



IMPROVEMENTS TO PROJECT CASH FLOW

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TWO KEY DEVELOPMENTS

Project Bank Accounts

**Reg. 113, Public Contracts
Regulations 2015**

“PBAs are recognised as an effective mechanism for facilitating fair payment to the construction supply chain. Government departments have committed to use PBAs on their projects unless there are compelling reasons not to do so.”

Para. 42, Government Construction Strategy
2016-20, March 2016

PBA USAGE

- ▶ Since 2011 over £10bn of government works paid through PBAs.
- ▶ PBAs successfully piloted in Wales and Scotland.
- ▶ From 1 January 2016 PBAs made mandatory in Northern Ireland for projects over £2m.

WHAT IS A PBA

- ▶ A bank account ring-fenced by a trust arrangement.
- ▶ The trust arrangement protects the monies in the account in the event of tier 1 contractor insolvency.
- ▶ Monies in the account are solely earmarked for firms in the supply chain such as lift firms.

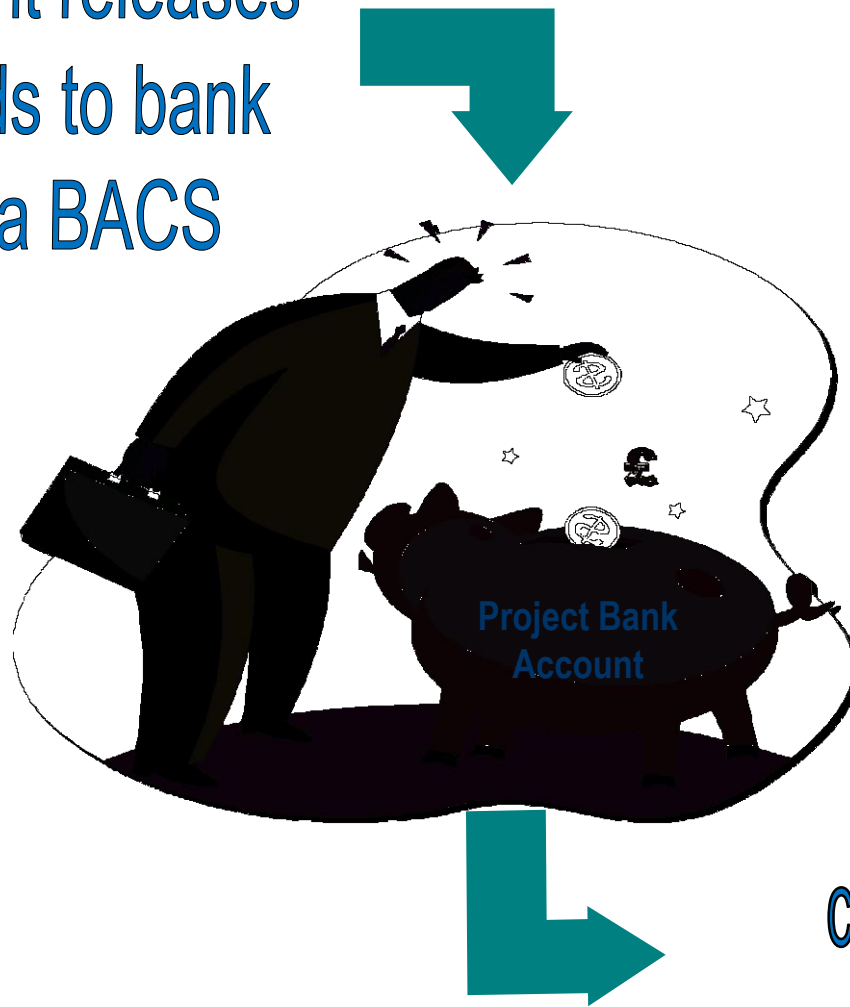
HOW DOES A PBA WORK?

- ▶ Current arrangements for valuation and applications remain in place.
- ▶ **BUT** when submitting payment applications to the client the tier 1 contractor will set out the amounts claimed by itself and the supply chain firms which are the beneficiaries.
- ▶ Once the client has certified the monies due for payment they are paid into the PBA.

HOW DOES A PBA WORK?

- ▶ Client and tier 1 contractor issue instructions to the bank to make specified payments to the beneficiaries (i.e. the tier 1 contractor and tier 2/3 contractors).
- ▶ The PBA is not a pay-when-paid arrangement; if there is a shortfall in the account (e.g. because the client has paid less than the amount applied for by the tier 1 contractor) the tier 1 contractor must make up the shortfall.
- ▶ All the standard contracts have PBA provisions.

Client releases
funds to bank
via BACS



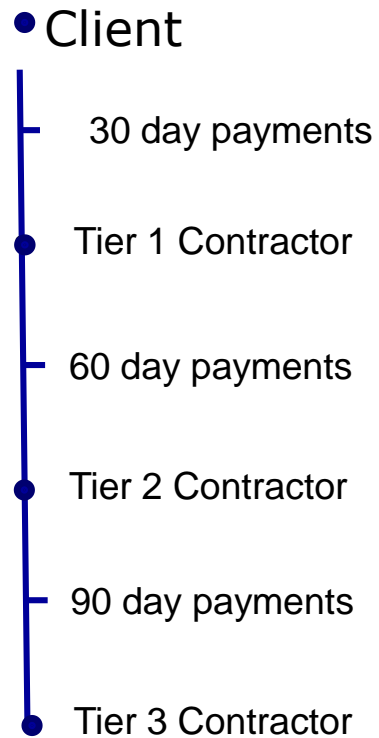
On deposit of funds bank
releases all payments
simultaneously to lead
contractor and supply chain

WHAT DO TIER 2/3 CONTRACTORS NEED TO KNOW?

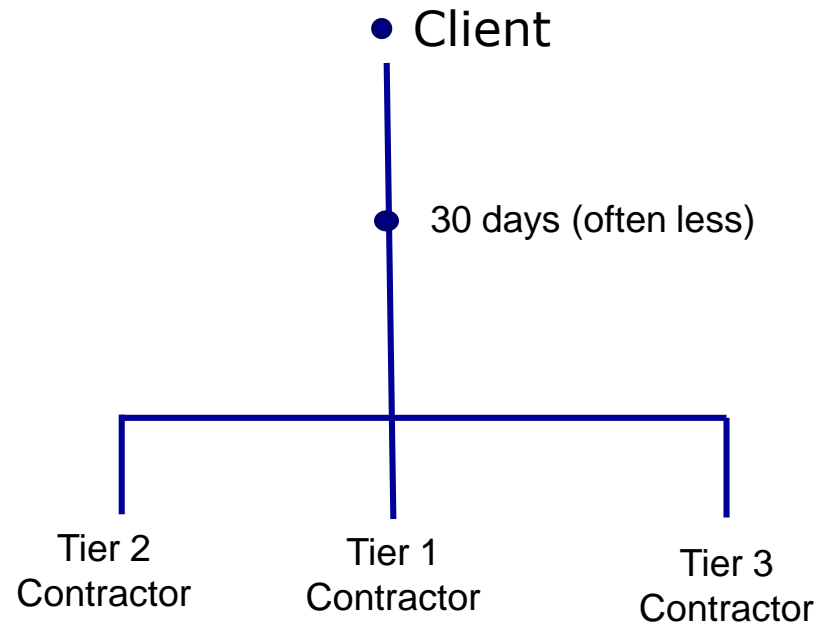
- ▶ Confirmation that they are a beneficiary.
- ▶ Details of the PBA.
- ▶ Who the trustees are.
- ▶ Arrangements for making payments through PBA (e.g. period for discharging payments*).

*Payment periods in lead contract and supply chain contracts should be aligned.

TRADITIONAL PAYMENT PROCESS



PBA PAYMENT PROCESS



WHAT SHOULD TIER 2/3 CONTRACTORS INSIST ON?

- ▶ Signing the trust deed/joining deed.
- ▶ Knowing of the amounts due to them that have been paid into the PBA and dates of paying in.
- ▶ Tier 1 contractor (or tier 2 contractor in the case of tier 3 contractors) pays any shortfall prior to the final date for payment.

NB. Use of bespoke sub-contracts will not be suitable if they do not align with the PBA requirements.

REGULATION 113 PUBLIC CONTRACTS REGULATIONS 2015

- ▶ Came into force on 26 February 2015.
- ▶ Places statutory duty on contracting authorities to pay their tier 1 contractors within 30 days from when an invoice is “***valid and undisputed***”.
- ▶ The 30 day obligation must be cascaded down into tiers 2 and 3 contracts.

REGULATION 113 AND CONSTRUCTION CONTRACTS

- ▶ Reg. 113 is not wholly aligned with the payment notice procedure under the Construction Act (as amended).
- ▶ Under the Act payment timing and entitlement is dependent upon the operation of this procedure – not on a process of determining whether an invoice is “***valid and undisputed***”.

THE CONSTRUCTION ACT

PAYMENT NOTICE PROCEDURE

- ▶ Within 5 days of the due date the payer or payee issues a payment notice.
- ▶ The contract determines who will issue the notice; if not the payer must issue the notice.
- ▶ The notice defines the amount to be paid by the final date for payment.

UNLESS

- ▶ The payer issues a pay less notice prior to the final date for payment (in which case the amount in this notice must be paid).

WHEN DO THE 30 DAYS START IN CONSTRUCTION CONTRACTS?

- ▶ Where the payer issues the notice payment should be discharged within 30 days.
- ▶ If the payee issues the notice the guidance states that validation should not exceed 7 days.
Thereafter payment should be made within 30 days.
- ▶ If a *pay less* notice is issued this amount would be an undisputed amount and, therefore, the 30 days is likely to start from the date of issue of the notice (provided that the *pay less* notice is itself valid).

ENFORCEMENT

- ▶ As from end of February 2016 contracting authorities are required to report annually on their payment performance to tier 1 suppliers.
- ▶ The statutory guidance advises that “PBAs should be used where appropriate” to implement the 30 day obligation.
- ▶ Statutory interest is payable if payment made after 30 days.
- ▶ *“Mystery Shopper will name and shame any suppliers that are proved to be poor payers”.**

*Para.4 in Annex 2 to the Statutory Guidance.



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