



## **ANALYSIS OF RESPONSES TO THE CONSULTATION ON HOW GOVERNMENT SHOULD TAKE ACCOUNT OF A SUPPLIER'S APPROACH TO PAYMENT IN THE PROCUREMENT OF MAJOR CONTRACTS**

### **Introduction**

The Government understands the importance of prompt, fair and effective payment in all businesses. Being paid promptly for work done ensures businesses have a healthy cash flow. This is especially important for small and medium sized enterprises (SMEs), including start-ups, who may not have the reserves of larger companies.

In its 2017 Manifesto, the Government stated that it would 'use our buying power to ensure that big contractors comply with the Prompt Payment Code both on government contracts and in their work with others'. This commitment has been examined in the context of the UK's procurement rules, the Public Contracts Regulations 2015.

The Government announced in October 2017 a commitment to consult on how it could make prompt payment part of the selection process for larger suppliers. The consultation was published on 10 April 2018 and ran for eight weeks to 5 June 2018. It was issued directly to a number of known stakeholders and was also made publicly available on GOV.uk.

The measures set out in the consultation document apply to Central Government Departments, their executive agencies and Non-Departmental Public Bodies when undertaking procurements under the Public Contracts Regulations 2015.

Responses were received from 30 organisations representing a range of suppliers, industry bodies and procuring authorities.

- Suppliers / businesses (12)
- Trade Bodies covering Construction, FM, Defence, and Accountancy as well those representing SMEs / large suppliers (10)
- Procuring Authorities (8)

We are grateful to all those stakeholders who responded to the consultation paper and/or participated in one of the consultation meetings that were organised.

## **Analysis of responses**

The consultation proposals identified two options where an assessment of whether the bidder demonstrates a fair, effective and responsible approach to payment in its supply chain management might be appropriate under the Public Contract Regulations 2015 (PCRs). We used the consultation to better understand the risks and benefits of each option (Questions 1 and 2). See consultation document for detailed explanation on each option.<sup>[1]</sup>

### ***Q1. What evidence do you consider contracting authorities would need to request from a bidder to assess the effectiveness of supply chain management payment practices.***

The majority of responses were supportive of using evidence readily available (such as metrics set out in the Prompt Payment Code) and the statutory requirement<sup>[2]</sup> for large businesses to report on payment performance across 30 days / 60 days. Several responses suggested using average days to pay in accordance with payment terms as a key piece of evidence.

Several responses highlighted the importance of ensuring a consistent approach to how this policy is implemented and the need for a common set of benchmarks to provide clarity to suppliers and contracting authorities.

### ***Q2: What evidence do you consider contracting authorities would need to request from a bidder to demonstrate Grave Professional Misconduct in payment practice?***

12 respondents specifically raised concerns with this approach including:

- negative impact on the supply market if a key supplier was excluded for 3 years;
- concerns that the option is 'excessive' and wouldn't drive change in approach to payment practices required;
- concerns that the 'self-cleaning' provision would build in delay to the procurement process.

Other respondents suggested the evidence needed for this option would need to include: instances of convictions or disciplinary action; number of claims for interest

due to late payment; details about how unresolved payments are dealt with; and persistent failure to pay within existing benchmarks.

**Q3: Do you agree that failure to pay 95% of payments within 60 days over two consecutive six month periods is an appropriate benchmark of payment performance? Are there other benchmarks that should be considered?**

13 responses agreed with this benchmark. The remaining either felt that 60 days were too generous and should be moved to 30 days; or that they were happy to report % of payments to SMEs only within 60 days.

Several responses picked up some wider points relating to benchmarks:-

- issues arise from disputed invoices, which a benchmark against undisputed invoices would not pick up.
- warned against over reliance on one benchmark and need to allow for tolerances. If the benchmark is too stark, there is the risk that suppliers with intentions to pay promptly who have made errors in paying late are excluded
- flagged the importance of ensuring there was consistency of approach to how benchmarks were applied across Government.
- Need to be aware that % of invoices do not factor in volumes or values of invoices, which could potentially distort the overall picture.

**Q4: Do you agree that applying this measure to contracts valued above £5m per year is an appropriate threshold? If not, what threshold should apply and why?**

8 responses agreed that this was the appropriate threshold. 10 responses suggested increasing the threshold, with suggestions of £10m per annum being a more appropriate threshold and running as a pilot for 12 months at which point the threshold could be reviewed. Reasons for increasing the threshold included the greater likelihood of targeting those contracts reliant on a supply chain and would therefore be more a proportionate approach to the policy application.

3 responses did not agree with a threshold being applied at all and should be applied to all contracts, regardless of value.

**Q5: Would there be benefit in giving subcontractors greater access to the contracting authority to make them aware of significant payment issues?**

Many responses were supportive of the concept, however:-

- A number were unclear how this route would alleviate the issue of SMEs being reluctant to report payment issues
- Several procuring authorities highlighted the importance of needing clear guidelines / process on what could be raised to avoid being drawn into every dispute.
- Eight responses were supportive of existing schemes already in place and were keen to see these used more (Mystery Shopper and Prompt Payment Code), rather than develop a new process.

Given the mixed responses, no clear conclusions could be drawn. Further consideration will be given to this, including how Mystery Shopper could be better used for payment delays in the supply chain.

---

[1] <https://www.gov.uk/government/consultations/prompt-payment-by-government-suppliers>

[2] <https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements>