

SSRO

Single Source
Regulations Office

Draft guidance on qualifying sub-contracts

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Version history

This is version 1.0 of the SSRO's guidance on qualifying sub-contracts.

The publication and application dates of versions of this guidance are shown below.

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Any questions related to this document, or to the regulatory provisions or SSRO guidance to which it refers, should be addressed to the SSRO's Helpdesk which is available from 9am to 5pm Monday to Friday (excluding UK public holidays) via 020 3771 4785 or helpdesk@ssro.gov.uk.

1. Introduction

Background

- 1.1 This document has been prepared by the SSRO under its guidance-issuing powers in response to a request from members of the SSRO's Operational Working Group¹ (OWG). OWG members asked the SSRO for an accessible summary of the provisions of the regulatory framework for single source defence contracts² which relate to qualifying sub-contracts (QSCs). This document will assist the Ministry of Defence³ (MOD), the parties to QSCs and other qualifying defence contracts (QDCs), and any person who expects to enter into such a contract to understand and apply the regulatory provisions pertaining to QSCs.
- 1.2 The Act and Regulations define when a contract is a QSC and confer a number of related obligations, rights, and powers, where specified, on the MOD, the parties to qualifying contracts, and the SSRO. These include:
- a. obligations on primary contractors under QDCs (or proposed QDCs) and sub-contractors under QSCs (or proposed QSCs) to assess whether any proposed sub-contracts to those contracts would be QSCs if entered into and to provide specified notifications about those assessments;
 - b. the right for a prospective sub-contractor when notified of a positive QSC assessment to make an appeal to the SSRO against that assessment before entering into the contract;
 - c. obligations on the MOD and contracting authorities and sub-contractors under QSCs to apply the regulatory framework to determine or re-determine the price of such a contract;
 - d. obligations on sub-contractors under QSCs to provide statutory reports to the MOD and the SSRO;
 - e. obligations on primary contractors under QDCs and sub-contractors under QSCs to report in their statutory contract reports certain information related to QSC assessments they have undertaken and QSCs (and other sub-contracts) entered into;
 - f. the right for a sub-contractor under a QSC to give notice to the SSRO that a sub-contract no longer meets the requirements to be a QSC and, therefore, is no longer subject to the regulatory framework;
 - g. powers for the MOD to issue compliance and penalty notices in some circumstances where the requirements of the regulatory framework have not been met; and
 - h. obligations on, and powers for, the SSRO to give opinions or make determinations on matters related to QSCs.

1 Comprised of representatives of the MOD and its contractors.

2 Established by the Defence Reform Act 2014 (the Act) and the Single Source Contract Regulations 2014 (the Regulations).

3 In this document, references to 'the MOD' may generally be read as references to 'the Secretary of State'.

About this document

- 1.3 This document identifies and summarises the relevant provisions of the regulatory framework and signposts readers to related SSRO guidance which should be considered alongside this document. This includes guidance on:
- determining the allowable costs and contract profit rate for qualifying contracts or components of such contracts that use a default pricing method;
 - the alternative pricing of qualifying contracts or components of such contracts;
 - the preparation and submission of contract reports and supplier reports; and
 - the SSRO's procedures for dealing with referrals.
- 1.4 Section 2 of this document provides answers to some of the most common questions about QSCs and will help readers with particular queries to identify the parts of the document most relevant to their needs. The remainder of the document is divided into topics as follows:
- Assessing if a contract is a QSC (Section 3)
 - QSC notifications and appeals (Section 4)
 - Agreeing the price of a QSC (Section 5)
 - Record-keeping and reporting by sub-contractors under QSCs (Section 6)
 - Notifying the SSRO of changes (Section 7)
 - Enforcement action by the MOD (Section 8)
 - How the SSRO can help (Section 9)

Definition of terms

- 1.5 Some terminology used in the guidance is defined below where that might be helpful. Other text in this guidance should be read in accordance with its natural and ordinary meaning. It is important for understanding and interpretation that specific parts of the guidance are not read in isolation from other relevant parts, but instead within the context of the complete text.

Term	Meaning
Contracting authority	The party to a contract who is (or, in the case of a proposed contract, would be) liable to pay the contract price to the other party to the contract. Under a QSC, this will be a person other than the Secretary of State.
Contractor (Prospective contractor)	The party to a contract who is (or, in the case of a proposed contract, would be) contracted to provide goods, works or services to the other party, and to whom the price payable under the contract is (or would be) due. Under a QDC, this party is commonly referred to as the 'primary contractor'.
Sub-contractor (Prospective sub-contractor)	The party to a sub-contract who is (or, in the case of a proposed sub-contract, would be) contracted to provide anything for the purposes of another contract, and to whom the price payable under the sub-contract is (or would be) due.

Term	Meaning
Qualifying defence contract or QDC	A contract that, possessing certain characteristics, falls within the scope of the regulatory framework for single source defence contracts, and that the Secretary of State has not exempted from being a QDC.
Qualifying sub-contract or QSC	A sub-contract to either a QDC or a QSC that, possessing certain characteristics, falls within the scope of the regulatory framework for single source defence contracts, and that the Secretary of State has not exempted from being a QSC.
Qualifying contract (Proposed qualifying contract)	A contract that is a QDC or QSC (or which would be a QDC or QSC if entered into).

Providing feedback on this document

- 1.6 We welcome feedback at any time from the readers of this guidance as to its usefulness in helping them understand and apply the regulatory requirements related to QSCs. Comments can be provided by email to helpdesk@ssro.gov.uk. The feedback the SSRO receives on this document will inform future updates.

2. Your QSC questions answered

2.1 We provide brief answers below to some of the most common questions related to QSCs and identify the relevant parts of this document to which readers should refer for further information.

General questions

No.	Question	Response	Refer to
1	What is a QSC?	<p>A QSC to which the Act and Regulations apply is a contract:</p> <ul style="list-style-type: none"> • between a contracting authority⁴ (who is not the Secretary of State) and another person which involves the provision by the other person of anything for the purposes of a QDC or QSC to which the contracting authority is (or expects to be) a party; • that is not awarded as the result of a competitive process; • that has a value of £25 million or more; • where at least 50 per cent by value of the obligations under the contract are required to enable the performance of existing or proposed QDCs or QSCs to which the contracting authority is or might become a party; • which is not of a type that is specifically excluded from being a QSC by the Regulations; • where the contracting authority has notified the other person and the MOD that the contract would be a QSC if entered into; and • where the Secretary of State has not directed that the contract is not a QSC. 	Section 3
2	Who is responsible for assessing whether a proposed sub-contract to a qualifying contract would be a QSC if entered into?	<p>A contracting authority who proposes to enter into a sub-contract with another person for the provision of anything for the purposes of a QDC or QSC to which the contracting authority is (or expects to be) a party must assess whether that sub-contract would be a QSC if it (and, where not yet agreed, the qualifying contract it will enable) were entered into.</p>	Section 3

⁴ The party to a contract who is or would be liable to pay the contract price.

No.	Question	Response	Refer to
3	Is there a particular format for notifying a person that a proposed sub-contract will be a QSC if entered into?	<p>The Regulations do not prescribe how a contracting authority should give notice to the MOD and the prospective sub-contractor that a proposed sub-contract would be a QSC if entered into, other than that the notification must be in writing.</p> <p>The SSRO has published a <i>Positive QSC Assessment Notification</i> form (available on the SSRO's website) which can be used for this purpose.</p>	Paragraphs 4.6 and 4.9
4	Can an existing sub-contract that is not a QSC become a QSC if it is amended?	No. However, if the parties to an existing sub-contract which enables the performance of a QDC or QSC propose to amend that sub-contract in such a way that a new contract would be created, the contracting authority will need to undertake a QSC assessment for the proposed new contract.	Paragraphs 3.9 to 3.11

Questions asked by contracting authorities

No.	Question	Response	Refer to
5	What are my responsibilities as the contractor under a qualifying contract (or proposed qualifying contract) when proposing to enter into a sub-contract with another person that will enable delivery of that qualifying contract (or proposed qualifying contract)?	<p>You must:</p> <ul style="list-style-type: none"> • assess whether the proposed sub-contract would be a QSC if it (and, if not yet agreed, the qualifying contract it will enable) were entered into; • make and keep a record of your assessment; • in all cases, give written notice to the MOD and the SSRO that an assessment has been made; and • give written notice to the MOD and the prospective sub-contractor if you consider the proposed sub-contract would be a QSC if it (and, if not yet agreed, the qualifying contract it will enable) were entered into. 	Sections 3 and 4
6	As the prospective contractor under a proposed qualifying contract, do I have to undertake a QSC assessment for an existing contract (with another person) which will enable delivery of the proposed qualifying contract?	<p>There is no need to undertake a QSC assessment for an <u>existing</u> contract which will enable delivery of a proposed qualifying contract.</p> <p>A QSC assessment must be undertaken for any <u>proposed</u> sub-contract that will enable delivery of an existing or proposed qualifying contract.</p>	Paragraphs 3.1 and 3.9

No.	Question	Response	Refer to
7	How do I assess whether a sub-contract I propose to enter into is a QSC?	<p>You should assess whether the proposed sub-contract would meet the requirements to be a QSC if entered into. This includes consideration of whether the proposed sub-contract:</p> <ul style="list-style-type: none"> • is to provide anything for the purpose of a QDC or QSC (whether existing or proposed); • was let competitively; • has a value of £25 million or more; and • meets certain other requirements specified in the Regulations. 	Section 3
8	When should I undertake a QSC assessment?	The Regulations require a contracting authority to undertake a QSC assessment at the time when it is proposed to enter into a new sub-contract. Therefore an assessment must be undertaken before entering into the proposed sub-contract.	Paragraphs 3.7 to 3.8
9	If I propose to enter into several sub-contracts with the same person to support my qualifying contract, do I have to assess the proposed sub-contracts individually or together?	<p>Each proposed sub-contract will need to be assessed individually to ascertain whether it would be a QSC if entered into.</p> <p>However, when determining the value of a proposed sub-contract for the purpose of a QSC assessment the contracting authority will need to aggregate the value of that proposed sub-contract with the values of other contracts or proposed contracts fulfilling the same requirement which the contracting authority has entered into, or proposes to enter into, with the same person or persons associated with that person (subject to certain, specified exclusions).</p>	Paragraphs 3.3 to 3.6
10	Once my QSC assessment is complete, who do I have to notify of the outcome?	You must notify the MOD and the SSRO that a QSC assessment has been made and notify the MOD and the prospective sub-contractor if you consider that the proposed sub-contract would be a QSC if entered into.	Paragraphs 4.4 to 4.11
11	Is there a particular format for notifying others of the outcome of a QSC assessment?	<p>The only requirement is that the notice must be provided in writing.</p> <p>The SSRO has published two forms on its website which can be used by contracting authorities when fulfilling their notification obligations.</p> <ul style="list-style-type: none"> • <i>QSC Assessment Notification</i> form • <i>Positive QSC Assessment Notification</i> form 	Paragraphs 4.4 to 4.11

No.	Question	Response	Refer to
12	Do I need to undertake a QSC assessment on the same contract more than once?	No. A QSC assessment is only required to be undertaken once, at the time when it is proposed to enter into a new sub-contract. If it is proposed to amend a sub-contract for which a QSC assessment was previously undertaken and the effect of the proposed amendment is such that a new contract would be created the contracting authority will need to undertake a QSC assessment for the proposed new contract.	Paragraphs 3.7 to 3.11
13	Is the contracting authority responsible for ensuring that the sub-contractor under a QSC complies with its statutory obligations?	No, the contracting authority and sub-contractor under a QSC are independently responsible for the fulfilment of their respective statutory obligations in respect of that contract. Where a contracting authority or sub-contractor under a QSC fails to meet its statutory obligations in respect of that contract, the MOD may take enforcement action against that person under the provisions of the regulatory framework.	Section 8
14	What information do I need to provide in statutory contract reports for my qualifying contract about QSCs I have entered into, or propose to enter into, to enable performance of my qualifying contract?	Primary contractors under QDCs and sub-contractors under QSCs are required to provide a range of information in statutory contract reports related to those qualifying contracts about agreed or proposed sub-contracts (including those which are QSCs) which have been or will be entered into to enable performance of those qualifying contracts. This includes providing information about the outcome of any QSC assessments they have undertaken.	Paragraphs 4.13 to 4.14

Questions asked by (prospective) sub-contractors

No.	Question	Response	Refer to
15	What should I do if a contract I am entering into meets the requirements to be a QSC but I have not received notice of a positive QSC assessment from the contracting authority?	You should discuss this with the contracting authority. Where a contracting authority makes a positive QSC assessment for a proposed sub-contract it must provide notice of that assessment to the MOD and the prospective sub-contractor before the proposed sub-contract is entered into. Where notice of a positive QSC assessment is provided at the earliest opportunity the prospective sub-contractor will have the greatest opportunity to understand and meet its statutory obligations in respect of that contract.	Paragraph 4.6

No.	Question	Response	Refer to
16	I've been notified by a contracting authority that a contract I propose to enter into with that person will be a QSC if entered into. What should I do if I disagree with this assessment?	You can make an appeal to the SSRO against the notice of assessment. The appeal must be made no later than six months after receiving the notice and before the contract is entered into. No appeal can be brought after the contract is entered into. An appeal must contain specified information about the contract and the assessment.	Paragraphs 4.15 to 4.20
17	What are my responsibilities under the regulatory framework as the sub-contractor under a QSC?	<p>The Act and Regulations specify how QSCs must be priced and confer obligations on sub-contractors under QSCs to provide statutory contract and supplier reports to the MOD and the SSRO.</p> <p>You must also assess whether any sub-contracts you propose to enter into with another person to provide anything for the purpose of delivering the QSC would also meet the requirements to be a QSC if entered into. You must:</p> <ul style="list-style-type: none"> • make and keep a record of your assessment; • notify the MOD and the SSRO that an assessment has been made; and • notify the MOD and the prospective sub-contractor if the assessment is that a proposed further sub-contract would be a QSC if entered into. 	<p>Sections 5 and 6</p> <p>Sections 3 and 4</p>
18	What pricing methods can be used to determine the price of a QSC?	<p>The price payable under a QSC must be determined in accordance with:</p> <ul style="list-style-type: none"> • a default pricing method (using a formula based on allowable costs and a profit mark-up); or • an alternative pricing method (for example, commercial pricing). <p>The permissible pricing methods are specified in the Regulations and the SSRO provides guidance on their application.</p>	Section 5
19	Can one part of my QSC be treated distinctly from other parts when determining the contract price?	<p>Yes, where:</p> <ul style="list-style-type: none"> • the Regulations contain provision to the effect that a part of a contract is treated distinctly from other parts in determining the price payable under the QSC; or • the parties to the contract agree that it should be treated distinctly. 	Paragraphs 5.5 to 5.10

No.	Question	Response	Refer to
		Each part that is priced distinctly is a 'component' of the contract. There are particular reporting obligations related to contract components.	Section 6
20	What information do I have to share with the MOD about how the price of my QSC has been calculated?	<p>When agreeing the price of your QSC, the information you need to share with the MOD will depend on the pricing method used for the contract or contract component (where applicable).</p> <ul style="list-style-type: none"> • For a contract or component which uses a default pricing method, you will need to demonstrate to the MOD's satisfaction that any (estimated or actual) costs claimed under the contract meet the requirements of Allowable Costs. The MOD may require you to provide access to records held by you for the purpose of verifying matters related to the price payable under the QSC. • For a contract or component which uses an alternative pricing method, it may be necessary to demonstrate to the MOD's satisfaction that the circumstances required for use of that pricing method apply in the case of your contract. <p>Once your QSC has been entered into, the Regulations require you to keep records pertaining to the contract and to provide information about the contract, including how the price has been determined, to the MOD and the SSRO via statutory contract reports.</p>	<p>Paragraphs 5.21 to 5.23</p> <p>Paragraphs 6.4 to 6.7</p> <p>Paragraphs 5.27 to 5.28</p> <p>Section 6</p>
21	What information do I have to share with the contracting authority about how the price of my QSC has been calculated?	<p>When agreeing the price of your QSC, the information you need to share with the contracting authority will depend on the pricing method used for the contract or contract component (where applicable).</p> <ul style="list-style-type: none"> • For a contract or component which uses a default pricing method, the sub-contractor under a QSC will need to: <ul style="list-style-type: none"> • demonstrate to the MOD that the costs are allowable and inform the contracting authority of the amount agreed with the MOD; • agree a contract profit rate with the contracting authority. 	Paragraphs 5.11 to 5.25

No.	Question	Response	Refer to
		<ul style="list-style-type: none"> • For a contract or component which uses an alternative pricing method, the sub-contractor under a QSC will need to: <ul style="list-style-type: none"> • demonstrate that the conditions for use of the pricing method are met; and • provide information as needed to support the agreement of the contract price. <p>After the QSC has been entered into, the information provided about the contract and its price to the MOD and the SSRO via statutory reports is not accessible to the contracting authority.</p>	<p>Paragraphs 5.27 to 5.30</p> <p>Section 6</p>
22	<p>What happens if circumstances change or my QSC is amended and it no longer fulfils the regulatory requirements to be a QSC?</p>	<p>A sub-contractor under a QSC may give notice to the SSRO that a sub-contract no longer meets the requirements to be a QSC and, therefore, is no longer subject to the regulatory framework.</p> <p>The SSRO must consider the notice of cessation if the conditions for a referral have been met and decide whether to agree or overrule it.</p>	Section 7

3. Assessing if a contract is a QSC

- 3.1 A contracting authority⁵ who is either a contractor under a QDC (or proposed QDC) or a sub-contractor under a QSC (or proposed QSC) and who proposes to enter into a sub-contract with another person (a prospective sub-contractor) to provide anything for the purposes of a QDC or QSC to which the contracting authority is (or expects to be) a party must assess whether that proposed sub-contract would be a QSC if it (and, if not yet agreed, the qualifying contract it will enable) were entered into.⁶ This is referred to as a QSC assessment.
- 3.2 We identify below the factors that need to be considered when assessing whether a proposed sub-contract would be a QSC to which the Act and Regulations apply if entered into and matters related to when a QSC assessment should be completed.

Undertaking the QSC assessment

- 3.3 The contracting authority must assess whether the proposed sub-contract would meet the requirements to be a QSC if entered into. A QSC is a contract between a contractor under a QDC and another person (a sub-contractor) or between a sub-contractor under a QSC and another person (a further sub-contractor) which meets the requirements described below.⁷

When is a contract a QSC?

A contract is a QSC to which the Act and Regulations apply if the conditions (a) to (g) below apply.

- a. The contract is either:
 - i. a contract between a primary contractor and another person which involves the provision by the other person of anything for the purposes of a QDC to which the primary contractor is a party; or
 - ii. a contract which involves the provision of anything for the purposes of another contract which is a QSC;
- b. The award of the contract is not the result of a competitive process. (See 3.4 below).
- c. The value of the contract is £25 million or more.⁸ (See 3.5 to 3.6 below).
- d. The contract is neither:
 - i. made within the framework of an international co-operative defence programme, except where the parties agree that it is a contract that should be a QSC; nor
 - ii. made wholly for the purposes of acquiring land; other rights or interests over such land; or the management or maintenance of any land or buildings or other structures; nor
 - iii. a contract in relation to which compliance with the record-keeping and reporting requirements of the Act and Regulations would require disclosure of information which the Secretary of State considers would create a risk to national security; nor
 - iv. a contract which replaced another contract where:

⁵ The party to a contract which is, or would be, liable to pay the contract price.

⁶ Regulation 61.

⁷ As detailed in section 28 of the Act, supplemented by regulation 58.

⁸ The amount specified in regulation 58(1).

- the purpose of the contract is to ensure the performance of contractual obligations which were to be performed under the other contract;
 - the other contract was not a QDC or QSC;
 - at least one of the parties to the other contract is also a party to the contract;
 - at least one of the parties to the contract was not a party to the other contract; and
 - the contract is in all material respects (apart from the identities of the parties to the contract) identical to the other contract.
- e. At least 50 per cent by value of the obligations under the contract is required to enable the performance of the QDC or QSC to which the contract is a sub-contract, or to enable the combined performance of the QDC or QSC to which the contract is a sub-contract and any other QDCs or QSCs, or prospective QDCs or QSCs to which the contracting authority (or any person associated with that person) is or might become a party.⁹
- f. The contract has been assessed and notified as a QSC.¹⁰
- g. The Secretary of State has not exercised their power to direct that the contract is not a QSC even though the requirements in (a) to (f) above are met in relation to the contract.

Is the contract the result of a competitive process?

- 3.4 A contract is not a QSC if it was awarded as the result of a competitive process as defined in boxes A or B below.

A: Competitive process – single contract

The award of a single contract is the result of a competitive process and the contract is, therefore, not a QSC if the conditions (a), (b) and (c) below are all satisfied.¹¹

- a. The contracting authority either:
- i. published a notice of intention to seek offers in relation to the provision of goods, works or services; or
 - ii. invited one or more persons other than the sub-contractor, and not associated with the sub-contractor, to negotiate or provide offers in relation to the provision of goods, works or services.
- b. The contracting authority conducted a transparent and arms-length procurement process and used appropriate evaluation criteria to identify the offer made by the sub-contractor as the best offer and the material terms of the contract are wholly or substantially the same as that best offer.
- c. At the time of making that offer, the sub-contractor did not or could not reasonably have considered it likely that its offer would be the only offer reasonably capable of acceptance by the contracting authority.

⁹ Regulation 58(5) provides that one or more obligations under a contract are deemed to form 50 per cent by value of the obligations under that contract if the value of a hypothetical contract under which those were the only obligations would be at least 50 per cent of the value of the contract being assessed.

¹⁰ In compliance with the procedure under section 29 of the Act.

¹¹ Regulation 59.

B: Competitive process – contract made under a framework agreement

A sub-contract made under a framework agreement is the result of a competitive process and the contract is, therefore, not a QSC in either of the circumstances (1) or (2) described below.¹²

1. Price determined by a framework agreement – The terms governing the price payable under the contract are determined by a framework agreement and the following conditions are met.

- a. The procurement process by which the contracting authority entered into the framework agreement with the sub-contractor was transparent and arms-length and used appropriate evaluation criteria to determine which person or persons should be awarded a framework agreement.
- b. The material terms of the framework agreement are wholly or substantially the same as were offered by the sub-contractor either:
 - i. in a tender submitted in response to the contracting authority's notice of intention to seek offers in relation to a proposed agreement or other arrangement ('framework agreement') which establishes terms under which a person (a 'framework supplier') would enter into one or more contracts with the contracting authority in the period during which the framework agreement applies; or
 - ii. in negotiations following an invitation made by the contracting authority to two or more persons to negotiate or provide offers in relation to the terms of a proposed framework agreement where at least one person invited to negotiate was not the sub-contractor or a person associated with the sub-contractor.
- c. At the time of making its offer, the sub-contractor did not consider, or could not reasonably have considered, it likely that its offer would be the only offer reasonably capable of acceptance by the contracting authority.

2. Price determined by a competition between framework suppliers – The terms governing the price payable under the contract are determined by a competition between two or more framework suppliers and the following conditions are met.

- a. At least one of the competing framework suppliers was not the sub-contractor or a person associated with the sub-contractor.
- b. The competition was transparent and arms-length and used appropriate evaluation criteria to identify the offer made by the sub-contractor as the best offer.
- c. The terms governing the price payable under the contract are wholly or substantially the same as were offered by the sub-contractor in that best offer.
- d. At the time of making its offer, the sub-contractor did not consider, or could not reasonably have considered, it likely that its offer would be the only offer reasonably capable of acceptance by the contracting authority.

¹² Regulation 60.

Calculating the value of a contract

- 3.5 The value of a proposed sub-contract is to be determined by the contracting authority in accordance with regulation 5 which provides that:
- a. the 'value' of a contract is the higher of two amounts which are the consideration (net of value added tax) which the contracting authority expects will be payable under the contract at either:
 - i. the date of the contracting authority's QSC assessment for that contract; or
 - ii. the date on which it is proposed to enter into the sub-contract;¹³
 - b. specified matters are to be taken into account or disregarded in calculating the value; and
 - c. the contracting authority must (subject to certain specified exclusions) aggregate the value of the proposed sub-contract with the values of other contracts or proposed contracts the contracting authority has entered into, or proposes to enter into, with the same person (or persons associated with that person) which:
 - i. are not the result of a competitive process; and
 - ii. have the purpose of fulfilling the same requirement for goods, works or services (see below) as the sub-contract.

Fulfilling the same requirement

For the purpose of the QSC assessment, determining whether contracts entered into with the same person (or persons associated with that person) have the purpose of fulfilling the same requirement for goods, works or services will necessitate the application of judgement by the contracting authority. In general, contracts may be considered as fulfilling the same requirement where:

- the goods, works or services to be provided under each contract are intended collectively to fulfil the same need for the contracting authority; and
- the goods, works or services under each contract could be supplied under a single contract in a commercially rational manner for the contracting authority.

- 3.6 The SSRO has provided guidance on how the value of a sub-contract should be determined for reporting purposes. (See paragraphs 3.59 to 3.63 in the SSRO's [guidance on the submission of contract reports](#).) The same guidance can be applied when assessing the value of a proposed sub-contract to a QDC or QSC for the purpose of determining whether that contract meets the requirements to be a QSC. The contract reporting guidance also includes an illustration of how to aggregate the values of multiple sub-contracts to determine the value of a proposed sub-contract as part of a QSC assessment. (See page 24 in that document.)

Timing of assessment

- 3.7 The Regulations require a contracting authority to undertake a QSC assessment at any time when it is proposed to enter into a new sub-contract. The QSC assessment must be undertaken and notice of a positive QSC assessment must be given to the MOD and the prospective sub-contractor before the contract is entered into.

¹³ In practice, it will not be necessary to assess the amount of the expected consideration at date ii) if the amount of the expected consideration at date i) meets the value threshold to be a QDC.

- 3.8 When considering the timing of the QSC assessment, the contracting authority should give thought to the time limits within which the prospective sub-contractor may appeal a positive QSC assessment should they wish to do so. No appeal against a QSC assessment may be brought after the proposed sub-contract has been entered into, and a notice of appeal must be received by the SSRO no later than six months after the person bringing the appeal received the notice of assessment.

Existing sub-contracts where amendments are proposed

- 3.9 Where it is proposed to amend an existing sub-contract (that is not a QSC) which enables the performance of a QDC or QSC, for example, changing the requirements or price of the sub-contract, there is no need to undertake a QSC assessment for that sub-contract, unless the effect of the proposed amendment is such that a new contract would be created. In this event, the contracting authority will need to undertake a QSC assessment for the proposed new contract.
- 3.10 An amendment to an existing non-QSC sub-contract between a contracting authority and a sub-contractor is to be treated as a new contract if either of the circumstances (1) or (2) below apply.¹⁴

Circumstances in which a contract amendment is to be treated as a new contract

1. The parties wish the sub-contractor to provide additional goods, works or services under an existing contract between them, and:
 - a. the same, or substantially the same, commercial outcome¹⁵ could be achieved either by:
 - i. amending the existing contract to include the additional goods, works or services; or
 - ii. procuring the additional goods, works or services under a separate contract without making disproportionately numerous or complex amendments to the existing contract;
 - b. procuring the additional goods, works or services under a separate contract would not give rise to unavoidable and material:
 - i. additional commercial risk; or
 - ii. duplication of costs or resource; and
 - c. the additional goods, works or services are not subject to a relevant pricing restriction.¹⁶ A relevant pricing restriction exists where either of the following applies:
 - i. The existing contract was awarded as the result of a competitive process (see paragraph 3.4 above); the contract specifies the way in which the price of the additional goods, works or services is to be determined; the manner of determining the price was agreed when the contract was entered into; and the way in which the price is to be determined is incompatible with the way the price may be calculated in accordance with the Act and Regulations.

¹⁴ Regulation 7A, modified by regulation 65(3A).

¹⁵ Regulation 7A(5) requires that any difference in commercial outcome which arises as a result of having to comply with the requirements of the Act and the Regulations is to be disregarded.

¹⁶ A relevant pricing restriction exists if either of the circumstances in regulations 7A(7) or 7A(8) applies.

ii. The existing contract was not awarded as the result of a competitive process (see paragraph 3.4 above); the contract specifies the way in which the price of the additional goods, works or services is to be determined; the manner of determining the price was agreed prior to 18 December 2014; and the way in which the price is to be determined is incompatible with the way the price may be calculated in accordance with the Act and Regulations.

2. The contract is amended in a way that amounts, in effect, to termination of that contract and the creation of a new contract.

3.11 Paragraphs 3.65 to 3.71 of the SSRO's [guidance on the submission of contract reports](#) concerns the application of regulation 7A in relation to QDCs. It identifies certain matters to consider when determining whether a proposed amendment to an existing contract would result in a new contract. The parties to a sub-contract should also consider these matters when determining whether a proposed amendment to that sub-contract would result in a new contract for which a QSC assessment would be required.

[A new contract amending an existing contract](#)

3.12 The Secretary of State has the power to agree with a primary contractor to treat a new contract entered into between them as amending an existing contract, which they might then agree results in the existing contract becoming a QDC.¹⁷ This power is not afforded to a contracting authority and a sub-contractor.¹⁸ Those parties may not agree that a new contract entered into between them results in an existing sub-contract being amended and (by their agreement) becoming a QSC.

¹⁷ Regulation 7A(4).

¹⁸ Regulation 65(3A)(b) omits regulation 7A(4).

4. QSC notifications and appeals

- 4.1 A contracting authority carrying out a QSC assessment must:
- make and keep a record of that assessment;¹⁹
 - in all cases, give written notice to the MOD and the SSRO that a QSC assessment has been undertaken;²⁰ and
 - if the assessment is that the proposed sub-contract would be a QSC if entered into, give written notice of a positive QSC assessment to the MOD and the prospective sub-contractor.²¹
- 4.2 A prospective sub-contractor in receipt of a positive QSC assessment may appeal to the SSRO against that assessment, subject to certain time limits.
- 4.3 We consider these aspects of the regulatory framework below.

Notification that a QSC assessment has been undertaken

- 4.4 The Regulations do not prescribe how or when a contracting authority should give notice to the MOD and SSRO that a QSC assessment has been undertaken, other than that the notification must be in writing. The SSRO has prepared a *QSC Assessment Notification* form (available on the SSRO's website) which may be used by a contracting authority when giving notice to the MOD and SSRO that a QSC assessment has been undertaken.
- 4.5 Written notifications to the SSRO can be provided:
- by email to helpdesk@ssro.gov.uk (preferred);
 - by post to SSRO, 100 Parliament Street, London, SW1A 2BQ; or
 - by upload to the Defence Contract Analysis and Reporting System²² (DefCARS).²³

Notification of positive QSC assessment

- 4.6 The Regulations do not prescribe how a contracting authority should give notice to the MOD and the prospective sub-contractor that a proposed contract would be a QSC if entered into, other than that the notification must be in writing. A contracting authority making a positive QSC assessment is required to provide the necessary notification of this to the MOD and the prospective sub-contractor before the proposed contract has been entered into. The contracting authority should provide the notification at the earliest opportunity before the proposed contract is to be entered into, to give the prospective sub-contractor the greatest opportunity to understand and meet its statutory obligations in respect of that contract, or to appeal to the SSRO against the assessment.

¹⁹ Regulation 61(5).

²⁰ Regulation 61(8).

²¹ Regulations 61(3) and (6).

²² The system developed and operated by the SSRO to assist contractors under qualifying contracts to submit their statutory reports.

²³ This can be done via the sub-contracts page of the next applicable Contract Notification Report, Quarterly Contract Report, Interim Contract Report or Contract Completion Report for the contract which the QSC enables, although contracting authorities remain free to adopt other approaches should they wish.

- 4.7 Until notice of a positive QSC assessment (where made) is provided to the MOD and the prospective sub-contractor the requirements of the regulatory framework will not apply to that sub-contract.²⁴
- 4.8 If notice of a positive QSC assessment were not provided until after the proposed contract had been entered into there would be implications for both the contracting authority and the sub-contractor under the QSC.
- a. The contracting authority would be in breach of its statutory obligation and would be susceptible to being served with a compliance notice by the MOD.²⁵ (See Section 8 of this document.)
 - b. The sub-contractor under the QSC:
 - i. would be denied its statutory right to make an appeal against that assessment to the SSRO as no appeal against a positive QSC assessment may be brought after the proposed sub-contract to which it relates has been entered into;²⁶ and
 - ii. may be unable to meet its statutory reporting obligations in respect of that sub-contract.
- 4.9 The SSRO has prepared a *Positive QSC Assessment Notification* form (available on the SSRO's website) which may be used by a contracting authority to notify the MOD and the prospective sub-contractor of a positive QSC assessment.
- 4.10 While there is no requirement for a contracting authority to provide notice of a positive QSC assessment to the SSRO, it is beneficial for the SSRO to be notified of a positive QSC assessment in order that it can provide support and advice to the prospective sub-contractor on the fulfilment of its statutory obligations under the regulatory framework.
- 4.11 A copy of a written notification can be provided to the SSRO:
- by email to helpdesk@ssro.gov.uk (preferred);
 - by post to SSRO, 100 Parliament Street, London, SW1A 2BQ; or
 - by upload to DefCARS.²⁷

Compliance with notification requirements

- 4.12 Responsibility for enforcement of the requirements to provide notifications related to QSC assessments rests with the Secretary of State, who may issue compliance and penalty notices where requirements are not met. (See Section 8 of this document.)

²⁴ Section 30(5) of the Act and regulation 58(6).

²⁵ Regulation 31(3)(f).

²⁶ Regulation 62(3).

²⁷ This can be done via the sub-contracts page of the next applicable Contract Notification Report, Quarterly Contract Report, Interim Contract Report or Contract Completion Report for the contract which the QSC enables, although contracting authorities remain free to adopt other approaches should they wish.

Reporting the outcome of QSC assessments in statutory contract reports

- 4.13 The notification requirements described above are separate from the obligations on the primary contractor under a QDC or the sub-contractor under a QSC to provide information in their statutory contract reports about the outcome of any QSC assessments they have undertaken. This includes, among other information:
- a. for each agreed or proposed sub-contract with a value of £1 million or more, confirmation of whether a QSC assessment has been undertaken and, if so, the outcome of the assessment;
 - b. for each agreed or proposed sub-contract with a value of £15 million or more which has been assessed as not being a QSC:
 - i. the outcome of the negative assessment;
 - ii. confirmation of whether the award of the contract is not, or would not be, the result of a competitive process; and
 - iii. confirmation of whether the contract enables the performance of contracts other than a QDC or QSC.
- 4.14 Paragraphs 4.78 to 4.80 and Table 24 in the SSRO's [guidance on the submission of contract reports](#) describe in detail all the reporting requirements related to sub-contracts to qualifying contracts.

Appeal against a QSC assessment

- 4.15 Where a prospective sub-contractor is given notice that a proposed sub-contract would be a QSC if entered into, the prospective sub-contractor may appeal against the assessment to the SSRO, who must determine the appeal if the conditions for a referral have been met.
- 4.16 A notice of appeal, containing specified information, must be sent to the SSRO and, at the same time, copied to the Secretary of State and the contracting authority who made the assessment. The notice of appeal must be received by the SSRO no later than six months after the prospective sub-contractor received the notice of assessment.²⁸ No appeal may be brought after the sub-contract to which the notice relates is entered into.²⁹
- 4.17 The Secretary of State and the contracting authority who made the assessment may each make a written submission to the SSRO on any matters to which they wish the SSRO to have regard in determining the appeal. Any such submission must be made within 20 working days of the appeal notice being received.
- 4.18 The SSRO is required to determine an appeal within 40 working days of receipt of the notice of appeal.³⁰

²⁸ Regulation 62(5)(b).

²⁹ Regulation 62(3).

³⁰ Regulation 62(7).

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- 4.19 The SSRO has published [guidance](#) on the procedures it will follow when determining such an appeal. This sets out:
- a. the requirements for submitting a notice of appeal;
 - b. the criteria the SSRO will apply to determine whether to accept an appeal;
 - c. the process the SSRO will follow when determining an appeal; and
 - d. the roles and expectations of all parties throughout the process.
- 4.20 Anyone intending to appeal to the SSRO against a positive QSC assessment may contact us via referrals@ssro.gov.uk or 020 3771 4785 to discuss the requirements.

5. Agreeing the price of a QSC

- 5.1 The Act and Regulations specify how qualifying contracts must be priced. These regulatory requirements apply to QSCs (and to sub-contractors) as they apply to QDCs (and to primary contractors), subject to certain modifications.³¹
- 5.2 The SSRO provides [guidance](#) on the pricing of qualifying contracts to assist the MOD and contractors to apply the regulatory framework. We provide signposting below to the SSRO's guidance on contract pricing and highlight the ways in which the contract-pricing requirements of the Act and Regulations are modified for application to a QSC.

Contract pricing methods for QSCs

- 5.3 The price payable under a QSC or a component of such a contract, must be determined in accordance with one of the following pricing methods.

Default pricing methods ³²	Alternative pricing methods ³³
<ul style="list-style-type: none"> • Firm pricing • Fixed pricing • Cost-plus pricing • Estimate-based fee pricing • Volume-driven pricing • Target pricing 	<ul style="list-style-type: none"> • Commercial pricing • Prices determined in accordance with law • Novated contract price • Competed rates applied to uncompleted volumes • Agreed changes to the contract profit rate • Aggregation of components

- 5.4 When a contract contains multiple components (see below) different pricing methods may be used for different components.

Contract components

- 5.5 The Act provides for a part of a qualifying contract to be treated distinctly from other parts of the contract when determining the price payable under the contract.³⁴ Each part that is priced distinctly is a 'component' of the contract. For this purpose, a part of a contract is to be treated distinctly if either:
- a. the Regulations contain provision to that effect; or
 - b. the parties to the contract agree that it should.³⁵

³¹ The modifications are specified in regulations 64 and 65.

³² Regulation 10.

³³ Provided for by regulations 19A, 19B, 19D, 19E, 19F and 19G. The pricing method provided for by regulation 19C (Previously agreed price) cannot be used for a QSC or a component of such a contract because a sub-contract cannot become a QSC upon amendment.

³⁴ Section 15.

³⁵ Section 15(7)

- 5.6 The Regulations contain multiple provisions for part of a qualifying contract to be treated distinctly from other such parts in determining the price payable under the contract. Some of these provisions apply to QSCs as they do to QDCs. For example:
- a. regulation 10 provides for the price payable under a qualifying contract or a component of such a contract to be determined in accordance with the pricing formula; and
 - b. regulation 11 provides for the contract profit rate for a qualifying contract or a component of such a contract to be calculated by taking the steps specified in that regulation.
- 5.7 The legislative provisions related to components which are modified for application to QSCs or components of such contracts are described below.

Circumstances in which a part of a QSC is a component of the contract

- 5.8 Regulation 9A(1), which identifies specific circumstances in which a part of a QDC is a component of that contract, does not apply in the case of a QSC. However, circumstances identified in this regulation may arise under a QSC where provision is made for them elsewhere in the Regulations, for example, in regulations 10 and 11 as noted above.
- 5.9 Additionally, a part of a QSC will be treated distinctly from another part and, therefore, be a component of the contract if the parties to the contract agree that it should.³⁶

Purpose for agreeing contract components

- 5.10 Regulation 9A(2) limits the circumstances in which the contracting parties can agree to treat parts of a QDC distinctly to when they can show a commercial purpose (other than to affect the final price adjustment of that contract). This provision is disapplied in the case of a QSC.

Default pricing methods

- 5.11 Under the default pricing methods, the price of a qualifying contract (or component of such a contract) is determined using the pricing formula: $(CPR \times AC) + AC$. In the pricing formula:
- a. CPR is the contract profit rate for the contract or component determined in accordance with regulation 11.
 - b. AC is the Allowable Costs for the contract of component determined in accordance with one of the six default pricing methods described in regulation 10.
- 5.12 The modifications to the Act and Regulations which are relevant to the determination of the contract profit rate and the Allowable Costs for a QSC or a component of such a contract are identified below.

³⁶ As provided for by section 15(7)(b) of the Act.

Determination of the contract profit rate

- 5.13 Section 17(2) of the Act and regulation 11 set out the steps that are to be followed by the parties to a qualifying contract to determine the contract profit rate to be applied when determining the price of the contract (or a component thereof) using a default pricing method. The four steps to determine the contract profit rate are as follows.



- 5.14 The SSRO has published guidance on the determination of the [contract profit rate](#) under a qualifying contract. The guidance is applicable both to QDCs and to QSCs. The contracting authority and the sub-contractor under a QSC must have regard to the SSRO's guidance.³⁷
- 5.15 The legislative provisions for determining the contract profit rate are modified for application to QSCs or components of such contracts, as described below.
- Step 2 (Cost risk adjustment) and step 4 (Capital servicing adjustment)*
- 5.16 The amount of the adjustments at step 2 and step 4 are to be agreed between the contracting authority (rather than the Secretary of State) and the sub-contractor.³⁸
- 5.17 In agreeing the capital servicing adjustment, the contracting authority and the sub-contractor:
- must have regard to the capital servicing rates in force at the time of agreement;
 - must not apply any adjustment in respect of any costs of the fixed and working capital employed by the sub-contractor which are allowable costs under the contract (or component); and
 - may use an average fixed and working capital for any business unit which is likely to be performing the sub-contractor's obligations under the contract (or component).³⁹
- 5.18 There is no provision for a contracting authority who proposes to enter into two or more QSCs with the same sub-contractor within the period of one year to agree:
- an amount which may be used as the cost risk adjustment for any QSC entered into between the parties within that year;
 - an amount which may be used as the capital servicing adjustment for any QSC entered into between the parties within that year.⁴⁰

³⁷ Regulation 64(5) modifies section 18(1) of the Act.

³⁸ Regulation 64(4) modifies section 17(4)(a) of the Act.

³⁹ Regulation 65(4) modifies regulation 11.

⁴⁰ Regulation 65(6) disapplies regulation 13.

Step 3 (Incentive adjustment)

- 5.19 An adjustment (not to exceed 2 percentage points) may be made at step 3 (incentive adjustment) where the contracting authority (rather than the Secretary of State) determines that the amount resulting from step 2 of the process should be increased to give the sub-contractor a particular financial incentive as regards the performance of provisions of the contract (or component) specified by the contracting authority.⁴¹

Determination by the SSRO

- 5.20 If, in response to a referral, the SSRO makes a determination on the baseline profit rate or any profit rate adjustments for a QSC (or a component of such a contract) it may determine that a payment of a specified amount must be made to the Secretary of State by the sub-contractor or to the sub-contractor by the Secretary of State, rather than amending the price payable by the contracting authority under the referred contract.⁴²

Determination of Allowable costs

- 5.21 A contractor's costs are Allowable Costs under a QDC or QSC which uses a default pricing method where the relevant parties are satisfied that the costs are appropriate, attributable to the contract and reasonable in the circumstances. These are referred to as the requirements of allowable costs. The SSRO provides guidance on the determination of [Allowable Costs](#) under a qualifying contract. The guidance is applicable both to QDCs and to QSCs. The Secretary of State, contractors and sub-contractors must have regard to the SSRO's guidance about determining whether costs are allowable costs under qualifying contracts.
- 5.22 The legislative provisions for determining Allowable Costs are modified for application to QSCs or components of such contracts, as described below.

Relevant parties

- 5.23 In the case of a QSC, the relevant parties who must be satisfied that the requirements of allowable costs are met are the Secretary of State and the sub-contractor. The Secretary of State may at any time require the sub-contractor under a QSC to demonstrate that the requirements of allowable costs are met in relation to a particular cost claimed by the sub-contractor as an allowable cost under a QSC (or a component of that contract).

POCO adjustment

- 5.24 A reduction to the allowable costs under a qualifying contract (or component of such a contract) may be made⁴³ to ensure that profit arises only once in the allowable costs that relate to the price payable under any group sub-contract⁴⁴ (including any further group sub-contract⁴⁵). This reduction is referred to in the SSRO's Allowable Costs guidance (Part I in Section 5) as the Profit on Costs Once (POCO) adjustment. That guidance explains how a POCO adjustment is to be determined.
- 5.25 Although the Regulations provide for the Secretary of State and a prospective contractor to agree a POCO adjustment on a group basis for QDCs entered into between them within a given year, there is no such provision for QSCs.⁴⁶

41 Regulation 65(4) modifies regulation 11.

42 Regulation 65(9)(b) modifies regulation 18(5).

43 Provided for by section 20(2A) of the Act.

44 Defined in Part I.8 of the SSRO's Allowable Costs guidance.

45 Defined in Part I.8 of the SSRO's Allowable Costs guidance.

46 Regulation 65(6) disapplies regulation 13.

Determination by the SSRO

- 5.26 If, in response to a referral, the SSRO makes a determination on the Allowable Costs for a QSC it may determine that a payment of a specified amount must be made to the Secretary of State by the sub-contractor or to the sub-contractor by the Secretary of State, rather than amending the price payable by the contracting authority under the referred contract.

Alternative pricing methods

- 5.27 The Act and Regulations provide for the use of six alternative pricing methods to determine the price of a QSC or a component of such a contract in circumstances which are specified in the legislation.⁴⁷ The SSRO provides guidance on the [alternative pricing of contracts](#). The SSRO's alternative pricing guidance is applicable both to QDCs and to QSCs. The legislative provisions for the alternative pricing methods are modified for application to QSCs or components of such contracts, as described below.

Commercial pricing⁴⁸

- 5.28 In the case of a QSC, the circumstances in which the commercial pricing method⁴⁹ may be used include where the Secretary of State is satisfied that:
- a. the sub-contractor has supplied goods, works or services under a contract to the same or substantially the same specifications:
 - i. to the Secretary of State or the contracting authority under a contract awarded as a result of a competitive process;⁵⁰
 - ii. to another party under a contract placed following a process which would have satisfied the requirements of a competitive process for single sub-contracts; or
 - iii. to any other person in an open market where such goods, works or services are offered for sale; or
 - b. a supplier (who may be the sub-contractor) has supplied goods, works or services under a contract to the same or substantially the same specification to other parties in a competitive environment.
- 5.29 The commercial pricing method may not be used for a QSC if the proposed contract is for the supply of goods, works or services and the Secretary of State or the contracting authority has made any direct payment for the development of those goods, works or services.

Aggregation of components⁵¹

- 5.30 In the case of a QSC, where the contracting authority (rather than the Secretary of State) determines that the sub-contractor should be given a particular financial incentive as regards the performance of provisions of the QSC specified by the contracting authority, the contract price may be increased by an amount ('the total incentive adjustment') specified by the contracting authority.

⁴⁷ Regulation 65(9ZB) disapplies regulation 19C which provides for the 'Previously agreed price' pricing method.

⁴⁸ See section 3 of the SSRO's guidance on the alternative pricing of contracts.

⁴⁹ Provided for by regulation 19A.

⁵⁰ Regulation 65(9ZA) modifies regulation 19A(3)(a)(i).

⁵¹ See Section 9 of the SSRO's guidance on the alternative pricing of contracts.

Adjustment to the price payable under a contract using the target pricing method

- 5.31 Under the target pricing method, the total price payable under a qualifying contract (or a component of that contract) may be adjusted where there is a difference between the contractor's actual allowable costs under the contract (or component) and the estimated allowable costs used to determine the target price.
- 5.32 The legislative provisions related to target pricing are modified for application to QSCs or components of such contracts, as described below.
- 5.33 For a QSC the amount of any adjustment must be determined by agreement between the contracting authority (rather than the Secretary of State) and the sub-contractor, or by the SSRO where the matter is referred to it.⁵² A reference to the SSRO for a determination on the amount of any adjustment in the total price payable under a QSC using the target pricing method may be made by the Secretary of State, the contracting authority or the sub-contractor.⁵³

Final price adjustment

- 5.34 The Regulations specify circumstances in which a final price adjustment may be made to the total price payable under a qualifying contract where cost under- or over-runs in contracts priced using the firm, fixed or volume-driven pricing methods result in the contractor either earning excess profit beyond a prescribed threshold or making a loss. The SSRO has published [guidance on the application of the final price adjustment](#). The guidance is applicable both to QDCs and to QSCs.
- 5.35 The legislative provisions for determining the final price adjustment are modified for application to QSCs or components of such contracts, as described below.
- 5.36 The provision to make a final price adjustment applies only to QSCs with a value of or above £50 million.⁵⁴
- 5.37 In the case of a QSC, a final price adjustment:
- a. is to be agreed between the Secretary of State and the sub-contractor; and
 - b. may result in a payment of a specified amount to the Secretary of State by the sub-contractor or by the Secretary of State to the sub-contractor.⁵⁵
- 5.38 The Secretary of State's power to disapply the provision for a final price adjustment in some cases does not apply in the case of a QSC.⁵⁶

Re-determining the price of a QSC

- 5.39 The Schedule to the Regulations applies if the parties to a qualifying contract propose to amend the contract in a way that would affect the original price of the contract or a component of the contract. The Schedule applies both to QDCs and to QSCs. The SSRO does not presently provide separate guidance on the application of the Schedule to the Regulations to re-determine the price of a qualifying contract but can provide advice on its application in response to queries (see Section 9 in this document).
- 5.40 In relation to a QSC, references in the Schedule to 'the parties' should be construed as meaning the contracting authority and the sub-contractor.⁵⁷

⁵² Regulation 64(2) modifies section 16(2)(a) of the Act.

⁵³ Regulation 64(3) modifies section 16(2)(b) of the Act.

⁵⁴ Regulation 65(8)(a)(i) modifies regulation 16(1).

⁵⁵ Regulation 65(8)(a)(ii) modifies regulation 16(1).

⁵⁶ Regulation 64(6) modifies section 21(5) of the Act.

⁵⁷ Regulation 65(16) modifies the Schedule to the Regulations.

6. Record-keeping and reporting by sub-contractors under QSCs

- 6.1 The Act and Regulations require contractors with qualifying contracts to keep records⁵⁸ pertaining to those contracts and to provide information about those contracts and their operations to the MOD and the SSRO via statutory reports.⁵⁹ These transparency requirements apply to QSCs (and to sub-contractors) as they apply to QDCs (and to primary contractors), subject to certain modifications.⁶⁰
- 6.2 The SSRO provides [guidance](#) and an online, web-enabled system (DefCARS) to assist contractors under qualifying contracts to submit their statutory reports. The reporting guidance is applicable both to QDCs and to QSCs. Contractors under qualifying contracts must have regard to relevant guidance issued by the SSRO when preparing their reports.
- 6.3 Differences between the reporting requirements for QDCs and QSCs are relatively minor and are identified by the SSRO where appropriate in its reporting guidance. We highlight below the ways in which the record-keeping and reporting requirements of the Act and Regulations are modified for application to QSCs and sub-contractors and provide signposting to the SSRO's reporting guidance where relevant.

Record keeping

- 6.4 The persons who are required to provide reports under Parts 5 and 6 of the Act are required to keep relevant records during a specified time period.⁶¹ These records may be examined by the Secretary of State or an authorised person for the following specified purposes:
- auditing contract reports and supplier reports;⁶²
 - verifying matters related to the price payable under a qualifying contract;
 - monitoring a contractor's performance of its obligations under a qualifying contract; or
 - determining whether a contract is a QSC.

When the duty to keep relevant records ends

- 6.5 For a QSC, the date on which the duty to keep a relevant record ends may be determined with reference to (if relevant) the date on which, in response to a referral, the SSRO determined that the contract is no longer a QSC. (See Section 7 of this document.)
- 6.6 Accordingly, unless a reference, application or appeal to the SSRO has been made in relation to the contract and not yet determined, the duty to keep a relevant record for a QSC (including any report⁶³ which relates to that contract) ends on the earlier of the dates which are:
- two years after the contract completion date or the date on which it is determined that the contract is no longer a QSC; or
 - six years after the end of the accounting period of the contractor in which the duty first arose.

⁵⁸ Specified in Part 4 of the Regulations.

⁵⁹ Specified in Parts 5 and 6 of the Regulations.

⁶⁰ Specified in regulation 65.

⁶¹ Section 23 of the Act and regulation 20.

⁶² Provided under sections 24 or 25 of the Act respectively.

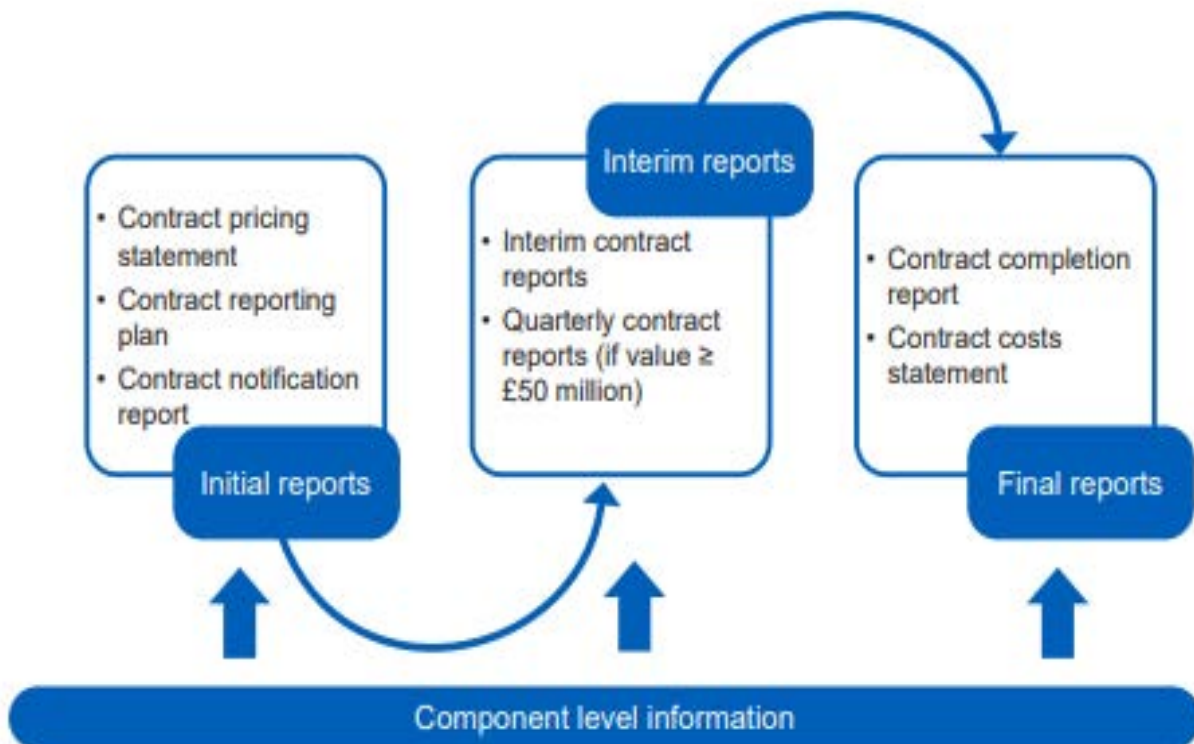
⁶³ Under part 5 of the Act.

- 6.7 If at the time mentioned in paragraph 6.6 a reference, application or appeal to the SSRO in relation to the contract has been made but not yet determined, the duty to keep relevant records ends three months after the reference, application or appeal is determined.

Contract reports

- 6.8 Section 3 of the SSRO's [guidance on the preparation and submission of contract reports](#) provides an overview of the reports (Exhibit 1) required on qualifying contracts.⁶⁴ All contractors with QDCs and QSCs are required to provide initial and final reports. The submission and frequency of interim reports is dependent on the value assessment and duration of the contract.

Exhibit 1 – Contract reports



General requirements

- 6.9 Regulation 22 sets out the general requirements for the provision of reports related to qualifying contracts and components of those contracts.
- 6.10 Unlike for reports related to QDCs, there is no requirement for a contract report related to a QSC to contain the following information:
- a. the name, position and contact details of the civil servant who is responsible for managing the contract on behalf of the Secretary of State;
 - b. any unique identifying number allocated to the contract by the Secretary of State;
 - c. where the contract contains components:
 - i. the name, position and contact details of the civil servant who is responsible for managing the component on behalf of the Secretary of State;
 - ii. any unique identifying number allocated to the component by the Secretary of State.⁶⁵

⁶⁴ Required by Part 5 of the Regulations.

⁶⁵ Regulation 65(10) modifies regulation 22.

Contract pricing statement

- 6.11 Regulation 23 sets out the requirements for provision of a contract pricing statement which must be submitted within one month of the qualifying contract being entered into. Section 4 of the SSRO's [contract reporting guidance](#) covers the relevant reporting requirements.
- 6.12 Regulation 23(3) specifies information that must be provided in a contract pricing statement if the contract price for the contract or component is determined using a default pricing method. For a QSC, this should include a description of any facts or assumptions provided by either the contracting authority or the Secretary of State and used by the contractor in calculations relevant to each element of allowable costs (including those relevant to any risk or contingency included in the allowable costs).⁶⁶

Contract notification report

- 6.13 Regulation 25 sets out the requirements for provision of a contract notification report which must be submitted within one month of the qualifying contract being entered into. Section 4 of the SSRO's [contract reporting guidance](#) covers the relevant reporting requirements.
- 6.14 Unlike for reports related to QDCs, there is no requirement for a contract notification report related to a QSC to contain the following information:
- a. a list of payments exceeding £100,000 or 1 per cent of the contract price made or expected to be made by the Secretary of State under the contract;
 - b. an annual profile of sterling payments made or which the contractor expects the Secretary of State will make; or
 - c. an annual profile of payments made in any currency other than sterling or which the contractor expects the Secretary of State will make.⁶⁷

Interim contract report

- 6.15 Regulation 27 sets out the requirements for provision of an interim contract report which must be submitted within two months after each reporting date. The reporting dates, which are contingent on whether the value of the contract is greater than or equal to £50 million, are determined with reference to regulations 27(2) or (3).⁶⁸ Section 6 of the SSRO's [contract reporting guidance](#) covers the relevant reporting requirements.
- 6.16 Unlike for reports related to QDCs, there is no requirement for an interim contract report related to a QSC to contain the following information:
- a. a list of payments exceeding £100,000 or 1 per cent of the contract price made or expected to be made by the Secretary of State under the contract;
 - b. an annual profile of sterling payments made or which the contractor expects the Secretary of State will make; or
 - c. an annual profile of payments made in any currency other than sterling or which the contractor expects the Secretary of State will make.⁶⁹

⁶⁶ Regulation 65(11) modifies regulation 23(3)(c)(ii).

⁶⁷ Regulation 65(12) modifies regulation 25.

⁶⁸ Where the contract contains components, regulation 27(3A) provides for the agreement of different reporting dates for each component.

⁶⁹ Regulation 65(13) modifies regulation 27.

Quarterly contract report

- 6.17 Regulation 26 sets out the requirements for provision of a quarterly contract report for contracts initially valued at £50 million or more. These reports must be submitted within one month of the end of each calendar quarter from the initial reporting date until the contract completion date. Section 5 of the SSRO's [contract reporting guidance](#) covers the relevant reporting requirements.
- 6.18 The requirements for quarterly contract reports are the same for QSCs as they are for QDCs.

Component completion report

- 6.19 Regulation 27A sets out the requirements for the provision of a component completion report. This must contain 'component completion information', which means the information that would be required to be provided in a relation to a component within a contract completion report (see below) if that information were not provided in a component completion report.
- 6.20 A component completion report must be provided within 12 months after the component completion date of a component of a qualifying contract, unless the information is provided in a contract completion report within 12 months after the component completion date of the component. Section 7 of the SSRO's [contract reporting guidance](#) covers the relevant reporting requirements.
- 6.21 The requirement to provide a component completion report applies to QSCs as it does to QDCs although the information that is required to be provided within such a report is amended for QSCs as noted in paragraph 6.23.

Contract completion report

- 6.22 Regulation 28 sets out the requirements for provision of a contract completion report which must be submitted within six months after the contract completion date. Section 7 of the SSRO's [contract reporting guidance](#) covers the relevant reporting requirements.
- 6.23 Unlike for reports related to QDCs, there is no requirement for a contract completion report related to a QSC to contain the following information:
- a. a list of payments exceeding £100,000 or 1 per cent of the contract price made or expected to be made by the Secretary of State under the contract;
 - b. an annual profile of sterling payments made or which the contractor expects the Secretary of State will make; or
 - c. an annual profile of payments made in any currency other than sterling or which the contractor expects the Secretary of State will make.⁷⁰

Defined pricing structure and output metrics

- 6.24 Among its other requirements, regulation 24 requires contractors to provide in the contract reporting plan for a qualifying contract:
- a. a description of the defined pricing structure (DPS) that the contractor will use to report costs in the reports provided under Part 5 of the Regulations;⁷¹ and
 - b. a list of the output metrics that will be used to describe deliverables in these reports, together with a description of which component or components the deliverables relate to.⁷²

⁷⁰ Regulation 65(14) modifies regulation 28.

⁷¹ Regulation 24(2)(d).

⁷² Regulation 24(2)(e).

- 6.25 Section 4 of the SSRO's contract reporting guidance covers the principles to which contractors should have regard when determining the DPS for reporting purposes and provides examples of output metrics which might be used to describe the contract deliverables.

Referrals to the SSRO

- 6.26 The Act and Regulations⁷³ provide for specified persons to make a referral to the SSRO for a determination on the defined pricing structure and output metrics that the contractor must use in all reports provided under Part 5 of the Regulations for that contract.
- 6.27 For a QSC or a proposed QSC a reference to the SSRO for a determination in relation to the defined pricing structure or output metrics to be used in reports under Part 5 for that contract:
- a. may be made by:
 - i. the contracting authority; or
 - ii. the prospective sub-contractor;⁷⁴ and
 - b. must be made:
 - i. no later than 6 months after the contract is entered into; or
 - ii. if the contract is amended after it is entered into in a way that affects any of those matters, no later than 6 months after the contract is so amended.⁷⁵

Supplier reports

- 6.28 The SSRO provides [guidance on the preparation and submission of supplier reports](#) by contractors under qualifying contracts or their ultimate parent undertakings where specified conditions pertaining to the value of qualifying contracts with outstanding obligations are met. Section 2 of the guidance provides an overview of the reports which may be required⁷⁶ to be submitted (Exhibit 2) and identifies matters to consider when determining which reports need to be submitted, who needs to submit them and when they are due.

Exhibit 2 – Supplier reports



- 6.29 Sub-contractors under QSCs and (where relevant) their ultimate parent undertakings should familiarise themselves with the requirements for the submission of supplier reports.

⁷³ Section 35(1)(b) of the Act and regulation 52(1)(a).

⁷⁴ Regulation 64(7) modifies section 35(2).

⁷⁵ Regulation 65(15) modifies regulation 52(2)(a).

⁷⁶ Required by Part 6 of the Regulations.

SSRO training support

- 6.30 In addition to providing guidance on the statutory reporting obligations, the SSRO provides bespoke training support to contractors and the MOD to familiarise them with the reporting requirements and to support their use of the SSRO's reporting system (DefCARS). If you are interested in receiving such training please contact the SSRO via helpdesk@ssro.gov.uk.
- 6.31 Other types of support provided by the SSRO are identified in Section 9 of this document.

Compliance with reporting requirements

- 6.32 DefCARS includes functionality that will support those with reporting obligations to submit compliant reports. This functionality is explained in the SSRO's [guidance on DefCARS functionality](#).
- 6.33 The SSRO has published a [compliance methodology](#) which sets out how it will keep under review the extent to which persons subject to reporting requirements are complying with them. The methodology explains how the SSRO will monitor whether reports:
- are delivered on time; and
 - contain the information prescribed in the Regulations.
- 6.34 If the SSRO identifies any apparent non-compliance with reporting requirements, it will bring that to the attention of the MOD.
- 6.35 Responsibility for enforcement of the record-keeping and reporting obligations rests with the Secretary of State, who may issue compliance and penalty notices. (See Section 8 of this document.)

7. Notifying the SSRO of changes

- 7.1 Where the sub-contractor under a QSC is of the opinion that the conditions specified in regulations 58(3) and 58(4) (see below) are no longer met in relation to that contract it may give notice to the SSRO that it considers Part 2 of the Act and the Regulations should cease to apply to that contract. The SSRO must consider the notice of cessation if the conditions for a referral have been met and decide whether to agree with or overrule the notice.

Conditions related to the value of the obligations under a QSC

Regulations 58(3) and 58(4) provide that a contract may be a QSC only if the performance of at least 50 per cent by value of the obligations under the contract is required to enable the performance of the QDC or QSC to which the contract is a sub-contract, or to enable the combined performance of the QDC or QSC to which the contract is a sub-contract and any other QDCs or QSCs, or prospective QDCs or QSCs to which the contracting authority (or any person associated with that person) is or might become a party.

- 7.2 A notice of cessation must be made in writing, contain specified information, and be received by the SSRO no later than the contract completion date of the QSC to which it relates. At the same time the notice is sent to the SSRO it must be copied to the Secretary of State and the contracting authority.
- 7.3 The Secretary of State and the contracting authority may each make a written submission to the SSRO on any matters to which they consider the SSRO should have regard in deciding whether to overrule the notice of cessation. Any such submission must be made within 10 working days of the notice of cessation being received.
- 7.4 The SSRO aims to decide whether to agree with or overrule a notice of cessation within 40 working days of receipt.
- 7.5 The SSRO has prepared [guidance](#) on the procedures it will follow when considering a notice of cessation. This sets out:
- a. the requirements for submitting a notice of cessation;
 - b. the criteria the SSRO will apply to determine whether to consider a notice of cessation;
 - c. the process the SSRO will follow when making a decision on a notice of cessation; and
 - d. the roles and expectations of all parties throughout the process.
- 7.6 Anyone intending to submit a notice of cessation as a QSC to the SSRO may contact us via referrals@ssro.gov.uk or 020 3771 4785 to discuss the requirements.

8. Enforcement action by the MOD

8.1 The Act and Regulations provide that the MOD may take enforcement action against contractors under QDCs and QSCs that contravene statutory obligations. The contracting authority and sub-contractor under a QSC are independently responsible for the fulfilment of their respective statutory obligations in respect of that contract.

8.2 We consider below the different types of enforcement action that may be taken by the MOD.

Compliance notice

8.3 The MOD may give a compliance notice to a person if the MOD thinks that:

- a. the person has contravened section 31 of the Act (see below); and
- b. there are steps that can be taken by the person to remedy the contravention.

Contraventions which may give rise to enforcement action

A person will contravene section 31 of the Act and be susceptible to enforcement action by the MOD if they:

- fail to comply with specified record keeping and reporting requirements;
- knowingly and recklessly provide a report on a qualifying contract that is misleading in a material respect;
- fail to comply with the duty to notify the MOD of events and circumstances which are materially relevant to either:
 - » the costs and price payable under a qualifying contract to which they are a party; or
 - » their ability to perform a material obligation of a qualifying contract;
- fail to undertake a QSC assessment in respect of a proposed sub-contract when required to do so;
- in the MOD's opinion, incorrectly assess that a proposed sub-contract would not be a QSC if entered into; or
- fail to give the required notice of a positive QSC assessment in respect of a proposed sub-contract.

8.4 A compliance notice must:

- a. be given within specified time limits;⁷⁷
- b. give details of the contravention;
- c. specify the period within which the steps specified in the notice must be taken; and
- d. state that, if the person receiving the compliance notice fails to take the specified steps, the Secretary of State may give the person a penalty notice under section 32 of the Act.

⁷⁷ Regulation 49.

Penalty notice

- 8.5 Section 32 of the Act provides that the Secretary of State may give a penalty notice to a person if either:
- a. the Secretary of State thinks that the person:
 - i. has failed to take the steps specified in a compliance notice; and
 - ii. does not have a reasonable excuse for the failure; or
 - b. the person has contravened section 31 of the Act (as above) and the Secretary of State does not think that there are steps that can be taken by the person to remedy the contravention.
- 8.6 A penalty notice is a notice requiring the person to pay a penalty to the Secretary of State within six months beginning with the date on which the notice is given. A penalty notice must:
- a. be given within specified time limits;⁷⁸
 - b. specify the contravention to which the notice relates;
 - c. state the amount of the penalty;⁷⁹
 - d. specify the date by which the penalty must be paid;
 - e. specify how the penalty must be paid;
 - f. give details of the interest that would be payable in relation any part of the penalty that is unpaid after the specified date;⁸⁰
 - g. explain how the person may apply to the SSRO, before the penalty becomes due, for a determination on:
 - i. whether the person has contravened section 31 or failed to take the steps specified in a compliance notice (or both);
 - ii. whether the person had a reasonable excuse for contravening section 31 or failing to take the steps specified in a compliance notice (or both); or
 - iii. the amount of the penalty.
- 8.7 The SSRO provides [guidance on determining the amount of a penalty](#) to which the Secretary of State must have regard.⁸¹

⁷⁸ Regulation 49.

⁷⁹ Determined in accordance with section 33 of the Act and regulation 50, with reference to the price of the QDC or QSC and having regard to guidance issued by the SSRO.

⁸⁰ Section 34(2) provides that if all or part of a penalty is not paid before the payment date, the unpaid balance carries interest from that date at the rate specified in section 17 of the Judgments Act 1838.

⁸¹ Section 33(3) of the Act.

Seeking a determination in relation to a penalty notice

- 8.8 The SSRO has published [guidance](#) on the procedures it will follow when making determinations, including determinations in relation to penalty notices. The SSRO's guidance sets out:
- a. the requirements for making a referral to the SSRO for a determination;
 - b. the criteria the SSRO will apply to determine whether to accept a referral;
 - c. the process the SSRO will follow when making a determination; and
 - d. the roles and expectations of all parties throughout the process.
- 8.9 Anyone intending to make a referral to the SSRO for a determination in relation to a penalty notice may contact us via referrals@ssro.gov.uk or 020 3771 4785 to discuss the requirements.

9. How the SSRO can help

- 9.1 The SSRO provides support to the MOD, and to new and existing contractors and sub-contractors under qualifying contracts to assist them to understand and apply the regulatory framework.

Support for new contractors

- 9.2 The SSRO offers on-boarding meetings to contractors and sub-contractors who have or will have a qualifying contract for the first time. These meetings are designed to help contractors and sub-contractors understand how the Regulations apply, their obligations under them and how to prepare and submit reports. Contractors and sub-contractors who already have qualifying contracts can also request on-boarding meetings to further develop their understanding of the regulatory framework or to induct new teams.
- 9.3 To request a meeting or further information about the SSRO and the regulatory framework, please email the SSRO Helpdesk via helpdesk@ssro.gov.uk or 020 3771 4785.

Help with queries

- 9.4 The SSRO Helpdesk responds to day-to-day queries on the regulatory framework, the SSRO's guidance, and the preparation and submission of statutory reports. We answer most helpdesk queries within 1 or 2 working days and aim to respond to all queries within a maximum of 5 working days.
- 9.5 The Helpdesk operates from 9am to 5pm Monday to Friday, excluding UK bank holidays.

Non-referral advice

- 9.6 The SSRO provides a non-referral advice service for contract-specific queries on applying the regulatory framework that are more complex in nature and which can't be dealt with by the Helpdesk. We aim to respond to complex queries within 10 to 15 working days of receipt. Further information on the SSRO's non-referral advice service is available at: <https://www.gov.uk/government/publications/the-ssros-non-referral-advice-service>.
- 9.7 Requests for non-referral advice must be made in writing to helpdesk@ssro.gov.uk.

Referrals

- 9.8 Some matters related to how the regulatory framework operates in specific circumstances require very detailed consideration and, as such, cannot be answered by the SSRO helpdesk or the non-referral advice service. In addition to the specific referrals covered elsewhere in this document, the Act and Regulations permit specified matters to be referred to the SSRO for an expert opinion or determination.
- 9.9 The SSRO has provided [guidance on its procedures for opinions and determinations](#). To discuss a potential referral, please email referrals@ssro.gov.uk or call 020 3771 4785.