

Scottish Procurement

Scottish Procurement Policy

Note

SPPN 10/2016

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Scottish Government
Riaghaltas na h-Alba
gov.scot

Implementation of Project Bank Accounts in Construction Contracts

Purpose

1. The purpose of this policy note is to advise that guidance on the provisions for including a Project Bank Account (PBA) in construction contracts has been published.

Key Messages

- Scottish Government and relevant bodies in scope of the Scottish Public Finance Manual¹ must include a PBA as set out in the Guidance in procurement documents for public works contracts commencing procurement procedures² from 31 October 2016 with an estimated award value at least in the following amounts:
 - £4,104,394 for building projects; and
 - £10,000,000 for civil engineering projects.
- Other bodies that can award public contracts, and other organisations providing delivery mechanisms for the construction of public buildings and infrastructure, are asked to implement PBAs and integrate the Guidance into their procedures.

¹ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro> (section 1; and 7 - 11)

² <http://www.legislation.gov.uk/ssi/2015/446/made> (Reg 2(1) "commenced")

- A summary of PBA application criteria is noted at Annex A.

Background

2. The Review of Scottish Public Sector Procurement in Construction noted that the construction sector suffers from endemic late and extended payment terms between businesses. It recommended that the Scottish Government should trial PBAs.

3. Scottish Procurement coordinated pilot projects, gathered lessons learned and researched wider PBA practice. PBA services have been developed with the banking sector, including the Banking Services Framework Agreement³.

Rationale

4. A PBA allows participating firms (“beneficiaries”) to be paid for work done without the money flowing through the main contractor’s bank account. Beneficiaries in a PBA project are the main contractor (tier 1) and firms in tiers 2 and 3 which join the PBA. The main contractor retains control of the amount due to beneficiaries but no longer exclusively controls when it is paid. All beneficiaries, including the main contractor, are paid simultaneously. A main contractor, whether solvent or insolvent, cannot withdraw money allocated to other supply chain beneficiaries from the PBA i.e. it is “ring-fenced”.

5. Beneficiaries are paid within five days of the amount certified under the main contract being deposited into the PBA. Money is moved along the supply chain and into the general economy more quickly, amplifying the multiplier effect of infrastructure investment leading to wider economic benefits beyond project delivery.

6. The overall selection framework seeks to implement PBAs within a manageable initial project throughput. Monetary thresholds for building and civil engineering projects reflect different average contract award values for the sectors. Consideration of factors including project delivery models and alignment of payment cycles recognise the practicalities involved in PBA implementation.

³ <http://www.gov.scot/Topics/Government/Procurement/directory/pscontractcentgovt/BankingServices>

Guidance

7. The guidance translates learnings into a simplified common approach with standard practices and resources which embody PBA principles. This will enable local implementation of PBAs under a consistent national framework with minimal resource input. A link to the guidance is given below:

- <http://www.gov.scot/Topics/Government/Procurement/policy/ReviewProcConst/projectbankaccounts/PBAPolicyGuidance>

Dissemination

8. Please bring this SPPN to the attention of all relevant staff within your field of responsibility to whom it may be of interest.

Contact

9. Any enquiries about this SPPN should be addressed to the PBA mailbox:
ProjectBankAccount@gov.scot

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Project Bank Accounts in Construction Contracts

Summary of Application Criteria

1. From 31 October 2016, where the award value of a public works contract is estimated to equal or exceed the following amounts, Scottish Government and relevant bodies to which the Scottish Public Finance Manual applies⁴ must state in the call for competition that a PBA as set out in the Guidance shall be a condition of tender and shall include provisions for the PBA in the procurement documents:
 - £4,104,394 for building projects; and
 - £10,000,000 for civil engineering projects.
2. The successful bidder (i.e. main contractor) must include provisions for the PBA in all invitations to tender for subcontracted work unless it gives a firm undertaking to self-deliver the public contract and/or employ subcontractors from within the parent company to which it also belongs such that one, other or a combination of both is more than 75% of the public contract award value, in which case the public body may review whether or not to proceed with the PBA.
3. Where potential exclusion factors do not apply to subcontractors, they will engage with the PBA according to their subcontract award value, as follows:
 - if it is at least 1% of the public works contract award value they must join the PBA; or
 - if it is less than 1% of the public contract award value, they can request to join the PBA. Joining will be subject to the agreement of the trustees and the main contractor.
4. Subcontractors must include the PBA provisions in all invitations to tender for work they intend to sub-subcontract. Any sub-subcontractor to which potential exclusion factors do not apply can request to join the PBA irrespective of the value of their sub-subcontract award. Joining will be subject to the agreement of the trustees and the employing subcontractor.

⁴ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro> (section 1; and 7 - 11)