

Guidance on how to take account of a bidder's approach to payment in the procurement of major contracts

October 2021

Introduction

1. This guidance supports Procurement Policy Note (PPN) 08/21 and sets out how payment approaches can be taken into account in the procurement of in scope central Government contracts (subject to the Public Contracts Regulations 2015 and in excess of £5 million per annum). **A set of standard selection questions is in Annex A.**
2. The key update from PPN 07/20 and guidance is the increase to the threshold bidders have to meet to demonstrate they have effective payment systems in place to ensure the reliability of their supply chains. In addition, this guidance reminds contracting authorities of the approach expected from bidders where supply chain finance is used.

Assessment Methodology

3. The key issue to be assessed is whether a bidder that intends to use a supply chain to deliver the contract, has effective payment systems in place to ensure the reliability of that supply chain.
4. A bidder should only be excluded if they do not meet the selection criterion having taken into account the self-declarations and an assessment of their systems and recent payment performance, or if the successful bidder is unable to verify its self-declarations with the required evidence.

Self-declaration (questions 1 to 4)

5. Question 1 is for information only and will not be scored. If the answer to question 1 is "No", the bidder is not required to answer the remaining questions.
6. Questions 2, 3 and 4 should be assessed on a pass/fail basis based on self-declarations by the bidder.

Payment performance (question 5)

7. Contracting authorities must make an assessment of the bidder's responses to question 5 in order to determine whether it has an effective and reliable supply

chain management system in place. This is done by looking at two aspects of the supply chain management system:

- Whether the bidder has paid its suppliers in accordance with the contractual terms that it applies to its supply chain; and
- Whether, overall, the bidder has paid its suppliers promptly; payment of 95% of invoices within 60 days is considered an appropriate measure of overall payment promptness.

8. Subject to paragraph 8, question 5 should be measured over a twelve month period and the bidder must demonstrate that they meet the required standard (paid their supply chain within agreed terms and paid 95% of invoices within 60 days) in at least one of the two previous six month periods (“reporting periods”¹).
9. Where the bidder has reported 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 5. 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. Where bidders are not required to publish their data in accordance with the regulations, they should still submit the previous twelve months’ worth of available data in two (six month) periods in line with the BEIS Guidance to Reporting Payment Practices and Performance.
10. With respect to question 5(b), if the bidder has not paid all invoices within the agreed contractual terms in at least one reporting period, they must explain why in order to pass. And, if they need to submit an action plan under 5(c), that plan must also cover what actions they are taking to improve payment of their suppliers within the agreed terms.
11. The evaluation methodology to be applied when assessing 5(b) is set out below. You must ensure this is included within the tender documentation so that bidders are aware of the assessment criteria and methodology.

Bidder’s performance	Assessment criteria and methodology	Outcome
Bidder pays all supply chain invoices within agreed terms.	Bidder meets the required standard.	Pass
Bidder does not pay all supply chain invoices within agreed terms but provides an explanation why.	Bidder meets the required standard.	Pass
Bidder does not pay all supply chain invoices	Bidder does not meet the required standard.	Fail

¹ A reporting period is a period of six calendar months as set out in the BEIS Guidance to Reporting Payment Practices and Performance under the Reporting on Payment Practices and Performance Regulations 2007. <https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements>.

within agreed terms and does not provide an explanation why.		
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12. With respect to question 5(c), if the bidder has not met the required standard of payment of 95% of all invoices in 60 days in at least one reporting period, they will still pass provided:

- After the bidder has removed intercompany payments from the calculations, it pays 95% of all invoices within 60 days in at least one of the previous two reporting periods.
- The bidder has paid between 90% and 95% of all its invoices within 60 days in at least one of the previous two reporting periods (after removing intercompany payments if relevant) and it demonstrates that it has a compliant action plan to achieve the required standard in future.
- The bidder is a new entrant to the market (trading for less than 12 months). In these circumstances bidders should not be disadvantaged and should therefore pass question 5. The bidder is still expected to respond to questions 1-4 and pass.

13. The evaluation methodology to be applied when assessing question 5(c) is set out below. You must ensure this is included within the tender documentation so that bidders are aware of the assessment criteria and methodology.

Bidder's performance	Assessment criteria and methodology	Outcome
Bidder pays ≥95% of all supply chain invoices in 60 days in at least one of the previous two six month reporting periods.	Bidder meets the required standard.	Pass
Bidder pays ≥95% of all supply chain invoices in 60 days in at least one of the two previous six month reporting periods after removing intercompany payments.	Bidder meets the required standard.	Pass

Bidder pays $\geq 90\%$ < 95% of all supply chain invoices in 60 days in at least one of the two previous six month reporting periods after removing intercompany payments (if relevant).	Bidder demonstrates action plan that includes (as a minimum) the following: <ol style="list-style-type: none"> 1. Identification of the primary causes of failure to pay: <ol style="list-style-type: none"> (a) 95% of all supply chain invoices within 60 days; and (b) (if relevant) all supply chain invoices within agreed terms. 2. Actions to address each of these causes. 3. Regular reporting on progress to the bidder's audit committee (or equivalent). 4. Plan signed off by a director. 5. Plan published on its website. (This can be a shorter, summary plan) 	Pass
	No action plan or action plan does not include all of the above features.	Fail
Bidder does not pay $\geq 90\%$ of all supply chain invoices in 60 days in at least one of the two previous six month reporting periods after removing intercompany payments (if relevant).	Bidder's payment performance falls substantially below the required standard.	Fail

Verification

14. Contracting authorities must verify that the successful bidder meets the selection criterion prior to award of the contract or appointment to a framework agreement or dynamic purchasing system by requiring the evidence set out in Table 2. Contracting authorities may request this evidence at any time during the procurement process. For multi-stage procurements, Contracting authorities may want to consider verifying the evidence before taking bidders on to the next stage. For contracts awarded under a framework agreement or dynamic purchasing system, Contracting authorities should verify that the bidder continues to meet the selection criterion prior to entering into any contract awarded under a framework agreement or dynamic purchasing system.

15. Contracting authorities should not require a bidder to provide evidence where it can be obtained directly and free of charge by the contracting authority from a national database (although it is not unreasonable for the bidder to be required to provide details of how to access that database).

Payment Statistics and use of supply chain finance

16. Contracting authorities are reminded that bidders should follow the approach set out below in reporting their payment data where supply chain finance is used (i.e

the supplier receives payment from a finance provider or other third party rather than from the bidder itself):

- a. Bidders must confirm that they meet the payment terms set out in question 4 and demonstrate that they meet the standard set out in question 5. If a subcontractor to the bidder chooses to enter into a supply chain finance arrangement in order to be paid earlier than the payment terms set out in question 4 or the standard set out in question 5, then that would be acceptable and a matter for the subcontractor.
- b. However, suppliers should not be required to enter into a supply chain finance arrangement in order for the payment terms (set out in question 4) or period in which payment is actually made (as reported under question 5(a)) to meet the required standards.
- c. See FAQs for further detail on how bidders are expected to calculate payment reporting statistics where supply chain finance is used.

Call-off Contracts from Framework Agreements

17. In answering question 1, bidders must confirm whether they intend to use a supply chain to deliver any call off contract that may be awarded under the framework agreement. In the event a bidder does not propose to use a supply chain, but during the procurement (i.e. after selection has taken place) its circumstances change such that it then proposes to do so, it must advise the authority immediately. Where such a change is permissible in the circumstances, the bidder should be asked to complete the remainder of the selection questions and provide the relevant payment data (applicable at the time the remainder of the questions are completed). The authority should carry out an assessment in the usual way.

18. Authorities may also wish to consider whether they would like to include a mechanism to deal with deterioration in payment performance after a bidder has been appointed to a framework agreement. For example, it may wish to suspend the award of any further work under the framework agreement until the supplier's performance returns to the required standard. If so, any such mechanism must be clearly set out in the framework agreement.

19. As set out in the standard selection questionnaire, if bidders provide false/misleading information in their responses, they may face sanctions, including exclusion from the procurement and bidding for other contracts for between three and five years (depending on the circumstances), rescission of any contract that had been entered into, damages and in some cases criminal prosecution.

Exceptional Circumstances

20. It may not be relevant or proportionate to apply this PPN in the following exceptional circumstances (which may often be temporary):

- where the market for a contract of this type is distorted/narrowed/struggling to such a significant extent that delivery of public services is likely put at risk, or value for money is likely to be severely compromised;
- where there is a civil emergency.

This is not an exhaustive list. Departments would need to document their reasons for not applying the measure and alert the Cabinet Office in advance to seek an exemption.

ANNEX A

Selection criterion: If you intend to use a supply chain for this contract, you must demonstrate you have effective systems in place to ensure a reliable supply chain. This criterion is focused on exploring your payment systems. If your response to question 1 is that you do not intend to use a supply chain for this contract, you are not required to complete the rest of this section.

Selection Questions 1- 4 Self-declarations		
1	Please confirm if you intend to use a supply chain ² for this contract or (if relevant) to deliver any call off contract that may be awarded under this framework agreement. If you answer “No” you do not need to complete the rest of this section. [INFORMATION ONLY]	Yes/No NOT SCORED
2	Please confirm that you have systems in place to pay those in your supply chain promptly and effectively, i.e. within your agreed contractual terms.	Yes/No PASS/FAIL
3	Please confirm you have procedures for resolving disputed invoices ³ with those in your supply chain promptly and effectively.	Yes/No PASS/FAIL
PUBLIC SECTOR CONTRACTS ONLY – Requirement under the Public Contracts Regulations 2015 (Regulation 113)		
4.	Please confirm that for public sector contracts awarded under the Public Contract Regulations 2015 you have systems in place to include (as a minimum) 30 day payment terms in all of your supply chain contracts and require that such terms are passed down through your supply chain.	Yes / No PASS/FAIL
PUBLIC AND PRIVATE SECTOR CONTRACTS		
5.	(a) Please provide the percentage of invoices ⁴ paid by you to those in your immediate supply chain on all contracts for each of the two previous six month reporting periods ⁵ . This should include the percentage of invoices paid within each of the following categories: <ul style="list-style-type: none"> 1. within 30 days 2. in 31 to 60 days 3. in 61 days or more 4. due but not paid by the last date for payment under agreed contractual terms. <p>It is acceptable to cross refer to information that has previously been submitted to Government or other bodies or is publicly available (provided it covers the required reporting periods), including data published in accordance with the</p>	

² References to supply chain means suppliers or sub-contractors of any tier that execute any works, supply any products or provide any services that are used wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the contract.

³ This should include all situations where payments are due; not all payments involve an invoice (see FAQs). You should explain this in the tender documents

⁴ See footnote 4

⁵ You should explain in the tender documents what a reporting period is by referring to the BEIS Guidance: <https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements>

Reporting on Payment Practices and Performance Regulations 2017. **If you do wish to cross refer, please provide details and/or insert link(s).**

(b) If you are unable to demonstrate that all invoices have been paid within the agreed contractual terms, please explain why. Note: if you are required to submit an action plan under question 5(c), this action plan must also set out steps to address your payment within agreed terms, in order to achieve a pass for question 5 (c).

(c) If you are unable to demonstrate that $\geq 95\%$ of invoices payable to your supply chain on all contracts have been paid within 60 days of the receipt of the invoice in at least one of the last two six months reporting periods please provide an action plan for improvement which includes (as a minimum) the following:

1. Identification of the primary causes of failure to pay:
 - (a) 95% of all supply chain invoices within 60 days; and
 - (b) if relevant under question 5(b), all invoices within agreed terms.
2. Actions to address each of these causes.
3. A mechanism for and commitment to regular reporting on progress to the bidder's audit committee (or equivalent).
4. Plan signed off by director.
5. Plan published on its website (this can be a shorter, summary plan).

If you have an existing action plan prepared for a different purpose, it is acceptable to attach this but it should contain the above features.

Table 2: Evidence Requirements (questions 2 – 4)

Evidence for self-declarations (questions 2-4): Prior to contract award the following evidence will be required from the successful bidder (where the bidder has answered "Yes" to question 1 above) in order to verify the bidder's responses	
Question	Evidence
2	A copy of your standard payment terms for all of your supply chain contracts.
3	A copy of your procedures for resolving disputed invoices promptly and effectively.
3	Details of any payments of interest for late payments you have paid in the past twelve months or which became due during the past twelve months and remain payable (contractually or under late payment legislation) and, if any such payment has been made (or arose), an explanation as to why this occurred and an outline of what remedial steps have been taken to ensure this does not occur again.
4	A copy of your standard payment terms used with sub-contractors on public sector contracts subject to the Public Contract Regulations 2015