



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

## November 2023

### Introduction

1. This guidance supports Procurement Policy Note (PPN) 10/23 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.**<sup>1</sup>
2. The key change to the approach in PPN 08/21 is the introduction of a new threshold based on average payment days bidders have to meet to demonstrate they have effective payment systems in place to ensure the reliability of their supply chains. It also clarifies the process contracting authorities should go through when seeking an exemption from the action of this PPN.
3. Frequently asked questions (FAQs) are set out in Annex B.

### Assessment Methodology

4. 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.
5. 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)

6. 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.
7. Questions 2, 3 and 4 should be assessed on a pass/fail basis based on self-declarations by the bidder.

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<sup>1</sup> These questions are replicated in the Technical and Professional Questions of Annex B of the SSQ guidance in PPN 03/23.

## **Payment performance (question 5)**

8. Contracting authorities must make an assessment of the bidder's responses to question 5 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 by:
    - o paying at least 95% (at least 90% if an action plan is provided) of invoices within 60 days, which is considered an appropriate measure of overall payment promptness, and;
    - o meeting the average payment days threshold of at least 55 days for all invoices.
9. Subject to paragraph 10, question 5 should be measured over a twelve month period and the bidder must demonstrate that they meet the required standard of paying their supply chain within agreed terms, paying at least 95% (at least 90% if an action plan is provided) of invoices within 60 days, and meeting the average payment days threshold of 55 or fewer for all invoices simultaneously in at least one of the two previous six month periods ("reporting periods"<sup>2</sup>).
10. 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 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 DBT Guidance to Reporting Payment Practices and Performance.
11. With respect to question 5(c), if the bidder has not paid all invoices within the agreed contractual terms in at least one reporting period, they must explain why to pass. And, if they need to submit an action plan under 5(d), that plan must also cover what actions they are taking to improve payment of their suppliers within the agreed terms.
12. The evaluation methodology to be applied when assessing 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.

| <b>Bidder's performance</b>                                | <b>Assessment criteria and methodology</b> | <b>Outcome</b> |
|--|--|----------------|
| Bidder pays all supply chain invoices within agreed terms. | Bidder meets the required standard.        | Pass           |

<sup>2</sup> 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 2017. <https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements>.

|  |   |      |
|--|---|------|
| 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 within agreed terms and does not provide an explanation why. | Bidder does not meet the required standard. | Fail |

13. With respect to question 5(d), 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.

14. The evaluation methodology to be applied when assessing question 5(d) 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. For the avoidance of doubt, suppliers must meet both of the below criteria simultaneously in one of the last two reporting periods (after removing intercompany payments):

- a. Supplier pays 95% plus of its invoices in 60 days (90% plus if a valid action plan has been provided), and;
- b. Supplier has paid all of its invoices in an average of 55 days or less.

| <b>Bidder's performance</b>   | <b>Assessment criteria and methodology</b> | <b>Outcome</b> |
|---|--|----------------|
| Bidder pays $\geq 95\%$ of all supply chain invoices in 60 days and the bidders average payment days are also $\leq 55^3$ . Both metrics are hit concurrently in at least | Bidder meets the required standard.        | Pass           |

<sup>3</sup> Both metrics may be calculated either with or without intercompany payments removed.

|   |  |      |
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| one of the previous two six month reporting periods.  |  |      |
| Bidder pays $\geq 90\%$ < 95% of all supply chain invoices in 60 days and the bidder's average payment days are also $\leq 55$ . Both metrics are hit concurrently in at least one of the previous two six month reporting periods. | Bidder demonstrates action plan that includes (as a minimum) the following: <ol style="list-style-type: none"> <li>1. Identification of the primary causes of failure to pay: <ol style="list-style-type: none"> <li>(a) 95% of all supply chain invoices within 60 days; and</li> <li>(b) (if relevant) all supply chain invoices within agreed terms.</li> </ol> </li> <li>2. Actions to address each of these causes.</li> <li>3. Regular reporting on progress to the bidder's audit committee (or equivalent).</li> <li>4. Plan signed off by a director.</li> <li>5. Plan published on its website. (This can be a shorter, summary plan)</li> </ol> | Pass |
|   | No action plan or action plan does not include all of the above features.  | Fail |
| Bidder pays <90% of all supply chain invoices in 60 days in both of the previous six month reporting periods after removing intercompany payments (if relevant).  | Bidder's payment performance falls substantially below the required standard.  | Fail |
| Bidder's average payment days are >55 in both of the previous six month reporting periods after removing intercompany payments (if relevant).   | Bidder's payment performance falls substantially below the required standard.  | Fail |

### **Verification**

15. Contracting authorities must verify or cross-reference (see paragraphs 17 and 18) 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 Annex A. Contracting authorities may request this evidence at any time during the procurement process. For multi-stage procurements, Contracting authorities may want to consider verifying or cross-referencing the evidence before taking bidders on to the next stage. For contracts awarded under a framework agreement or dynamic purchasing system,

Contracting authorities should ensure that the bidder continues to meet the selection criterion prior to entering into any contract awarded under a framework agreement or dynamic purchasing system.

16. Contracting authorities should not require a bidder to provide further 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).
17. To cross-reference data a supplier has provided in answer to question 5, the Contracting authority may use data published online under the Reporting on Payment Practices and Performance Regulations 2017.
18. If a supplier has not published data under the Reporting on Payment Practices and Performance Regulations 2017 and a Contracting authority has reason to believe it is in scope of these regulations, it should consider further investigation of the supplier and its payment performance.
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.

#### **Payment Statistics and use of supply chain finance**

20. 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 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**

21. 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.

22. 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.

### **Exemption Process**

23. It may not be relevant or proportionate to apply this PPN in the following exceptional circumstances:

- 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.

24. Should a central government authority wish to seek an exemption they must contact the Commercial Policy Team in Cabinet Office with an evidence-based rationale for the exemption request, and alternative measure proposed to improve payment performance in the specific market area. Cabinet Office will then liaise with the contracting authority before taking a decision on whether to recommend the exemption to the Minister. An exemption can only be agreed by the relevant Cabinet Office Minister. No exemption should be requested without a Cabinet Office recommendation, who will handle the submission process.

## 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.

**Table 1: Selection Questions**

| <b>Selection Questions 1 - 4 Self-declarations</b>   |   |                              |
|--|---|------------------------------|
| 1  | Please confirm if you intend to use a supply chain <sup>4</sup> 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.<br><b>[INFORMATION ONLY]</b> | Yes/No<br><b>NOT SCORED</b>  |
| 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<br><b>PASS/FAIL</b>   |
| 3  | Please confirm you have procedures for resolving disputed invoices <sup>5</sup> with those in your supply chain promptly and effectively.   | Yes/No<br><b>PASS/FAIL</b>   |
| <b>PUBLIC SECTOR CONTRACTS ONLY – Requirement under the Public Contracts Regulations 2015 (Regulation 113)</b> |   |                              |
| 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<br><b>PASS/FAIL</b> |
| <b>PUBLIC AND PRIVATE SECTOR CONTRACTS</b>   |   |                              |

<sup>4</sup> 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.

<sup>5</sup> 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

|    |   |
|----|---|
| 5. | <p>(a) Please provide the percentage of invoices<sup>6</sup> paid by you to those in your immediate supply chain on all contracts for <b>each</b> of the two previous six month reporting periods<sup>7</sup>. This should include the percentage of invoices paid within each of the following categories:</p> <ol style="list-style-type: none"> <li>1. within 30 days</li> <li>2. in 31 to 60 days</li> <li>3. in 61 days or more</li> <li>4. due but not paid by the last date for payment under agreed contractual terms.</li> </ol> <p>(b) Please provide the average number of days taken by you to pay an invoice to those in your immediate supply chain on all contracts for <b>each</b> of the two previous six month reporting periods.</p> <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 Reporting on Payment Practices and Performance Regulations 2017. <b>If you do wish to cross refer, please provide details and/or insert link(s).</b></p> <p><i>(c) 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(d), this action plan must also set out steps to address your payment within agreed terms, to achieve a pass for question 5(d).</i></p> <p><i>(d) If you are unable to demonstrate that ≥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:</i></p> <ol style="list-style-type: none"> <li>1. Identification of the primary causes of failure to pay: <ol style="list-style-type: none"> <li>(a) 95% of all supply chain invoices within 60 days; and</li> <li>(b) if relevant under question 5(c), all invoices within agreed terms.</li> </ol> </li> <li>2. Actions to address each of these causes.</li> <li>3. A mechanism for and commitment to regular reporting on progress to the bidder's audit committee (or equivalent).</li> <li>4. Plan signed off by director.</li> <li>5. Plan published on its website (this can be a shorter, summary plan).</li> </ol> <p><i>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.</i></p> |
|----|---|

<sup>6</sup> See footnote 4

<sup>7</sup> You should explain in the tender documents what a reporting period is by referring to the DBT Guidance:  
<https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements>



**Table 2: Evidence Requirements (questions 2 – 4)**

| <b>Evidence for self-declarations (questions 2 - 4):</b> Prior to contract award the following evidence will be required from the successful bidder (where the bidder has answered “Yes” to question 1 above) 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  |
| <b>Evidence for prompt payment performance (question 5):</b> Prior to contract award the Contracting authority may cross-reference the data provided for this question with data published online under the Reporting on Payment Practices and Performance Regulations 2017. |   |
| 5  | A link to your data published online under the Reporting on Payment Practices and Performance Regulations 2017 if you are required to publish under these regulations   |

## **Annex B - Frequently asked questions (FAQs)**

### **Groups of Bidders**

#### **Q1. How does this criterion apply to consortia bids?**

**A.** *All members of a consortium are required to provide the information required. See standard SQ guidance in PPN 03/23 for further guidance on groups of bidders.*

### **New Entrants**

#### **Q2. How do you assess a bidder's payment history if they are new to the market or are a special purpose vehicle (SPV) or joint venture (JV) set up for the purpose of delivering the contract?**

**A.** *Any bidders (e.g. new entrants, SPVs or JVs) who do not have a payment history record (as required by question 5) should 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 questions 2, 3, and 4 (if relevant). For a JV, formed of a group of independent organisations, all members of the JV should each respond to the questions (see question 1).*

### **Construction Projects**

#### **Q3. How does this work with PAS91? These payment questions aren't included.**

**A.** *Where relevant, contracting authorities may consider using the PAS91 PQQ for works contracts (including the procurement of goods and services needed in relation to the works).*

### **Framework Agreements**

#### **Q4. Does this criterion apply to Framework Agreements and Dynamic Purchasing Systems (DPS)?**

**A.** *Yes. It applies in relation to framework agreements and DPS but only where it is anticipated that the value of contracts awarded under the framework agreement or DPS will be in excess of £5m per annum (excluding VAT). Verification should take place both prior to entering into the framework agreement/DPS and prior to entering into any contract awarded under the framework agreement/DPS. We recommend terms are included in the framework agreement allowing for this.*

#### **Q5. What if a framework or DPS is established before 1 April 2024, but contracts awarded under the framework/DPS take place after 1 April 2024 - which threshold applies?**

**A.** *The payment questions and relevant threshold are applied at selection stage. If the framework/DPS is advertised before 1 April 2024, then the threshold set out in PPN 08/21 would apply throughout the period of the framework/DPS – regardless of whether contracts awarded under that framework/DPS occur after 1 April 2024. The threshold set out in PPN 10/23 applies to framework agreements and DPS established on or after 1 April 2024.*

#### **Q6. Suppliers can be admitted, and therefore be required to complete selection questionnaires, throughout the lifetime of a DPS. If the DPS covers a period commencing before 1 April 2024 and continues after 1 April 2024, this means that the threshold changes during the lifetime of the DPS. Should we change the threshold for suppliers applying to be admitted to that DPS?**

**A.** *No. The same threshold must be applied consistently throughout the duration of the DPS. If the DPS is advertised before 1 April 2024, PPN 08/21 applies throughout the period of the DPS, including to suppliers applying to join the DPS after 1 April 2024.*

**Q7. What about an extension to the term of the framework, can these questions be added?**

**A.** *No. You cannot assess payment performance in the event of an extension to the term of the framework. Payment performance can only be assessed at the beginning of the procurement process, in the same way as for any other SQ.*

## **Supply Chains**

**Q8. What happens if a bidder at the point of bidding does not have a supply chain / use sub-contractors, but does at a later stage?**

**A.** *If this occurs after the procurement has concluded, then this is not relevant as the contract will have already been awarded, although contract managers will still be expected to monitor compliance with PCR 2015, regulation 113. If this occurs before the contract is awarded (and is permissible in the particular circumstances), the bidder should be asked to provide a response to the questions (to the extent that it can, given that it may not have a history of payments to a supply chain / sub-contractors (see question 2)).*

**Q9. How does this fit with a supply chain finance (or similar) scheme?**

**A.** *Bidders must demonstrate that they meet the payment terms set out in question 4 and the standard set out in question 5. If a subcontractor to the bidder chooses to enter into a supply chain finance agreement 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. However, suppliers should not be required to do so in order for the payment terms or period for payment to meet the required standard. This is consistent with the reporting requirements under the Small Business, Enterprise and Employment Act 2015 ("SBE") and the Limited Liability Partnerships Act 2000 ("LLPA") and further guidance can be found here:*

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

**Q10. What about contracts let under the Utilities Contracts Regulations 2016 or the Defence and Security Public Contracts Regulations 2011? Does that mean that I can't ask these questions?**

**A.** *These questions were developed with the scope of the PCRs. However, you may determine that these questions are applicable to procurements you are running using different regulations. This is your commercial decision.*

**Q11. If an SME bids, do they have to respond?**

**A.** *Yes, these questions are applicable to any supplier regardless of size who bids for a Government contract in excess of £5m per annum from 1 April 2024. Smaller suppliers may not have published data available via the DBT reporting requirements, however if they are using a supply chain to deliver the contract they are still expected to respond to the questions and to meet the required standard.*

## **Statutory Reporting Requirement - 'Duty to Report'**

**Q12. What if a bidder has filed responses in accordance with the Reporting on Payment Practices and Performance Regulations 2017 - can this data be used?**

**A.** *Yes, provided it reflects the last two six month periods. The data may still be cross-referenced by the Contracting authority as described in the guidance. Similarly, if bidders have filed/published data as part of any other requirement, code, etc., this can be used provided it reflects the last two six month periods.*

**Q13. What if the bidder is about to submit another six monthly payment report shortly after the deadline for submitting the tender which would meet either the 95% in 60 days or 55 or fewer average payment days standard?**

**A.** Where interim (unreported data) is available for the most recent three months or more, this can also be accepted. For example, if a bidder's last report was submitted in July for the period covering January to June and it is bidding for a contract in October, it would be able to submit the previous three months worth of unreported data (i.e. July, August, September) and this would count as a 'reporting period' (see paragraph 9 of the Guidance). Payment performance would need to be calculated in the same way as for a six monthly payment report.

**Q14. If a bidder who is not in scope of publishing payment data under the Reporting on Payment Practices and Performance Regulations 2017 submits a response to the tender in January 2024 (for example) are they expected to provide data covering the 12 month period from January 2023 to December 2023.**

**A.** This depends. Bidders who are not required to publish data in accordance with the regulations should still submit their data in two (six month) periods in line with the DBT Guidance to Reporting Payment Practices and Performance

- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/649941/payment-practices-performance-reporting-requirements-oct-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649941/payment-practices-performance-reporting-requirements-oct-2017.pdf).

If your financial year starts on the 5th of a month, the last day of that reporting period would be the 4th of the month, six months later. The second reporting period starts on the next day and runs until the end of the financial year.

Example: A business' financial year starts on the 1 January, their first reporting period would be 1 January until 30 June. Their second reporting period would be 1 July until 31

December. In these circumstances, when submitting a bid in January 2024, the bidder would submit data for the period 1 January 2023 to 31 December 2023. However, if their financial year commenced on 1 April, then they should submit data for the periods 1 October 2022 - 31 March 2023 and 1 April 2023 to 30 September 2023.

For bidders who are required to publish their data in accordance with the regulations, the same principle as set out in question 11 applies and bidders could also chose to submit data for the period October 2023 to December 2023 and this would count as a reporting period (because it covers a period of three months or more since the last six monthly reporting period (see paragraph 9 of the Guidance).

**Q15. What if its parent company or another company within its group has filed responses - can this data be used?**

**A.** Responses are required from the legal entity tendering for the contract in question. If it has already filed data, then this may be used in the response. However, if the entity that has filed data is not the same entity tendering for the contract, then the filed data will not be relevant and the bidder must respond to the questions.

**Q16. What if the bidder's response to question 5 does not match the payment data publicly available online?**

**A.** In the event that the response to question 5 does not appear consistent with payment data that is publicly available, the contracting authority should clarify this with the bidder.

**Q17. If the bidder removes intercompany payments from the total headline figure, won't that mean this figure won't match their reported data under the RPPP Regulations 2017?**

**A.** Yes. The published data includes intercompany payments. Organisations are encouraged, when filing their six monthly reports under the RPPP Regulations 2017, to set out in the free text box what their payment performance would be if they removed intercompany payments from their calculations. If they do so, the reported data will then be completely transparent and consistent with the information they have submitted in bidding.

**Q18. When does the supplier start counting day 1 when calculating the number of days in which it pays invoices? When does the clock start? (taken from DBT guidance on reporting)**

**A.** Day 1 is the day after the date on which the bidder receives an invoice or has notice, by other means, of the amount to pay (see response to question 20), and the period ends when the supplier receives the payment.

## **Invoices**

**Q19. When reporting on percentage of invoices and average days taken to pay does this include disputed invoices or is this undisputed invoices only?**

**A.** This includes all invoices. This approach is consistent with the RPPP Regulations 2017 whereby businesses include disputed invoices which fall due in the reporting period and are not paid.

*All payments that are made under a qualifying contract, during the reporting period, should be included. Invoices that a business has received but has not yet paid should not be included in the figure. These payments should be reported in the reporting period in which they are paid, should the reporting business still be in scope of the requirement.*

*Disputed invoices which fall due in the reporting period and are not paid will need to be included in the statistics that record the proportion of invoices which were not paid within agreed terms.*

*Any disputed invoices that have been paid in a given reporting period will be included in the statistics for that period on the average time taken to pay and in the percentage of payments made within the reporting period which were paid: in 30 days or fewer, between 31 and 60 days, and in 61 days or longer.*

**Q20. Is the average calculation based solely on the number of invoices paid or is the value of invoices taken into account?**

**A.** The value of invoices is not taken into account. The calculation is the average (mean) number of days within which payments are made under qualifying contracts during the reporting period. To find the mean, add the number of days it took to make all payments to be reported, and divide it by the number of those payments.

**Q21. What if there is no invoice presented for payment? Should situations where payment is due but there is no invoice be counted?**

**A.** Yes. If there is no invoice, then the date when payment would otherwise become due is the relevant date. This could arise, for example, where payment is triggered by the receipt of a timesheet setting out work carried out under an on-going contract for services. These should still be included as part of the response, with the first day after receipt of the timesheet being equivalent to the first day after receipt of an invoice. This is consistent with the reporting requirements under the SBEE or the LLPA and further guidance can be found here:

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

**Q22. Is it percentage by value or volume of invoices in response to question 5?**

**A.** By volume. This is consistent with the requirement to publish under the RPPP Regulations 2017.

**Q23. Do the percentage of invoices paid in 60 days metric and the average payment days metric have to be hit in the same period, or is it fine for one to be hit in one of the previous two periods, and one in the other?**

**A.** Both metrics must be achieved in the same period.

## Action Plans and the Prompt Payment Code

**Q24. If a bidder has already completed an action plan for the Small Business Commissioner (SBC) because they are not meeting the code's core standard of 95% in 60 days – can the same one be submitted?**

**A.** *If a bidder has an action plan already developed and shared with SBC they can provide this one so long as it meets all the 5 criteria set out in the guidance.*

**Q25. If a bidder does not complete some of the 5 key criteria within the action plan, will they still pass?**

**A.** *No. The bidder must submit a plan which meets all 5 criteria to pass.*

**Q26. A bidder is expected to explain why it is not paying all their invoices within agreed terms to pass. If they need to submit an action plan, do they also need to set out what steps they are taking to rectify this situation?**

**A.** *Yes. See paragraph 10 of guidance. If you are required to submit an action plan because you are not meeting 95% in 60 days – then this plan must also include what actions you are taking to improve payment of your suppliers in the event you are not paying all invoices within the agreed terms.*

**Q27. If a bidder is suspended / removed on the Prompt Payment Code – does this mean they are excluded from the bid?**

**A.** *No. Whilst suspension from the PPC is an indication that the supplier's performance has fallen below the required standard, this should not be used as a simple pass/fail. Bids must (unless otherwise excluded) all be assessed against the selection questions. This includes, where the bidder does not meet the 95% threshold but does meet the 90% threshold, taking into account an explanation as to why bidders are not meeting the required standard and their proposed action plan.*

**Q28. What about multinational deals – are these exempt from the measure? These are long standing deals with other large firms where both parties are mutually content with the terms set.**

**A.** *No, these are not exempt from the measure. If a contract is subject to UK law or involves a supplier registered as a company in the UK then this measure will apply.*

*This is because under the Public Contracts Regulations 2015 all economic operators must be treated the same, meaning treating a supplier that has no UK invoices differently than a supplier which does could breach this.*

*In addition, it could potentially mean giving a supplier with a bad prompt payment record a UK contract, because that supplier does not have to pass the payment threshold because it only has non-UK invoices. It might also lead to suppliers subcontracting abroad where payment terms are less stringent, meaning UK firms lose out on contracts.*

**Q29. What is the definition of supply chain for the purposes of this measure?**

**A.** *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.*

## Exemptions

**Q30. I am a Central Government Authority? How do I request an exemption to this measure?**

**A.** *Contact the Commercial Policy Team via [info@crowncommercial.gov.uk](mailto:info@crowncommercial.gov.uk) who will direct you to the relevant official. Prepare an evidence based rationale for the exemption request, and alternative measures to improve payment performance in the specific market area.*

*Cabinet Office will then take a decision on whether to recommend to the relevant Minister for approval, and handle the rest of the process.*

## **Procurement Act 2023**

### **Q31. How does the Procurement Act 2023 affect PPN?**

This PPN relates to contracts subject to the Public Contracts Regulations 2015. The Procurement Act 2023 will commence from Autumn 2024. This PPN will be updated in due course to reflect any new requirements.