



Report on a Survey of Payment Practices and Pre-qualification in Health Sector Construction Procurement in Wales

**Members of the Specialist Engineering
Contractors' (SEC) Group Wales/Cymru**

Association of Plumbing & Heating Contractors
British Constructional Steelwork Association
Building & Engineering Services Association
Electrical Contractors' Association
Lift and Escalator Industry Association

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Introduction

The Specialist Engineering Contractors' (SEC) Group Wales/Cymru represents the largest element of construction (by value) in Wales. Its member organisations – listed on the front of this report – mainly comprise SMEs involved in various aspects of construction engineering from steel fabrication and lift installation and maintenance to mechanical, electrical and plumbing installation and maintenance.

Over the years two issues have given rise to major concerns for these firms – lack of cashflow security and the needless cost associated with wasteful duplication in public sector pre-qualification processes. SEC Group Wales/ Cymru has been working closely with the Welsh Government, Value Wales (the procurement arm of the Welsh Government) and Constructing Excellence Wales to address these issues.

The Finance Minister, Jane Hutt AM, who has ministerial responsibility for public sector procurement, is firmly committed to using procurement as a strategic tool to enhance the commercial well-being of Welsh construction supply chains. This, in turn, promotes growth through investment in technology, jobs and training. Amongst measures introduced there have been the Supplier Qualification and Information Database (SQiD) which aims to standardise the pre-qualification process and, from the beginning of this year, the trialling of project bank accounts on three projects.

This Report, which has been compiled by my colleague Sarah Greatorex BA, MA, MBA, SEC Group Executive Secretary, is in support of the monitoring being carried out by the Welsh Government and Value Wales to assess the impact of measures aimed at improving payment practices and reducing the cost of prequalification.

The survey, upon which this Report is based, covered NHS Trusts in Wales. This Report should be regarded as an addendum to the report we produced in August 2014 on local authorities, police forces and fire services in Wales. Interesting comparisons can be made between these two reports. Responses to the questionnaire were obtained under the Freedom of Information Act.

There are seven Local Health Boards in Wales responsible for delivering healthcare to their respective communities. In addition there are three NHS Trust having an all-Wales focus. This report reflects the responses from all seven Local Health Boards and one NHS Trust – Welsh Ambulance Service NSH Trust. There are references in this Report to the Designed for Life Construction frameworks. From October 2012 all NHS Capital projects valued over £10 million are let under these frameworks.

In our August 2014 Report we made a number of recommendations which we are pursuing with the Welsh Government and Value Wales. We do not repeat those recommendations here but that Report can be downloaded from www.secgroup.org.uk.

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1. Recommendations

Recommendation 1

Value Wales is invited to remind all Health Boards and Trusts of the payment periods (and their commencement) in the Fair Payment Guidance.

Recommendation 2

We invite NHS Wales to issue guidance that sets the standard retention at 5% and advises that supply chain retentions are placed in trust.

Recommendation 3

Given that the NEC 3 contract is mandated for projects let under the Designed for Life frameworks, project managers should be advised by the Welsh Shared Services Partnership that they should not accept sub-contracts with payment periods in excess of 19 days from the payment due dates in the tier 1 contract. This reflects the standard set in the Value Wales Fair Payment Charter and SQuID.

Recommendation 4

We invite NHS Wales/Welsh Shared Services Partnership to advise all health authorities in Wales that SQuID should be used exclusively by all construction procurers and also that tier 1 contractors use it in the selection of their supply chains. Furthermore:

- **Health authorities should be advised that the selection process (up and down the supply chain) should give preference to those contractors which have demonstrated their technical ability through membership of independent or arms-length competence schemes.¹**
- **NHS Wales should maintain a database of pre-qualification data relating to all contractors (including supply chain firms) involved in health sector construction; this is to avoid contractors having to repeatedly input the same data when bidding for different contracts.**

Recommendation 5

We urge NHS Wales/Welsh Shared Services Partnership to organise regular supply chain feedback sessions directed at identifying instances of both good and bad practice. Where bad practice is revealed the matter should be investigated whilst preserving the anonymity of the complainant. Where health sector clients and/or contractors are continually guilty of bad practice consideration should be respectively be given to withdrawing funding for projects and excluding contractors from future work for a certain period.

¹ Many specialist engineering firms in Wales have undergone rigorous checks on their technical proficiencies by independent assessors appointed by their trade associations.

2. Executive Summary

During the course of this year (2014) the Specialist Engineering Contractors' (SEC) Group conducted several extensive surveys of pre-qualification and payment practices in England and Wales in non-central government public bodies. The survey reported on here questioned Welsh health authorities. Responses were received from all the seven Local Health Boards and the Welsh Ambulance Service NHS Trust. A full list of participants in this survey can be found in Appendix 2.

The highlights of the Welsh health sector survey are:

- **Widespread awareness of project bank accounts and intention to use them on health sector projects.**
- **Fifty per cent of health authorities have adopted the SQuID pre-qualification system as promoted by the Welsh Government although we cannot be sure whether it was used with amendment or additional questions.**
- **Eighty-six percent of health authorities responding to the survey have monitoring arrangements in place to track payment performance in the supply chain.**
- **Only one of the respondent authorities is adhering to the payment times in the Fair Payment Guidance published by Value Wales (although all pay their tier 1 contractors within 30 days).**
- **All health authorities deduct cash retentions and they regard this as standard practice. There is concern that a retention of 10% is being deducted which is double the usual percentage that is deducted; that has adverse implications for cashflow in the supply chain.**
- **Only twelve per cent of health authorities regard the cash retention as part of their normal working capital. Most do not draw down funds until they are due to be paid.**

Following the survey SEC Group Wales/Cymru has set out five recommendations which are listed in section 1 of this report.

3. Extent of monitoring by public bodies of tier 1 contractor payments to tier 2 contractors

The Fair Payment Guidance published by Value Wales in November 2012 stipulates the payment periods for public sector construction.

Level of Contractor	Payment Period	Commencement of Payment Period
Tier 1	14 calendar days	Due dates in the contract with the contracting authority
Tier 2	19 calendar days	As above
Tier 3	23 calendar days	As above

The Guidance advised that the supply chain is made aware of the main contract payment dates and adds:

*“Construction procurers in Welsh Government departments, local authorities and **other relevant bodies in Wales**, need to ensure that their contracts with suppliers include the payment provisions outlined in [the above table].”* (emphasis added)

These requirements are incorporated in standard clauses published with the Guidance:

“Public sector clients will be responsible for monitoring application of the standard contract clauses by requesting regular reports as appropriate from the relevant main contractor.”

From the end of 2013 the Supplier Qualification Information Database (SQuID) also required that tier 1 contractors commit to paying their supply chains within 19 days (unless a project bank account was intended to be put in place).

The results of the survey suggest that progress has been made by the health sector monitoring tier 1 contractor payment performance. It is significant that 86% of the health authorities monitor what is happening to payments down the supply chain. Only 56% of the other public body respondents in our main Welsh survey reported that they did this.

The health authorities have various methods of checking. The majority of those responding reported that over the last eight years monitoring has been carried out under the Designed for Life Building for Wales frameworks. These frameworks require integrated supply chains and collaboration. They have had no adverse comments from sub-contractors. A minority follows up on payment performance in monthly project meetings. Some state that they

comply with the Housing Grants, Construction and Regeneration Act. It's not clear how such compliance at Tier 1 contractor level necessarily ensures good practice at tier 2 level.

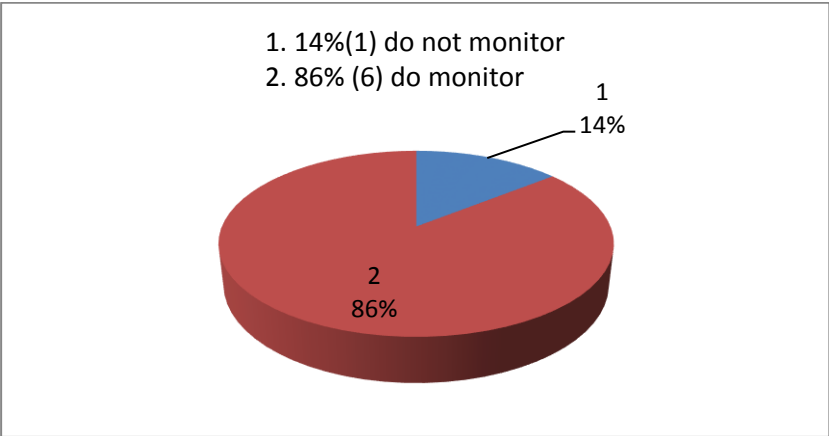


Fig. 1: Proportion of health authorities which monitor payment

4. Steps taken to ensure payment down the supply chain in the absence of regular monitoring

The Welsh Ambulance Services Trust does not monitor payment at all. All the Boards take very seriously their responsibilities towards the supply chain

“All Supply Chain Partners to the Designed for Life Building for Wales second generation frameworks have signed a Fair Payment Charter as part of the Official Journal of the European Union (OJEU) qualification process. At Call-Off agreement stage the Fair Payment Charter is re-signed as a Pass/Fail qualification. The Fair Payment Charter has been produced by Construction Procurement Steering Group, of which the Specialist Engineering Contractors’ (SEC) Group Wales is a member.”

Hywel Dda University Health Board

5. Average time taken to discharge payment to tier 1 contractors

The table below sets out the average times taken by each respondent to the survey to pay their tier 1 contractors.

Health Authority	Days
Hywel Dda	7
Abertawe	28
Powys	30
Cardiff	30
Betsi Cadwaladr	30
Welsh Ambulance Services	30
Aneurin Bevan	30

Fig 2: Number of days taken to pay the tier 1 contractor

In Wales, as in the main survey, the majority of health authorities pay within the statutory 30 days (see fig. 2 above).² However only one of the authorities which responded are paying their tier 1 contractors within 14 days or less in accordance with the Value Wales Fair Payment Guidance. The longer that public bodies take to pay, the longer that tier 1 contractors will take to pay tier 2 contractors and so on down the supply chain. It seems that most authorities believe it to be sufficient if they pay within the statutory 30 days.

“Of the 45 entries on the last form (Feb to July 2014) the average time taken to process payments is 3.27 days, some were processed the same day. The longest time taken was 15 days.

Major Capital Works

The time taken to process these payments is usually within one week of receipt of paperwork and the contractors are paid during that week if it falls within the University Health Board's (UHB's) weekly payment cycle or they are paid in the second week if submitted to finance out of the weekly cycle.

Hywel Dda University Health Board

Recommendation 1

Value Wales is invited to remind all Health Boards and Trusts of the payment periods (and their commencement) in the Fair Payment Guidance.

² Late Payment of Commercial Debts Regulations 2013.

6. Extent of use of cash retentions in works contracts

The practice of applying a cash retention in Welsh health authorities is even more prevalent than in England, and than in other public bodies in Wales; all the Trusts which responded deduct a cash retention, and the standard amount is 10%.

The “Designed for Life, Building for Wales 1”. All Wales construction frameworks utilise the New Engineering Contract (NEC) 3 Engineering and Construction Contract (ECC) Option C form of the contract as amended by the framework. In constructing the framework careful consideration was given to the application of retention and the requirements state under the mandated use of X16 that:

- ***The retention free amount is 85% of the prices (as varied from time to time in accordance with this contract) in respect of Stage 4. The retention percentage is 10%.***
- ***Half of this limited retention is released upon completion.***
- ***Half of this limited retention is released upon Defects Correction Period. The Defects Correction Period is one year.***

In identifying the contractual requirements of the second generation “Designed for Life, Building for Wales” all Wales frameworks, contracting organisations were consulted on the above and no adverse comments were received. The above has therefore continued to be utilised on the second generation frameworks.

Betsi Cadwaladr University Health Board

Given that the Designed for Life frameworks are aimed at establishing trust and, thereby, promoting a more collaborative approach to construction procurement and delivery, the deduction of retentions appear to be the antithesis of this objective.

In our August 2014 Report we stated that £30 million of cash retentions will be outstanding at any one time on Welsh public sector construction. The bulk of these monies will have been provided by small firms in the supply chain. Moreover they are always at risk because of the possible insolvency of the tier 1 contractor but, on public sector projects, the tier 1 contractor is not faced with such risk.

It is imperative that supply chain retentions are protected. In many other jurisdictions there exists legislation to protect retention monies. For example, in the majority of the States in the United States, legislation exists to limit the time over which retentions are held or to require, for example, that retentions are kept in trust.

A requirement that retentions are placed in trust or that tier 1 contractors provide a bank guarantee to ensure that the monies will be released to the supply chain should be a pre-qualifying requirement.

Moreover we are concerned that the standard retention of 10% is double that for the rest of public sector construction in Wales. On many large projects the retention is only 3%. Whilst half of the 10% retention will be released on the expiry of the “*Defects Correction Period*” there is no guarantee that there will be such timely release down the supply chain.

Recommendation 2

We invite NHS Wales to issue guidance that sets the standard retention at 5% and advises that supply chain retentions are placed in trust.

7. The use made of cash retentions while held by public bodies

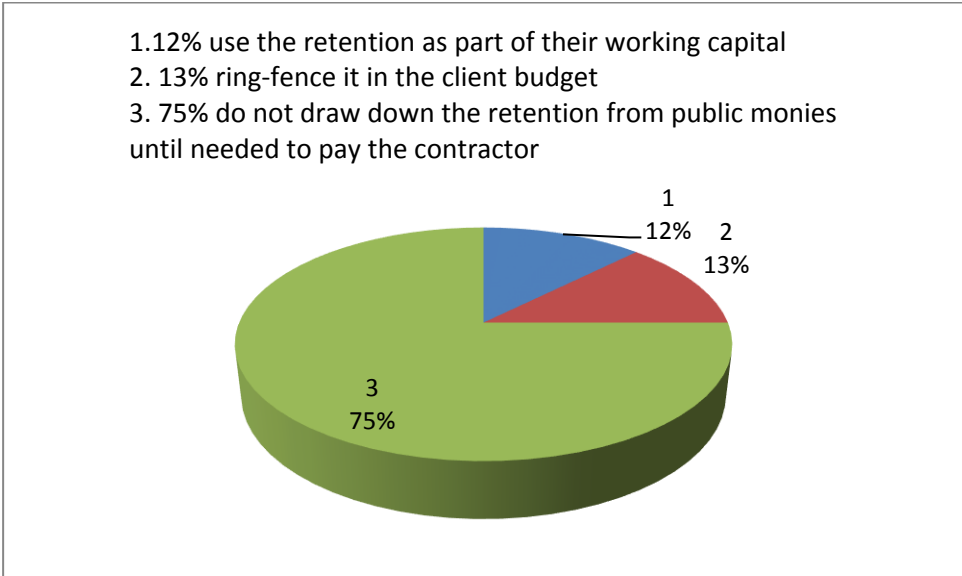


Fig. 3: Uses made of cash retentions

Although more health authorities deduct retentions than is the case with other public bodies in England and Wales, they state that they are following standard procedure as advised in official guidance and do not draw down the money or use it for any other purpose.

8. Use of project bank accounts

The development and use of project bank accounts (PBAs) in Wales, with the support of the Welsh Government, can be seen to be the way ahead for ensuring that cashflow is secure for SMEs. For public bodies PBAs provide greater transparency over the project process and remove the need for detailed oversight of payment performance along the supply chain.

The Welsh health authorities show remarkable awareness of and expectation of adopting PBAs, more so than either the other public bodies in Wales, or those in England and Wales in general. Sixty-two per cent of Welsh health authorities are monitoring the three current pilot projects with a view to adopting them in the near future.

“In collaboration with the (SEC) Group Wales and through the Construction Procurement Steering Group, NHS Wales Shared Services Partnership – Facilities Services (NWSSP-FS) is monitoring the three early pilot projects in Wales that have agreed to adopt Project Bank Accounts (PBAs). Following these pilots, we will review the lessons learned from these experiences and then work with the Construction Procurement Steering Group to consider how this approach may be adopted within NHS Wales.”

Hywel Dda University Health Board

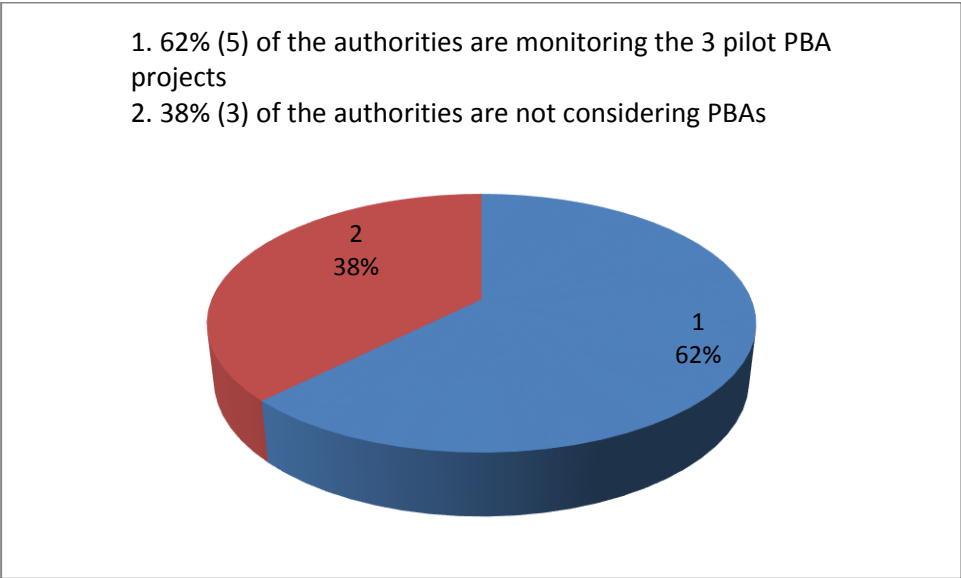


Fig. 4: Use of PBAs in Welsh health authorities

9. Plans to improve payment performance

It is clear that health authorities in Wales are putting much thought into ways of enhancing payment security in the supply chain. All but one of the authorities questioned are taking further action to ensure that there are better payment controls along the supply chain. The use of SQuID, which addresses payment in the supply contract, ensures that sub-contractors are looked after in terms of payment. Some follow the Fair Payment Charter but most are considering PBAs and all are constantly reviewing their procedures in an attempt to reduce payment times.

10. General commentary on the responses to the payment questions

It is encouraging that there is currently much deliberation amongst Welsh health authorities on how best to improve cashflow along the supply chain. We consider that much of this is due to the interventionist approach adopted by the Welsh Government and Value Wales. Even if they have not yet taken any action most of those questioned are currently reviewing their practices. In some cases the contracts are audited regularly to ensure that both main contractors and sub-contractors are paid regularly. The fair payment clauses provided by the Welsh Government are in some cases incorporated into contracts.

Recommendation 3

Given that the NEC 3 contract is mandated for projects let under the Designed for Life frameworks, project managers should be advised by the Welsh Shared Services Partnership that they should not accept sub-contracts with payment periods in excess of 19 days from the payment due dates in the tier 1 contract. This reflects the standard set in the Value Wales Fair Payment Charter and SQuID.

11. Standardising the pre-qualification process

The standard pre-qualification route in Wales is through SQuID published by Value Wales. More than 50% of health authorities are committed to using the SQuID pre-qualification questionnaire. We do not know whether this is being used unamended. Applying SQuID as the standard approach to supplier selection in Wales was a key objective in the Procurement Policy Statement launched by the Finance Minister in December 2012.

Recommendation 4

We invite NHS Wales/Welsh Shared Services Partnership to advise all health authorities in Wales that SQulD should be used exclusively by all construction procurers and also that tier 1 contractors use it in the selection of their supply chains. Furthermore:

- **Health authorities should be advised that the selection process (up and down the supply chain) should give preference to those contractors which have demonstrated their technical ability through membership of independent or arms-length competence schemes.³**
- **NHS Wales should maintain a database of pre-qualification data relating to all contractors (including supply chain firms) involved in health sector construction; this is to avoid contractors having to repeatedly input the same data when bidding for different contracts.**

12. Conclusion

It can be seen that procurement in the Welsh health sector follows a pattern similar to that found in other public bodies in Wales. However, health boards appear to be more proactive (mainly through the Designed for Life frameworks) in auditing payment performance in the supply chain. A major concern, however, relates to the large retention percentage which is deducted and the impact of this in the supply chain.

The Welsh Government's announcement earlier in 2014 that it intends piloting PBAs on three school projects appears to have encouraged health sector clients in Wales to take up this option. SEC Group Wales has been actively involved in this process and committed to working with the Welsh Government and other public bodies in Wales (such as NHS Wales and the Welsh Shared Services Partnership) in adopting forward-thinking practices that support SMEs in Welsh construction.

Within construction there exists a general climate of fear which prevents supply chain firms from complaining about bad practice. For supply chain firms in health sector construction there is no obvious contact point for feedback.

³ Many specialist engineering firms in Wales have undergone rigorous checks on their technical proficiencies by independent assessors appointed by their trade associations.

Recommendation 5

We urge NHS Wales/Welsh Shared Services Partnership to organise regular supply chain feedback sessions directed at identifying instances of both good and bad practice. Where bad practice is revealed the matter should be investigated whilst preserving the anonymity of the complainant. Where health sector clients and/or contractors are continually guilty of bad practice consideration should be respectively be given to withdrawing funding for projects and excluding contractors from future work for a certain period.

Appendix 1: Freedom of Information Act questionnaire



REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

PARTY MAKING THE REQUEST:	Sarah Greatorex Executive Secretary Specialist Engineering Contractors' Group 34 Palace Court London W2 4JG Tel: 020 7 313 4819
EMAIL FOR RECEIPT OF RESPONSE:	contact@secgroup.org.uk or sarah.greatorex@eca.co.uk
DATE OF REQUEST:	
THE REQUESTED INFORMATION: [Please note that the information requested relates to your construction procurement activities over the past 12 months.]	
1. What monitoring and reporting do you have in place to check whether your main contractors are paying their sub-contractors within 30 days?	
2. If your response to Q1 is in the negative what other steps does your organisation take to ensure fair payment is applied along construction supply chains?	
3. Please provide information showing the average time taken by your organisation to discharge payments to your direct or main contractors?	
4. Do you apply a cash retention in your works contracts?	
5. If you apply a cash retention what use do you make of the cash whilst it's in your possession?	
6. Have you or are you about to put in place project bank accounts on your construction projects?	
7. Please provide information about any plans which your organisation has for improving payment performance along the supply chain [e.g. making payments to sub-contractors within 30 days (of the main contract due payment dates) a pre-qualification requirement for lead contractors].	
8. Has your organisation been using PAS 91 as the pre-qualification standard to be the exclusion of other pre-qualification requirements?	
9. If you are not currently using PAS 91 as the exclusive route to pre-qualification does your organisation have plans to use PAS 91 (exclusively) in the future?	
THANK YOU FOR HELPING WITH THIS FREEDOM OF INFORMATION ACT REQUEST.	

Appendix 2: List of respondent public bodies

Hywel Dda University Health Board
Powys Teaching Health Board
Cardiff Vale University Health Board
Betsi Cadwaladr University Health Board
Welsh Ambulance Services NHS Trust
Aneurin Bevan University Health Board
Cwm Taf University Health Board
Abertawe Bro Morgannwg University Health Board