



Scottish Procurement Policy Note: SPPN 2/2022

07 April 2022

Public Procurement – Prompt Payment in the Supply Chain

Purpose

This Policy Note provides details of how public bodies are to embed prompt payment performance in the supply chain through procurement processes.

This Policy Note replaces [SPPN 08/2009](#).

Key Points

- it is critical that we use the power of procurement to support Scotland's economic recovery and longer term wellbeing, and that includes ensuring suppliers and sub-contractors are paid on time. Prompt payment of the supply chain is not only the ethical and socially responsible thing to do. It is critical to the [sustainability and resilience](#) of our supply chains in delivering goods, services and works to, or on behalf, of the people of Scotland.
- suppliers are asked to adopt the elements of Fair Work First as detailed in [SPPN 6/2021](#) when bidding for public contracts. It is important for suppliers to be paid on time to deliver against these elements.
- public bodies should ensure contracts are awarded to bidders who have good payment performance history and have systems in place so that their full supply chain is paid on time and in accordance with the terms of the contract. Mechanisms should be put in place to assess and monitor payment performance of the supply chain throughout the lifetime of the contract.
- public bodies and suppliers are encouraged to share this SPPN with relevant members of their supply chains including trade bodies and procurement forums.
- Scottish public bodies in scope of the Scottish Public Finance Manual must include [project bank accounts](#) in tender documents for public works contracts over the applicable value thresholds.

Where a supply chain exists which is not covered by project bank accounts, public bodies should use the following:

Selection Stage - new SPD Standard Statement

Public bodies should evaluate past payment performance as part of the selection stage as an indicator of a resilient and sustainable supply chain. When it is likely that a supply chain will be used, the updated standardised statements in relation to the Single Procurement Document question 4C.4 should be added to Contract Notices advertising a contract opportunity. Bidders responses to this question should evidence if they have effective payment systems in place to ensure reliability of their supply chains. The updated standardised statement can be found in [Annex A](#).

Public bodies must make an assessment of the bidder's responses in order to determine whether it has an effective and reliable supply chain management system in place. The essential features of the updated statement assesses:

- whether the bidder has paid its suppliers in accordance with the contractual terms that it applies to its supply chain, achieving at least 95% of valid invoices paid on time.
- where a bidder does not pay at least 95% of valid invoices on time, an [improvement plan](#) must be provided to proceed

If a bidder does not pay at least 95% of valid invoices on time and is unable to provide a proportionate and timely improvement plan, they will not be selected to participate any further in the competition.

Guidance for start-up companies, consortia etc. and minimum requirements for improvement plans is provided within the [Procurement Journey](#).

Award Stage Question

Public bodies should confirm at award stage if bidders will ensure payment of subcontractors at all stages (Includes public body to contractor, contractor to subcontractor and sub-contractor to sub-contractor) of the supply chain within a maximum of 30 day payment terms and that this will be managed. All public bodies advertising requirements which may require the use of sub-contractors should adopt the statement in [Annex B](#) – Award Statement.

If a bidder is unable to confirm acceptance of the award statement in [Annex B](#), they should not be awarded the contract unless there are extenuating circumstances.

Terms and Conditions

[Annex C](#) – Terms & Conditions Standard Clause, provides an updated standard clause for public bodies' use. It includes a requirement to pay contractor and subcontractor invoices within 30 days throughout the supply chain of public contracts. A point of contact in the public body must also be provided should the sub-contractor have any difficulty in securing the timely payment of an invoice. Where proportionate to do so, public bodies should review relevant existing contracts and frameworks to

ensure this clause, or a similar clause, is embedded when sub-contractors are being used.

Public bodies are encouraged to include payment performance reporting requirements as a condition of contract to support the contract management activity referenced in the contract management section.

Contract Management

Public bodies should ensure suppliers have effective payment systems in place and provide regular reports on payment performance of sub-contractors in the supply chain. This should be monitored by the public body as part of the contract management activity, addressing any shortfalls with the prime contractor during the life of the contract to ensure the reliability of the supply chain.

Examples of payment performance reporting can be found within the Procurement Journey [Prompt Payment page](#).

PCS Tender has been updated to allow public bodies using the contract management functionality to attach payment evidence within the additional information area. An additional KPI has also been added which can be used when using the Supplier Performance Management module.

Escalation for late and non-payment of valid invoices

The first route of escalation for sub-contractors in the event of a delay in an invoice being paid, should be the public body stated in the contract, who in turn will engage with the prime contractor to support resolution. Should resolution not be achieved, advice can be requested from [The Scottish Government SPoE](#) and further support may also be provided by [The Small Business Commissioner](#).

Monitoring

The Scottish Government will monitor this policy in a variety of ways including reviewing public bodies' payment performance in their Annual Procurement Reports, conducting surveys and collaborating with supplier representative bodies.

Action Required

All relevant procurement processes should fully incorporate the guidance above for planned contracts and frameworks from 1st June 2022.

Dissemination

Please bring this SPPN to the attention of all relevant staff, this can include customers, end-users of a procurement and other relevant stakeholders who may have an impact over the decisions made in a procurement.

Contact

If you have any questions about this SPPN, please contact us at Scottishprocurement@gov.scot

Annex A - Standardised Statement

SPD Question 4C.4

Please provide a statement of the relevant supply chain management and/or tracking systems used:

New standardised Statement

If bidders intend to use a supply chain to deliver the requirements detailed in II.2.4 in the Find a Tender Service, Contract Notice or relevant section of the Site Notice, they should confirm they have (or have access to) the relevant supply chain management and tracking systems to ensure a resilient and sustainable supply chain. This will include confirmation that they have the systems in place to pay subcontractors through the supply chain promptly and effectively, and provide evidence when requested of:

a) their standard payment terms

b) ≥95% of all supply chain invoices being paid on time (in accordance with the terms of contract) in the last financial year.

If the bidder is unable to confirm (b) they must provide an improvement plan, signed by their Director, which improves the payment performance.

Annex B – Award Statement

Confirmation that you will include the [standard clause](#) in all contracts used in the delivery of the requirements, ensuring payment of sub-contractors at all stages of the supply chain within 30 days and include a point of contact for sub-contractors to refer to in the case of payment difficulties. This will require you to actively monitor payment performance and provide evidence and reports to the contracting authority on a regular basis.

Annex C – Terms & Conditions Standard Clause

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

19.3.1 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 the Contract and the subcontractor's invoice relates to the Contract 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 subcontractor 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;

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

19.3.3 in the same terms as that set out in this Condition 19.3 (including for the avoidance of doubt this Condition 19.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

2. LATE PAYMENT OF INVOICES Suppliers to the [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 the [insert contact point within public body].