading Section 2 Eligibility Criteria.

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.

This is a helpful section.

As mentioned above we think an expansion of references to regulation would be helpful.

2.8 We agree with the paragraph but wonder whether the second sentence should add the word “seek” (i.e. “...unintentionally **seek** to fetter their legal rights...”) as it is explained in the last sentence that contractual terms cannot override legislation.

2.9

We understand the FPA is a value to be agreed and therefore it will initially be an estimate to trigger the joint assessment/agreement, however, if the assessment then proves to be less than £250k an FPA would not apply. So, should there be a third sentence added to the paragraph such as:

“However, if the agreed value of the adjustment is less than £250k no adjustment to the price is made”?

2.10

Is helpful.

As an alternative, the same information might be laid out in flow chart form. Such a chart might also be used in the introductory section to support quick assessment of the relevance of guidance to the users circumstance.

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.

The guidance is clear but is possibly asking for more information than the calculation requires.

A slightly simplified approach developed for use in training is offered for consideration. There will of course be greater detail in support of any calculation, the example focuses on that specifically needed to conduct the FPA, for a contract or its components. We articulate the required information and also include tables and an Excel example.

Required information:

As contracted:

- Price
- CPR % excluding

IA As Outturn:

- Price (excluding LD's, or interest on overdue payments)
- CPR % excluding IA
- Actual allowable costs (excluding LD's, or interest on overdue payments)

We therefore wonder if the following should be reconsidered:

4.3 i

We understand the costs as contracted will be held as support information but do not think it is required for the calculation.

4.3 ii

It may be simpler for the user to record the CPR and make adjustment to remove the IA (where relevant) in the calculation, rather than having to detail all the CPR steps, especially as the CPR steps have changed.

4.3

Second bullet - we are not sure why the "value" (regulation 5?) of contracts or components are required, or where it is used in the calculation.

Third bullet – Should this say out turn allowable costs of the component, or contract?

4.5 bullet 1 – "step 5 for contracts entered into of amended" should be "or"?

An alternative table format previously found helpful:

Final Price Adjustment Levels Actual Profit Rate compared to Contract Profit Rate (CPR)	Excess profit range (% points)	Final price adjustment applied by level
Excess level 1	CPR + 5%	n/a
Excess level 2	CPR +(>5% up to 10%)	25%
Excess level 3	CPR +(>10% up to 15%)	50%
Excess above level 3	CPR +(> 15%)	75%

An Excel example of the simplified calculation:

		QDC		
Contracted CPR		12.00%		
IA		2.00%		
Contracted profit rate for FPA purposes		10.00%		
Actual costs		90,000,000		
Contracted Price net of LD's and interest on overdue payments		110,000,000		
Actual profit		20,000,000		
Actual profit rate		22.22%		
Excess profit rate		12.22%		
		Level %	FPA %	FPA £
Contracted CPR-IA			10.00%	
Level 1		5%	0%	-
Level 2		10%	25%	1,125,000
Level 3		15%	50%	1,000,000
> Level 3			75%	-
			22.22%	2,125,000

An example excess loss table:

Final Price Adjustment Levels Loss compared to Contract Price	Excess loss range	Final price adjusted applied by level
Loss level up to contract price + 5%	Up to - 5%	25%
Loss level >5% above contract price	> -5%	50%

4.10 table

- Excess loss worked example, third box - The loss made by the contractor (£10m) exceeds the loss level by £6m." The £10m should read £11m.

4.15

- A suggested correction to the last bullet
 - "...outturn costs could ~~to rise~~ reduce by ~~£6.5m~~ £3.5m before the FPA would be triggered."

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?

We agree the SSRO could make a calculator available although its use not compulsory. Parties to the contract may already have tools in place which both are familiar with and agree are compliant.

Please also see our proposal at question 6

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

The draft guidance is helpful.

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

The draft guidance is helpful.

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?

We see inclusion of the questions and answers as helpful.

Is there any further feedback you wish to provide?

No.

6. QinetiQ

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

This is an area of single-source contracting that generates a lot of discussion with our MOD customers. Hence, enhanced clarity in respect of this is welcome/needed. In summary, yes, this draft guidance does cover the correct areas (eligibility, procedural requirements, basis of calculation, reporting requirements). Nothing of note has been missed out.

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

Yes, agreed. I like having the links to other guidance documents.

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

Yes, agreed.

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.

We welcome the inclusion of a simple eligibility checklist.

All seems pretty clear but will see how it goes when the business are using this in practice.

Question 5: Procedural requirements – 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.

This is helpful as, in practice, we see MOD referring to DEFCON648A and using a date of either two years after final payment of all sums due under the contract or for a period of three years after the final delivery or completion of performance under the contract.

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.

Yes, all seems clear. But will assess in practice.

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?

Yes, helpful to have a standard calculator that both contractor and MOD can use without debate. The example in section 4.10 states a loss made by the contractor of £10m (as per below).

The loss made by the contractor (£10M) exceeds the loss level by £6M.

This should be £11m?

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

Seems appropriate and sufficient.

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

The new non-referral advice service is a good addition.

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?

This is a helpful, sensible inclusion

Is there any further feedback you wish to provide?

Can we suggest requesting specific feedback from contractors at an appropriate point in time after this guidance has gone live e.g. after one year. Then SSRO can enhance the guidance further in a subsequent next version.

Potentially the CPS in DefCARS could state whether or not an FPA could be applicable at the end of the contract. Unless the pricing method is firm, fixed or volume driven, a clear statement could highlight that no FPA will be applicable.