

P22 Framework Query 2: P22 Compliance with Government Prompt Payment Policy

Summary

The ProCure 22 framework is compliant with the Governments prompt payment policies. This framework query provides details of how the framework and associated NEC3 project level contract allow for these policies, including:

- Public contract Regulations 2015: Public sector buyers must pay prime contractors (Tier 1 suppliers) within 30 days and must ensure that their prime contractor includes equivalent 30-day payment terms in any subcontracts through the supply chain. The P22 contract requirements include 21-day payment term as standard to ensure subcontractors receive payment within 30 days also.
- Late payment of Commercial Debts (interest) Act 1998.
- Contractual mechanisms around payment and payment disputes.
- On going monitoring of payment performance.
- Prompt Payment codes.

Details of payment statistics required under the 'The Reporting on Payment Practices and Performance Regulations 2017' can be found on the link below.

<https://www.gov.uk/check-when-businesses-pay-invoices>

To access the PSCP overall company (also includes non P22 projects) payment statistics use the company names/ numbers below:

Ref.	PSCP	Business name (national report)	Co. Number
1	BAM	BAM Construction Ltd	2379469
2	Galliford Try	Galliford Try Building Ltd	2472080
3	GRAHAM	John Graham Construction Ltd	NI003503
4	IHP	Sir Robert McAlpine Ltd	566823
		Vinci Construction UK Ltd	2295904
5	Interserve	Interserve Construction Ltd	303359
6	Kier	Kier Infrastructure and Overseas Ltd	1157281

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P22 Commercial Working Group

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1. Background

This framework query explains the main processes, of the P22 Framework Agreement and associated P22 NEC3 ECC contracts that address the relevant parts of the Governments prompt payment policy¹ and the Public Contract Regulations 2015 (PCR2015)

It considers the standard P22 payment provisions only and does not cover variants such as project bank accounts, advanced payment bonds and delayed payment agreements. Users should also read and understand the relevant contractual, policy and statutory requirements around prompt payment and reporting.

2. Payment periods under the P22 Framework

P22 Framework Agreement clause 12.2.2 requires:

The PSCP shall comply with the guidance set out in Framework Schedule 3 Part 4 (OGC Guide to Best Fair Payment Practice)

The OGC Guide requires the PSCPs to make payments to their tier one and two supply chain within 30 days of the assessment date. Appendix C provides further details.

To achieve the 30-day target, clause 51 of the P22 NEC3 ECC requires:

- The Project Manager certifies a payment within one week of each assessment date (51.1); and
- Each certified payment is made within three weeks of the assessment date (51.2).

3. P22 Assessment and payment procedure

The P22 payment cycle is summarised in Appendix A and the assessment procedure can be found in Appendix B. P22 NEC3 ECC Clauses 3.1 and 3.2 provide additional protection to the Client and to motivate the PSCPs to pay their supply chain on time.

4. Open Book and Record keeping

P22 NEC3 ECC Clause 52 requires PSCPs to keep records to validate their assessment and make these available to the Client and/or their advisors. Such records will include the Schedule of Cost Components, rates and margins, evidence of actual cost, time-sheets etc. Usually a Client's Cost Advisor would oversee the application and advise the Project Manager on certification and payment.

P22 NEC3 ECC requirements are complimentary to the P22 Framework PSCP open book requirements. These records are also required for any DHSC central audits. Failure by the PSCP and their supply chain to keep and maintain accurate records can result in those costs being disallowed.

5. Pay Less Notification

If a client thinks they should pay the PSCP less than the application, the Project Manager must inform the PSCP within 14 days of the submission of the application. If not done, the payment must be made in full. If the client does pay less, but subsequently it is found to be a mistake, the PSCP may levy interest on the amount not paid from the date the payment should have been made.

¹ <https://www.gov.uk/guidance/prompt-payment-policy>

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6. Late Payment of Commercial Debts (interest) 1996 (and 2002 and 2013 regulations)

This Act provides that late Client payments are subject to interest at 8% above the Bank of England base rate for the period which is reflected in P22 NEC3 ECC clause 51.2

It is worth emphasising the Project Manager should certify any due late payment interest and there is no requirement for the PSCP to claim the interest. If a Client expects any payment will be late, they should provide the PSCP with fair warning explaining their reasons. Both parties can then agree how best to proceed.

7. Payment performance and reporting

There are a number of requirements to publish payment performance data:

- For companies and Limited Liability Partnerships: ‘The Reporting on Payment Practices and Performance Regulations 2017’².
- The Government Construction Board monitors the progress of departments in delivering the Government Construction Strategy objectives. These objectives include fair payment objectives. The DHSC is working with the GCB to collecting data on payment performance under P22 projects which may be subject to publication on the P22 website.
- The government has also introduced: Procurement Policy Note 04/18: Taking account of a supplier’s approach to payment in the procurement of major contracts³ which is likely to be adopted in future framework procurements.

8. Payment disputes

Where there is a dispute over payment NEC3 allows the appointment of an adjudicator. However, DHSC would encourage the Client, the Project Manager and the PSCP to seek resolution before going to Adjudication. Notification of the DHSC Implementation Advisor is advised to assist the situation before Adjudication costs are incurred.

9. Prompt Payment codes

To supplement the statutory and P22 contractual payment requirements the government is also working to encourage government suppliers to sign up to the ‘Prompt Payment code’⁴

² <https://www.gov.uk/check-when-businesses-pay-invoices>

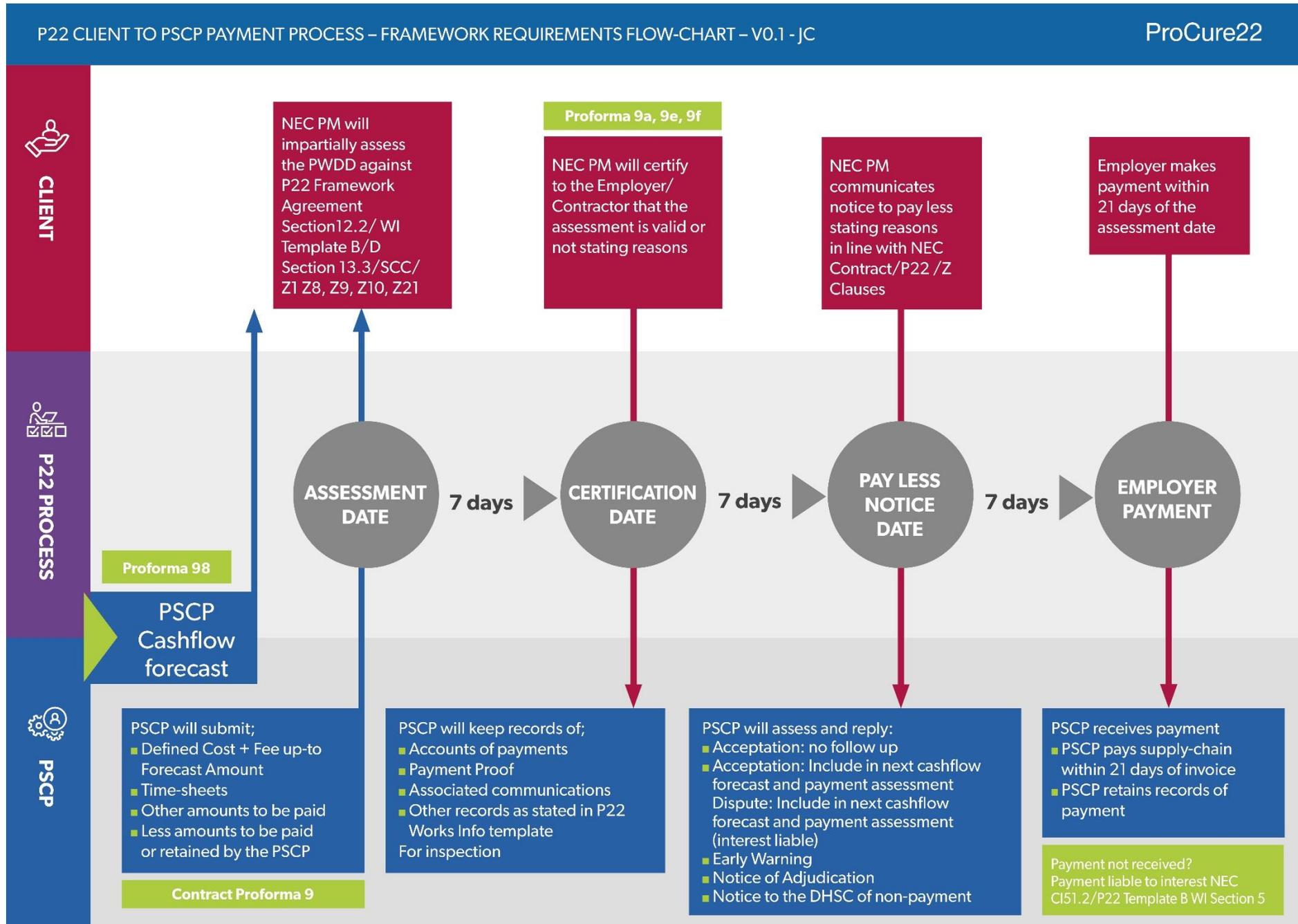
³ <https://www.gov.uk/government/publications/procurement-policy-note-0418-taking-account-of-a-suppliers-approach-to-payment-in-the-procurement-of-major-contracts>

⁴ <https://www.gov.uk/government/publications/prompt-payment-code-signatories>

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Appendix A – Payment Flow Chart

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Appendix B – P22 NEC3 ECC Works Information Section 13.3

13.3 Assessment Procedures

- (i) The PSCP submits an application for payment to the Project Manager prior to each assessment date.
- (ii) The payment application does not exceed the amount forecast by the current accepted PSCP's expenditure profile and projection established for Stages 1, 2 and 3 and/or the GMP established prior to commencement of Stage 4/5.
- (iii) The PSCP holds in readiness for review by the *Project Manager* all data and calculations to support assessment applications including own staff and people payroll records showing amounts due to People (including salaried staff). Amounts due or to be paid by the PSCP in respect of Insurance and other statutory obligations in relation to salaries and wages together the amended Schedule of Cost Components.1,11 to 14 are to be costed for application to individual People and not as blanket amounts for the purpose of Defined Cost.
- (iv) In the event the PSCP fails to comply with procedures and or make available to the *Project Manager* records and information required to meet the commercial requirements in this contract then amounts claimed by the *Contractor* but not supported by such records and information are treated by the *Project Manager* as Disallowed Cost without the benefit or reinstatement at a future time.
 - Such Disallowed Cost may be applied retrospectively where non compliance is identified by the DH P22 FA Audit Consortia or other *Employer's* appointed representatives after payment of an amount certified by the *Project Manager*.
- (v) The PSCP includes with each application for payment a list (aged creditors) showing those creditors with payments outstanding at the time of the application.
- (vi) The PSCP discusses and where appropriate adjusts the payment application with the *Project Managers* cost advisor prior to the Project Manager's assessment.
- (vii) The PSCP, on receipt of the *Project Manager's* certificate, submits his VAT invoice in the manner required by the *Employer*.

Appendix C – P22 Framework Agreement Section 3: Supply Chain Protection

Supply Chain Protection

- 1.1 The PSCP shall ensure that all Sub-Contracts contain a provision:
 - 1.1.1 requiring compliance from both the PSCP and the Supply Chain with the Housing Grants Construction and Regeneration Act 1996 as amended updated or replaced from time to time.
 - 1.1.2 requiring the PSCP to pay any undisputed sums which are due from the PSCP to the PSCM/Supply Chain within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
 - 1.1.3 requiring that any invoices submitted by a PSCM/Supply Chain shall be considered and verified by the PSCP in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - 1.1.4 requiring the PSCM/Supply Chain to include in any PSCM Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by paragraphs 3.1.1, 3.1.2 and 3.1.3 above; and
 - 1.1.5 conferring a right to DH and any Client with whom the PSCP has entered a Scheme Agreement to publish the PSCP's compliance with its obligation to pay undisputed invoices within the specified payment period.
 - 1.1.6 The PSCP shall ensure that all Sub-Contracts with Supply Chains who Process Cyber Essentials Data contain provisions no less onerous on the Supply Chains than those imposed on the PSCP under this Framework Agreement in respect of the Cyber Essentials Scheme under Clause 8.
 - 1.1.7 The PSCP shall pay any undisputed sums which are due from the PSCP to a Supply Chain within thirty (30) days from the receipt of a valid invoice.
 - 1.1.8 Any invoices submitted by a Supply Chain to the PSCP shall be considered and verified by the PSCP in a timely fashion. Undue delay in doing so shall not be sufficient justification for the PSCP failing to regard an invoice as valid and undisputed.
 - 1.1.9 If the PSCP notifies DH that the PSCP has failed to pay an undisputed Supply Chain's invoice within thirty (30) days of receipt, or DH otherwise discovers the same, DH shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).