

## **PE1824/A**

Scottish Government submission of 3 September 2020

1. The petitioner contends that Scottish Government policy and legislation requiring supply chain firms in public contracts to be paid within 30 days has never been monitored or policed.

### **Prompt Payment Policy**

2. We strongly encourage the prompt payment of suppliers and expect those who deliver public contracts to adopt the highest standard of ethical business practices.
3. Scottish Procurement Policy Note (SPPN) 8/2009<sup>1</sup> advised contracting authorities<sup>2</sup> (CAs) of a new clause introduced into our standard conditions of contract (SGTC) requiring payment of valid invoices within 30 days throughout the supply chain. CAs which did not use SGTC were asked to amend their contracts to include the new clause. A new provision required each individual contract to specify a contact point/named individual to whom issues regarding non-payment within the 30 day period can be raised.

### **Coverage and Scope**

4. Scottish Government aspires to a 10 day target for paying bills to businesses. In financial year 2018-19 we paid 99.7% of valid invoices within 30 days and 99.0% within 10 days. How other CAs comply with SPPNs, including prompt supply chain payment provisions in their contracts, is a matter for them.

### **Prompt Payment Reporting in Public Procurement Legislation**

5. The Procurement Reform (Scotland) Act 2014 (the Act) introduced a requirement for CAs expecting to spend at least £5m to publish a strategy setting out how, so far as reasonably practicable, payments under public contracts to businesses and between businesses are to be made within 30 days. It also requires CAs to publish a report reviewing the compliance of procurements with their strategy and a statement of how any non-compliance will be rectified.
6. Scottish Ministers' 2019 Annual Report of Procurement Activity is based on information prepared by CAs. It contains the following acknowledgement:

*“The 2014 Act requires Scottish public bodies to set out their prompt payment policy in their procurement strategies. While a number of public bodies included information on payment performance within their reports, we know there is more to do so that all public bodies routinely include information on payment performance within their annual procurement reports.”<sup>3</sup>*

### **Addressing Late Payment**

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<sup>1</sup> [SPPN 8/2009](#)

<sup>2</sup> Entities which are legally capable of awarding a public contract.

<sup>3</sup> [Annual Report of Procurement Activity 2019](#) (page 22)

7. SPPN 8/2009 - issues regarding non-payment within the 30 day period should be raised with the CA as noted in SPPN 8/2009.
8. Project Bank Accounts (PBAs) - PBAs<sup>4</sup> have enabled prompt payment of subcontractors in public construction contracts. CAs can cite a PBA as evidence of how a contractual procedure implemented prompt payment policy.<sup>5</sup> We have also facilitated a means for CAs to provide details of PBA payments to subcontractors.<sup>6</sup>
9. Small Business Commissioner - this office has a remit to consider complaints from small businesses about payment problems with their larger business customers, making non-binding recommendations on how the parties should resolve their disputes.
10. Single Point of Enquiry - if a subcontractor on a public contract believes that they are not being paid on time, they can raise the issue with our Single Point of Enquiry<sup>7</sup>, which can try, on an informal basis, to resolve the issue between the parties
11. Audit Scotland - we cannot comment on references made by the petitioner to Audit Scotland.

### **2013 Construction Procurement Review**

12. Chapter 10.3 of the Review of Public Sector Procurement in Construction<sup>8</sup> recommended actions for the supply side of the industry, not Scottish Government, to implement under the heading “Treating Each Other Fairly”.

### **COVID-19**

13. We have issued SPPNs and Construction Policy Notes dealing with the pandemic. These set out measures which CAs and supply chain firms can take to maintain cashflow.<sup>9</sup>

### **Matters Under Consideration**

14. The following matters are under consideration:

- conducting a supplier survey including questions on prompt payment.
- requiring the main contractor to report monthly on payment performance throughout its supply chain.
- requiring main contractors during procurement processes to provide evidence of their prompt supply chain payment policy, procedures and performance.

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<sup>4</sup> [Project Bank Accounts](#)

<sup>5</sup> [Scottish Procurement Blog 24 July 2019](#)

<sup>6</sup> [Construction Policy Note 7/2019](#)

<sup>7</sup> [Single Point of Enquiry](#)

<sup>8</sup> [The Review of Public Sector Procurement in Construction 2013](#)

<sup>9</sup> [COVID-19 SPPNs and CPNs](#) (see “Guidance on procurement policy and legislation”)

## **Conclusion**

15. We are both responsible and accountable for the implementation of SPPN 8/2009 in our contracts. Other CAs are solely responsible and accountable for it in their contracts. There was no requirement in SPPN 8/2009 for CAs to provide us with details of how they implemented SPPN 8/2009.
16. The Act requires individual CAs to publish their own procurement strategy and to report performance in their annual report, including reporting prompt supply chain payment.
17. We have implemented other ways for compliance with prompt payment policies in public contracts to be reported; and are considering additional related matters.