



T: 0300 244 4000
E: scottish.ministers@gov.scot

Mr Alan Wilson
Chair
CICV Forum

Alan.wilson@select.org.uk

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Dear Mr Wilson

Thank you for your letter, dated 6 May, giving the key points the CICV Forum feel need to be addressed to help cash flow in the construction industry during the covid-19 pandemic. I have addressed the five key points in your letter below.

1. Public sector procurers to agree the construction costs of all projects at 31 March 2020, including resolution of disputed issues, like claims, with payments being made to the contractor within 14 days with monitoring of payments to the supply chain.
 - *CPN 1/2020, published on 9 April 2020, recommends that contracting authorities seek to agree with the contractor a process for identifying and recording prolongation and disruption directly attributable to COVID-19; to minimise the potential for doubt to arise in the interpretation of prevailing circumstances on site.*
 - *Contractual disputes which had crystallised on projects before sites were closed should, unless the parties agree otherwise, adhere to the terms of escalation and resolution stated in the contract.*
 - *We expect however that contracting authorities and contractors should utilise closures to take the time to reconsider and re-examine disputes and where possible inject renewed impetus into resolving such component parts that can be agreed in order to release cashflow into the supply chain.*
2. Retention – Public sector procurers to consider retention release in whole or in part; procurers can retain a sensible amount in cases where there are identified defects in the works.
 - *CPN 1/2020 provides specific guidance on payment to suppliers to ensure service continuity in the construction sector and suggests that contracting authorities consider releasing retentions promptly on a proportional basis to work done.*
3. On start-up, introduce 14-day payment period from the date of the contractor's application for payment, to the final date for payment. Contractors back to back with supply chain.

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- *We recognise that maintaining cashflow for businesses at this time is important which is why we stated in CPN 1/2020 that COVID-19 should not be exploited as an opportunity to gain from the loss of another party.*
 - *Exceptional effort is being made in the public sector to pay invoices quickly not least by Scottish Government introducing a 10-day period. We expect such efforts to be replicated by all firms in the supply chain to pay subcontractors as much as they are due as quickly as possible.*
 - *CPN 1/2020 covered payment to suppliers to ensure service continuity and suggested measures such as: initiating mid-monthly or weekly interim payments; public bodies making direct payments to subcontractors; and the prompt disbursement of main contractor payments to subcontractors.*
 - *Payment periods in existing contracts between public bodies and contractors will, upon restart, remain as they were unless both parties agree to vary them, which would be a matter for them.*
 - *Public bodies who have published a procurement strategy which covers the current period must publish in their subsequent procurement report the steps they've taken to effect prompt supply chain payment.*
 - *For new contracts we would expect public bodies to expedite interim valuations and payments and to use their best endeavours to finalise payment processes within either the legislative or contractual periods rather than take all of the time available in said periods, where staff capacity and accessibility permits.*
4. Consider introduction of Project Bank Accounts (PBA's) on start-up projects per UK Government guidance, as an option.
- *Advice in HMG Cabinet Office's PPN 1/2020 on PBAs during COVID-19 ([here](#) Q7) is to highlight the existence of HMG policy as it stood before COVID-19 and does not extend the application of PBAs beyond HMG departments' current commitment to use them in all new construction projects unless there are compelling reasons not to.*
 - *Therefore "new" does not solely mean new projects procured during the COVID-19 recovery phase; it means new projects from the date the original PBA PPN promulgated (c2010).*
 - *Our policy requires PBAs to be implemented on construction contracts above the applicable award threshold (see [here](#)).*
 - *There is nothing to stop Scottish contracting authorities choosing to use using PBAs for lower value projects if they wish, which has already happened.*
5. New projects coming on stream: Consider reduction in the PBA threshold on public sector procurement to £250k.
- *Our PBA policy is based on balancing the benefits of prompt and protected payment spread out to as many subcontractors as possible with a manageable administrative quotient for public bodies, contractors and banks.*
 - *Under current circumstances banks are diverting some frontline staff ordinarily involved in setting up PBAs to provide continuity and survival advice to businesses. The increase in PBAs caused by lower thresholds would incur project delays and jeopardise the overall objective of achieving an infrastructure-led economic stimulus.*
 - *Even in ordinary circumstances reducing the threshold to £250k would be unmanageable at the coalface and would also produce a queue of stalled projects waiting for the banks necessary financial checks to complete before they could start on site.*

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- *SG has made setting up a PBA easier within current thresholds by issuing CPN 2/2020 on 14 April which relaxed the need for “wet” signatures on original legal documents during the crisis. No equivalent advice has issued across the rest of the UK.*

You made several additional points in your letter which I want to deal with below.

6. The Scottish Government needs to consider how contractors and the supply chain will be reimbursed, if at all, for the impact of lowered productivity on sites. While it may be considered that CPN1/2020 and CPN 5/2020 addressed this in principle, the stark reality is that the uncertainty on this issue is there. We are therefore asking you to ensure that all procuring authorities in the public sector are on common ground as soon as possible on this issue.
 - *We consider that the principles set out in CPN 1/2020 provide the basis for contracting authorities to begin to consider how they will address these issues from a common position.*
 - *We expect honest, open and constructive engagement, recognising the mutual need of clients and contractors to pragmatically address issues relating to COVID-19. However we cannot assure beyond this that they will all reach the same conclusions and take the same action.*
 - *In CPN 1/2020 we urged all contracting authorities to focus on an objective that any measures taken should be to help ensure that Scotland, both locally and nationally, retains a viable construction sector through these unprecedented times.*
7. In addition to the above, we would also ask you to consider the principle of advance payments on contracts [for a short-term period]
 - *SPPN 5/2020 highlights a range of measures intended to ensure service continuity during and after the current outbreak and includes payment in advance of need and accelerating payment of invoices*
 - *Firms in receipt of payment in advance of need should take the necessary steps to avoid it serving only to defer potential cashflow stress to a future point where no further payment is due but work on site remains incomplete.*

I do hope that this letter has reassured you that the Scottish Government is taking robust measures to help the construction sector at this difficult time.

Kind regards



KEVIN STEWART

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