



Project Bank Accounts: availability and accessibility to subcontractors - CPN 7/2020

Purpose

1. This Construction Policy Note reiterates Scottish Government policy on the inclusion of subcontractors in a Project Bank Account (PBA); and reinforces it in practice through a notice to subcontractors.

Key message

2. Information must be available to and accessible by subcontractors to enable them to join a PBA.

Timing and coverage

3. This CPN applies with immediate effect and covers all current and future contracts containing PBA provisions.

Target audience

4. This note is intended for all relevant staff:
 - in public bodies to which [PBA policy applies](#) (section 1 and 7-11)
 - in all other bodies that can award public contracts to which a PBA could be applied
 - in other organisations providing procurement routes for the construction of public buildings and infrastructure

Introduction

5. PBAs assure two things for subcontractors working on Scottish construction projects delivering built assets to the public sector:
 - prompt payment
 - protection of payment from the effects of main contractor insolvency

6. The former is good for businesses and their employees. The additional assurance PBAs give on the latter also make them good for the economy and society. **It follows therefore that where a PBA is implemented it must be available to and accessible by subcontractors.**

Guidance

7. Commissioning bodies can both facilitate and expedite subcontractors' requests to join the PBA by ensuring that the main contractor receives and conveys a note of the information and associated guidance set out herewith at **annex A**. This annex shall henceforth be incorporated as appendix I - 1 of Scottish Government's PBA guidance document.

Dissemination

8. Please bring this CPN to the attention of all those staff involved in the procurement of relevant construction projects.

Contact

9. If you have any questions about this CPN please contact:

Construction Procurement Policy Unit
Scottish Government
3B South, Victoria Quay
EDINBURGH
EH6 6QQ

Phone: 0131 244 8492

Email: constructionpolicy@gov.scot

Website: [Construction Procurement](#)

Notice of PBA contact and joining details for subcontractors

Commissioning bodies

1. Commissioning bodies can both facilitate and expedite subcontractors' requests to join the PBA by ensuring that the contractor receives and conveys a note of relevant information set out in this appendix. The commissioning body should keep a note of the PBA status of every subcontractor and sub-subcontractor. This is facilitated by the Operational Review Template at annex K. It allows circumstances in which any subcontractor or sub-subcontractor declined to join the PBA to be explained.
2. Where the main contractor does not provide written submissions or they are incomplete or otherwise inadequate, the commissioning body shall remind the main contractor of the relevant obligations in the conditions of contract.

Main contractors

3. The main contractor **must include** the PBA provisions in all invitations to tender for subcontracted work and require subcontractors to do likewise in all prospective sub-subcontracts. The main contractor will be able to evidence that it has met its obligation to use best endeavours in this regard by showing that it sent the notice of relevant information set out in this appendix to all subcontractors employed on the project.
4. Scottish Government's model PBA terms of contract requires the main contractor to set out in writing to the commissioning body the reason(s) why it has decided that any subcontractor is not able to join the PBA. The main contractor is also obliged to obtain a written explanation from subcontractors declining to join the PBA; and to send a copy to the commissioning body.

Subcontractors and sub-subcontractors

5. Where a commissioning body awards a contract which includes a PBA, subcontractors **must** join it where their subcontract value is at least 1% of the contract award value. While there are very limited potential exemptions, the presumption is that subcontractors will join the PBA, as follows:
 - the employer, contractor and subcontractor are named at the top of part 2 of the schedule under the heading "Additional Party Agreement" (APA); and
 - all three parties sign at the foot the APA.

Subcontractors can **request** to join the PBA if their subcontract value is less than 1% of the main contract award value. Any sub-subcontractor can also **request** to join the PBA irrespective of the value of their sub-subcontract award.

1. Project Bank Accounts (PBAs) are Scottish Government policy. They assure that subcontractors get paid promptly for work done and that those payments are ring-fenced if the main contractor ceases trading. This is a notice to firms concerning the PBA operating on the following construction project.*

2. Subcontractors employed by the main contractor **must join** the PBA where their subcontract value is at least 1% of the value of the contract awarded to the main contractor. There are very limited potential exemptions and it is generally presumed that subcontractors will join the PBA. The main contractor and main contract award value for this project are as follows:*

3. Subcontractors with lower value subcontracts and any firm on this project employed by a subcontractor can **ask to join** the PBA by contacting the employer in the first instance. Firms who are advised against or denied their opportunity to contact the employer should **immediately** contact the employer, as follows:*

Employer name _ _ _ _ _

Email address _ _ _ _ _

Telephone number_ _ _ _ _

4. A subcontractor or sub-subcontractor on this project **must sign** the additional party agreement in order to join the PBA. The additional party agreement must be provided by the main contractor to any subcontractor it wishes to employ; and by any subcontractor to any sub-subcontractor it wishes to employ. Where the additional party agreement is not provided please contact the employer.
5. No fees or charges in connection with joining the PBA may be levied on this project.
6. A subcontractor's or sub-subcontractor's work in progress on site will be valued by the firm which contracted it to work on this project. Payment will be received directly from the PBA **a day or two after** the employer deposits it. All participating firms, including the main contractor, will receive payment from the PBA **at the same time**.

* to be completed by the commissioning body before sending to the main contractor