

PE1824/D

Scottish Government submission of 28 October 2020

1. This note of clarification is submitted by Scottish Government in response to the points raised in the Public Petitions Committee's letter of 8 October 2020 concerning Scottish Government's submission of 3 September 2020.¹
2. In respect of bullet point 1 of paragraph 14 of that submission, Scottish Government plans to issue a questionnaire to suppliers that will ask about their experience of prompt payment in the supply chain of public contracts at the start of November and anticipates that responses will be published in February 2021.
3. Bullet points 2 and 3 refer to a national framework agreement which we intend to establish for Civil Engineering Works and Associated Services, for which we published a Prior Information Notice on 3 August 2020.² During the procurement process, contractors will be asked to provide evidence of their prompt supply chain payment policy, procedures and performance. Failure either to supply the necessary information, or to act upon an instruction to improve payment performance, will invoke a contractual process of engagement and, upon persistent non-compliance, escalation which may lead to the Supplier being suspended from the Framework and, if necessary thereafter, potential permanent removal from it.
4. We anticipate the framework will become operational in summer 2021 and is currently estimated to cover at least £1bn worth of projects over the four-year term. The framework will be available to public bodies from across the Scottish public sector and they will be obliged to implement the monthly reporting requirements upon contractors. Please note that these requirements will apply only to the prospective framework agreement.
5. We would also take this opportunity to make reference to "*other ways for compliance with prompt payment policies in public contracts*" (noted in paragraph 17 of our previous submission), in the following paragraphs.
6. All existing and planned Scottish Government frameworks and contracts already/will include a requirement for sub-contractors to be paid within 30 days of a valid invoice. For collaborative frameworks accessible across the public sector and where there is a substantive sub-contract component, it is expected that suppliers will report on performance on a quarterly basis going forward. In other SG contracts, we reserve the right to do spot-checks during actual contract delivery and have the ability to conduct audits where appropriate e.g. this was done for the "Warmer Homes"³ contract.
7. Prompt payment performance is often also a standing agenda item at contract management meetings conducted by the public body responsible for managing

¹ https://www.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202020/PE1824_A.pdf

² https://www.publiccontractsscotland.gov.uk/search/show/search_view.aspx?ID=AUG391615

³ <https://www.gov.scot/policies/home-energy-and-fuel-poverty/energy-saving-home-improvements/>

the performance of the contract, particularly if the contractor's delivery strategy contains a large subcontracting component. If public bodies fail to address performance failures they can escalate them, by exception, to SPPD.

8. For Scottish public bodies that provide an Annual Procurement Report, as per section 18 of the Procurement Reform (Scotland) Act 2014,⁴ they are asked to provide the following information in their Report:
 - a. number of valid invoices received during the reporting period;
 - b. percentage of invoices paid on time during the period ("on time" means within the time period set out in the contract terms);
 - c. number of regulated contracts awarded during the time period containing a contract term requiring the prompt payment of invoices in public contract supply chains; and
 - d. the number of concerns raised by sub-contractors about the timely payment of invoices in public contract supply chains.

⁴ <https://www.legislation.gov.uk/asp/2014/12/section/18>