Prompt Payment in the Supply Chain

Organisations should ensure contracts are awarded to bidders who have good payment performance history and have systems in place so that their supply chain is paid on time 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.

Single Procurement Document (SPD) Standardised Statement – Selection Stage

Open or close

To help you, the standardised statement for the Single Procurement Document (SPD) question 4C.4 has been updated with wording to explain that to pass the selection stage bidders must:

- evidence at least 95% payment on time of valid invoices,

  Or

- provide an improvement plan to drive timely progress towards 95%

All SPD's sent to bidders, their sub and sub-sub-contractors, should now include a statement on this prompt payment requirement.

How to Evidence Prompt Payment

Open or close

Your successful bidder(s) must demonstrate that they meet the required standard i.e. have paid their supply chain within the agreed terms and paid at least 95% of invoices within those terms or provided an improvement plan driving timely progress towards this threshold.

The evidence provided by your bidder(s) should be measured over a twelve-month period.

Examples of payment performance evidence can be found below.

Bidders may already be self-reporting their payment performance to The Department for Business & Trade, Business Payment Practices and Performance System.

Businesses need to report if they exceed the following thresholds:

• £36 million annual turnover

• £18 million balance sheet total

• 250 employees

However, bidders below threshold may also report their payment performance voluntarily.

Where bidders report payment data every six months in accordance with the Reporting on Payment Practices and Performance Regulations 2017, the two most recent reports can be submitted in response to question 4C.4.

If the bidder has recent data for the previous three or more months which has not yet been reported under the regulations, then this this can also be submitted as a reporting period.

Any bidders who do not have a payment history record (as required by the standardised statements) e.g. new entrants, Special Purpose Vehicles (SPV's) or Joint Ventures (JV's), must not be disadvantaged in the procurement and are able to explain their circumstances in their 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 requirements of standardised statements. For a JV, formed of a group of independent organisations, all members of the JV should each respond to the questions.

Award Criteria

Open or close

Organisations should also evaluate at award stage how bidders 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. Award criteria guidance can be found in the Award Criteria station.

If a supplier is accredited to the 'Gold' level of the Fair Payment Code this provides evidence that they are paying their supply chain within a 30 day period.

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.

The Scottish Government's standard terms and conditions of contract include a prompt payment standard clause, which we ask other public bodies to adopt.

Quickfire Guide

Quickfire Guide

Essential 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 supply chain relating to the contract;
- when your organisation (the buyer) has paid an invoice submitted by the prime contractor (which includes payment for work carried out by a sub-contractor) the prime contractor must pay the sub-contractor's invoice without deduction (once submitted);
- sub-contractors should be notified that the sub-contract forms part of a larger contract for your organisation As a result if payment issues arise the sub-contractor may refer these to you;
- 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,
- the prime contractor(s) are obliged to ensure that a clause with the same terms is included in the terms and conditions of any sub-contractor (sub-sub contractor, etc.) for the purposes of performing the contract.

The actual Scottish Government Standard Clause wording can be found below:

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

Open or close

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

Open or close

Prompt payment should be considered throughout the entire procurement process, where relevant and proportionate to do so, and supplier payment performance should be managed using the contract and supplier management process.

The standard clause referenced above, should be cascaded through the entire supply chain and prime contractors are responsible for ensuring relevant management information is gathered from all sub-contractors. This information should be reviewed during the organisation’s scheduled performance review with the prime contractor.

KPIs/management information should be used to measure the supplier's payment performance to sub-contractors evidenced by, for example, summarised accounts payable reports reviewed monthly or quarterly.

The UK Government Business Payment Practices and Performance System is a convenient and free service for suppliers to report their bi-annual payment performance detail, which can 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.

Suppliers can be asked to demonstrate their commitment to prompt payment more generally by asking them to:

- Consider signing the Fair Payment Code
- Make subcontractors aware of the Small Business Commissioner which can help small businesses (those with fewer than 50 employees) experiencing late payment issues with other businesses.
- Publish their payment performance reports on the UK Government Business Payment Practices and Performance System. Any organisation can provide their reports voluntarily.
- Consider adding a non-executive director to its board with direct responsibility for payment culture

Payment Escalation

Where a supplier is unable to obtain a satisfactory resolution on payment issues they can:

- Contact the public body (the buyer) that the end contract pertains to;
- 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

If suppliers are continually not paying invoices on time, the organisation should consider the associated loss or damage incurred and address with the supplier.

The number of supplier complaints/escalations regarding payment issues should be recorded by the organisation and reported in their Annual Procurement Report.

Reporting

Open or close

The Procurement Reform (Scotland) 2014 Act requires public bodies, which have an estimated total value of regulated procurement spend of £5 million or more (excl. VAT) in a financial year, to publish a Procurement Strategy.

This Procurement Strategy must set out how they will ensure prompt payment of the main contractors and sub-contractors in the supply chain. Your Annual Procurement

Report should include statements on how this has been achieved.

The Procurement Strategy template includes prompt payment requirements within the Spend/Finance section.

The Procurement Journey also includes the Annual Procurement Report template.

Evidence of prompt payment throughout the full supply chain will be included into the Procurement Capability Improvement Programme (PCIP) assessors' guidance for the next cycle.

If you have any questions on prompt payment please contact: Scottishprocurement@gov.scot

The Fair Payment Code

Open or close

What is the Fair Payment Code?

Background

The Fair Payment Code was launched in December 2024 and is administered by the Office of the Small Business Commissioner on behalf of the UK Government. The Fair Payment Code replaces the Prompt Payment Code.

The Fair Payment Code was developed to build upon the foundations established by the Prompt Payment Code, but it introduces some important enhancements. One of the significant changes is the implementation of a tiered award system, which recognises organisations at Gold, Silver, and Bronze levels based on their payment performance. This allows for greater transparency and encourages higher standards across the board. In addition, the Fair Payment Code Awards are restricted to a maximum of two years, with businesses required to reapply for their Award at the end of each two-year period, whereas with the Prompt Payment Code had no expiry date.

Additionally, the Fair Payment Code has strengthened its approach to verification by increasing the level of checks carried out. This ensures that organisations’

compliance is robustly assessed and upheld. Payment performance data is analysed and all references approached. Another notable improvement is the introduction of a more rigorous complaints process. This provides a clear route for raising and addressing concerns, making the system more accountable and responsive for all stakeholders.

Overall, the Fair Payment Code aims to create a more transparent, reliable, and supportive environment for fair payment practices, with improved recognition and assurance mechanisms compared to the Prompt Payment Code, with the importance of being clear, fair, and collaborative with your supply chain.

How to use the Fair Payment Code

As a buyer, contracting with a business which has received a Fair Payment Code Award, provides an assurance that they are paying their supply chain within the desired time-frame of their Award category (e.g. Gold / Silver / Bronze).

Membership of the Fair Payment Code Awards is free and there are no ongoing membership cost.

The Fair Payment Code is a tiered system of Awards aimed to improve payment performance drive best practice. The Awards recognise the positive payment practices undertaken by businesses and organisations.

There are three Award categories: Gold, Silver and Bronze. The Fair Payment Code includes a set of fair payment principles (of being Clear, Fair and Collaborative with their suppliers that every applicant business is required to sign up to.

The three Awards categories are:

- **Gold Award** – for those firms paying at least 95% of all valid invoices within 30 days
- **Silver Award** – for those paying at least 95% of all valid invoices within 60 days, including at least 95% of valid invoices to small businesses (with fewer than 50 employees) within 30 days
- **Bronze Award** – for those paying at least 95% of all valid invoices within 60 days

The Fair Payment Code Awards are open to businesses of any size with a UK registered office (and organisations as defined below) as long as they can provide evidence that they are meeting the Fair Payment Code's requirements which are the ability to pay suppliers within the required number of days, providing proof and references of payments and meeting the expected behaviours (contracts should be clear and understandable, everyone should know the payment terms and when money will arrive and payment disputes should be avoided and resolved quickly if they do arise) and complying with its principles (of being Clear, Fair and Collaborative with their suppliers).

The Fair Payment Code is an initiative set up to help businesses demonstrate that they are meeting or working towards this requirement through a tiered award system (gold – paying within 30 days is the standard required under the Procurement Reform (Scotland) Act 2014). The code is aimed at driving best practice and improving payment performance within the UK business sector.

The Fair Payment Code Awards reward businesses for adopting fair payment practices for their suppliers and small suppliers in particular. As well as having three Award categories, Gold, Silver and Bronze, the new Code includes a set of fair payment principles that every applicant business is required to sign up to.

The Code is ambitious in setting high standards including an exemplar 'Gold' category for those businesses paying suppliers within 30 days. The Code is also aspirational and aims to support businesses to improve payment practices and encourages their transition to Gold over time. To ensure the Code is credible, there is a rigorous but relatively light touch application process, a two-year limit on Awards and a more robust approach to enforcement than the old Code.

The Fair Payment Code is administered by the Office of the Small Business Commissioner (OSBC) on behalf of the Department for Business and Trade (DBT).

The Fair Payment Code is an initiative set up to help businesses demonstrate that they are meeting or working towards this requirement through a tiered award system (gold being the standard that we require). It is aimed at driving best practice and improving payment performance within the UK business sector.

Other organisations that are eligible to apply include:

- Universities (Institutions of higher education run as commercial organisations (not owned by local authorities),
- Community Interest Companies (Social enterprises regulated by the Community Interest Company Regulations that utilise their profits and assets for public good),
- Charities (Non-profit organisations that are set up to benefit the public for philanthropic purposes),
- Business Representative Organisations (Bodies that advocate in the interests of businesses such as trade associations and chambers of commerce)
- Co-Operatives (Organisations that are owned and run jointly by their members, sharing the profits and benefits).

Please note: Government departments and Public Sector bodies are NOT eligible to join the Fair Payment Code.

There is a robust complaint system in place which allows businesses to highlight Awardees that are not meeting the requirements of their Award category (Gold, Silver or Bronze) or not following the principles of the Fair Payment Code.

By signing up to the Code principles, businesses are committing to engaging with the Fair Payment Code Team to address any complaints raised. Failure to engage with the Fair Payment Code Team over a complaint, or evidence of bullying or harassing businesses that do make a complaint, will lead to being removed from the Code or applications rejected until evidence is provided that their payment practices have changed.

If you have any questions on prompt payment please contact: Scottishprocurement@gov.scot

Any documents you need are listed below

Prompt Payment Improvement Plan

(file type: xls)

Payment Performance Evidence Examples

(file type: docx)

Prompt Payment Certificate

(file type: docx)

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