What Do I Need to Do for Prompt Payment?

When Bidding

If you will rely on a supply chain i.e. sub-contractors and sub-sub-contractors, to deliver a contract, you must answer question 4C.4 within the Single Procurement Document (SPD) which explains that to pass the selection stage you must:

- evidence a history of at least 95% payment on time of valid invoices, or
- provide an improvement plan to drive timely progress towards 95%

The buyer will include question 4C.4 in the tender SPD for your responses.

Examples of payment performance evidence can be found at the bottom of this page in the documents section. The evidence provided by you should cover a twelve-month period.

New Entrants, Special Purpose Vehicles & Joint Ventures

If you do not have a payment history record (as required by buyer in the SPD e.g. you are a new entrant, Special Purpose Vehicles (SPV's) or a Joint Venture (JV), you must not be disadvantaged in the procurement if you are able to explain the circumstances in your bid responses.

New entrants to the market will still be expected to demonstrate that they meet or (in the case of a bidder that has not yet traded) will meet the tender requirements.

For a JV, formed of a group of independent organisations, all members of the JV should each complete a separate SPD answering the prompt payment question 4C.4.

Contract Award

Buyers will also evaluate when awarding the contract how you will ensure payment of sub-contractors at **all** stages of the supply chain (within a maximum of 30-day payment terms) and how this will be managed.

Where you use sub-contractors and sub-sub-contractors you will need to ask them to confirm their prompt payment acceptance.

To do so, you will need to include the standard clause (details below) in all of your terms and conditions for public sector contracts you deliver. This will:

- ensure payment of sub-contractors at all stages of the supply chain within 30 days
- include a point of contact for sub-contractors to refer to in the case of payment difficulties and
- request evidence and reports to the buyer on a regular basis.

If you are unable to confirm acceptance of the award statement, you should not be awarded the contract unless there are extenuating circumstances.

Standard Clause

Currently the Scottish Government requires all suppliers to be paid within a maximum of 30 days of receiving a valid invoice, and to manage suppliers to ensure their sub-contractors, sub-sub-contractors, etc. are paid within 30 days at all stages of the supply chain. The Scottish Government encourages all organisations to adopt this approach.

Quickfire Guide

Quickfire Guide

Main Features of the Scottish Government Prompt Payment Standard Clause

- suppliers must be paid within 30 days of receipt of a valid invoice, at all stages of the public sector contract supply chain
- when the buyer has paid an invoice submitted by you (the main supplier) which includes payment for work carried out by a sub-contractor, you must pay the sub-contractor’s invoice without deduction (once submitted)

- sub-contractors should be notified that their sub-contract forms part of a larger contract for your organisation As a result, if payment issues arise the sub-contractor may refer these issues to the public sector buyer for assistance
- each individual contract should specify a contact point/named individual within your organisation to whom issues regarding non-payment within the 30 day period can be raised; and
- you (the main supplier)(s) must ensure a clause with the same terms is included in the terms and conditions with any sub-contractor, sub-sub-contractor, etc.) for the purposes of performing the contract.

The actual Scottish Government Standard Clause wording you should use in your public sector contract can be found below:

Extract from the Scottish Government Terms & Conditions Clause for the Purchase of Services

SUB-CONTRACTORS CLAUSE: AN EXTRACT FROM SCOTTISH GOVERNMENT TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

21.3 Where the Supplier enters into a sub-contract must ensure that a provision is included which:

21.3.1 requires payment to be made of all sums due by the Supplier to the subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor’s invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

21.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and

21.3.3 in the same terms as that set out in this Condition 21.3 (including for the avoidance of doubt this Condition 21.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and subcontractor as the case may be.

SUPPLEMENTARY NOTICE LATE PAYMENT OF INVOICES Suppliers to [public body] are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to [point of contact at public body]. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers legal rights.

Contract and Supplier Management – If You Have Been Awarded the Contract

Once a public sector contract has been awarded and the contract is live, supplier payment performance should be managed using the contract and supplier management process.

The standard clause referenced above, should be used throughout your entire supply chain.

You, as the main supplier, are responsible for ensuring relevant management information is gathered from all sub-contractors. This information should be reviewed during your scheduled performance review meetings with the buyer.

KPIs/management information should be used to measure sub/sub-sub-contractor payment performance for example by using summarised accounts payable reports reviewed monthly or quarterly.

The **UK Government Business Payment Practices and Performance System** is a free service for suppliers to report their bi-annual payment performance detail. This information can then be used as evidence during bids and towards reporting management information requirements during the Contract & Supplier Management process.

More information on the portal and other examples of payment performance evidence can be found at the bottom of this page.

A Prompt Payment Certificate could be used to declare prompt payment is being driven and measured down the full supply chain relating to a contract.

An example can be found at the bottom of this page.

Suppliers can demonstrate their commitment to prompt payment more generally by:

- Making sub-contractors aware of the **Small Business Commissioner** which can help small businesses (those with fewer than 50 employees) experiencing late payment issues with other businesses
- Publishing your payment performance reports on the **UK Government Business Payment Practices and Performance System**. Any organisation can provide their reports voluntarily
- Consider adding a ingnon-executive director to your board with direct responsibility for payment culture

Support for Late Payment

Where you, or your sub/sub-sub-contractors cannot reach a satisfactory resolution on payment issues you can:

·Contact the public body (the buyer) of the main end contract;

·Contact the **Small Business Commissioner** for support and advice;

·Contact the **Scottish Procurement Single Point of Enquiry** for advice;

Add statutory interest to payments due which have not been made within 30 days. For more information, see **UK Government guidance on late commercial payments: charging interest and debt recovery**

Advice and Support

If you have any questions on Prompt Payment please contact: Scottishprocurement@gov.scot

Prompt Payment Documents

Prompt Payment Certificate.docxDownload Document

(23.6 KB / file type:docx)

Prompt Payment - Payment Performance - Evidence Examples.docx Download Document

(266.88 KB / file type:docx)

Prompt Payment Improvement Plan.xlsDownload Document

(85.5 KB / file type:vnd-ms-excel)

If you have any questions, these may be answered in **Prompt Payment Frequently Asked Questions**.