

SSRO

Single Source
Regulations Office

Final Price Adjustment

Consultation response

30 January 2025

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1. Introduction

- 1.1 This document sets out the SSRO's response to feedback received on our proposed new guidance on the Final Price Adjustment (FPA). The Procurement Act 2023 granted new powers to the SSRO to issue guidance in relation to the application or interpretation of the law on any area aspect of the regulatory framework. We chose the FPA as our first area in which to use this new power, following feedback from government and industry stakeholders that this was an area where additional support was needed and desired. Through the application of an FPA, a contractor's excess profits or losses arising from variances between the estimated and actual allowable costs of a qualifying contract can be shared between the contractor and the Ministry of Defence (MOD) rather than being borne by only one or the other.
- 1.2 We ran a 6-week public consultation, from 3 October to 14 November 2024, on new draft FPA guidance. We would like to thank all respondents for their feedback which has helped us further improve the draft guidance, which is published alongside this document.
- 1.3 We received six written responses to the consultation. The table below provides a breakdown of responses.

Table 1: Number of responses

	Government	Industry	Trade/Advisory Body
Number of responses	1	4	1

Consultation questions

- 1.4 The consultation sought feedback on the following questions in relation to the draft guidance:
- **Question 1:** Does the draft guidance cover the correct areas?
 - **Question 2:** Do you support this new approach to SSRO guidance?
 - **Question 3:** Do you think this section (Section 1: Introduction) will help users to quickly determine whether the guidance is applicable to the situation they are trying to understand?
 - **Question 4:** Eligibility criteria - We welcome feedback on this section of the draft guidance, including on the presentation and content of the examples and the tables.
 - **Question 5:** Timescales – We welcome feedback on this section of the draft guidance. In particular we would welcome any views in relation to:
 - The presentation of the timescales.
 - Whether the end of contract activities that must be undertaken and their role in the FPA process is clear.
 - Whether it is clear how multiple components can affect the timescales.
 - The explanation of the deadline for making a referral to the SSRO.
 - **Question 6:** Calculating the FPA – Is the explanation of the way in which the FPA is calculated accurate, clear and accessible? We welcome specific suggestions for improvement or identification of any areas that are not clear.

- **Question 7:** Do you agree with the SSRO making available an FPA calculator and do you have any comments on the draft version accompanying this consultation?
- **Question 8:** Reporting requirements – We welcome feedback on the draft guidance.
- **Question 9:** Getting help and resolving issues – We welcome feedback on the proposed guidance.
- **Question 10:** Key questions and answers regarding the FPA – We welcome feedback on the inclusion of questions and answers within the draft guidance. We would also welcome submissions of any further Q&A topics for inclusion.

Consultation response structure

- 1.5 The sections below summarise the feedback received to the consultation questions and provides the SSRO's response to it. Where several respondents made similar arguments, we have sought to sensibly aggregate these, and in so doing some feedback may be included in sections different to those under which they were originally raised.

2. Consultation feedback

Summary of responses

- 2.1 Responses were positive, with stakeholders expressing that this was a valuable piece of guidance and that the new approach taken in its development was a significant step forward in accessibility and ease of use.
- 2.2 Respondents made suggestions on areas for improvement relating to:
- Referencing the regulations, and so guiding users to the specific regulations underpinning each section of the guidance.
 - Further clarity on the sequencing of events in relation to components and applying an FPA.
 - Expanding the guidance built into the calculator to reduce the need for cross referencing with the guidance and minimising the data inputs required in the calculator.
 - Future considerations for updating the guidance, particularly the questions and answers (Q&A) section to reflect helpdesk queries.
 - Some minor reformatting to allow users to more quickly identify whether the guidance is relevant to their circumstances and improve ease of use.
- 2.3 The remainder of this section sets out in more detail the stakeholder feedback received to the questions posed in the consultation and the SSRO's responses to these. Section 4 sets out the conclusions and next steps for implementation.

Question 1: We asked if respondents thought the draft guidance covered the correct areas.

- 2.4 All respondents said they thought that the guidance covered the correct areas. One respondent stated:

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

- 2.5 We have taken a comprehensive approach to this guidance, seeking to ensure all relevant elements associated with the FPA are covered for users, therefore lessening need to rely on multiple guidance documents. In this regard we are pleased that respondents feel the guidance included the right information. We keep all our guidance under review and will update it should evidence arise of such a need.

Question 2: We asked if respondents supported the new approach we had taken to SSRO guidance.

- 2.6 In developing the draft FPA guidance the SSRO adopted a new approach, aiming to improve the user experience by:
- a. Providing more real-world scenarios to assist users' understanding and help with likely common issues;
 - b. Reducing the need to cross reference between multiple documents, such as the guidance and the Regulations; and
 - c. Improving signposting for how to access further information or assistance for further questions or additional clarification.
- 2.7 All stakeholders were supportive of the approach, many stating it was more user friendly, clarifying points that users had previously struggled with and supporting the use of the examples and key questions and answers.
- 2.8 Respondents commented:
- "The SSRO using its new powers to issue guidance in relation to the application of the FPA is a welcome step forward in providing a user-friendly solution."*
- "The draft guidance is a significant improvement on the existing guidance information and more 'user friendly'."*
- 2.9 A number of stakeholders also requested that the guidance provide more references to the specific regulations for each of the elements of the guidance, particularly relating to qualifying sub-contracts (QSCs). In light of this feedback, we have inserted additional references to the Regulations and highlighted those which are specific to QSCs. We have presented this in a way that we consider strikes the right balance between ensuring that the legal basis for the guidance is clear, without encumbering the text with multiple references to the regulations. This is to ensure the guidance is as accessible to users as possible.

Question 3: We sought feedback on whether the introduction helped users to quickly determine whether the guidance is applicable to them.

- 2.10 Respondents explained that the introduction was clear, although some readers may find it difficult to quickly determine if the guidance was applicable to them without also reviewing Section 2 (Eligibility criteria) of the guidance. It was suggested that adding eligibility criteria in this section or moving the check list shown later in the draft guidance would be beneficial.
- 2.11 We have moved the checklist from section 2 (eligibility criteria) to section 1 (the introduction) and added an extra row regarding excess profit/loss. This 'yes-to-all or no' checklist will allow users to quickly gauge whether the guidance is likely to be relevant to them, with the sections covering each check item referenced for further detail.

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

- 2.12 All respondents agreed that this section was helpful. Our response is set out below and in Table 2.
- 2.13 A respondent asked for further clarity in section 2 regarding when the Secretary of State may direct that an FPA may not be made, i.e., whether at the beginning or end of a contract, and examples of why this direction may be made. Sections 2 and 3 of the guidance (Eligibility criteria and Procedural requirements, respectively), set out the legal requirements under the Act and Regulations in respect of this particular power. These do not constrain or direct the Secretary of State as to the reasons they may or may not direct that an FPA is to be disapplied, or the timing of this direction, which is explained in the final guidance. We are not aware of any cases of any such directions being issued but should examples arise that may be cited we will consider their inclusion in future. It is beneficial for the parties to be transparent with one another in respect of the application of the FPA and this has been emphasised in the guidance.
- 2.14 Paragraph 3.11 references that parties should include an estimated value of a potential FPA when notification of intent to make an FPA is given. Respondents raised that the MOD's standard letter does not refer to an estimated amount. It gives notice it intends to apply an FPA, and that investigations are ongoing. An estimated value is included in a subsequent letter.
- 2.15 It is a requirement for contractors to report an estimate of any potential FPA within statutory reports submitted in DefCARS throughout the life of the contract. With this information available to both parties, the guidance therefore promotes including in a letter of intent an estimate of any potential FPA as good practice, even if detailed calculations are ongoing by the notifying party.

Table 2: Question 4 feedback and response

Document reference	Stakeholder Comments	SSRO Response
2.3 example	The example under paragraph 2.3 in the guidance should be moved to post paragraph 2.4, as it is more connected to this paragraph.	We agree and have implemented this.
2.4	Paragraph 2.4, which discusses components that must be discounted for the purposes of the FPA value calculation, should explain that FPAs can be calculated at a component or contract level, which is not addressed until section 3.	We agree and have added a reference to this in Section 2.

Document reference	Stakeholder Comments	SSRO Response
2.8	The word “seek” should be inserted into the second sentence before the words “fetter their legal rights” as the paragraph goes on to explain that a contractual term cannot override the legislation.	We agree and have implemented this.
2.9	A third sentence should be added to the paragraph to clarify what happens if an FPA was initially estimated as over the required £250k threshold but that it was subsequently agreed that the amount of the FPA would be less than £250k: “However, if the agreed value of the potential adjustment is less than £250k no adjustment to the price is made”	An FPA of less than £250k cannot be made, so if the actual amount is less than was first thought, then no adjustment can be made. We have explained this in the guidance.
2.10	The information in paragraph 2.10 might alternatively be displayed as a flow chart.	We have retained the checklist format so as not to imply the criteria must be considered in a particular order. This checklist has now been moved to the introduction.

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

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

- 2.16 Respondents felt this section was helpful, presenting all relevant timelines in one place with timeline diagrams being of practical use. Our response is set out below and in Table 3.
- 2.17 The regulations allow the parties to treat two or more components as aggregated for the purpose of calculating the final price adjustment in relation to those components. Respondents suggested some clearer explanation regarding agreeing the aggregation of components and what the default position would be if no agreement is made. Example 2 and paragraph 3.10 has been expanded to make clearer that if the parties do not agree to aggregate components, then the alternative approach they must take is to calculate the FPA on a component-by-component basis (subject to any other relevant criteria being met). We also note that it is not permissible under the Regulations to create components under a QDC or QSC so as to avoid the FPA.

- 2.18 Respondents asked at what point agreement that components should be aggregated for the FPA should be sought and, if there is disagreement on the approach, whether this is something that can be referred to the SSRO for determination.
- 2.19 The Regulations do not prescribe timeframes for any agreement between the parties to aggregate components for the purpose of calculating the FPA. We consider it would be reasonable for the parties to a QDC to agree this in advance of the component completion dates for the components being aggregated, but this is not a requirement. However, our guidance (paragraph 3.12) explains that having issued a notice of intent the parties must attempt to agree an amount of the FPA. To do this the parties would need to know whether the FPA was to be calculated on an aggregated-components basis or not. We have explained this in the guidance.
- 2.20 Where the parties disagree on the approach (we presume because one party would prefer to aggregate the components and the other would not), a referral may be made to the SSRO for a determination on the amount of the FPA. In making a determination, the SSRO would need to establish the correct method for calculating the FPA in accordance with the requirements of the legislation, which would involve taking evidence on the contracting parties' respective positions on the matter of aggregation.

Table 3: Questions 5 feedback and response

Topic / Reference	Stakeholder Comments	SSRO Response
Figures 1 & 2	It would help the guidance flow more intuitively if figures 1 & 2 followed paragraphs 3.4 & 3.5.	We agree with this suggestion and have implemented it.
Figure 2	The SSRO may want to consider Figure 2 on the timeline for an FPA for a component in context with the whole contract when mentioning components. This would cover potential non-compliance of reporting in figure 2.	The guidance is presented on the basis that the parties comply with their legal reporting obligations. However, we explain in example 3 what we consider to be the impact of late reporting.
3.10 – Notification and components	The guidance suggests whilst the right is initially lost to make an adjustment for a component it can be reinstated at contract completion as a component FPA or possibly as a part of the contract FPA? Clarity if this is the case would be helpful.	There are two potential opportunities to issue a notice of intent to apply an FPA to a component (assuming the component completes more than 12 months prior to contract completion). The first is after the component completion date and the second is following the contract completion date. Therefore, if notice is not served following the component completion date, it would need to follow the contract completion date. However, we do not think this can be described as a loss of rights which are later reinstated.

Topic / Reference	Stakeholder Comments	SSRO Response
3.10 – Referral timelines	<p>At what point, in reference to the two-year window mentioned to make a referral to the SSRO, can such a referral be made?</p> <p>And, if such as referral was made, what are the timelines for the SSRO to make its determination under the Defence Reform Act 2014?</p>	<p>The two-year limit is a statutory deadline, and, subject to satisfying the conditions, a referral can be made at any time prior to this if either one or both parties desire. We have added a clarification to ensure this is clear in our guidance.</p> <p>The timings and processes would follow those as set out in the SSRO's procedures for determinations guidance.</p>

Question 6: We asked if the explanation of the way in which the FPA is calculated is accurate, clear and accessible?

- 2.21 Stakeholders felt the guidance was clear but questioned in some cases if it was asking for more information than was required to perform the calculation. Specifically, it was noted that it was not necessary to know the allowable costs of the contract, only the price and the contract profit rate. Another suggestion was that it would be easier to take the contract profit rate (CPR) and make an adjustment to remove the incentive adjustment (IA) (where relevant) in the calculation, rather than having to detail all the CPR steps, especially as the CPR steps have changed.
- 2.22 We have updated the guidance to remove the suggestion that all of the six/four steps are required to calculate the FPA. Beyond this, in each of the examples in the guidance we show how the data inputs listed are used. We understand the views expressed but giving effect to those would require bypassing certain steps in the end-to-end calculation process, which for some users of the guidance may not always be appropriate. For example, whilst it possible start the FPA calculation from the contract price, that amount must be calculated using the price formula by inputting the allowable costs under the contract and the contract profit rate. Similarly, the amount of any incentive adjustment which needs to be deducted is determined using the allowable costs and incentive adjustment percentage. If readers feel comfortable bypassing certain aspects of the calculation, then our guidance does not prevent them doing so, although they should take care to ensure the inputs and outputs are correct. We have made this clearer in the guidance.
- 2.23 One respondent considered the guidance would benefit from referencing the area of the Regulations which creates the “legal requirement” to use the specified methodology in the guidance. In response we have included a reference to regulation 17 which is the legal basis for the method by which the FPA must be calculated, and this is explained in the guidance.

Question 7: We asked if stakeholders agreed with the SSRO making available an FPA calculator and if they had any comments on the draft version accompanying the consultation.

- 2.24 Respondents were supportive of the SSRO publishing its own calculator. One respondent felt the availability of an independent calculator that both the MOD and industry could trust would be helpful.

- 2.25 Several respondents noted that they believed it should be made clear that its use was not mandatory. We have noted in the guidance it is not mandatory to use that the SSRO's calculator, although any alternative calculation tool must generate a result which complies with the regulations.
- 2.26 A respondent questioned why a field for "value" for the contracts or components had been included in the FPA calculator and where it is used in the calculation. Several aspects of the FPA require an assessment of value. For example, the minimum value of a contract to which an FPA can apply. The calculator uses the value input to check the relevant thresholds are met and will return an FPA result of zero where they are not.
- 2.27 Further specific points of feedback on the FPA calculator are addressed in the following table.

Table 5 – FPA calculator feedback

Topic / Reference	Stakeholder Comments	SSRO Response
Input cell guidance	Further guidance on what should be entered in the input cells within the calculator. This would prevent having to examine two documents.	We have reviewed and added to our guidance within the calculator.
Scope of information	Respondents repeated their concerns about the amount of information needed in the calculator, which were raised in question 6.	We think offering a first principles approach to the calculation is appropriate and more likely to avoid errors. We have removed the need to input all six/four steps.
Expansion of "use notes"	More could be made of the use notes, to reduce the extent to which referencing back to the guidance is required.	We agree with the idea to include definitions in the calculator and have done so.
Confusion over where to add steps 5 and 6	One respondent expressed uncertainty as to where to enter values for steps 5 and 6 when using the calculator in relation to a contract that was entered into prior to 1 April 2024. They asked if this was the purpose of the un-numbered "POCO" and "SSRO funding adjustment" lines.	We have simplified the data input section for the contract profit rate and these values are no longer required.
Suggestion to add additional fields	There were suggestions to add additional fields to the calculator to breakdown the £ value due to MOD at each excess profit level as well as the aggregate FPA figure.	We agree and have implemented this.

Topic / Reference	Stakeholder Comments	SSRO Response
Aggregate profit rate for components which are aggregated for FPA calculation.	When components are being aggregated for the FPA calculation the guidance explains how to find the aggregated profit rate – presumably this can be loaded into the calculator as a single value rather than spending time trying to work out a rate for all the steps – clarification of that would be good.	Yes, this is correct. We have updated the FPA calculator to allow users to aggregate profit rates with improved ease.

Question 8: We sought feedback on the section regarding reporting requirements

- 2.28 All respondents agreed the guidance was helpful. Multiple respondents suggested that as paragraph 5.1 mentions that contractors must “provide a forecast of any FPA which the contractor expects to be made in any update report” it would be useful for the guidance to clarify which reports, and where in these reports, such declarations should be made. It was also suggested that a cross reference to the appropriate reporting guidance could be helpful. There was also a suggestion to specify that DefCARS is the contract reporting tool.
- 2.29 We have reviewed the guidance and have added links and references to assist users in locating the appropriate areas of reporting guidance.

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

- 2.30 All respondents felt this section was helpful and clearly outlined the options for seeking further clarity from the SSRO, including the new non-referral advice service. No changes were suggested or made to this section.

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

- 2.31 All respondents were highly supportive of the Q&A section, feeling that it was helpful and enhanced the clarity of application. Several respondents requested feedback on how we intended to ensure that the Q&A section is updated and remains topical.
- 2.32 We will keep this guidance under review and consider if an update is required to the Q&A section at the time of our annual profit guidance update. In the interim, the SSRO publishes quarterly its [Responses to Commonly Asked Questions](#) on its website. The guidance page has been updated to notify users that the most recent Q&A topics may be found there. Any further FAQs relevant to the FPA will be added to the guidance periodically.
- 2.33 We received suggestions for potential additional questions for this section, the themes of which we have incorporated into the main body of the guidance and added an additional Q&A.

3. General feedback

3.1 We received other general feedback on the guidance which is summarised in the table below.

Stakeholder comment	SSRO response
Reviewers found the guidance to be useful and a significant improvement to the existing information available.	We thank all respondents for their feedback, which is invaluable in ensuring the SSRO's guidance remains as accurate, relevant, and accessible as possible.
Tables and examples in the guidance could be numbered to make referencing easier.	We have sequentially numbered all tables and worked examples in the guidance for ease of reference.
The SSRO could consider including a reference to the role of cost recovery rates in the FPA process. I.e. is profit made by the contractor assessed against fixed / firm, contracted labour rates or against actual labour rates?	The guidance explains that the outturn profit made by the contractor is the difference between the contract price and the outturn costs. The contract price under the applicable pricing method(s) should have been determined using estimated allowable costs, and the outturn costs should have been determined using the actual allowable costs, each calculated as necessary using the estimated and actual cost recovery rates respectively. The SSRO produces separate guidance on the use of cost recovery rates in the determination of allowable costs which is now referenced.
The SSRO should request specific feedback from contractors at an appropriate point in time after the guidance has gone live to help enhance future versions of this guidance.	We agree with this suggestion and have made this an agenda item for the SSRO's Operational Working Group (OWG) October 2025.
The contract pricing statement (CPS) in DefCARS could state whether or not an FPA could be applicable at the end of the contract, for example a statement that it is not applicable where a contract or component is not priced using the firm, fixed or volume driven methods.	The content of the CPS in DefCARS is as specified in the Regulations. If an FPA is not applicable (for example, because it does not use one of the applicable pricing methods) we would expect that contractors would already be entering a zero value in this field.
The guidance should include examples of evidence the SSRO must have regard to in making a determination, in particular that reductions in the actual costs under the contract are due to efficiency measures.	In making a determination, the SSRO is required to have regard to the matters set out in regulation 16(9), with the specific types of evidence examined by a referral committee determined on a case-by-case basis which would be specific to the contract. Relevant evidence would be discussed with the contracting parties in the event of a referral.

Stakeholder comment	SSRO response
<p>How will agreements between parties on the treatment of aggregating components for the purpose of calculating the FPA be recorded? Will there be a system built into DefCARS?</p>	<p>The formation of components and the decision of whether to apply an FPA at a contract or component level is for contracting parties to agree and record. There is no regulatory requirement to record an agreement to aggregate components in statutory reports and it is not a function in DefCARS.</p>

4. Conclusion

- 4.1 SSRO guidance on the Final Price Adjustment v1.0 is published concurrently with this document and is effective immediately. It explains, and does not add to, existing legal requirements.
- 4.2 We will continue to keep our guidance under review, particularly in the event of amendments to the legislation. Subject to the legislation dealing with the FPA remaining unchanged, there are no specific plans to further develop the guidance at this time outside of a periodic refresh of the Q&A as may be required.
- 4.3 We remain open to feedback on the guidance, and any further updates to guidance will be considered as part of our corporate planning process. In particular we would encourage stakeholders to share specific examples of their application of our guidance.
- 4.4 Finally, we would like to thank stakeholders for their feedback and input on the consultation and the guidance.