



Guidance for Clients on setting up Project Bank Accounts (PBAs)

12 Easy Steps in Setting up a Project Bank Account (PBA)

This guidance is issued by the Specialist Engineering Contractors' (SEC) Group for the benefit of client organisations wishing to set up a PBA.[1] PBAs will help contracting authorities to meet their statutory responsibilities under Reg.113 of the Public Contracts Regulations 2015. Reg. 113 requires contracting authorities to ensure 30 day payments along the supply chain to tier 3 contractors.

STEP 1 Understand The Reasons For Introducing PBAs And Their Benefits

The reasons for introducing PBAs are two-fold:

- to provide regular and secure payments to the supply chain;
- to ensure that monies payable to the supply chain are protected from upstream insolvencies.

The benefits include:

- facilitation of compliance with fair payment requirements (e.g. the Public Contracts Regulations);
[1]

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- reduction in the risk of failure of supply chain firms and consequent disruption caused to projects;
- reduction in the bureaucracy, cost and disputes associated with having multiple layers of payment systems on projects;
- automatic visibility and auditability of the timing and amounts of all transactions via the electronic banking process.

STEP 2

Consider Who Will Set Up The PBA

If the client has a longstanding bank agreement it is likely to be easier and quicker to stipulate that the client's bank will provide the PBA facility. Also if clients have an on-going programme of work utilising PBAs it is easier for them if they select the PBA bank as it will enable them to standardise the set-up and operation process. The PBA option in NEC 3 [option Y(UK)1] requires that the tier 1 contractor sets up the PBA but the banking arrangements must be approved by the client; the contractor has to provide the project manager with copies of communications with the bank in connection with the PBA.

STEP 3

Make Clear The Following In The Invitation Tender To (ITT)

- all payments certified or authorised by the client will be deposited in a PBA;
- the PBA assets (i.e. the sums deposited by the client) will be held in trust for the benefit of the project participants (beneficiaries) listed in the ITT;
- payments out of the PBA will be made to the listed beneficiaries;
- all matters relating to the PBA set-up are completed by the successful tenderer prior to contract award.

STEP 4

The ITT Should State That The Client Will Be A Trustee Of The PBA Alongside The Lead Contractor

It is recommended that clients adopt one form of trust deed for all their projects and include a copy in the ITT (see step 6).

STEP 5**The ITT Should List The PBA Beneficiaries**

These will include the lead contractor and sub-contractors. Since the names of the supply chain firms will not be known the ITT could simply list the beneficiaries by reference to their trades (e.g. cladding, steel, mechanical, electrical and plumbing, plastering/drylining, ductwork etc). If other beneficiaries are to be added subsequently they can be added to the beneficiaries list in any PBA agreement (or supplement) or added to any trust deed by virtue of a joining deed.

STEP 6**Consider Which Standard Contract To Use**

All the standard form contracts have PBA options or supplements but there are a few significant differences between them. The NEC PBA option has a trust deed but the JCT supplement doesn't; however the supplement does make clear that the parties have agreed that the PBA assets will be held in trust.

However a client does not need to use the trust deed offered by any standard form. It is recommended that their legal adviser develops a form of deed that best suits their requirements; this is particularly relevant where clients have an on-going programme of work as it again helps to standardise the PBA process.

STEP 7**Consider How You Would Wish To Operate The PBA**

The key document is the bank mandate which will identify the account holders and which party(s) has authority to authorise payments out.

Clients with an on-going programme of work should consider appointing an internal administrator and naming this person on the bank mandate. They will make the set-up of any future PBA much simpler as the administrator will already be cleared by the bank.

STEP 8**Ideally Your ITT Should State That The PBA Account Holders Will Be The Client And Lead Contractor**

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On this matter the standard contract PBA options are different. Under the NEC Option Y(UK)1 the tier 1 contractor is the sole account holder. If the client prefers to jointly hold the account alongside the lead contractor it may be necessary to amend this using a Z clause. Having a joint account means that the account remains in place if the contractor ceases to be involved (e.g. because it goes into insolvency). The JCT option provides for joint account holders.

STEP 9

The ITT Should State That The Bank Mandate Will Require That Payments Out Of The Account Will Be Jointly Authorised By The Client And Main Contractor

Although the lead contractor is the sole account holder under the NEC 3 PBA option, both the client and contractor are required to sign the "Authorisation" for payments out of the account to the beneficiaries.

The client may wish to add to the Bank Mandate that it has the sole right to authorise payments out in the event that, for whatever reason, the lead contractor fails to provide any necessary authorisation.[1]

STEP 10

Once Tenders Have Been Returned Check That There Has Been Unqualified Assent To The PBA Requirements.

This is to forestall, following award, any attempt to whittle down the requirements.

STEP 11

Ensure That The Beneficiary Sub-Contracts Have The Following PBA Provisions

- they name the PBA bank;
- they name the trustees;
- they confirm that the sub-contractor is a beneficiary under the PBA trust;
- they require that the sub-contractor is notified of the amounts to be paid into the PBA in respect of its works and/or services, and
- they align the sub-contract payment cycles with those in the head contract.



STEP 12

Before Contracts Are Executed Double-Check To Ensure That All The Matters Set Out In Steps 2 To 11 Have Been Addressed In The Contractual Package

[1] Cabinet Office intend to reference this SEC Group Guidance into their future publications where relevant.

[2] Through using PBAs Highways England have been able to ensure that, on average, tier 3 contractors (sub-sub-contractors) are paid within 19 days of the assessment dates under the tier 1 contracts.

[3] Banks offering PBA facilities include Barclays, Royal Bank of Scotland, Lloyds (Bank of Scotland) and Danske Bank (in Northern Ireland).

[4] It is advisable to read "A Guide to the implementation of Project Bank Accounts (PBAs) in construction for government clients". This was published by the Cabinet Office on 3 July 2012 and is downloadable from the Cabinet Office website. The Guide states: The Government Construction Board require PBAs to be used to at least Tier three on projects and for at least 80% of the value of work sub-contracted". Para.1.4 lists 13 minimum requirements for setting up PBAs. Similar guidance has been published by all the devolved governments.

[5] If the tier 1 contractor is to set up the PBA "know your customer" checks could take some time. If this was to be left until after contract award there is likely to be less urgency in completing the necessary formalities.

[6] The PBA bank will not want to become involved in disputes over who can provide the necessary authorisation. Therefore the Bank Mandate must clearly state the circumstances in which the client will step in as providing sole authorisation. A written notice from the client to the bank that the lead contractor has failed to provide the necessary authorisation and henceforth the client will be the sole signatory for authorising payments out may suffice.