

# Forging stronger links



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As a leading member of SEC Group Scotland, SELECT had long campaigned for the introduction of project bank accounts (PBAs). Now they're up and running, two industry experts explain how the Scottish Government is increasing its efforts to ensure they benefit every firm in the supply chain

Almost four years ago, the Scottish Government mandated the use of project bank accounts (PBAs) for all public bodies in receipt of government funding, and also advised other bodies such as local authorities to follow suit.

When launching the policy, the Scottish Government was adamant that all sub-contractors and sub-sub-contractors must benefit from the use of PBAs.

All sub-contractors had to be paid through a PBA if the value of their works was at least 1% of the value of the main contract works. Where sub-contractors were excluded, they were still able to request that their payments were made through the

PBA. This new policy applied to all building projects more than £4 million but last year this was reduced to £2 million.

**Benefits for sub-contractors**

PBAs offer sub-contractors two major benefits. The first is faster and regular payments. PBAs avoid the need for payments to cascade down through

**ADVICE ONLINE**

Rudi and Len delivered a webinar about PBAs on behalf of the CICV Forum on 15 September. To watch it again, please go to [bit.ly/PBA-webinar](https://bit.ly/PBA-webinar) and download the presentation at [cicvforum.co.uk/useful-links](https://cicvforum.co.uk/useful-links)



the different layers of contracting. Instead, everybody is paid simultaneously from the same 'pot' within 12-15 days.

The second benefit is that sub-contractors' monies are ring-fenced, so once they're in the PBA they're protected in the event of the main contractor's insolvency.

Monies are held in trust which means that they can't be raided by the main contractor's insolvency practitioner. The monies in the PBA are held by the client and main contractor as joint account holders on behalf of the beneficiary sub-contractors.

### Problems with PBAs

To date, the experiences of sub-contractors on PBA projects have been very positive. After Carillion collapsed in January 2018, Highways England, the largest user of PBAs down south, reported that sub-contractors on their projects had not lost any money.

## MORE ABOUT PBAs

PBAs aren't complicated and shouldn't be feared – they merely offer certainty of payment timing and give you protection in the event of a contractor's insolvency.

To read more about the process, please visit the Useful Links section of the CICV Forum website at

[www.cicvforum.co.uk](http://www.cicvforum.co.uk) where you'll find a dedicated section on PBAs.

Among the material is a link to a particularly helpful Scottish Government publication, *Implementation of Project Bank Accounts* – you won't find clearer guidance anywhere.

But not all has been plain sailing. Some sub-contractors, while enthusiastic about PBAs, have reported that they don't receive information about whether a PBA has been set up on their projects. Others

are aware but for one reason or another have not been included within the PBA arrangements.

Main contractors have often given the excuse that some or all of their sub-contractors don't wish to be a part of the PBA. Even where they are beneficiaries of the PBA, firms are not always made aware when their payments have been deposited in it.

### Tightening the rules

The Scottish Government is keen to ensure that the PBA 'net' in Scotland is cast as widely as possible to include more small firms, and in August it issued updated guidance for the public sector.

This means that where PBAs are implemented, they must be available to and accessible by all sub-contractors and sub-sub-contractors. All commissioning bodies, i.e. public sector construction procurers, must maintain a record of the PBA status

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of every sub-contractor and sub-sub-contractor and the reasons for any firm declining to join the PBA.

Furthermore, "the main contractor must include PBA provisions in all invitations to tender for sub-contracted work and require sub-contractors to do likewise in all prospective sub-sub-contracts".

Main contractors must be able to provide evidence that PBA relevant information has been sent to all sub-contractors on the project.

The Scottish Government's model PBA contract provisions already require main contractors to give written reasons to clients for excluding a sub-contractor from the PBA. They are also required to obtain a written explanation from sub-contractors declining to join the PBA and to make this available to the client.

A PBA template notice is shown on the right, which clients must now send to main contractors for circulation to all sub-contractors on the project.



### TELL US YOUR EXPERIENCES

Have you been in, or are involved in, a PBA? Have you been on a PBA project where you weren't invited to join it? If you have been involved in a PBA, did you receive information regarding your payment amounts going into it and the dates when they were deposited? SELECT would like to hear feedback about your experience of PBAs. Please email [ian.mason@select.org.uk](mailto:ian.mason@select.org.uk) with your feedback.

### PBA TEMPLATE NOTICE

Project Bank Accounts (PBAs) are Scottish Government policy. They assure that sub-contractors 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.\*

Sub-contractors employed by the main contractor must join the PBA where their sub-contract 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 sub-contractors will join the PBA. The main contractor and main contract award value for this project are as follows:\*

Sub-contractors with lower value sub-contracts and any firm on this project employed by a sub-contractor 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:** \_\_\_\_\_

A sub-contractor or sub-sub-contractor 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 sub-contractor it wishes to employ; and by any sub-contractor to any sub-sub-contractor it wishes to employ. Where the additional party agreement is not provided, please contact the employer.

No fees or charges in connection with joining the PBA may be levied on this project. A sub-contractor's or sub-sub-contractor'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

### CASE STUDY: SCOTLAND'S RURAL COLLEGE

Claire Lorimer, Procurement Contract Manager at Scotland's Rural College (SRUC), was responsible for procuring the main contractor for the Avian Innovation and Skills Centre at SRUC's Bush Estate, beside SELECT HQ in Midlothian.

A PBA was successfully used for the delivery of the £5 million facility, and Claire was very positive about the benefits it brought to the supply chain.

She said: "In view of the potential consequences and impact on sub-contractors if

a main contractor was to go into liquidation or withhold payments, SRUC was keen to embed the PBA into the terms and conditions for this project.

"In doing so, it minimised potential risk, while providing confidence of timely payments to both the main contractor

and sub-contractors. This balanced the interest of all within the construction supply chain ensuring consistent cashflows and established fair and transparent payment practices. Once set up, the PBA was easily managed and administered."