

Project Bank Accounts – Procurement Advice Note (PAN)

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Version: 1

Project Bank Accounts

1. Introduction

POINTS TO NOTE – please ensure you read this section first

- ***The information set out in this document is not legal advice and is not intended to be exhaustive – contracting authorities should seek their own independent advice as appropriate. Please also note that the law is subject to constant change and advice should be sought in individual cases. This document reflects the position as at 1st January 2018***
- ***This Procurement Advice Note (PAN) builds on, and is consistent with, the information available on the Procurement Route Planner (PRP) and supporting guidance document - “Guidelines for deploying Welsh Government Project Bank Account Policy”, The note therefore assumes a certain level of knowledge of public procurement. The guidance document is available from the PRP Toolkit – <http://prp.gov.wales/toolkit/>.***
- ***Although this advice note is primarily written to cover the use of Project Bank Accounts in construction/infrastructure projects, the principles could equally apply to other industries / sectors.***

Issues addressed

This Procurement Advice Note is published by the Welsh Government to encourage use of Project Bank Accounts (PBAs) as a means of addressing poor payment practices in public sector supply chains by facilitating fair and prompt payment. It sets out Welsh Governments Policy on PBAs for Welsh Government departments required to apply PBAs unless there are compelling reasons not to do so and to promote the use of PBAs as best practice to public sector bodies in Wales.

2. Overview:

The Welsh Government is committed to using procurement as a lever for driving economic, social and environmental benefits and supporting jobs and growth. Public procurement should help promote Wales as a good place for doing business and should provide mechanisms that allow suppliers of all sizes to flourish.

Project Bank Accounts (PBAs) are a mechanism that supports this ethos. PBAs represent best practice in ensuring fair and prompt payment in the supply-chain. It is important to ensure cash flow through supply chains to reduce the risk of supply chain failure for Welsh businesses and enable more rapid circulation of money through the economy and local communities. Although PBAs have been developed in response to poor supply chain payment practices that persist, in the construction industry, they can be applied in any contract that relies on sub-contractors.

Welsh Government's PBA Policy has been informed by the experience of PBA implementation by UK Government Departments (Highways England) the Northern Ireland Executive and Scottish Government supplemented by a series of pilot projects in Wales between 2015 and 2017

Background

Small to medium enterprises (SMEs) play critical roles in the delivery of public sector projects through sub-contracting arrangements. Access to finance and cash flow are vital to any business and no more so than smaller businesses with limited resources. It is therefore essential that public sector clients ensure fair and prompt payment, not only to our tier 1 contractors but throughout their supply chains when delivering public contracts. Indeed this is a statutory requirement of the Public Contracts Regulations 2015 (PCR) which stipulates that public contracting authorities must ensure that they include conditions of contract requiring payment of their tier 1 contractors within 30 days of submission of an undisputed invoice and that these terms are reflected down the supply chain.

Project Bank Accounts (PBAs) provide a mechanism to meet the statutory requirement of the PCR facilitating fair and prompt payment with the added benefit of streamlining the process for clients, contractors and sub-contractors.

Welsh Government recognises that the use of PBAs within the public sector contracts represents a change in traditional payment practices. However, the benefits of PBAs to both the contracting organisation and the supply chain of using PBAs outweigh the impact of this change in payment practice. Research by the UK Fair Payment working group mapped typical traditional existing payment regimes against a Fair Payment best practice process; that research indicated that savings in the region of 1% could accrue for Fair Payment and Project Bank Accounts. These savings could rise over time if the supply chain were able to reduce overheads

relating to debt chasing and administration. The additional knock-on benefits of greater productivity and a reduction in construction disputes, and supply chain failures are difficult to quantify but they could be substantial.

All public projects should make use of the approach where it is appropriate.

Key benefits of a PBA include:

- Effective mitigation to the risk of payment delay and cost associated with it
- Reduction of the risk of supply chain failure by improvement of cash flow
- Transparency of supply chain spend and payment flow
- Easier measurement of payment timescales across the supply chain
- Acceleration of payments for the supply chain
- Cost benefits to supply chain resulting from early and certain payments
- Surety and confidence for all parties that monies paid into the account are secure

Dissemination & Scope

This PAN is directly applicable to:

2.1 All Welsh Government construction and infrastructure contracts and any other appropriate contracts valued at £2m or more which are delivered directly on behalf of Welsh Government Departments requiring a PBA be applied unless there are compelling reasons not to do so. Where such compelling reason are identified a decision report detailing those reasons must be completed and filed to allow for audit.

2.2 Construction and infrastructure projects and any other appropriate contracts valued at £2m or more which are part or Grant funded by Welsh Government requiring a PBA be applied unless there are compelling reasons not to do so.

2.3 With reference to 2.1. and 2.2. above, where compelling reasons are identified a decision report detailing those reasons must be completed and filed to allow for audit. Exemptions to the £2m threshold are set out in section 4.5.3 below.

This PAN is also intended to:

2.4 Provide best practice guidance to support the implementation of PBAs in the delivery of construction and infrastructure and any other appropriate contracts by Welsh public sector bodies. It is recommended that that this PAN should be circulated (for information) within your organisation, particularly drawing it to the attention of those with a commissioning, procurement planning and contract management role or those involved in the delivery of construction and infrastructure projects.

An additional guidance document, *Guidelines for Deploying Welsh Government PBA Policy* to support implementation of this Policy is available via the Welsh Government's Procurement Route Planner website <http://prp.wales.gov.uk> in the Policy and Resources Toolkit found in the PRP at <http://prp.gov.wales/toolkit/>

The *Guidelines for Deploying Welsh Government PBA Policy* guidance outlines the minimum requirements at Annex 1 for a Project Bank Account, how to implement PBAs, the roles and responsibilities of the organisations involved and sample documents

3. What are Project Bank Accounts?

PBAs are ring-fenced bank accounts with trust status that act solely as a receptacle for transferring funds from the client to the lead contractor and supply-chain. For projects delivered via the Welsh Mutual Investment Model approach, the 'client' is the Project Company /Special Purpose Vehicle established to manage the project.

Whereas payments normally made direct to the lead contractor are paid onto the supply-chain later, PBAs allow simultaneous payments within 3-5 days from the deposit of money into the PBA following certification of the claim to the lead contractor and supply chain partners. Utilising PBAs on projects facilitate prompt payment through the supply chain and alleviate any possible issues surrounding lengthy payment terms.

PBAs can also help to safeguard public sector bodies from legal action under the Late Payment of Commercial Debts (Interest) Act 1998, that allows businesses of any size to claim statutory interest on late payment of undisputed invoices within 30 days.

3.1 Single or Sole Account and Joint Account approaches

As the PBA has trust status, monies can only be paid to the named beneficiaries (the lead contractor and other sub-contractors within the project's supply chain) of the PBA. This approach makes a PBA a safeguard against insolvency of the lead contractor for subcontractors in the supply chain. There are two approaches advocated to operate a PBA:

- Single or Sole account – sole contractor account. The lead contractor opens the account in its name only;
- Joint account - joint client and contractor account.

Regardless of which approach is taken both accounts have two key requirements:

- Both Client and contractor are trustees to the account;
- Both Client and contractor jointly authorise payments at each payment cycle.

Both of these approaches offer the same level of security and payments of funds to the supply chain, albeit with a slightly different approach to transparency.

The advantages of choosing the joint account approach are:

- It affords the Client more control as they are party to the account and can instigate opening of the account;
- It is easier to align financial systems if the Client uses their own banking provider;
- Clients can ensure all projects using PBAs have a consistent approach using the same bank.

The disadvantages are:

- Some public sector organisations may have regulations prohibiting them entering into a joint bank account with a supplier, and therefore cannot set up joint account.
- If the bank chosen for the joint account is new to the Contractor, they would be subject to rigorous due diligence checks on the opening of the account which may add to the time it takes to open account.

The advantages of choosing the sole account approach are:

- The Contractor may be more amenable to the introduction of PBAs if they can use their bank of choice (see Annex 1 of the 'Guidelines for deploying Welsh Government Project Bank Account Policy' guidance document for minimum requirements);
- It still affords the same level of security as both parties are trustees and both parties have to authorise the payments through the system.

The disadvantages are:

- The Client has less control in the opening of the account
- If you have several projects with several contractors and sole accounts, you could have a number of different banking providers to deal with
- You will need to ensure software from the chosen Bank is compatible with IT systems to allow for access to internet banking systems.

Whichever approach is used, it is still incumbent on the public sector body to monitor the account closely and ensure the account is compliant with the minimum requirements (see Annex 1 of the 'Guidelines for deploying Welsh Government Project Bank Account Policy' guidance document for minimum requirements).

4. Welsh Government Policy

From 1st of January 2018

4.1 All Welsh Government construction and infrastructure contracts valued at £2m or more which are delivered directly on behalf of Welsh Government Departments are required to apply a PBA unless there are compelling reasons not to do so.

4.2 Construction and infrastructure projects part or Grant funded by Welsh Government requiring a PBA be applied unless there are compelling reasons not to do so.

And

4.3 Welsh public sector bodies are advised to apply PBAs in the delivery of self funded construction and infrastructure projects where appropriate.

4.4 Existing framework agreements should incorporate PBAs as soon as it is feasible.

4.5 Suitable projects will largely depend on the duration of the project and the subcontract packages involved. As general guidance, the following criteria may be used to identify suitable projects:

4.5.1 Construction / Infrastructure or other public contracts with a significant sub-contracting supply chain

- a) of over 6 months duration and
- b) valued at £2 million or more

4.5.2 In all cases where a PBA is applied tier 2 or lower tier suppliers will be engaged as follows:

- a) Tier 2 or lower tier suppliers who account for at least 1% of the main contract award value must join the PBA; or
- b) Tier 2 or lower tier suppliers who account for less than 1% of the main contract award value, should be allowed to request to join the PBA. Acceptance of such a request to join the PBA will be subject to the agreement of the trustees and the main contractor.

4.5.3 Exemptions to the £2m threshold

- a) Projects shorter than 6 months
- b) If the successful bidder (i.e. tier 1) gives a firm undertaking to self-deliver and/or use subcontractors (i.e. tier 2) from within the parent

company to which the tier 1 also belongs, such that one, other or a combination of both is more than 75% of the main contract award value, then the commissioning body may choose whether or not to proceed with the PBA.

4.6 When implementing PBAs consideration should be given to:

- Governance requirements in order to set up PBA
- Obtaining specialist training and support for Client Team
- Identifying changes needed for tender documents
- Wording to put into OJEU notices
- Preparing briefing packs for contract documentation
- Briefing for tenderers as part of the procurement process
- Briefing of the wider supply chain on PBA and benefits

Detailed information and guidance on these considerations can be found in the “**Guidelines for deploying Welsh Government Project Bank Account Policy**” document available via the Procurement Route Planner website.

5. Guidance and tools

Below are some of the policy guidance documents and supporting tools that are available to you for use in your procurement activity:-

- Procurement Route Planner (PRP):- <http://prp.wales.gov.uk>
- Procurement Route Planner Toolkit:- <http://prp.wales.gov.uk/toolkit>
- Guidelines for deploying Welsh Government Project Bank Account Policy, Value Wales (2017)
- Sustainable Risk Assessment (SRA), Value Wales (2016)
- Wales Procurement Policy Statement, Value Wales (2015)

Should you require further information please contact:

Value Wales: ywpolicy@gov.wales

6. Acknowledgements

Value Wales is pleased to acknowledge that it has drawn upon the following publications and organisations to supplement its own research to produce this note:-

- “A Guide to best Fair Payment practices” The Office of Government Commerce (OGC) 2007
- Project Bank Accounts - Briefing document (Cabinet Office 10 February 2012)
- A Guide to the implementation of Project Bank Accounts (PBAs) in construction for government clients. (Cabinet Office 03 July 2012)