IMPLEMENTING

PROJECT BANK ACCOUNTS

IN

CONSTRUCTION CONTRACTS

20 December 2016
~~**23 September 2016**~~

(* Named Bodies under Scottish Government's Banking Services Framework but also applies in principle to other customers)

Purpose and Applicability

1. The purpose of this guidance is to enable the implementation of Project Bank Accounts (PBAs) in construction contracts. It applies to Scottish Government and relevant bodies in scope of the Scottish Public Finance Manual (SPFM)[1]. Within this guidance they are referred to as "Scottish Government bodies".

2. Other organisations outside SPFM that can also award public works contracts are referred to as "other public bodies". Organisations providing delivery mechanisms for the construction of public buildings and infrastructure, that are neither Scottish Government bodies nor other public bodies, are referred to as "other bodies". Organisations in both categories are asked to implement PBAs and integrate this guidance into their procedures.

3. For generic matters, the term "commissioning bodies" refers to organisations belonging to any of the types of bodies noted above. Likewise, "main contract" and "main contractor" refer to scenarios common to public works contracts/contractors and contracts let by other bodies for the construction of public buildings and infrastructure.

4. This guidance has translated the experience of the trial into a simplified common approach with standard practices and resources for PBAs in Scotland, to enable local implementation with minimal resource input under a consistent national framework.

Structure of Guidance

5. This guidance has been set out to reflect the chronology and dependencies of actions necessary to enable payments to be made to businesses participating in a PBA, known as named beneficiaries. It is based on a collaborative multi-disciplinary approach to PBA administration.

6. Before a PBA can be cited as a condition of tender or be used to pass any contract payments, the commissioning body must first of all have set up the enabling infrastructure and selection framework. The first step is to appoint the bank and set up the processes that will enable a bank account to be opened and operated as a PBA. A "PBA Champion" role is proposed in order to marshal corporate PBA activity including both internal processes and external relationships.

7. Scottish Government's Banking Services Framework Agreement with the Royal Bank of Scotland (RBS) provides engagement and implementation processes for the bodies named in the Agreement. Other commissioning bodies can engage PBA services separately, either with RBS or another provider, using the Minimum Standards and information in this guidance.

8. A PBA must be opened in the joint names of the commissioning body and the main contractor. Both parties must also sign the trust deed and instruct the bank

[1] http://www.gov.scot/Topics/Government/Finance/spfm/Intro ("Applicability" paragraph 7 et seq.)

to authorise payment from the PBA to named beneficiaries. The commissioning body must decide on the ability of the account to accrue interest and who must pay any applicable banking charges.

9. The banking infrastructure must be supplemented by the contractual and legal basis for a PBA to operate effectively before it can be cited as a condition of tender. This guidance provides commissioning bodies with templates for a contract notice, contract terms and a trust deed which, together with the account opening forms, are collectively known as the PBA documents.

10. Only once the integrated banking, contractual and legal framework exists can the selection criteria for projects and participants be considered. Separate monetary implementation thresholds have been set for building and civil engineering projects. This guidance also covers factors affecting the suitability of project delivery models and supply chain firms. The overall selection framework seeks to implement PBAs consistently on a national basis within a manageable initial project throughput.

11. The enabling infrastructure and selection framework allow contract payments to be made to named beneficiaries of the trust. The guidance sets out how payment applications are elicited, evaluated and certified within a PBA project and how named beneficiaries receive payment from the PBA. A project-specific payment timeline is introduced as a collaborative approach to mapping out interconnected supply chain payment processes.

12. A series of standard metrics is proposed to help assess PBAs' performance on a consistent and comparable national basis and to help inform good practice, continuous improvement and policy development. This guidance also refers to a broader range of matters upon which commissioning bodies should obtain feedback from the supply chain, where possible. All types of feedback on PBA practice and performance should be sent to Scottish Government's PBA mailbox: ProjectBankAccount@gov.scot

Project Bank Accounts in Practice - Summary

13. The commissioning body must communicate that a PBA as set out in this guidance will be a condition of tender and include PBA provisions in the procurement documents where the estimated award value is at least in the following amounts:

    - £4,104,394 for building projects; and
    - £10,000,000 for civil engineering projects.

14. 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.

15. Otherwise, the successful bidder must include the PBA provisions in all invitations to tender for work subcontracted to tier 2 businesses.

16. Where potential exclusions do not apply to tier 2 businesses, they will engage with the PBA according to their subcontract award value, as follows:

- if it is at least 1% of the main contract award value, they must join the PBA; or
- if it is less than 1% of the main contract award value, they can request to join the PBA. Joining will be subject to the agreement of the trustees and the main contractor.

17. All tier 2 businesses must include the PBA provisions in all invitations to tender for work they intend to sub-subcontract. Any sub-subcontractor (i.e. tier 3) to which potential exclusions 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 their employer.

18. The tier 1 and all tier 2 businesses, even where the latter is not a named beneficiary of the PBA, must show in their payment applications the separate amounts due to all the named beneficiaries they employ. A contractual right for one business to value the amount due to another is neither revoked nor negated by a PBA.

19. The amount of the main contract interim certificate must be allocated among named beneficiaries by the main contractor in order to provide a mandate for the bank to pay the commensurate amount to each of them from the sum deposited into the PBA by the commissioning body.

20. Operation of a PBA neither negates nor revokes the Construction Act's ban on conditional payment provisions. Any business whose payment from the PBA is insufficient for it to fully pay another business will need to pay the outstanding balance and this shall be done outside the PBA. The PBA must not be used as a repository for accumulating cash retention under the main contract or to hold money relating to a dispute between supply chain businesses.

21. Each named beneficiary will receive payment of the amount noted on the mandate within five days of the commissioning body depositing the value of the main contract interim certificate into the PBA. Money allocated to named beneficiaries is ring-fenced from other businesses, including the main contractor. Supply chain businesses which are not named beneficiaries will be paid from their employer's bank account i.e. not the PBA. That money will not, unless suitable arrangements are made, be ring-fenced.

Background

22. The Review of Scottish Public Sector Procurement in Construction[2] noted that the construction sector suffers from endemic late and extended payment terms

[2] Review of Scottish Public Sector Procurement in Construction

between businesses. It recommended that the Scottish Government should trial PBAs.

23. Scottish Government's Procurement and Commercial Directorate (SPCD) co-coordinated pilot projects and worked with the banking sector to develop PBA services, including Scottish Government's Banking Services Framework Agreement[3]. SPCD facilitated the lessons learned process and also researched wider PBA practice.

What is a PBA?

24. A PBA is a facility provided by a commercial bank to allow a commissioning body to pay the main contractor and supply chain firms which are named as beneficiaries of the trust deed. Payments come from the amount of the interim certificate issued under the main contract allocated among named beneficiaries, who are paid simultaneously from the total amount deposited into the PBA by the commissioning body. In this guidance a PBA is set up by the commissioning body and opened in joint names with the main contractor.

25. The total amount of the interim certificate is not paid into the main contractor's bank account. The main contractor's PBA payment only reflects the work that it has directly executed plus the total amount due to supply chain firms which have not joined the PBA i.e. non-beneficiaries. Supply chain payment cashflows and contractual relationships in PBA and non-PBA arrangements are illustrated at Annex A.

26. The prohibition of conditional payment in the Housing Grants, Construction and Regeneration Act 1996[4] (as amended[5]) still applies to all firms in a PBA-enabled project where they are performing a construction contract within the meaning of the Act, irrespective of whether they are named beneficiaries or not.

27. A PBA operates as a legal trust. Once the amount of the interim certificate has been deposited into the PBA by a commissioning body, the constituent amounts due to named beneficiaries are excluded from assets deemed to belong to an insolvent main contractor. This is known as "ring fencing" and protects named beneficiaries by preventing money which has been certified under the main contract from being held back or reduced by the main contractor.

28. Other bodies should set up and implement PBAs by reference to this guidance, their corporate governance procedures and the project-specific contract.

Extent and Limitations of PBAs

29. A PBA deals with **how**, **when** and **to whom** cash flows. The amount of payment is still determined by the valuation process under the main contract, in terms of **why** payments are in certain amounts and **what** work they relate to. PBAs cannot resolve disputes but they do allow named beneficiaries to be paid promptly for

[3] Scottish Government's Banking Services Framework contract.
[4] http://www.legislation.gov.uk/ukpga/1996/53/section/113
[5] http://www.legislation.gov.uk/ukpga/2009/20/contents

amounts arising from disputes once an agreement has been reached under the main contract.

30. PBAs do not change any of the following perspectives:

- Commissioning body
  - still certifies payments to the main contractor.
  - no role in calculating, agreeing or certifying payments to subcontractors.
  - still pays for work in arrears.

- Main contractor
  - still values and pays for work done by subcontractors.
  - still submits interim applications to the commissioning body.
  - still obliged to perform the entire main contract.
  - still can count the entire interim certificate for financial accounting purposes.

- Generally
  - statutory obligations for VAT and other relevant taxation and accounting etc, unchanged.

31. The implementation of this guidance can help contracting authorities towards meeting their obligations for construction projects under section 15(5)(d) of the Procurement Reform (Scotland) Act 2014. To ensure full legislative compliance contracting authorities should, where reasonable and practicable, supplement PBAs with other means which allow non-beneficiaries to be paid no later than 30 days after the invoice or equivalent claim relating to the payment is presented.

Lessons

32. The prime lesson of the trial programme was that with effective leadership, procedures and support, PBAs operate the same as any other bank account and specifically can ensure that contract payments are:

- Paid promptly - amounts are deposited into named beneficiaries' business accounts typically within 5 days of the commissioning body paying the value of the interim certificate into the PBA.
- Protected - legal trust status ring-fences amounts in the PBA, excluding them from the main contractor's insolvent estate.
- Prescribed - there is a specific governance model for operating PBAs.
- Predictable - the transition from amounts claimed to accounts payable is transparent, improving corporate/commercial planning by highlighting the amounts of, and timeframe for, payments.

33. Lessons were elicited from experience gained on the pilot projects and broader research into PBA practice. At least two meetings were convened for each pilot project specifically to discuss ongoing experience and lessons. The first was held once the PBA was set up and the second when it was in use. There were also separate meetings with the PBA bank.

34. Each pilot project was treated separately for purposes of learning lessons, to promote a better sense of the extent of issues' recurrence and relative importance. Lessons learned gave rise to overriding themes, none of which were preconceived. Lessons which informed more than one theme were included in every applicable theme. Where lessons could not be aligned to an existing theme, a new one was created.

35. The themes arising from lessons learned are as follows:

- Enabling Infrastructure - the overarching means of systematically implementing PBA policy.
- Leadership - the commitment to implement PBAs.
- Alignment and Integration - the interaction and mutual understanding between disciplines, people, processes and timelines in a PBA.
- Project Management - the way in which the PBA infrastructure is deployed and managed for the specific project.
- Professional and Commercial Practice - the operational norms for the various disciplines involved in putting a PBA into effect (e.g. finance, surveying, banking etc).
- Communicating the Process - stakeholders knowing when, and who, to ask for information on the PBA and who to share it with.
- Communicating the Story - the narrative of the value of central oversight, policies and procedures for integrating inter-disciplinary perspectives into standard, systematic and cohesive multi-disciplinary processes.
- Direct and Indirect Benefits - the accruals that result from a PBA.
- Continuous Improvement - the ongoing raising of standards in PBA practice, efficiency and effectiveness.
- Future Considerations - matters more relevant after roll-out.

36. The counterpoint to direct and indirect benefits, i.e. disbenefits, is not shown separately. The inclusion in this guidance of mitigations gleaned from lessons learned addresses the implementation of a PBA from scratch, which some stakeholders felt was an initial disbenefit.

Benefits of Prompt Payment

37. Prompt payment helps keep firms solvent and viable. It improves the overall return on investment in public assets by promoting the flow of cash along supply chains and out into the wider economy, enabling a range of subsequent investment and purchasing decisions beyond the delivery of a specific public asset. This benefits individuals, businesses and the broader Scottish economy.

38. Prompt payment also helps to avoid costs incurred by the consequences of late payment, particularly the insolvency of otherwise viable businesses, resultant redundancies and wider costs such as a greater draw on state benefits and loss of tax revenue. A diminishing supply base also reduces competition which can increase tender prices, stifle innovation, and undermine finished quality and overall value for money.

Essential Elements of a PBA

39. A Scottish Government body using a PBA shall set it up with the main contractor to operate as follows:

    - the bank account must be in their joint names.
    - both must be named as trustees in the trust deed.
    - they must jointly instruct the bank to authorise payments from the PBA.

40. For Scottish Government and other public bodies, a trust is created by a truster (public body) and trustees (public body and main contractor) signing a trust deed which complies with the law of Scotland and which names the beneficiaries to be paid from the PBA (main contractor and participating subcontractors). The following table outlines the various roles and actions involved in a PBA deployed by Scottish Government and other public bodies.

Entity	Role/Action						
	Truster	Trustee	Beneficiary	Opens PBA	Pays into PBA	Receives from PBA	Provides PBA
Public Body	✓	✓	×	✓	✓	×	×
Main Contractor	×	✓	✓	✓	×	✓	×
Subcontractors (beneficiaries)	×	×	✓	×	×	✓	×
Subcontractors (non -beneficiaries)	×	×	×	×	×	×	×
Bank	×	×	×	×	×	×	✓

41. Other bodies should seek appropriate advice to consider how the roles of truster, trustee and beneficiary relate to their operating arrangements for construction contracts.

Role of the PBA Champion

42. The range and diversity of commissioning bodies in Scotland, each with distinct corporate rules and practices, means that Scottish Government cannot set out a generic PBA operating system beyond the matters covered in this guidance. Commissioning bodies should nominate one or more persons to be responsible for co-ordinating corporate PBA activity, including engaging with the bank, integrating this guidance with local instructions, promoting continuous improvement and linking into Scottish Government’s PBA activities.

43. Appointment of a “PBA Champion” is the first of a series of enabling activities required to ensure that an organisation can operate a PBA: see Annex B. The Champion role should be empowered with the backing of senior management to make PBA policy work in corporate practice.

44. The Champion will facilitate the alignment and maintenance of organisational PBA processes involving a range of disciplines. This guidance necessarily covers each interface and, consequently, PBA implementation may seem to be an onerous task. In fact, the pilot projects showed that the necessary elements are already part of normal corporate governance and any adjustments will in themselves be minor and manageable for most organisations, where enabled by and implemented consistently with this guidance.

45. The extent of commissioning bodies' potential involvement in setting up and implementing a PBA has been significantly reduced by the incorporation into this guidance of lessons learned, wider research and an accessible enabling infrastructure.

Opening and Setting up a PBA

<u>Appointing the Bank</u>

46. Commissioning bodies should appoint the bank that will provide PBA services, and establish core processes, before citing the PBA as a condition of tender in a specific project. Commissioning bodies should discuss the following matters (covered in more detail in the following paragraphs) with the bank so that the PBA is available to process the initial project payment cycle:

- IT and system compatibilities;
- account set up, access rights and security;
- operational processes and dependencies; and
- training.

47. The bank is responsible to the commissioning body for the banking infrastructure within which the PBA sits; and to both the commissioning body and the main contractor for services governing the efficiency and effectiveness of a project-specific PBA.

<u>Account Demarcation</u>

48. Firms delivering the same project all join the same PBA. While there will be only one PBA per project from the commissioning body's perspective, firms working on more than one project for the same commissioning body, or for other commissioning bodies using PBAs, may be involved in separate and concurrent PBAs.

<u>Scottish Government Banking Services Framework</u>

49. The scope of Scottish Government's framework agreement with the Royal Bank of Scotland (RBS) includes provision of PBA services incorporating internet banking ("Bankline"). The related services and charges' tariff is only available to the organisations named in the agreement. Commissioning bodies should contact SPCD's Banking Services' framework manager for guidance on how to call off a contract for PBA services with RBS[6].

[6] http://www.gov.scot/Topics/Government/Procurement/directory/pscontractcentgovt/BankingServices

50. RBS is required to maintain service continuity for an existing PBA that overruns the framework expiry date (30 June 2018) where stated in the terms of the commissioning body's call-off contract. Alternatively, commissioning bodies can choose to migrate to RBS's successor if RBS is not awarded any subsequent framework.

51. Main contractors and their prospective subcontractors do not need to be existing customers of RBS in order to be invited to tender for a public contract containing a PBA provided by RBS. A firm's status in this regard is not a relevant evaluation criterion and has no bearing in a procurement process leading to the award of a public contract.

52. An account to be used for the purposes of a PBA under the framework must be opened in the joint names of the commissioning body and the main contractor. Both must agree the way which the account is to operate, including what they expect of each other and circumstances where action is needed to make payments.

53. The terms of the agreement will be specific to each project and should not be difficult to reach where the PBA is either called off from Scottish Government's Banking Services Framework or, alternatively, set up in accordance with this guidance. Either scenario implies a standard approach to the PBA, allowing both parties to consider how their specific corporate governance procedures will function within the PBA. Instructions for opening a PBA with RBS under the framework are noted at Annex C.

54. RBS will not involve itself in matters concerning the main contract or subcontracts, or issues arising between the main contractor and the commissioning body. RBS will keep the account open for as long as the commissioning body and main contractor wish to operate it, during which time RBS has no legal or financial claim on money in the account. RBS is not a trustee so has no control over money in the PBA and cannot use the money to offset any debt owed to it by a named beneficiary.

55. The account holders will need to be initially set up on Bankline as PBA users, followed by setting up the specific project as a PBA on the system: see instructions at Annex D and E. RBS has protocols for these steps and can provide training for PBA account holders, including the main contractor. The account holders, as separate corporate entities with differing corporate governance rules, will need to consider for themselves how they administer the internet banking system, for example:

- Writing corporate PBA procedures.
- Checking amounts of payments and recipients.
- Inputting amounts of payments into the internet banking system.
- Checking inputs.
- Authorising money transfer to beneficiaries.
- Auditing PBA procedures and transactions.

56. Bankline requires account holders to nominate a person to the role of “Administrator” to oversee the creation of new users, new user accounts, etc. Where resources permit, the “Administrator” role should be segregated from the payment inputter role (the “Preparer”): however it is possible to combine these roles. Bankline enforces segregation of duties between the “Preparer” and the payment “Authoriser”.

Other Banks

57. Scottish Government bodies not named in the framework agreement will need to make other PBA banking arrangements. The following banks provide defined PBA services:

- RBS, outside of Scottish Government’s framework agreement.
- Barclays Bank plc, which provided banking services to the pilot projects.
- Danske Bank, which provides PBA services to the Northern Ireland Executive.

58. Other banks may also be able to provide PBA services commensurate with this guidance document. The Minimum Requirements at Annex F set out recommended operating parameters for a PBA in Scotland.

PBA Practice and Project Deadlines

59. Project deadlines should not be delayed to incorporate a PBA. However, the PBA should be incorporated into such deadlines at the outset so that a commissioning body’s programme for its first PBA project includes time to set up the banking infrastructure and obtain documentation from the prospective main contractor. PBAs on subsequent projects should then be “business as usual”.

60. Arrangements for processing PBA payments generally take less time than maximum durations allowed by corporate instructions and/or main contracts, and so should not be prolonged simply to match them.

Statutory Requirements

61. All banks are required by financial sector legislation to check the credentials of any entity seeking to open an account. These processes - referred to as Know Your Business and Know Your Customer (“KYB/KYC”) - typically take at least 20 working days. All parties who are involved in setting up and operating the PBA should ensure that form-filling etc, is accurate, complete and uncontested at the first time of asking to avoid unnecessary delays.

Dependencies and Chronology

62. The PBA Champion should ensure that dependencies and chronology involved in the bank’s PBA opening procedures are mapped, including establishing the following:

- minimum requirements needed to access and operate the electronic banking platform;
- whether forms are to be completed electronically or in ink;
- compatibility of corporate nomenclature with form requirements; and
- verifying acceptability of proposed corporate signatories.

Business Continuity

63. The PBA Champion should initiate business continuity measures to ensure sufficient cover and contingency is in place to overcome unforeseen absences of staff allocated to executive internet banking roles. Corporate PBA procedures should be supported by up to date, complete and accessible local guidance.

IT and Related Technology Interfaces

64. As a general rule, any commissioning body already using an internet banking platform to access commercial banking services for corporate purposes should be able to operate a PBA as set out in this guidance. However, the Champion should engage early with relevant corporate specialists to ensure that PBA objectives are served, not limited or constrained, by matters including the following:

- network accessibility and security;
- software compatibilities and upgrades' regime;
- hardware operability; and (insofar as possible)
- systems' interoperability between different businesses.

Setting up the Trust Deed

65. The need for parties to sign trust and related documents is a logistical as well as an administrative process. The PBA Champion shall ensure that the signatories know to be in the right place at the right time and also that carriage durations for original documents are included in the project execution programme to avoid unnecessary delays.

Operating the Internet Banking Platform

66. The commissioning body and the main contractor will each need to determine how to use the internet banking platform to manage project payments within their respective corporate rules. This is no different from deciding how any financial and/or accounting system is deployed safely, securely and efficiently. Factors include the following:

- access permissions and login credentials for staff;
- the functionalities available at different permission levels;
- the way in which data will be organised and segregated; and
- the overall cost implications of the associated bank charges.

Training and Testing

67. The PBA Champion shall clarify if the bank requires the PBA to be opened before it permits access to, and training on, the internet banking platform. The training regime itself should be based on clear and realistic objectives and take place in a fully-supported environment enabled with appropriate audio/visual capability including live access to relevant systems. If possible, corporate PBA processes should be tested on the relevant systems and people before making a "live" contractual payment. The first payment cycle in a commissioning body's first PBA should build-in extra time to ensure that processes are followed and checked. RBS provides training on Bankline free of charge.

Charges

68. The party responsible for paying any bank charges associated with the PBA should ensure that payment arrangements have been fully understood and enabled including, where necessary:

- depositing an amount to cover the charges separately from other amounts deposited for interim certificate purposes; and
- monitoring to ensure charges are paid to, and collected promptly by, the bank.

69. Commissioning bodies named on Scottish Government's Banking Services Framework Agreement shall pay charges levied by RBS. The related services' tariff is made available to commissioning bodies when a contract is called off from the Agreement. The total chargeable amount per project under the framework will typically be less than £1,000. Other commissioning bodies electing to include PBA charges as a pricing point in the tender for a main contract should ensure that the procurement documents state as such.

<u>Interest</u>

70. RBS does not offer interest-bearing PBAs under Scottish Government's Banking Services Framework. Other PBAs can be set up to be interest-bearing. Whether or not this facility is activated and, if so, which of the account holders receives such accruals, is a policy matter for commissioning bodies to consider.

71. Scottish Government bodies not named on the Banking Services Framework should not normally set up a PBA to be interest bearing. This is because in most cases, the total amount accrued will be negated by the resource cost necessary to manage it, including procedures for returning it to the Scottish Consolidated Fund[7]. Exceptionally, however, when such a body commissions a very high value project it should calculate the costs and benefits of both alternatives and consider opening an interest-bearing account where this is available and estimated to produce overall value for money.

72. Other public bodies and other bodies should consult their specific corporate governance rules in terms of, initially, the feasibility of accruing interest in a PBA, then evaluate the benefits and costs of doing so.

<u>Completing the PBA Set-Up</u>

73. Commissioning bodies shall require all bidders to submit the following documents in a complete, accurate and uncontested manner with their tender:

- account-opening forms;
- internet banking forms; and
- trust documents, including subcontractor beneficiaries where known.

74. This will help ensure that the PBA can be set up and implemented as soon as possible, aiming to do so in time for the first payment cycle. Where bidders are unable to submit fully-completed documents, commissioning bodies should consider the reasons provided in mitigation. In any event, PBA documentation

[7] http://www.gov.scot/Topics/Government/Finance/spfm/Intro

that cannot be fully submitted should be expedited prior to contract award in order to minimise delays post-award.

Completing the Trust Deed

Project-Specific Trust Deed

75. A trust deed must be agreed for each PBA. Any arrangement for a trust deed to cover more than one main contract, from the commissioning body's perspective, is not recommended.

Scottish Government Template Trust Deed

76. Scottish Government bodies that would normally consult the Directorate for Legal Services can include the template provided at Annex G. Circumstances under which fundamental or substantial amendments to the template are considered necessary should be fully documented and made available to Scottish Government (for feedback purposes).

Role of the Bank

77. The commissioning body shall intimate the trust agreement to the bank and request a letter which acknowledges the following, to provide the commissioning body with additional comfort that the funds in the PBA are protected i.e. ring-fenced:

- the bank has received of a copy of the trust deed; and
- the bank confirms that it accepts that the funds in the PBA are trust property.

Operation and Limitation of Trust Status

78. The operation of a trust deed in a PBA does not of itself create any direct works contract between the commissioning body and any of the subcontractor beneficiaries. The commissioning body's only direct relationship with firms participating in the PBA is that of being a trustee in relation to the named beneficiaries (main contractor and subcontractors), which is governed by the trust deed, not the main contract.

Main Contractor Completion of Trust Documents

79. The commissioning body shall obtain full, accurate and uncontested completion of PBA documents from the prospective main contractor. Trust documents should be signed in ink i.e. no typed or scanned signatures. Once the main contractor signs the main contract, he must also include the additional party agreement in tender documents sent to prospective subcontractors to enable them to also become beneficiaries.

Reviewing PBA Uptake

80. Where the commissioning body has had to certify at least 50% of the main contract value under non-PBA processes, for example by being unable to obtain complete, accurate and uncontested PBA documents, it should review with the main contractor both the sub-contracting and PBA implementation strategies for the remainder of the contract. While the overriding objective must be to deploy the PBA, circumstances leading to it unavoidably being abandoned must be fully documented by the commissioning body and made available to Scottish

Government, including reasons, lessons learned and proposed mitigation for future projects.

PBA Value Thresholds in Main Contracts

Threshold for Application

81. Scottish Government bodies shall, in the call for competition, communicate that a PBA will be a condition of tender and include PBA documents[8] in the procurement documents for public works contracts and framework agreements[9] (and other longer term delivery models) with an estimated award value (before VAT is added, where applicable) at least in the following amounts:

- £4,104,394 for building projects[10] and
- £10,000,000 for civil engineering projects.

82. The thresholds are intended to facilitate the national implementation of PBAs within a manageable initial project throughput and to help commissioning bodies and main contractors integrate them into ordinary practice by balancing policy coverage with corporate capability and capacity. Accordingly, for consistency purposes, other public bodies and other bodies are asked to adopt these thresholds. The higher application threshold for civil engineering projects reflects higher average contract award values than building projects. The thresholds will be reviewed in the light of prevailing practice.

83. The value of the main contract at award will remain the benchmark for PBA application for the duration of the contract. This is the only time the project cost is fixed before the final account is agreed. Final cost estimates do not provide an unequivocally objective benchmark as they usually differ as between the commissioning body and main contractor.

84. The main contractor must include the PBA documents in all sub-contracts with firms it employs and ensure that such subcontractors do likewise with firms they employ. Subcontractors must join the PBA if the potential exclusion factors do not apply to them and their subcontract award value is at least 1% of the main contract award value. Other subcontractors, and sub-subcontractors, should be allowed to join the PBA upon request if the potential exclusion factors do not apply to them, and their employer and the trustees agree. Circumstances which prevent this should be fully documented and made available to the commissioning body and Scottish Government (for feedback purposes).

Marginal Estimates/Awards

85. A project estimated to exceed the PBA threshold but whose contract award value is less than it shall deploy the PBA, subject to any exclusion factors affecting the main contractor's proposed project delivery model. While such transitional scenarios are likely to be very rare, a below-threshold award value is unlikely to negate the underlying reasons for using a PBA.

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[8] PBA contract terms, trust deed and bank account opening forms

[9] Excludes contracts called off after 31 October 2016 from frameworks agreements already in place before that date.

[10] http://www.gov.scot/Topics/Government/Procurement/policy/10613 (revised every two years)

86. A commissioning body whose pre-procurement project estimate is just below the PBA threshold should consider hedging against an above-threshold contract award by including PBA documents in the procurement documents and deploying them as a condition of the main contract.

Retrofitting

87. Commissioning bodies may explore the feasibility of retrofitting a PBA prior to main contract award with the prospective main contractor where PBA documents have not been issued with the procurement documents.

88. If the commissioning body intends to award the main contract without all of the PBA documentation in place, it should seek to obtain complete, accurate and uncontested PBA documents and implement the PBA before 50% of the contract value has been certified. This should allow sufficient time to deploy a retrofitted PBA. If this timeframe proves to be insufficient, the commissioning body and main contractor should re-consider the feasibility of implementing the PBA for the remaining balance of the main contract award value.

Including the PBA in the Tender and Contract

89. The PBA must be enabled by the terms of the public works contract, or equivalent contracts let by other bodies for the construction of public assets. The terms need to cover the following provisions:

- payments due under the construction contract are to be routed through the PBA;
- explanation of how the PBA is to operate; and
- explicit statement that payments into the PBA qualify as "discharge of payment" (up to the amount paid in).

90. Commissioning bodies should obtain legal advice on the compatibility of the intended form of main contract and overall PBA governance arrangements, particularly if considering implementing a PBA under a standard form of contract that has not been drafted from a Scots law perspective.

91. Examples of selection stage notices and contractual enabling clauses are noted at Annex H, for illustration and reference purposes. While they are considered suitable for use in most cases, commissioning bodies should ensure they are suitable for specific procurement exercises. Further guidance for actions related to the PBA which are required of the main contractor during the tender period is noted at Annex I.

Potential Factors Against PBA Deployment - Main Contracts

Baseline Position

92. The commissioning body must set up, implement and operate the PBA unless circumstances set out below arise and cause reconsideration. The commissioning body should determine on a project-specific basis how much of the contract period needs to have elapsed before reconsideration is no longer feasible, in which case the PBA shall remain for the remainder of the contract.

Proportion of Cumulative Subcontract

93. The proportion of work to be subcontracted by the main contractor is a factor in PBA application. The type of public asset to be procured may on rare occasions suggest self-delivery as a possible outcome prior to commencing procurement. However, as supply chain delivery is much more likely to be the case, PBA documents as described in this guidance must be included in the procurement documents for all public works contracts and, where possible, contracts let by other bodies for the construction of public assets, whose estimated award value equals or exceeds the threshold.

Self-Delivery and In-House Subcontractors

94. The commissioning body may choose whether or not to proceed with the PBA if the main contractor gives a firm undertaking to self-deliver a significant amount of the contract value. This can involve placing few if any subcontracts and/or where the cumulative value of subcontracted work to be placed with firms within the same parent company as the main contractor is significant. "Significance" means one, other or both factors in combination amounting to more than 75% of the value of the contract awarded by the commissioning body to the main contractor.

Subcontracts

Enabling Provisions

95. Contracts between firms in the project supply chain must contain suitable PBA provisions, in respect of which the contract let by the commissioning body shall contain the following:

- PBA documents as set out in this guidance;
- a requirement for the main contractor to include PBA documents in tender documents for all subcontracts with prospective subcontractors;
- for the main contractor to also require subcontractors to do likewise for all sub-subcontracts with prospective sub-subcontractors; and
- a requirement that the PBA documents shall be replicated in contracts between supply chain firms amended only as necessary to give effect the operation of the PBA at that level.

Potential Exclusion Factors

96. The following broad questions cover factors that could potentially preclude subcontractors and sub-subcontractors from becoming PBA beneficiaries. While this is principally a matter for the employing and employed parties within normal contract management, the commissioning body should ensure that it monitors the throughput both of named beneficiaries and payments in the PBA.

- Is the firm's delivery/invoicing regime compatible with a PBA? For example, are materials charged as an aggregated bulk across several sites?
- Can the firm's payment cycle be aligned for compatibility with the main contractor's cycle? For example, is it weekly or out of phase with the main contract?
- Is the firm's entire contract duration shorter than one payment cycle of the main contract?

Completion of PBA Documents by Subcontractors

97. The prospective main contractor should seek to obtain full, accurate and uncontested completion of PBA documents from known subcontractors for them to become named beneficiaries in time to sign the trust deed at main contract award. Subcontractors appointed after this can join the PBA by signing the additional party agreement, which is the part of the overall trust deed allowing new beneficiaries to join. All beneficiaries should sign in ink i.e. no typed or scanned signatures.

98. Both trustees must sign the additional party agreement to enable subcontractors to be admitted to the trust as named beneficiaries. Subcontractors who are existing beneficiaries are not required to take any action in connection with new subcontractors joining the PBA.

99. Delivery may take place by sending an electronic copy of the original signed documents unless it has already been agreed between the parties that delivery will be in a different form. If there has been no such agreement, electronic delivery would be reasonable unless the parties agreed that particular circumstances made it unreasonable.

Retrofitting

100. A main contractor which omits the PBA documents from a particular subcontract shall provide the commissioning body with a full explanation and mitigation plans for subsequent subcontracts. In such circumstances the main contractor shall, where feasible, seek the subcontractor's agreement to retrofit the PBA into ongoing subcontracts for which less than 50% of the subcontract value has been certified by the main contractor. Agreement from both parties will be needed to produce complete, accurate and uncontested PBA documents.

Integration with Internet Banking

101. Where the PBA is operated using RBS's Bankline system, subcontractors need only give their bank account details to the main contractor's nominated Bankline Preparer. Subcontractors do not have any direct engagement with RBS and do not have to undergo any KYB/KYC procedures.

Dealing with Non-Deployment

102. The PBA should not be deployed for a tier 2 or tier 3 firm if they have been unable to become a named beneficiary before at least 50% of their contract payments have been made by their employer. The other payment process should remain for the duration of the sub-contract. The reasons should be fully documented by the relevant employing party and made available to the commissioning body, who shall relay to Scottish Government (for feedback purposes).

103. Where subcontractors decline to join the PBA, the commissioning body should, through the main contractor, seek where possible to obtain disclosure on the reasons for non-participation and where considered appropriate constructively challenge them. This process should be fully documented by the

commissioning body and made available to Scottish Government (for feedback purposes).

Paying the Interim Certificate into/out of the PBA

Overview

104. The processes for making main contract payments in a PBA are virtually identical to non-PBA payment systems. The use of a PBA should have no bearing on the amount certified by the commissioning body. There is no reason that an amount certified in a PBA-enabled project should be any different to an amount which would have been certified under traditional payment processes. The commissioning body is responsible for certifying the amount due under the main contract to the main contractor and does not invite or evaluate applications from, or certify any payments to, anyone other than the main contractor.

105. A PBA does not affect how much a main contractor should pay for a subcontractor's work. Payment should only be triggered when the prescribed contractual output has been achieved. Nor does a PBA make a subcontractor's work any more or less compliant with the subcontract under which it is performed. The main contractor is still, under a PBA, able to deduct or contra charge payments etc, where provided for in the subcontractor's contract and notified to him in accordance with the Construction Act, before the commissioning body deposits payment into the PBA.

106. The following paragraphs cover processes which culminate in named beneficiaries being paid from the PBA: see also Annex J.

Compatibility with Valuation Methods

107. The main contract should define the overall payment regime and associated trigger point(s) determining when payments become due to the main contractor. A PBA can accommodate the following broad classifications of payment regimes used in construction contracts:

- time related - traditional "measure and value".
- activity related - milestone payments for pre-defined stages' completion.
- proportion related - stage payments based on percentage completion.

Payment Timeline

108. The main contractor and commissioning body shall collaborate on drawing up a project-specific payment timeline to be a shared template for named beneficiaries in order to promote mutual understanding of what needs to happen, by when and from whom in the supply chain, as follows:

- PBA certification/payment/authorisation processes to be set out as a series of activities and interdependencies.
- align these with the main contract payment timescale.
- map this onto Construction Act requirements to produce an overall compliant timeline.

Payment Applications

109. The commissioning body shall make clear that an invoice (or other such equivalent payment request) submitted by a main contractor will only be regarded as valid if it shows the allocation of payments to each named beneficiary at every level of the supply chain (including the main contractor) as well as the total amount.

110. The main contractor's allocation is the sum of all the payments due under subcontracts with non-beneficiary subcontractors plus any amount due to the main contractor directly. Likewise, a subcontractor should, in the payment application to the main contractor, show the separate amounts due to beneficiaries among sub-subcontractors he employs, alongside one figure to cover the sum of amounts due to himself plus his non-beneficiary sub-subcontractors. At all levels of the supply chain, the PBA does not affect an employer's contractual right to evaluate the amount due to an employed party i.e. the former can still adjust a payment application submitted by the latter.

111. The main contractor shall ensure that its application complies with all relevant legislation, for example "Pay Less" notices issued to subcontractors under the Housing Grants, Construction and Regeneration Act 1996 as amended[11] ("the Construction Act"). This also applies to subcontractors employing sub-subcontractors, irrespective of whether or not they are named beneficiaries. This is identical to processes and dependencies in non-PBA payment systems.

112. The commissioning body must also ensure that it complies with the Construction Act, in terms of Pay Less notices etc, if its evaluation of the amount due under the main contract differs from the main contractor's application. The main contractor must allocate the commissioning body's evaluation among all named beneficiaries. The commissioning body cannot do this as it is only in contract with the main contractor, not any subcontractors, and so is only responsible for certifying the total amount due to the main contractor for all work carried out under the main contract.

Uninitiated or Delayed Applications

113. In a PBA, the only money that flows into the main contractor's bank account is the allocation of the interim certificate for the main contractor's own contribution to performing the main contract, plus a sum for payments relating to subcontracts with non-beneficiary subcontractors. There may be occasions when the main contractor's allocation of an upcoming interim payment could be low. This could disincentivise the main contractor from initiating an interim application even though other named beneficiaries may be due payments.

114. Where the main contractor appears to be delaying initiating the interim application process in the PBA, the commissioning body should consider raising an interim certificate in order to maintain supply chain cashflow. The main contractor's assessment of the appropriate allocations relating to work done by named beneficiaries would still be needed to enable payment through the PBA.

[11] http://www.legislation.gov.uk/ukpga/2009/20/contents (Part 8 of the Local Democracy, Economic Development and Construction Act 2009 and associated Scheme for Construction Contracts (Scotland) Amendment Regulations 2011).

Conditional Payments' Prohibition

115. A PBA does not supplant the Construction Act's prohibition on conditional payments[12]. An interim certificate issued by the commissioning body which is less than amount applied for and insufficient to cover all of the sums owed by the main contractor to subcontractors does not mean the main contractor is able to pay them only what it has received under the main contract. The main contractor must still pay what is owed to subcontractors under the terms of their respective subcontracts (see "Top-Up Payments").

Retention in the Main Contract

116. Retention, where it applies in the main contract, could be considered to contain components of retention owed by the main contractor to subcontractors at subcontract level. The commissioning body's duty in trust to subcontractor beneficiaries of the PBA could mean that it risks becoming liable to repay their retention if the main contractor reneges. Retention at main contract level shall be held outside the PBA.

Retention in Subcontracts

117. A PBA is a device of the main contract and so cannot be used to house retention money relating to subcontracts in the supply chain. Those contracts, not the main contract, contain the rules for accumulating and releasing cash retention held by one business from another.

Disputed Amounts Between Businesses

118. The ability of a PBA to ring-fence deposits relates only to payments which have been certified under the main contract. It does not apply to money relating to a dispute between businesses in the supply chain, which cannot be held in a PBA. Businesses can however make separate arrangements if they wish, which must be outside the PBA, to hold such money until the dispute is resolved.

Making Payments

119. The commissioning body should deposit the amount of the interim certificate into the PBA as soon as it is known. This discharges the commissioning body's payment obligation for work carried out under the terms of the main contract. At this point the money becomes a trust asset and the commissioning body's legal interest in it transfers from its capacity as a party to the main contract to the separate role of trustee. The commissioning body and the main contractor are required, as trustees, to manage the trust assets for the good of the beneficiaries.

Fraud

120. PBAs do not prevent attempts at fraud (for example: identity theft; online malware; bogus firms etc) so accuracy, checking and vigilance are still as relevant and necessary as they are with other IT-enabled financial processes.

Authorising Payments via Internet Banking

121. The main contractor should accurately obtain and input all relevant information into the internet banking system to enable named beneficiaries to

[12] The amount and timing of a payment due from a main contractor to a subcontractor is not to be dependent on the amount and timing of payment received by the main contractor from the employer.

receive payment from the PBA into their bank accounts. Once input, the main contractor's Authoriser shall instruct the bank to authorise money transfer from the PBA to beneficiaries. Depending on the internet banking system, this may be immediately visible on-screen to the commissioning body's Authoriser. In any event, both Authorisers should be in direct mutual contact to verify actions undertaken on the internet banking system.

122. The bank will not act on this instruction until the commissioning body gives its equivalent instruction. The commissioning body should check the details of the instruction given by the main contractor's Authoriser to the bank with the allocation of payments previously noted by the main contractor during the interim certificate process. Any apparent discrepancies should be notified to the main contractor's Authoriser immediately and if necessary the authorisation process recommenced. This is a simple matter of good administrative practice within a collaborative environment and does not incur additional responsibility or liability for the commissioning body. Once parity is established the commissioning body's Authoriser should instruct the bank to authorise money transfer from the PBA to beneficiaries. At that point payments are transferred into named beneficiaries' bank accounts.

123. The authorisation process therefore requires consecutive, not concurrent, instructions: first the main contractor; then the commissioning body. The bank will not authorise any payment to named beneficiaries if instructed to do so only by the main contractor or the commissioning body: it needs them both to do so. The main contractor should decide how it will check that named beneficiaries have received their payment e.g. by exception (i.e. only if payment appears absent or late) or by requirement (i.e. confirming receipt of payment).

124. If real-time monitoring via internet banking is not enabled (e.g. temporary system downtime), the commissioning body must as a minimum obtain a copy of the transaction details of money flowing out of the PBA and into each of the named beneficiaries' business accounts. This is also important in order to verify that the PBA is meeting prompt supply chain payment objectives and to determine the effectiveness and efficiency with which it is doing so.

<u>"Top Up" Payments</u>

125. The PBA must not be used by the main contractor to deposit "top up" payments where the value of the interim certificate is less than the cumulative value of payments owed by the main contractor to subcontractors. The commissioning body risks potential conflict in its role as a trustee instructing the bank to authorise payment with its other role as employer in the works contract. This would arise where the instruction related to payment agreed by the main contractor with a subcontractor for work performed under their sub-contract which the commissioning body had already decided against including in a payment certificate under the main contract. As the PBA is a device of the main contract, additional payments that the main contractor needs to make to meet sub-contractual obligations to a named subcontractor beneficiary must be made outside the PBA.

<u>Charges</u>

126. The commissioning body should ensure that its exposure to charges levied by the bank is minimised by appropriate timing and structuring of payments to named beneficiaries. For example, where charges for “next day” payment are considerably less expensive than “same day”, this should be considered where the next day is still within a 5 day period.

Leaving the PBA and Account Closure

127. The main contractor’s and subcontractors’ interests as named beneficiaries of the PBA cease upon their respective final payments. There is no need for any formal exit process or documents. Commissioning bodies will need to judge, on a case by case basis, the value for money of continuing to pay bank charges for keeping the PBA open after the project is completed (i.e. defects liability period or maintenance period) when durations between payments are likely to increase considerably.

128. The joint account holders will need to agree when to close the account and follow the processes advised by the banking services’ provider to effect this decision.

Non-Scottish Contractors

129. There are a number of factors that may require consideration when a firm which does not have a Scottish corporate presence wishes to join a PBA.

- Currency - Scottish public contracts and contracts let by other bodies for the construction of public assets in Scotland are valued in pounds sterling. The PBA should be able, in principle, to make payments to participants in any currency, as long as the amount(s) due are covered.

- Bank procedures - the bank operating the PBA may require additional checks and clearances for non-domiciled entities.

- Scottish trust law - firms in the PBA will have to agree to join a trust which complies with the law of Scotland.

PBA Performance Measurement

130. The principal information recommended to be collated for measuring and understanding PBA performance is as follows:

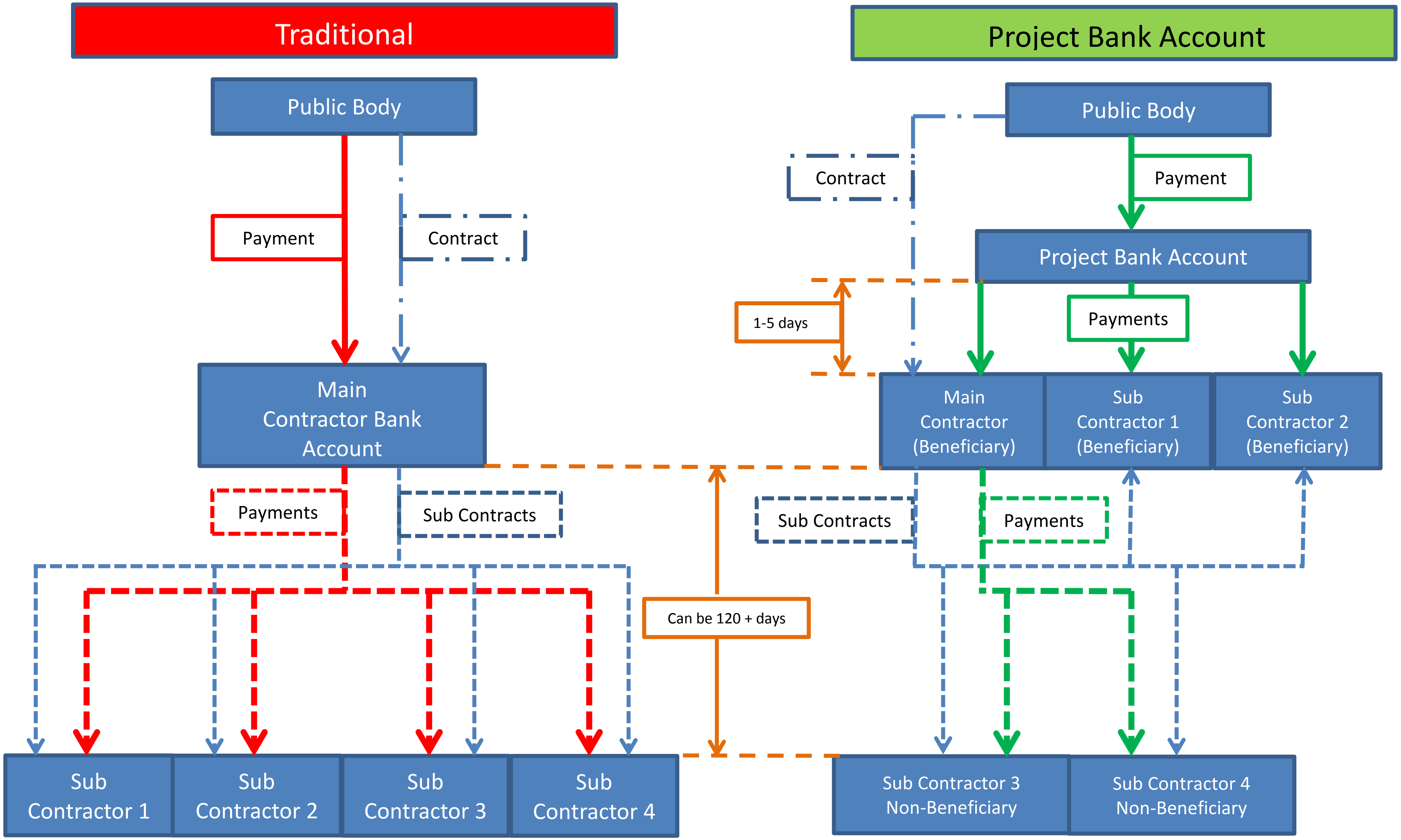
- Date of the main contractor’s submission of a payment application under the main contract to the commissioning body.
- Date when the commissioning body intimated the amount of the payment certificate to the main contractor.
- Date when the commissioning body deposited the amount of the payment certificate into the PBA.
- Date when named beneficiaries received payment.
- Ongoing cumulative amount of main contract sum paid to named beneficiaries through the PBA.

- Number of named beneficiaries paid through the PBA.
- Ongoing cumulative number of payments made from the PBA to named beneficiaries.
- Percentage of each named subcontractor beneficiary's contract value paid through the PBA.
- Number of payment cycles in which the PBA was operational/not operational - main contract and for each named beneficiary's contract below the main contract.
- Number of required[13] subcontractors joining/not joining the PBA.
- Reasons given for required subcontractors not joining.
- Number of requesting[14] subcontractors asking to join the PBA - tiers 2 and 3.
- Number of requesting subcontractors declined - tiers 2 and 3.
- Reasons given for requesting subcontractors being declined - tiers 2 and 3.

131. For reporting purposes, durations should be measured as calendar days, including weekends and all public and bank holidays. For operational purposes, durations should be programmed to exclude weekends and all public and bank holidays. PBA trustees should implement business continuity measures to ensure as far as reasonably practicable that staff absences do not interrupt PBA activities.

[13] "Required subcontractors" are those who must join the PBA because their contract value is at least 1% of the main contract sum and are unaffected by potential exclusion factors.
[14] "Requesting firms" are subcontractors whose contract value is less than 1% of the main contract sum or any sub-subcontractor irrespective of their contract value; who are unaffected by potential exclusion factors; and who ask to join the PBA.

Annex A - Construction Supply Chain - Contractual and Payment Illustration



Annex B - Activities for PBA Implementation

Activities (chronology indicative)		Stakeholders [1]				
		Commissioning Body	Bank	Main Contractor	Subcontractor Beneficiaries	Subcontractor Non-Beneficiaries
1	Appoint PBA Champion	✓		✓	✓ [2]	
2	Identify bank to provide PBA services to comply with recommended Minimum Standards	✓				
3	Agree scope of service with bank and enter into PBA service agreement	✓	✓			
4	Complete account formalities and input corporate details	✓				
5	Set up internet banking	✓	✓	✓		
6	Devise overarching internal corporate governance principles for PBAs	✓		✓	✓ [2]	
7	Devise standard corporate instructions/processes for consistent setting-up, implementation and operation of PBAs	✓		✓		
8	Integrate corporate functions to support PBA processes (e.g. IT, Finance, Construction, Procurement)	✓		✓		
9	Appoint nominees for corporate PBA internet banking duties (e.g. authoriser, auditor, deputies [3] etc)	✓		✓		
10	Implement PBA qualifying criteria in construction procurement process	✓				
11	Decide on policies for charging and interest	✓				
12	Include PBA notification in call for competition and PBA documents in procurement documents	✓		✓	✓	✓ [4]
13	Obtain complete, accurate and uncontested agreement to PBA documents	✓		✓	✓	✓ [4]
14	Arrange training on internet banking	✓	✓	✓		
15	Prime PBA with funds to meet bank charges	✓ [5]		✓ [5]		
16	Open project PBA in joint names	✓		✓		
17	Set up project up as PBA on internet banking	✓		✓		
18	Lodge trust deed with bank	✓				
19	Obtain letter of confirmation from bank	✓				
20	Devise project-specific payment timeline	✓		✓		
21	Sign up as many subcontractors as possible as named beneficiaries			✓	✓	✓ [4]

22	Align named subcontractor beneficiaries' payment cycles with main contractor	✓		✓	✓	✓ [4]
23	Agree, implement and monitor exclusion factors	✓		✓	✓	✓ [4]
24	Obtain reasons and justification for subcontractors declining - send to SG via commissioning body	✓		✓	✓	✓ [4]
25	Initiate payment cycle under PBA			✓		
26	Participate in payment cycle	✓		✓	✓	✓ [4]
27	Issue interim certificate for main contract and deposit amount due into PBA	✓				
28	Advise allocation to named beneficiaries of main contract's interim payment			✓		
29	Instruct bank to authorise payment to beneficiaries			✓		
30	Confirm main contractor's payment authorisation	✓				
31	Named beneficiaries receive payment			✓	✓	
32	Ensure named beneficairies receive - via top up outside PBA - amount due under sub-contract not covered by interim certificate			✓	✓	✓
33	Non-beneficiaries receive payment					✓
34	Record payment process metrics and send to Scottish Government	✓		✓		
35	Participate in continuous improvement and send feedback to Scottish Government	✓		✓		

[1] Implementation of common stakeholder activities is not necessarily concurrent. *
[2] Only likely if subcontractor is to encounter PBAs regularly.
[3] RBS terminology, which may differ for equivalent roles in other banks.
[4] Non-beneficiaries may become involved in their subcontractors' PBA activities.
[5] Requires decision.

* For example: indicative activity 6 ("Devise overarching internal corporate governance principles for PBAs") is not carried out by the Commissioning Body, Main Contractor, and Sub-contractor Beneficiaries concurrently. Each stakeholder will do so when appropriate to their introduction into the project and within their specific corporate requirements.

Annex C - Illustration for Named Bodies in Scottish Government's Banking Services Framework to open a RBS Project Bank Account
(also applies in principle to other customers)

PROCESS	GUIDANCE/INFORMATION
Named body contacts RBS	RBS contact details on SG website.
RBS PBA Team or the Local Relationship Manager arrange face to face meeting.	Account Opening Form and Bank Mandate completed at this meeting, failing which the parties expedite off site immediately thereafter.
Once paperwork has been returned then RBS begin internal checks and advise if any proof of identity is required.	Any proof of identity to be provided by individuals to the RBS PBA Team, Local Relationship Manager or branch.
Once all checks completed, PBA opened and account number issued to named body.	
RBS advise named body to contact SolutionsLine and arrange for access to Bankline.	

<u>RBS Project Bank Account Team</u>
E: David.Rennie@rbs.co.uk
T: 0131 523 3505
M: 07917 559 073

E: Allan.Dickov@rbs.co.uk
T: 0131 525 0246
M: 07769 248 915

E: Customer Support Team
T: 0131 523 3027

RBS SolutionsLine
T: 0345 030 3109

Local Relationship Managers (LRM) - by reference to RBS PBA Team in the first instance

Annex D - Illustration for Named Bodies in Scottish Government's Banking Services Framework to set up access to Bankline
(also applies in principle to other customers)

PROCESS

GUIDANCE/INFORMATION

PBA opened and account number issued to named body.

↓

RBS advise named body to contact SolutionsLine to arrange for access to Bankline.

↓

SolutionsLine complete Bankline forms over the phone as far as possible and send it to named body to finalise.

→ The Bankline helpdesk should be contacted for support.

↓

Named body completes and returns Bankline forms to Bankline Registration Team.

→ Named body contacts SolutionsLine for advice and support on forms.

↓

On receipt of correctly completed forms, RBS set up the named body's Bankline profile normally within 7 to 10 working days.

RBS SolutionsLine
T: 0345 030 3109

Bankline Helpdesk
T: 0345 300 4108

Annex E - Illustration for Named Bodies under Scottish Government's Banking Services Framework to set up a PBA Project on Bankline
(also applies in principle to other customers)

PROCESS

GUIDANCE/INFORMATION

Once the Bankline profile is created, PIN, cards and card reader are sent to the named body's named Bankline Administrator.

These are sent to the same corporate address on different days.

Bankline Administrator can then log on to Bankline and set up the required profiles and access levels.

This includes new users, new roles, payment limits per profiles and the number of authorisers required.

If the Bankline Administrator is an experienced Bankline user they could do this themselves.

If the Bankline Administrator is new, the Bankline Helpdesk on 0345 300 4108 can help.

SolutionsLine offer training when setting up a profile.

The Local Relationship Manager will be review requests for face-to-face training to set up the profile on a case-by-case basis.

Once the Bankline Administrator has set up Bankline users, RBS contact the named body to offer user training.

Training is also accessible via online demos,.

RBS Project Bank Account Team
E: David.Rennie@rbs.co.uk
T: 0131 523 3505
M: 07917 559 073

E: Allan.Dickov@rbs.co.uk
T: 0131 525 0246
M: 07769 248 915

E: Customer Support Team
T: 0131 523 3027

Bankline Helpdesk
T: 0345 300 4108

RBS SolutionsLine
T: 0345 030 3109

Local Relationship Managers (LRM) - by reference to RBS PBA Team in the first instance.

Annex F - Recommended Minimum Standards for PBAs[15]

1. The bank which is to provide PBA services is to be appointed by the commissioning body.
2. The account is to be opened and operated in the joint names and with the joint agreement of the commissioning body and the main contractor.
3. The account is to be linked to a trust deed which complies with the law of Scotland so that the money is ring-fenced.
4. Organisations wishing to be a beneficiary of the PBA must be named in the trust deed or join it as an additional party by means of an agreement which serves that purpose and complies with the law of Scotland.
5. The bank is to be informed and acknowledge that a trust deed exists and that operation of the payments will be covered by it.
6. Confirmation is to be obtained from the bank that monies are held in trust and that they cannot be used to offset any other liabilities arising from any of the named beneficiaries.
7. The banking service should not materially alter the operation of the trust deed or the PBA.
8. The main contractor is to notify the commissioning body of beneficiaries' payments to be made only in respect of and within the amount due to the main contractor under the main contract.
9. The commissioning body and the main contractor shall have mutual visibility of money deposited into the PBA and payments made out of it.
10. The commissioning body and main contractor shall expedite instructions necessary for the PBA to function efficiently and effectively.
11. All named beneficiaries of the PBA trust deed shall be paid at the same time as soon as possible after the amount certified under the main contract has been deposited the into the PBA.
12. No cheque facility or overdraft facility is to be made available on the PBA.
13. The commissioning body shall have a clear policy for dealing with which of the parties to the joint account will be liable to pay bank charges.
14. The commissioning body shall have a clear policy on whether or not the account is to be interest-bearing and which of the parties will be the recipient.

A commercial bank account operated by a main contractor will not be suitable for the purposes of running a PBA. Public bodies should avoid entering into an agreement that such an account can be referred to and operated as if it was a PBA.

Delivery of a PBA through internet banking, while preferable, is not currently one of the Scottish Government's minimum requirements for a PBA. This is because there may be scope for prompt payment timescales achievable through internet banking to be delivered by other means in a PBA which still meet the minimum requirements, or for them to be implemented as a temporary measure to support payment processes if the underlying internet banking system is unavailable when payments are due to be made. However, the systematic operation of a PBA outwith an internet-enabled platform is likely to be more costly.

[15] for public works contract, or contracts let by other bodies for the construction of public assets

Annex G - Scottish Government Template Trust Deed

PBA - implementation
guidance - Trust Deed

Annex H - Selection Stage Notices and Contractual Enabling Clauses

Examples of selection stage notices and contractual enabling clauses, for illustration and reference purposes. While they are considered suitable for use in most cases, commissioning bodies should ensure they are suitable for specific procurement exercises.

PBA - implementation guidance - PQQ ITT -

Annex I - Tender/Award Period Actions for Main Contract Bidders

1. Bidders for the main contract must undertake the following actions in relation to documentation they send to prospective subcontractors:

- Include the trust deed and PBA enabling clauses to give the PBA effect between the bidder and a subcontractor. *
- Request subcontractors' own bank account details e.g. account number and sort code. *
- Require subcontractors whose subcontract award value is at least 1% of the main contract award; and who are not affected by potential exclusion factors, to join the PBA and become named beneficiaries of the trust deed.
- Make provision for subcontractors whose subcontract value is less than 1% of the main contract sum; and who are not affected by potential exclusion factors, to ask to join the PBA with a view to becoming named beneficiaries of the trust deed. *
- Require all subcontractors to give equivalent effect to the foregoing (*) in their invitations for sub-subcontractors to tender.

2. Upon receipt, check subcontractors' submissions of PBA-related papers for accuracy and completeness.

3. Bidders must notify the commissioning body if they can give a firm undertaking to perform more than 75% of the main contract award value directly and/or with subcontractors from within the same parent company as the bidder.

4. Bidders must submit to the commissioning body, as part of the main contract tender, PBA documents all fully and accurately completed.

- Trust deed and the PBA account opening form, both signed by a person(s) with the appropriate designation employed by the bidder e.g. Managing Director.
- Trust deed to contain beneficiaries known at tender submission.
- Advice that the bidder does/does not already have a RBS business account.
- Advice that the bidder's signatories already have/do not have an account with RBS (corporate or personal - this may speed up RBS due diligence).
- Advice that the bidder is already a Bankline user.

5. Upon award of the main contract the successful bidder must undertake the following actions:

- Review the commissioning body's signature of: the trust deed; the PBA account opening form; and the Bankline forms.
- Meet/contact the commissioning body as soon as possible to agree the account operating instructions i.e. the Mandate.

6. Undertake the following actions when inviting tenders for subcontracts:

- All as per item 1, except the additional party agreement shall apply.
- Upon receipt, check subcontractors' submissions of PBA-related papers for accuracy and completeness.
- Upload banking details onto Bankline of subcontractors who become named beneficiaries of the trust deed.

Annex J - Interim Application Process

At the trigger for an interim payment the main contractor shall value the work done and proceed as follows:

1. Present the interim application to the commissioning body showing the following:
    - the separate amount due to each named beneficiary of the trust deed.
    - the amount due to the main contractor, which is made up of the amount due to all subcontractors employed by the main contractor which are not named beneficiaries plus what the main contractor considers is due to itself.
    - each subcontractor should show in their interim application to the main contractor the separate amount due to each named beneficiary in its employment plus the amount considered due to itself.
    - the PBA does not affect either the main contractor's or subcontractors' right to evaluate work done by firms they employ. The main contractor can still adjust a subcontractor's interim application regardless of whether or not they are named beneficiaries, as can subcontractors for sub-subcontractors' applications.

2. The commissioning body will evaluate only the sum total of the main contractor's interim application, not any of the individual amounts allocated to named beneficiaries.

3. If the commissioning body agrees with the amount of the interim valuation then it will produce the interim certificate and deposit the commensurate amount due under the main contract, excluding any retention, into the PBA.
    - the commissioning body only values work done under the main contract and does not value or certify any other work done under any subcontract, which remains the main contractor's responsibility.
    - cash retention deducted from the main contractor shall not be held in the PBA.

4. If the commissioning body disagrees with the amount of the interim valuation then it will follow the procedure for a Pay Less notice and intimate the amount to be paid to the main contractor.
    - the commissioning body will deposit its evaluation of the amount due under the main contract, excluding any retention, into the PBA.
    - the commissioning body will not assess or adjust any of the amounts allocated by the main contractor to named beneficiaries.

5. The main contractor shall allocate, from the sum shown on the commissioning body's interim certificate, an amount due to each named beneficiary, including itself.
    - this in effect becomes the mandate for the bank to authorise payment to each named beneficiary from the money deposited in the PBA by the commissioning body.
    - this is equivalent to the disaggregation among subcontractors of an interim certificate issued in a non-PBA project i.e. it is not an additional activity.

6. Where the main contractor has agreed the amount of a subcontractor's interim application but the amount certified by the commissioning body under the main

contract is not enough to cover it, the main contractor is still obliged to pay the sum agreed with the subcontractor.

- a PBA does not supersede the law in the Construction Act prohibiting conditional payments.
- “top up” payments cannot be made in the PBA as this would require the commissioning body to instruct the bank to authorise payment for work which was not included in the interim certificate and which has been evaluated under a subcontract to which the commissioning body is not a party.

7. The main contractor, acting as trustee, uploads the amounts allocated to named beneficiaries’ on to the internet banking platform e.g. Bankline, and instructs the bank to authorise payment to each named beneficiary’s bank account in those amounts.

8. The commissioning body, acting as trustee, follows with its equivalent bank instruction.

9. The bank will only release the funds from the PBA once both trustees have instructed it, the main contractor followed by the commissioning body.

10. Subcontractors and sub-subcontractors which are not named beneficiaries will not receive their payment through the PBA. Instead, they will be paid from their employer’s bank account in a different timescale and their money will not be ring-fenced from the effects of main contractor insolvency.