
STATUTORY INSTRUMENTS

2015 No. 102

The Public Contracts Regulations 2015

PART 4

MISCELLANEOUS OBLIGATIONS

CHAPTER 9

MISCELLANEOUS PROVISIONS

Payment of undisputed invoices within 30 days by contracting authorities, contractors and subcontractors

113.—(1) This regulation applies to all public contracts except the following:—

- (a) contracts for the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013(1);
- (b) contracts awarded by a contracting authority which is a maintained school or an Academy.

(2) Contracting authorities shall ensure that every public contract which they award contains suitable provisions to require the following:—

- (a) that any payment due from the contracting authority to the contractor under the contract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- (b) that any invoices for payment submitted by the contractor are considered and verified by the contracting authority in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
- (c) that any subcontract awarded by the contractor contains suitable provisions to impose, as between the parties to the subcontract—
 - (i) requirements to the same effect as those which sub-paragraphs (a) and (b) require to be imposed as between the parties to the public contract; and
 - (ii) a requirement for the subcontractor to include in any subcontract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those required by this sub-paragraph (c).

(3) Paragraph (2) is without prejudice to any contractual or statutory provision under which any payment is to be made earlier than the time required by that paragraph.

(4) In complying with paragraph (2), contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office.

(5) Such guidance may, in particular, recommend model provisions, including provisions defining the circumstances in which an invoice is to be regarded as being, or as having become, valid and undisputed including, for example—

- (a) provisions deeming an invoice to have become valid and undisputed if not considered and verified in a timely manner; and
 - (b) addressing what is to be considered, for that purpose, to be a timely manner in various circumstances.
- (6) To the extent that a public contract does not contain express provisions dealing with any of the matters which, in accordance with paragraph (2), should have been contained in that contract or subcontract, it shall be an implied term of the contract that—
- (a) any payment due under it from the contracting authority to the contractor is to be made no later than the end of a period of 30 days from the date on which the contracting authority completes any process of verification that the invoice is valid and undisputed;
 - (b) the contracting authority is to consider and verify any invoice submitted by the contractor in a timely manner with a view to ascertaining whether the invoice is valid and undisputed; and
 - (c) the contractor will include in any subcontract which it awards provisions—
 - (i) imposing, as between the parties to that subcontract, requirements to the same effect as those which sub-paragraphs (a) and (b) refer to as between the parties to the public contract, and
 - (ii) requiring the subcontractor party to that subcontract to include in any subcontract which it in turn awards provisions imposing, as between the parties to that subcontract, requirements to the same effect as those referred to in paragraphs (i) and (ii) of this sub-paragraph.
- (7) Every financial year, each contracting authority shall publish on the internet statistics showing, for the preceding financial year, how far the contracting authority has actually complied with its obligations under this regulation to make payments within 30 days, including—
- (a) the proportion of invoices that were paid in accordance with those obligations, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with those obligations;
 - (b) the total amount of any liability (whether statutory or otherwise) to pay interest which accrued by virtue of circumstances amounting to a breach of those obligations; and
 - (c) the total amount of interest actually paid in discharge of any such liability (including any which had accrued before the beginning of the period to which the statistics relate).
- (8) In paragraph (7), “publish on the internet” means—
- (a) make freely available on the internet; and
 - (b) maintain such availability, subject to temporary interruptions for technical reasons, until the publication under paragraph (7) of the statistics for the following financial year.
- (9) In complying with paragraph (7), contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office.
- (10) Such guidance may, in particular, recommend model templates for presenting the statistics.
- (11) In this regulation—
- “financial year” means the period in respect of which the accounts of the contracting authority are prepared;
 - “subcontract” means a contract between two or more suppliers (at any stage of remoteness from the contracting authority in a subcontracting chain) made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of a public contract; and

“supplier” means a party to a contract or subcontract under which that party is to execute any works, supply any products or provide any services.

General provisions applicable to Part 4

114.—(1) A material failure to comply with any requirement of this Part does not, of itself, affect the validity of a public contract that has been entered into.

(2) Nothing in this Part requires a contracting authority to disclose any information if it considers that the disclosure would be contrary to the security interests of the United Kingdom.