

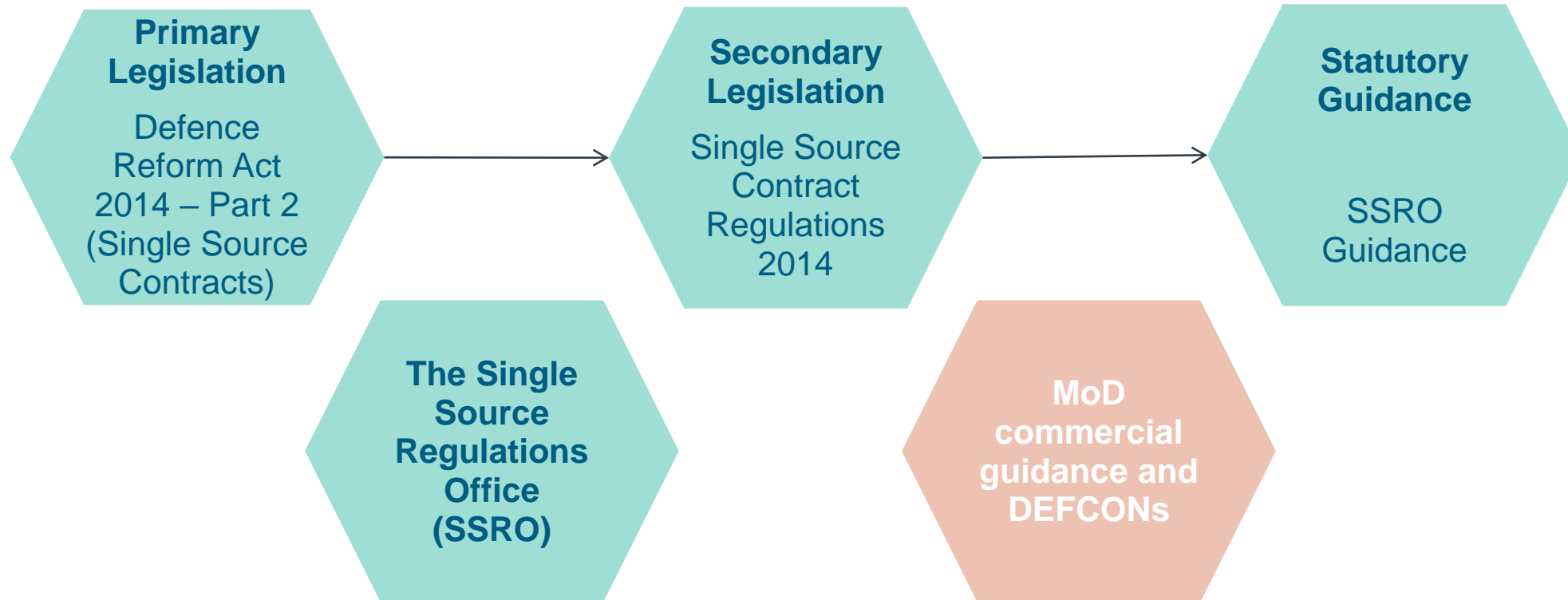
# Defence & Security single source contracting webinar

*18 October 2022*



**Bird & Bird**

# The Single Source Contract Framework



- Statutory regime
- Sits alongside contracts
- Flows down the single source supply chain

# Scope of the SSCRs

Setting the contract price (profit rate and allowable costs)

Reporting

Open book/MoD audit rights

SSRO as the regulator



Bird & Bird

# Overview of SSCRs

Charly Wason, Head of Single Source Advisory Team - MoD



# **BIRD AND BIRD WEBINAR – 18 OCTOBER 2022**

## **Reform of the Single Source Contract Regulations**

**Charly Wason  
Single Source Advisory Team Head**



# Single Source Contract Regulations (SSCRs)

- The SSCRs were introduced in 2014 to improve value for money on the £8Bn pa of single source work.
- The regime has improved assurance on value for money on our largest single source programmes and there is evidence that it has saved substantial sums of money on a range of contracts. It has also improved transparency and is producing useful MI.
- Covering 462 contracts that have a total value of £69.8Bn the SSCRs are working well and MOD Ministers and HMT are fully committed to them.
- However, within that context there are reforms we need to deliver to ensure the regime works better for ‘traditional’ procurements, and adapts to changes in what we buy and how we buy it.
- We will also ensure the regime takes account of the lessons learned and fixes a number of technical issues with the current legislation.



# Command paper

- The reforms we are making were set out in a Command Paper published in April.
- The Defence and Security Industrial Strategy (DSIS) establishes a more strategic relationship between Government and the defence and security industries, replacing competition by default with a more flexible and nuanced approach.
- This means we may opt in certain circumstances for long-term strategic partnerships. Where we do procure in the absence of competition, it remains vital that we pay fair prices for the goods and services we buy, to provide value for money for the taxpayer while ensuring the UK defence sector remains an attractive place to invest.
- The Command Paper included 30 proposed reforms along with a raft of detailed technical changes.



# What the reforms will deliver

- The reforms set out in the Command paper will support delivery of three of the key DSIS objectives:
  - Improving choice and flexibility;
  - Speeding up and simplifying defence procurement; and
  - Stimulating innovation and exploiting technology.
- The proposals in the Command Paper were developed after a comprehensive stakeholder engagement exercise and included recommendations and views from both the Single Source Regulations Office (SSRO) and industry.
- Engagement with all the key stakeholders continues as we turn towards implementation of the reforms.





# Choice and flexibility

- Providing more choice and flexibility will ensure that the SSCRs can be applied to a wider range of contracts.
- We will be allowing alternative ways of demonstrating value for money by for example reference to market prices, rather than always having to use the bottom-up pricing formula.
- We will explicitly allow contracts to be split into different segments where they use a different pricing method, have different profit rates or where it makes sense to calculate the final price differently for different sectors.
- We will ensure that where possible the profit rate available to suppliers accurately reflects the full range of financial risks that they take on when they enter into a single source contract given these risks vary significantly from sector to sector.



# Speed and simplification

- A key objective of DSIS is to improve the speed and simplicity of the systems that MOD uses to acquire, support and upgrade military capability. These need to be underpinned by processes to reduce timescales for placing contracts, including where let on a single-source basis.
- The reforms of the SSCRs will speed-up the contracting process by:
  - Introducing a simpler way of determining appropriate contract profit rates by reducing the number of steps in the profit calculation;
  - Simplifying reporting requirements and making better use of the reports we do mandate;
  - Making better use of the referrals process to resolve protracted arguments before contracts are signed and expanding the issues on which the SSRO can be asked to make a determination; and
  - Clarifying and generally tidying up the SSCRs based on the experience of those who use them to remove ambiguities and make them easier to apply.



# Stimulating innovation and exploiting technology

- DSIS aims to stimulate innovation and exploit technology through procurement to unlock value from new suppliers, increase responsiveness to technological change and enable our capabilities to remain current whilst they are in service.
- We will deliver this by using the regime in new and innovative ways and working with the SSRO to make clarifications in statutory guidance, particularly as it relates to allowable costs. The key changes will be:
  - Ensuring incentive methods drive innovation where appropriate, including rewarding suppliers for innovative ideas;
  - Ensuring the SSCRs allow for the proper reward of Research and Development including mechanisms that support shared ownership of any Intellectual Property where appropriate; and
  - A full assessment of what can currently be specified in contracts that will achieve wider Government objectives and ensure where necessary any associated costs are allowable.

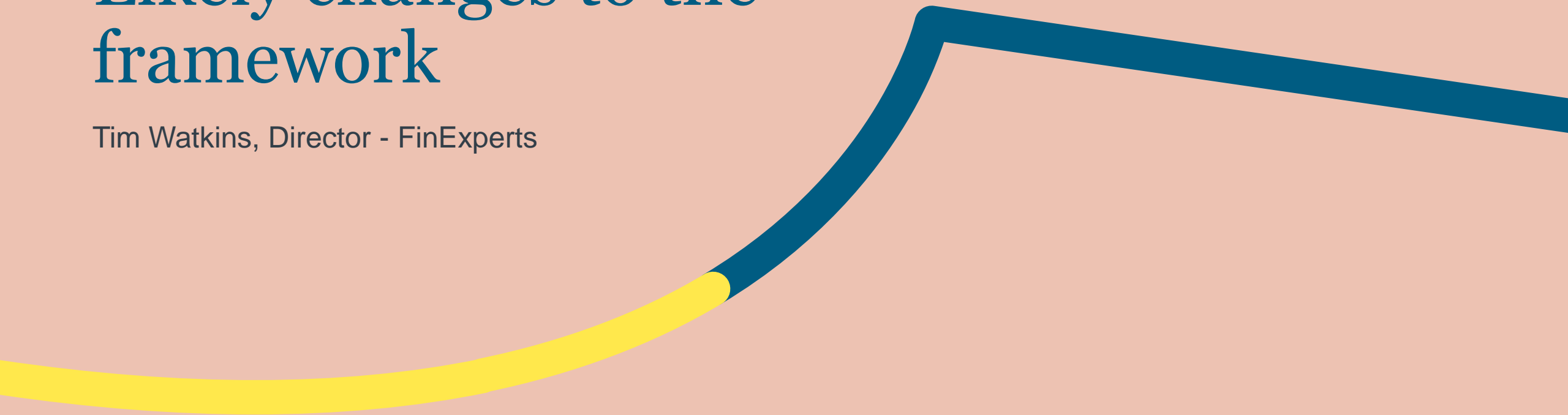


# Implementing the reforms

- Many of the changes, including alternative ways to demonstrate value for money, componentisation etc. are being taken forward in Schedule 10 of the Procurement Bill.
- Assuming Royal Assent in Spring 2023, MOD internal planning is currently to amend the SSCRs and deliver the key reforms by October 2023. We anticipate we will need a further tranche of changes to deliver the more technical reforms by April 2024.
- MOD is planning a consultation on the detail of the first tranche of reforms in January/February 2023. We anticipate the SSRO running a parallel consultation exercise on changes to Statutory Guidance on the back of the MOD paper to ensure all aspects of the regime are ready for October.
- We will also roll-out all the necessary changes to internal MOD commercial guidance and provide training to Delivery Teams thereafter.

# Likely changes to the framework

Tim Watkins, Director - FinExperts



# The Change Process (2nd update round)

## Formal process in the legislation

Every 5 years, SSRO proposals, MoD consider and updated legislation

## Current review

- **SSRO** proposals June 20 (on time), and again June 21
- **MoD** Command Paper, of intent, April 22:
  1. **Primary legislation** March 2023  
Schedule 10 of the Procurement Bill (HoL Committee Stage)
  2. **Regulations** likely (2 tranches?) in 2023/4 (Sept 23/Apr 24)
  3. **Statutory guidance** from SSRO after consultation **in that timescale Parallel process.....**

I am representing industry for ADS, with MoD/SSRO in the consultation

# Legislation change topics (Pricing / Costs)

Currently ALL of a QDC/QSC contract priced using the formula

$R10 \text{ Cost} + \text{Profit} = \text{Price}$

**No Exceptions.....whole of the contract**

1. Permit: Market prices for elements.....proof?
2. Permit: Conversion on amendment. Only new scope using the formula....current deal secured

## Allowable Costs

1. AAR for overseas suppliers – FARs, etc permitted
2. Cost allowance for risk of breach of contract (LDs)

# Legislation change topics (Profit #1)

Profit – Viewed as not flexible enough (+ and -)

Profit is a defined 6 step process (1.BPR 2.CRA 3.POCO 4.SSRO funding 5.Incentive 6.CSA)

**1.The Cost Risk Adjustment (CRA)** – bands/process (later slide)

**2.Group costs**, profit allowed once (POCO):

- a.POCO to include JVs
- b.cost based adjustment only (choice eliminated)
- c. £100,000 de minimis raised?
- d.Address the problems with POCO first??



# Legislation change topics (Profit #2)

Profit – Viewed as not flexible enough (+ and -)

## **3. Contracts ‘Componentised’:**

- a. Currently they are blended depending on weighted average of pricing methodology
- b. In future each element will be separate (more reporting/admin)

## **4. SSRO Funding Adjustment deletion (rate increases 0.046%)**

## **5. Step 5 ‘Incentive’ band increased from +2% to**

- +12%(>£100m),
- +5% (<£100m)
- with a ‘framework’ for each ‘domain’

# Cost Risk Adjustment (Profit #3)

## Cost Risk Adjustment (early information, work in progress)

Additional 5 step process within step 2 of profit

+/- % bounds unknown to date (past debate around is -70% +100% for >£100m cttss, +/-25% cttss below £100m)

1. Adjustment for technical risk
2. Adjustment for supply chain risk
3. Adjustment for efficiency and performance risk
4. Adjustment for contract conditions
5. Adjustment for financial risk i.e. LDs/KPIs

**Profit rate cap 2.5x BPR (20.78%) for after incentive/CRA**

# Legislation change topics (Others)

## Others

### 1. Referrals:

- a. On an overhead rate, on QDC status, all profit rate steps
- b. One side can refer in all cases
- c. MoD plan to use as regularly/policy/'risk'

### 2. A large volume of technical changes & clarifications (hopefully)

## Reporting

### 1. Submission of 'agreed' BU reports

### 2. Limit SICR to UK parts of groups

### 3. Amendments/Components - split out

### 4. Use of DPS, required for a few contracts only (and then at start/end/occasionally interim only) Most use own WBS.

Q&A – please submit questions



Bird & Bird



Bird & Bird

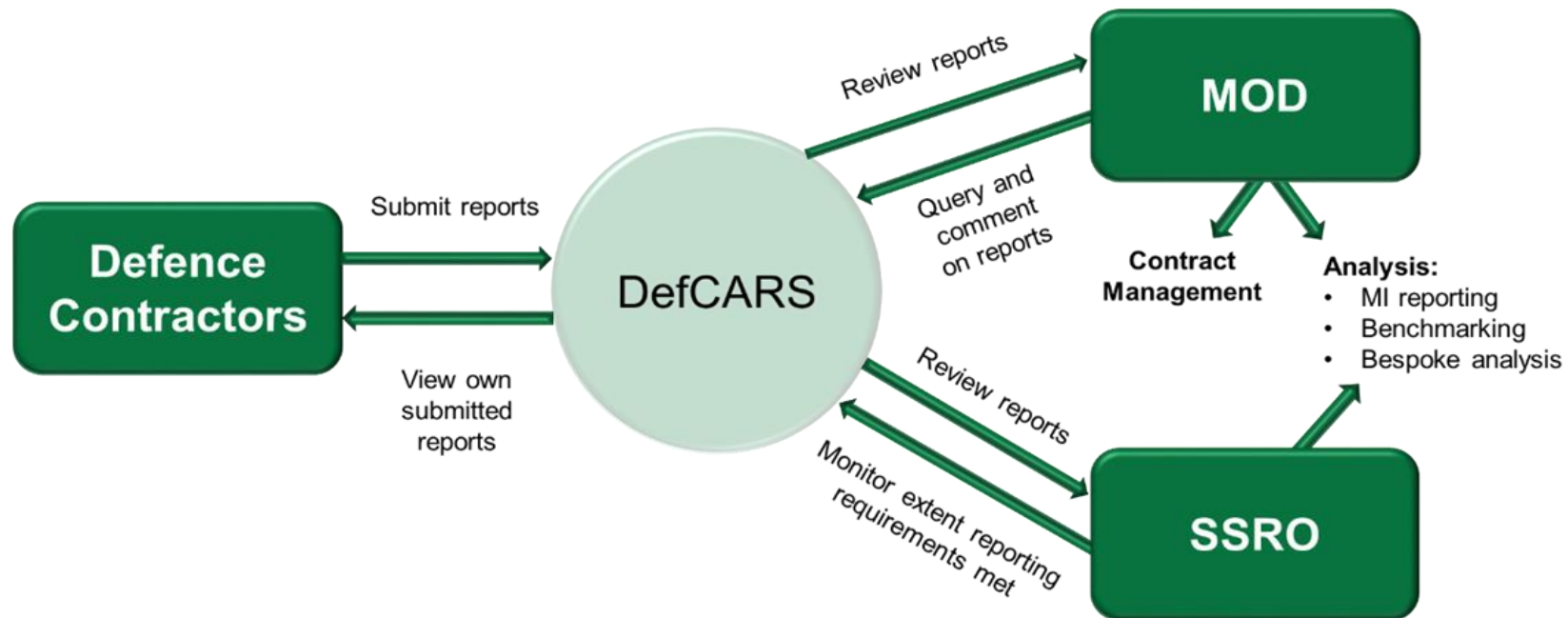
# SSRO – Reporting & Compliance

Ben Johnson, Head of Pricing and Economics - SSRO  
Akhlaq Shah, Head of Compliance and Reporting - SSRO

**We have a range of functions set out by the Act and Regulations to support the regulatory framework**



**The Defence Contracts Analysis and Reporting System (DefCARS) is the central system for the capture, storage and analysis of all data submitted in accordance with statutory reporting requirements**



- All queries and comments on reports are within the system, rather than via email correspondence.
- As well as the live system there is a potential QDC and training environment.

## Contract reports relating to QDCs or QSCs and supplier reports are required by the Single Source Contract Regulations 2014

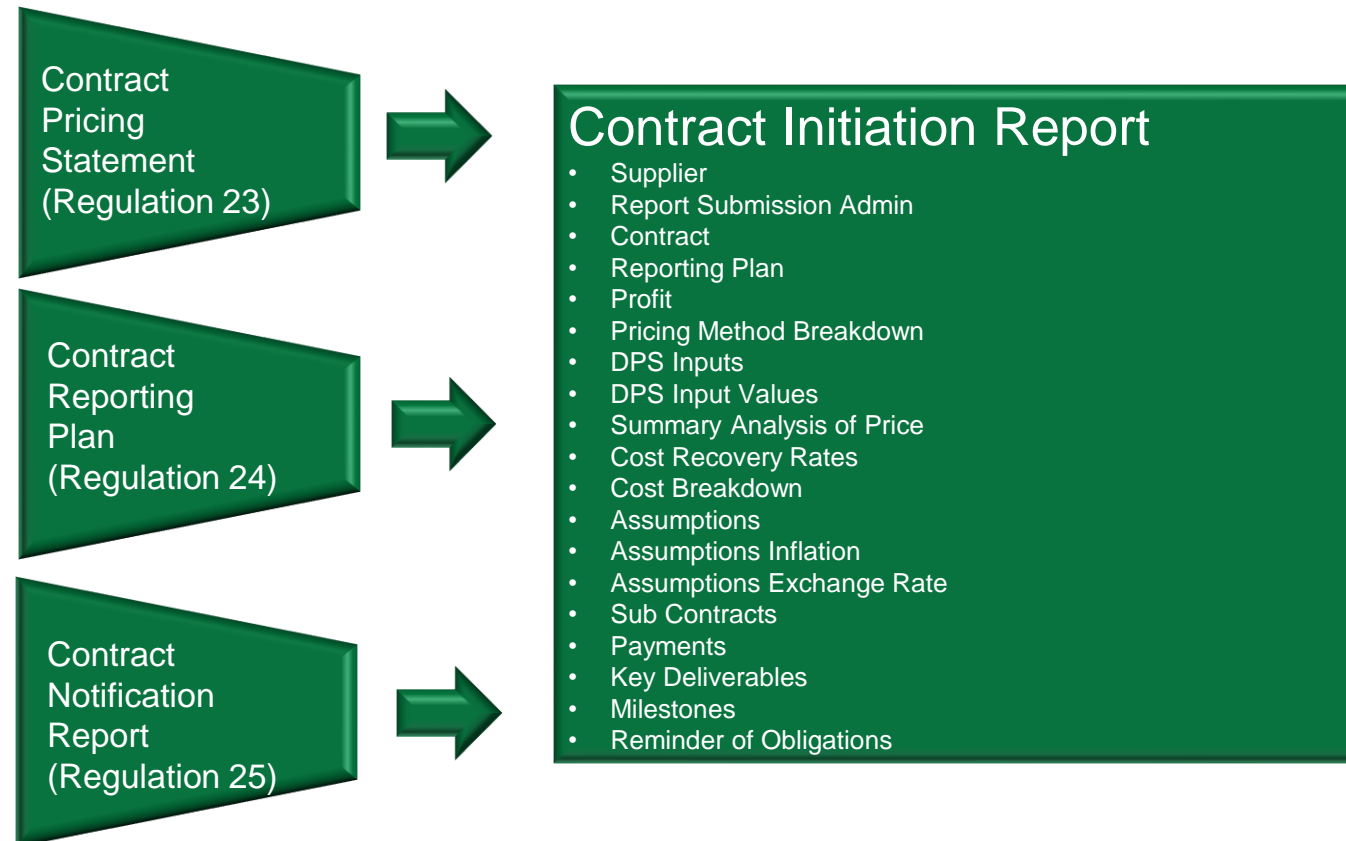
Report category	Reports	
<p><b>Contract reports</b> (Part 5 of the Regulations)</p> <p>Reports required for each QDC and QSC (some of which may additionally be required on-demand)</p> <p>Data about contract requirements, payments, estimated and actual costs, profit, delivery and sub-contracts.</p>	<pre> graph LR     A["Contract Pricing Statement Contract Reporting Plan Contract Notification Report"] --&gt; B["Interim Contract Reports Quarterly Contract Reports"]     B --&gt; C["Contract Completion Report Contract Cost Statement"]           </pre>	
<p><b>Supplier reports</b> (Part 6 of the Regulations)</p> <p>Reports required about defence contractors when relevant triggers are met.</p> <p>Data about a contractor's overhead costs in standard categories, its strategic capacity and opportunities for SMEs in the supply chain.</p>	<p><b>Overhead reports</b></p> <ul style="list-style-type: none"> <li>Estimated Rates Agreement Pricing Statement</li> <li>Estimated Rates Claim Report</li> <li>Actual Rates Claim Report</li> <li>QBU Estimated Cost Analysis Report</li> <li>QBU Actual Cost Analysis Report</li> <li>Rates Comparison Report (on demand)</li> </ul>	<p><b>Strategic reports</b></p> <ul style="list-style-type: none"> <li>Strategic Industry Capacity Report</li> <li>Small or Medium Enterprises Report</li> </ul>

\*In this table, and in the Regulations, "QBU" refers to a qualifying business unit.

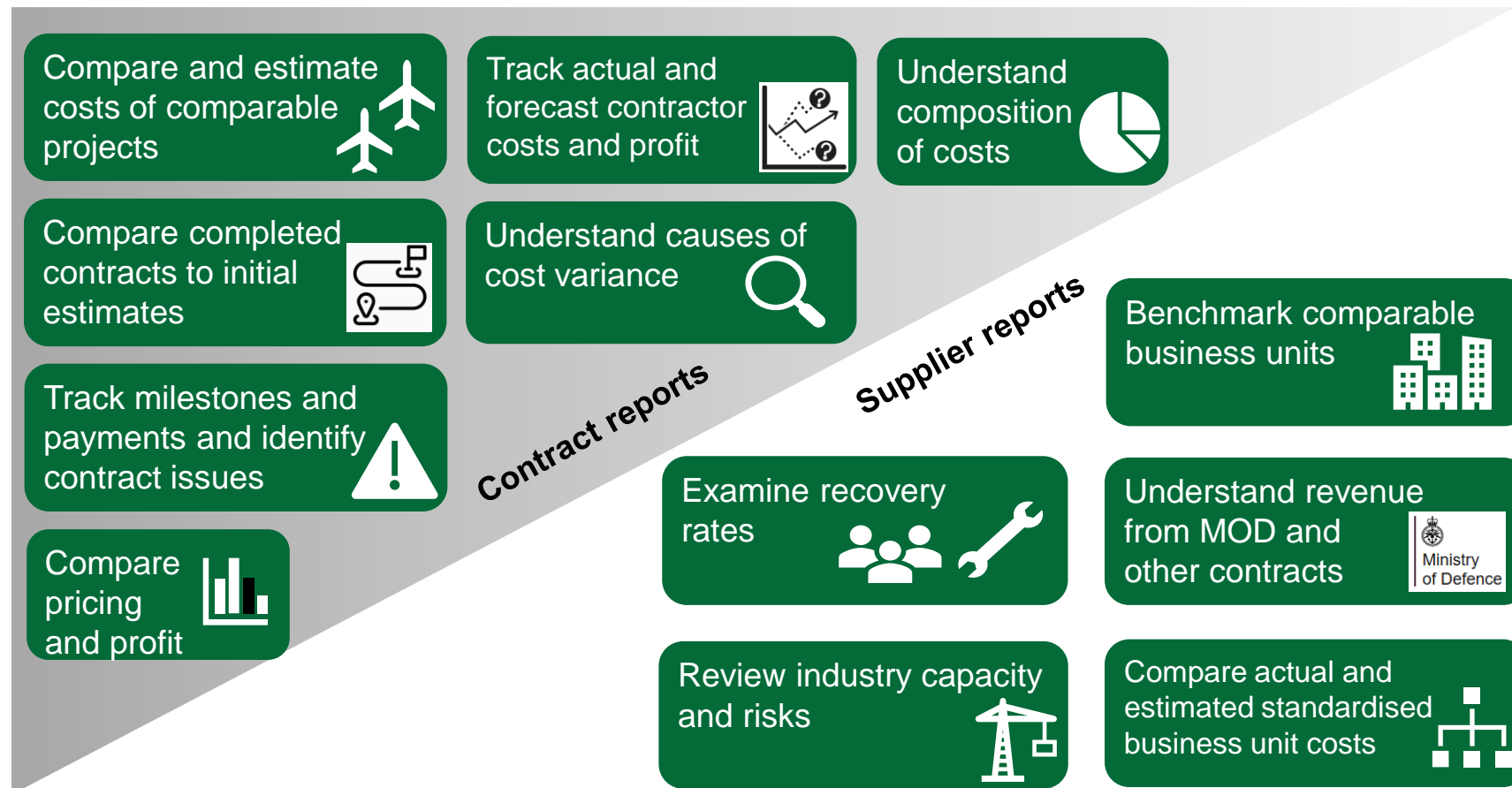


## The three initial contract reports have been merged into a single report to reduce duplication

This is due within one month of the contract being entered into.



DefCARS data can support the MOD to understand contract costs and profits and improve estimates, budgeting and contract management



## Our compliance activities

The SSRO has two review functions under the Defence Reform Act 2014 to keep under review the:

- extent to which persons subject to reporting requirements are complying with them (Section 36(2)); and
- provision of the regulatory framework established by the Defence Reform Act and associated Single Source Contract Regulations 2014 (Section 39(1)).

Q&A – please submit questions



Bird & Bird

# Speakers



*Elizabeth Reid*

Partner, Bird & Bird

elizabeth.reid@twobirds.com



*Mark Leach*

Partner, Bird & Bird

mark.leach@twobirds.com



*Tim Watkins*

Director, FinExperts

tim.watkins@finexperts.co.uk



*Ben Johnson*

Head of Pricing and Economics, SSRO

Ben.Johnson@ssro.gov.uk



*Akhlaq Shah*

Head of Compliance and Reporting, SSRO

akhlaq.shah@ssro.gov.uk

*Charly Wason*

Head of Single Source Advisory Team, MoD

tim.watkins@finexperts.co.uk



# Thank you

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai • Dublin • Dusseldorf  
• Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London • Luxembourg • Lyon • Madrid • Milan • Munich • Paris  
• Prague • Rome • San Francisco • Shanghai • Singapore • Stockholm • Sydney • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.