SSRO

Single Source Regulations Office

Reporting guidance consultation response

July 2022

Contents

1. Introduction

1.1 This document explains the changes which the SSRO is making to its reporting guidance in July 2022. The changes impact the following guidance documents:

- guidance on contract reports (previously version 10.1);
- guidance on supplier reports (previously version 8.1); and
- guidance on DefCARS functionality (previously version 10.1).

1.2 We engaged with stakeholders about the changes, except for those which are minor and uncontroversial. We issued a consultation document for a period of eight weeks, from 13 April to 8 June 2022, covering the following areas:

- aggregation principles;
- reporting under framework contracts;
- general requirements for supplier reports; and
- company registration for overseas contractors.

1.3 We received four written responses to our consultation, as set out in Table 1. The Ministry of Defence (MOD) did not provide a response to the consultation.

Table 1 – Stakeholder responses to consultation

Organisation	Number of responses
Independent consultant	1
Contractor	2
ADS Group	1
Total	**4**

1.4 We would like to thank respondents for sharing their views with us. We have considered all responses and we have set out in sections 2 – 7 of this document and Appendices 1 – 5 how the feedback has been considered and the reasons for any guidance changes. Three of the respondents agreed that the SSRO could publish their consultation response alongside this document on the SSRO's website.

1.5 In our consultation document we explained that, subject to stakeholder feedback, any changes to the reporting guidance would be made in August 2022. The guidance is effective from the date of publication.

2. Other matters raised in the consultation

2.1 Three of the four respondents raised matters which were outside the scope of the consultation but related to the topics which were covered. These matters are explained below and the SSRO's response to them.

2.2 One respondent stated that the SSRO should not refer to its reporting guidance as statutory guidance and explained why they did not consider that the SSRO had a legal basis for issuing such guidance. The same respondent also suggested that the scope of the SSRO reporting guidance should be restricted to the reporting obligations as set out in Part 5 and Part 6 of the Single Source Contract Regulations 2014 and not extend to other aspects of the regime.

2.3 The SSRO's reporting guidance is statutory guidance, which it issues under its statutory powers conferred by sections 24(2)(d) and 25(6)(d) of the Defence Reform Act 2014 and to which contractors are required to have regard. We are satisfied that the proposed reporting guidance that was issued for consultation will assist contractors in understanding and complying with their reporting obligations under Part 5 and Part 6 of the Regulations.

2.4 In 2019, the MOD introduced changes to the legislation to help resolve practical reporting problems caused by the dual use of the terms "contract value" and "contract price". One respondent identified other areas where they thought there was still confusion. In particular, they identified use of the term "value" as problematic in relation to regulation 26(6)(j), regulation 5(6)(c), regulation 5(7), regulation 5(8)(b) and regulation 5(8A). ADS also expressed concerns about changes to use of the term "contract value" which they said they have shared with the MOD.

2.5 The proposed guidance reflects the requirements of the current legislation. We can recommend changes to the Secretary of State and would welcome discussion of the respondents' suggested changes as part of the ongoing review of the legislative framework that is being undertaken by the MOD. Respondents suggested that the SSRO should delay making changes to its reporting guidance until the current planned changes to the legislation had been implemented. The SSRO does not consider such a delay is necessary or beneficial to contractors. It will update the reporting guidance as necessary to reflect any future legislative changes at the appropriate time.

3. Aggregation principles

3.1 There was some support for the proposed guidance and related notification templates from stakeholders. However, one respondent felt that the guidance on assessment requirements and provision of templates to assist contractors to provide the notifications which they may be required to make following an assessment did not constitute guidance on contract reports and that they should be removed. Another respondent questioned why the contractor should attach notifications to DefCARS when the information required to be notified is a requirement of the reports in the system.

3.2 The SSRO regularly encounters instances of contracting authorities failing to comply with the notification requirements in relation to positive QSC assessments. In many cases notice is provided to the Secretary of State and the sub-contractor several months after the QSC is entered into, at which time a sub-contractor in those circumstances would also have failed to submit their initial contract reports which are due within one month of the sub-contract being entered into and may therefore receive a compliance notice under section 31 of the Act.

3.3 The SSRO has also confirmed in its proposed guidance that the requirement for contracting authorities to provide written notification for the purposes of regulations 61(3) and (6) and 61(8) is not satisfied through the submission of sub-contract information within statutory reports. This is because the reporting obligations and notification obligations are invoked by reference to different legislative requirements.

3.4 We acknowledge that the notification requirements exist separately from the reporting obligations established under section 24 of the Act and Part 5 of the Regulations. For this reason, the notification template and guidance on its submission is not included within the reporting guidance and, instead, will be made available elsewhere on the SSRO's website for a contractor to use should it wish to. We consider that the notification templates will assist sub-contractors in understanding and complying with their reporting obligations and, if a prime contractor chooses to do so, may be provided through DefCARS in the next applicable report. The guidance suggests that the Contract Notification Report (CNR), Quarterly Contract Report (QCR), Interim Contract Report (ICR) or Contract Completion Report (CCR) would be the most appropriate reports for this as they already include a page on sub-contract information. The SSRO therefore intends to make these templates available for contractors but they remain free to adopt other approaches should they wish to.

3.5 ADS felt that the proposed guidance did not accurately reflect that a contractor need only report the outcome of a QSC assessment in certain statutory reports if such an assessment had been made. The draft guidance, which provides that contractors are required to report the outcome *of any assessment that has been made* of whether a sub-contract is a QSC, is consistent with the legislation. The SSRO considers that, in any event, regulation 61 requires a contractor to undertake a QSC assessment in each case where it is proposed to enter into a relevant sub-contract, irrespective of the contract value. We would therefore expect that a QSC assessment will have been made for each sub-contract required to be reported.

3.6 Paragraph 3.38 of the proposed guidance describes the QSC assessment notification requirements and directs contractors to the notification templates on the SSRO's website. There are two templates, one for notification of a positive QSC assessment and the other for notification of every QSC assessment. ADS did not support the inclusion of the words 'assessment in all cases' in relation to the second notification template as they considered this to be too expansive. This relates to the SSRO providing notification templates on its website for both types of assessment which a contractor is required to undertake and provide notification of. The SSRO has replaced this wording with 'for every QSC assessment carried out' to be clearer.

3.7 One respondent thought that the guidance was not clear that the value assessment for a QSC assessment takes place twice as required by regulation 5(3)(a). Paragraphs 5.6 and 6.4 of the reporting guidance already confirm when a value assessment is to be undertaken by a contracting authority, but in the context of QCR and ICR submissions. We agree that the guidance would benefit from similar clarification in relation to QSC assessments and have updated paragraph 3.40 to reflect regulation 5(3)(a), which describes how the value is to be determined on the date of the QSC assessment or, if a later date, the date on which it is proposed to enter into the sub-contract (whichever value is the higher).

3.8 ADS considered the requirement to assess the value of each sub-contract to a QDC or QSC, both direct and indirect, to be onerous and disproportionate. The proposed guidance reflects the requirements of the legislation, which include that a value assessment must be undertaken for every proposed sub-contract (regulations 61(1) and (4) and 5(3)). The SSRO has not therefore made any changes to the final guidance. We do, however, welcome any discussion on the matter as part of the ongoing review of the legislative framework that is being undertaken by the MOD.

3.9 ADS and another respondent raised concerns about the SSRO's explanation of a contract 'requirement' in its guidance. ADS suggested that it was brief and did not cater for the complexity of the goods and services that are delivered to the MOD by the contractor base under the single source regime. The SSRO accepts that the term 'requirement' is not defined in the legislation. For the purpose of assessing whether the requirement fulfilled by the sub-contract being assessed is the same as the requirement fulfilled by other contracts, we remain of the view that this is to be identified from the terms of each contract and that contracting authorities should give careful consideration to how those requirements are expressed. Contracting authorities should also take into account the intent of the aggregation principles, being to prevent avoidance of the regulatory framework by dividing a single requirement into more than one contract. We have simplified the proposed paragraph 3.46 and deleted the subsequent proposed paragraph. We have also updated the example to explain that the sub-contracts were for the same requirement.

3.10 The example provided was generally supported as being a useful addition to guidance. One respondent, however, suggested that it should be removed because it relates to regulations outside of Part 5 of the Regulations. The SSRO has seen incorrect application of the QSC assessment requirements. This includes incorrect application of the aggregation principles, which has resulted in erroneous reporting. We consider that the inclusion of the example in the guidance will assist contractors in understanding and complying with their reporting obligations following a QSC assessment and that it should remain. One respondent suggested that the example should be amended to provide guidance on what would happen in the event of a further QSC for over £1m being assessed later in the contract. The example has been amended to take account of this.

3.11 One respondent did not support the requirement included in the guidance which related to where a contractor has decided a sub-contract is not a QSC because it does not involve the provision by the sub-contractor of anything for the purposes of a QDC or QSC to which the primary contractor is a party. The proposed guidance had suggested that the contractor should indicate the contracts which are not QDCs or QSCs that the contract supports, and explain why the contract is being identified for the purposes of the QDC or QSC that is being reported on. We have deleted this guidance in the new proposed paragraph as the requirement to report whether the contract enables the performance of contracts other than qualifying defence contract(s) or qualifying subcontract(s) is covered in paragraph 3.36.

3.12 All the changes to guidance associated with this topic can be seen in Appendix 1.

4. Reporting under framework contracts

4.1 ADS suggested that the SSRO needed to define the types of framework contracts which could exist in its guidance. The Act and Regulations do not distinguish between different types of framework agreements and this is therefore the approach adopted in the proposed guidance. Whether a framework agreement (or a contract awarded under it) is a QDC or QSC is determined by reference to the definitions in sections 14 and 28 of the Act respectively, irrespective of the type of framework.

4.2 One respondent suggested that a contractor could be unnecessarily subject to reporting requirements where the value assessment made the contract a QDC but where call-offs under the framework agreement were not made to the value envisaged. Regulation 5 provides that it is the responsibility of the contracting authority to determine the value of the contract. Whether a contract (including a framework agreement) is a QDC or QSC is determined by reference to the definitions in sections 14 and 28 respectively and this includes that the value be above the relevant threshold. The draft guidance has been prepared to reflect the requirements of the current legislation, and so the comments cannot be addressed as part of this consultation.

4.3 Two respondents thought that the SSRO had incorrectly suggested that the terms of a framework agreement would be refined each time there was a call-off order under the agreement. One suggested that the guidance should be deleted. The guidance provides a broad statement of how a framework agreement can operate within the single source regime. This includes that it establishes the terms which apply to subsequent purchases, subject to the possibility of some refinement to those terms. We have considered the comment and changed the language to reflect that refinement to the terms may not be needed in every case.

4.4 One respondent felt that a framework contract, and any contract awarded by it, is assessed by the MOD in the same way that any other type of contract would be. They considered that reporting guidance should be just that, guidance on how to report and not how to assess if a contract should be reported. The SSRO has received multiple queries through its Helpdesk and during contractor onboarding sessions concerning the reporting requirements associated with framework agreements. Contractors can be unsure, for example, of the difference between ‘contract value’, ‘contract price’ and ‘price committed to pay’ in the context of framework agreements. The contracting authority’s assessment of contract value is not only relevant for the purposes of determining whether the contract is a QDC or QSC, but also to determine certain reporting requirements, including whether QCRs must be submitted and, in the absence of agreed dates, the frequency of Interim Contract Reports. The proposed paragraph is therefore appropriate since it helps contractors to understand and comply with their reporting obligations.

4.5 Another respondent asked questions about whether particular scenarios would result in separate contracts being created. The Act and Regulations do not distinguish between the different types of framework agreement and this is therefore the approach adopted in the proposed guidance. Application of the regime to framework agreements is by reference to whether the definition of a QDC or QSC in sections 14 or 28 of the Act, respectively, is satisfied. This is the case irrespective of the 'type' of framework agreement. The specific contracting scenarios referred to would each need to be assessed in this way.

4.6 All the changes to guidance associated with this topic can be seen in Appendix 2.

5. General requirements for supplier reports

5.1 This guidance proposal was generally supported. One respondent suggested that the SSRO delay updates to the guidance until the MOD had completed its planned changes to the reporting requirements which would impact on other requirements relating to supplier reports. The SSRO does not consider such a delay is necessary or beneficial to contractors. It will update the reporting guidance as necessary to reflect any future legislative changes at the appropriate time. All the changes to guidance associated with this topic can be seen in Appendix 3.

6. Company registration for overseas contractors

6.1 This guidance proposal was generally supported. Three respondents identified that some contractors who are awarded qualifying defence contracts may be registered in countries outside the jurisdictions covered in the proposed guidance. The guidance has been amended to address this point and this can be seen in Appendix 4.

7. Other reporting guidance changes

7.1 The SSRO included some minor and uncontroversial guidance changes it intends to make in the consultation document. These changes have been introduced in this update as they reflect the current functionality within DefCARS. Some respondents made comments about DefCARS changes associated with the topics covered which could be helpful developments. We have noted these suggestions and will consider whether they are priorities for future development of the system.

7.2 The final guidance on these changes can been seen at Appendix 5.

8. Conclusion

8.1 This document, version 11 of the contract reporting guidance, version 9 of the supplier reporting guidance and version 11 of the guidance on DefCARS functionality have been published on the SSRO website on 28 July 2022. The notification templates have also been added to the SSRO website on 28 July 2022. The SSRO continues to welcome feedback on improvements to its reporting guidance. For any assistance with reporting please contact helpdesk@ssro.gov.uk or 0203 771 4785.

9. Appendices

9.1 The following appendices set out the SSRO's detailed response to the consultation topics. The appendices detail the updated guidance alongside relevant paragraph numbers in the 'final guidance' column:

- Appendix 1 – Aggregation principles;
- Appendix 2 – Reporting under framework contracts;
- Appendix 3 – General requirements for supplier reports;
- Appendix 4 – Company registration for overseas contractors; and
- Appendix 5 – Minor and uncontroversial changes