



# **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](http://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.<sup>1</sup>**
- **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.**

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<sup>1</sup> 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:

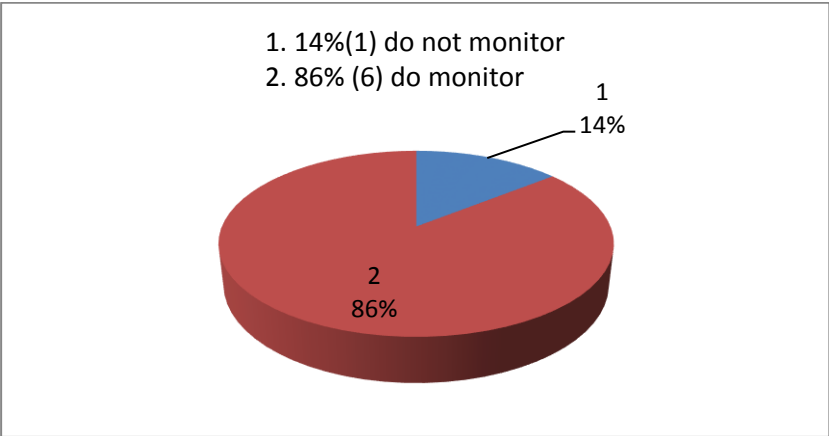
*“Public sector clients will be responsible for monitoring application of the standard contract clauses by requesting regular reports as appropriate from the relevant main contractor.”*

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).<sup>2</sup> 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.**

<sup>2</sup> 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.**

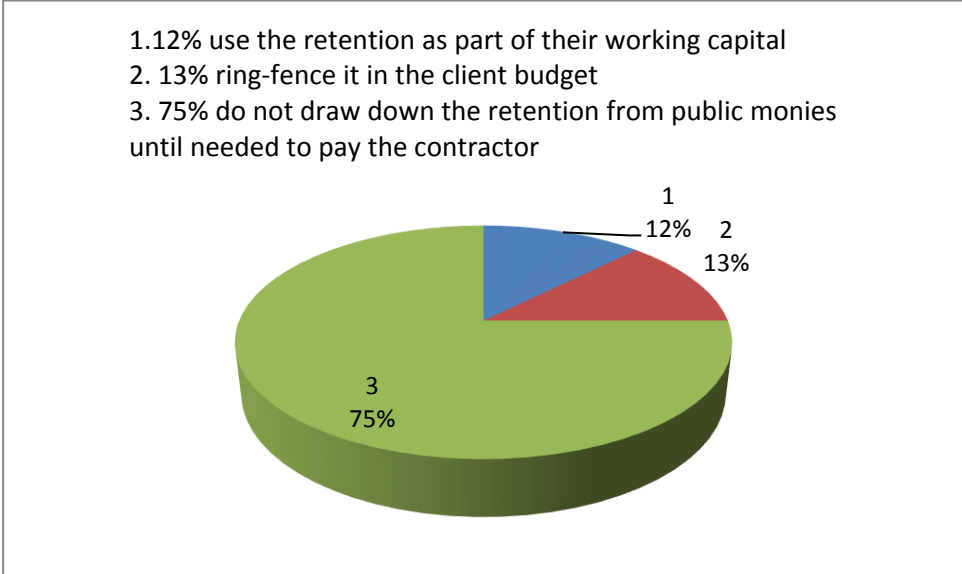
A requirement that retentions are placed in trust or that tier 1 contractors provide a bank guarantee to ensure that the monies will be released to the supply chain should be a pre-qualifying requirement.

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.

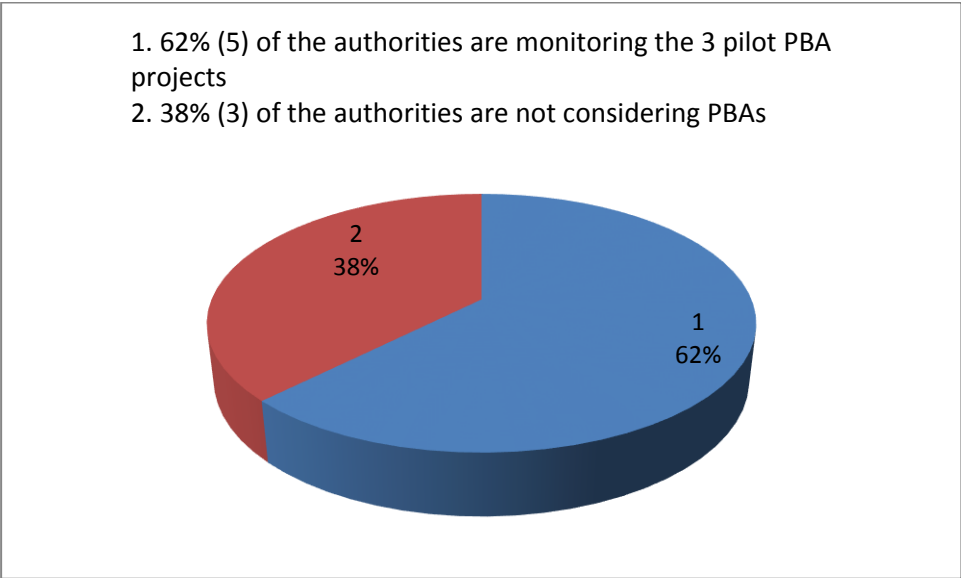
## 8. Use of project bank accounts

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.<sup>3</sup>**
- **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.

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<sup>3</sup> 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:	<a href="mailto:contact@secgroup.org.uk">contact@secgroup.org.uk</a> 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?	
<b>THANK YOU FOR HELPING WITH THIS FREEDOM OF INFORMATION ACT REQUEST.</b>	



## 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 <a href="#">Services</a> NHS Trust
Aneurin Bevan University Health Board
Cwm Taf University Health Board
Abertawe Bro Morgannwg University Health Board



# Report on a Survey

## of Payment Practices and Prequalification in Public Sector Construction in **Wales**

*The members of  
the SEC Group  
Wales/Cymru  
are:*

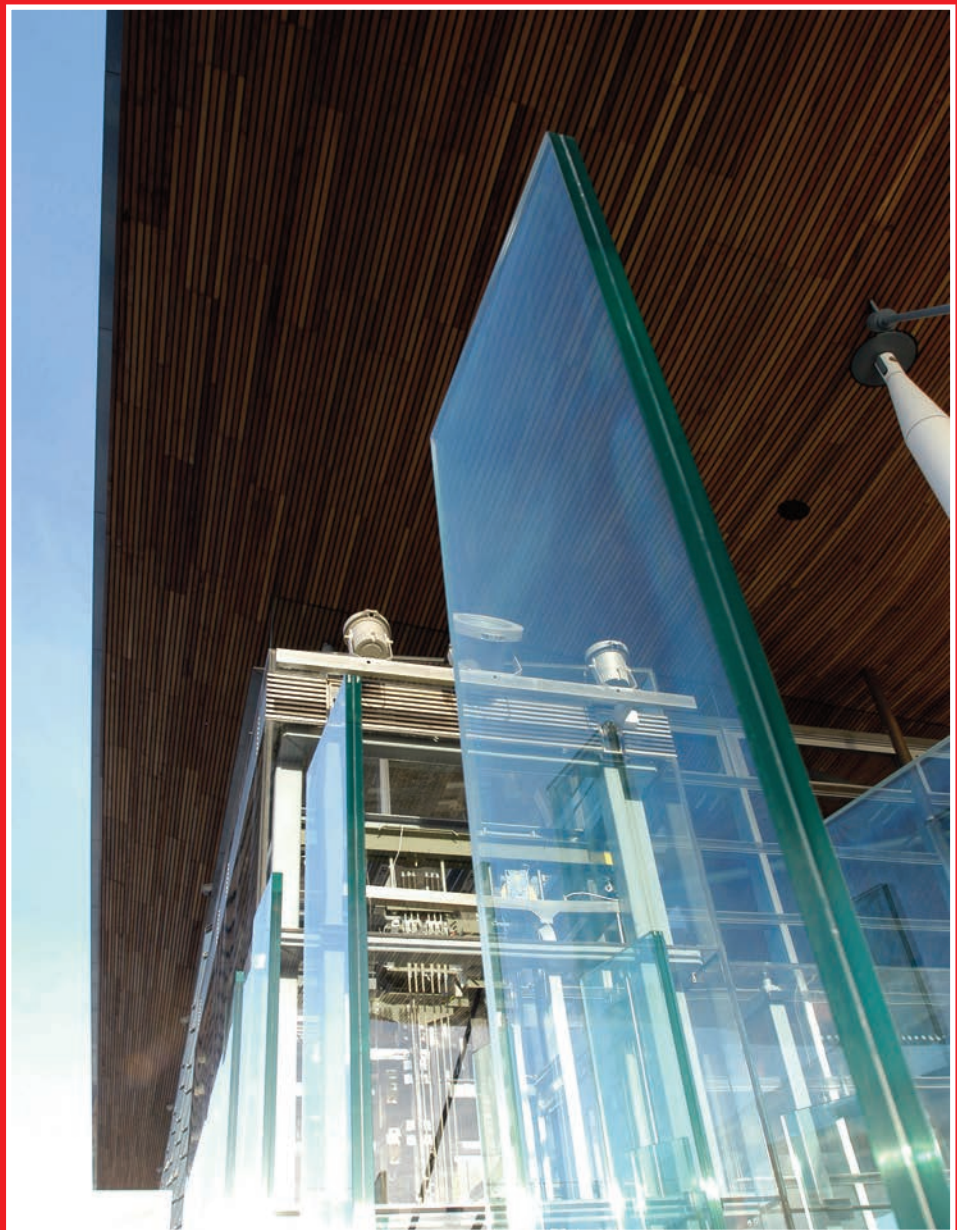
Association of  
Plumbing and  
Heating  
Contractors  
(APHC)

British  
Constructional  
Steelwork  
Association  
(BCSA)

Building &  
Engineering  
Services  
Association  
(B&ES)

Electrical  
Contractors'  
Association  
(ECA)

Lift & Escalator  
Industry  
Association  
(LEIA)



*August 2014*

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## Introduction

# Report on a Survey of **Payment Practices** and **Prequalification in Public Sector** Construction in **Wales**

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 prequalification 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 have been the Supplier Qualification and Information Database (SQuID) which aims to standardise the prequalification process and, from the beginning of this year, the trialling of project bank accounts on three schools 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 local authorities, police and fire services in England and Wales, and NHS Trusts in England. The Welsh responses have been extracted for this Report but interesting comparisons are made with responses from the English authorities. Responses to the questionnaire were obtained under the Freedom of Information Act since an initial voluntary survey failed to elicit sufficient responses.

Almost a quarter of the £4.3 billion annual spend of the Welsh public sector comprises construction and construction-related activities. In Wales there are approximately 100 public bodies, but not all procure construction. This Report reflects the responses from 16 authorities which do have significant annual construction spends.

In analysing the responses we have drawn up a number of recommendations that are listed at the beginning of this Report. We intend to pursue these with colleagues in the Welsh Government, Value Wales and in the Construction Procurement Strategy Steering Group.

I would like to take this opportunity to express my thanks for all the help and support received from the Minister of Finance, Nick Sullivan and his team at Value Wales and Milica Kitson, CEO of Constructing Excellence Wales.

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## Executive summary

During the course of this year (2014) the Specialist Engineering Contractors' (SEC) Group conducted an extensive survey of prequalification and payment practices in England and Wales in non-central government public bodies. The questionnaire is attached as Appendix 1. These included local authorities, NHS Trusts, and Police and Fire authorities. That survey is reported on separately.

Since the responses to the survey in Wales were different from those in England, it was considered useful to analyse the Welsh responses separately. It was found that overall there is more interest in project bank accounts in Wales, and that most authorities are using the SQuID system as a basis for their procurements. This may well reflect the Welsh Government's commitment to improving procurement practices and promoting the use of project bank accounts. Most of the responses came from local authorities. NHS Trusts in Wales have not yet been approached. A full list of Welsh participants in the survey can be found in Appendix 2.

### The highlights of the Welsh survey are:

- *Widespread awareness of project bank accounts and their increasing use in public projects*
- *Widespread adoption of the SQuID pre-qualification system as promoted by the Welsh Government*
- *Fifty-six percent of the Welsh public sector bodies responding to the survey have monitoring arrangements in place to track payment performance in the supply chain*
- *Only one third of the respondent public bodies are adhering to the payment times in the Fair Payment Guidance published by Value Wales (although all pay their tier 1 contractors within 30 days)*
- *With the exception of 2 authorities all authorities deduct cash retentions which are primarily funded by small firms (with approximately £30 million being held at any one time)*
- *The overwhelming majority of respondents use cash retentions to finance their other activities and, in two cases, invest the monies*



has invited the Welsh Government and Value Wales to consider a number of recommendations including:

- **Setting targets for introducing project bank accounts across Welsh public sector construction**
- **Introducing legislation to protect cash retentions from payer insolvency**
- **Introducing targets for mandating the use of SQuID, the pre-qualification system**
- **Setting up an office of Procurement Ombudsman to deal with poor procurement and payment practices**

# Recommendations

## Payment

1. We invite the Welsh Government to seek an explanation from those public bodies which are not monitoring tier 1 supplier payment practices or not taking steps to ensure payments are being made along the supply chain (public bodies which did not respond to the survey should also be asked to indicate the steps taken to promote fair payment along the supply chain).
2. We invite Value Wales to remind public bodies that SQuID pre-qualification requires acceptance of either PBAs (if used) or acceptance that tier 2 suppliers be paid within 19 days of the main contract due payment dates (this should also be cascaded down into sub-sub-contracts so that tier 3 suppliers are paid within 23 days of the main contract due dates).
3. It is suggested that the Construction Procurement Strategy Steering Group and Value Wales agree targets for progressing the use of project bank accounts throughout Welsh public sector construction.
4. We invite the Welsh Government to support transposition into regulation of the option in the revised EU Public Procurement Directives for direct payments to the supply chain in the event of non-payment by tier 1 suppliers.
5. Given the risk to the supply chain of losing cash retentions on the insolvency of a tier 1 supplier (which risk does not exist for tier 1 suppliers) we urge the Welsh Government and Value Wales as a matter of priority, to:
  - a) amend SQuID to require that tier 1 suppliers protect cash retentions by issuing a bank guarantee or placing them in trust; and
  - b) introduce legislation (as exists in many other jurisdictions) to protect retention monies.

## Prequalification

6. We invite Value Wales to set phased targets for mandating the use of SQuID (without amendment or additions unless there are demonstrable overriding reasons for so doing) throughout Welsh public sector construction so that it becomes the exclusive prequalification route up and down the supply chain.
7. We invite Value Wales to make available guidance to public bodies on the actions those bodies can take against those suppliers failing to comply with the SQuID requirements
8. In order to avoid unnecessary time and cost incurred by firms in having to repeat or replicate the information required for prequalification purposes, we propose that Value Wales should hold one database for all such information.
9. To ensure high standards of technical proficiency and competency we suggest that Value Wales encourages all public bodies in Wales to select only firms which have demonstrated their technical proficiency through independent vetting by trade association or similar schemes (this must apply up and down the supply chain).

## Dealing with poor practice

10. We urge the Welsh Government to give consideration to setting up an office of Procurement Ombudsman similar to the Canadian model.

## Extent of monitoring 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 advises 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].”**

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

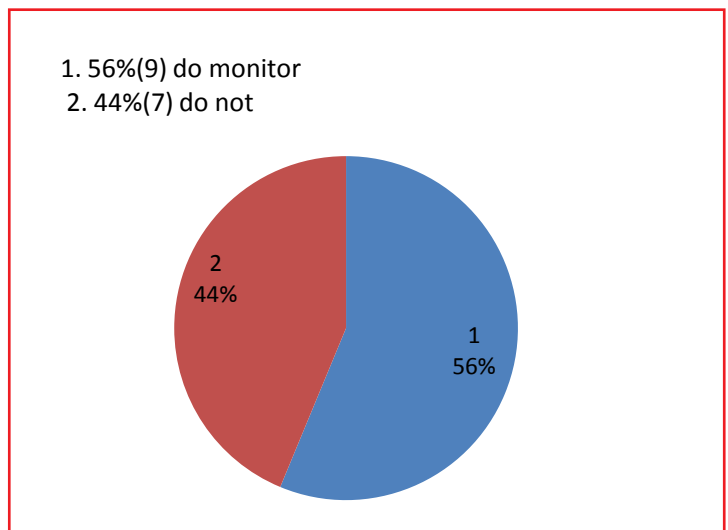
**“Public sector clients will be responsible for monitoring application of the standard contract clauses by requesting regular reports as appropriate from the relevant main contractor.”**

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

The results of the survey suggest that progress has been made by public bodies in monitoring tier 1 contractor payment performance. Despite the fact that the Welsh sample is much smaller than that for the whole of England and Wales, it is significant that more than half of the Welsh respondents monitor what is happening to payments down the supply chain; whereas only a quarter of those in the larger combined survey reported that they did this.

Welsh public bodies have various methods of checking. For at least half of those who do monitor, it is a requirement of the prequalification process that payments will be monitored. The other half requires compliance with the Fair Payment Charter, or payment performance is followed up in monthly project meetings. It is assumed that the reference to the Fair Payment Charter is to the Charter published by the (then) Office of Government Commerce in 2007.

**Fig. 1: Proportion of public bodies which monitor payment**



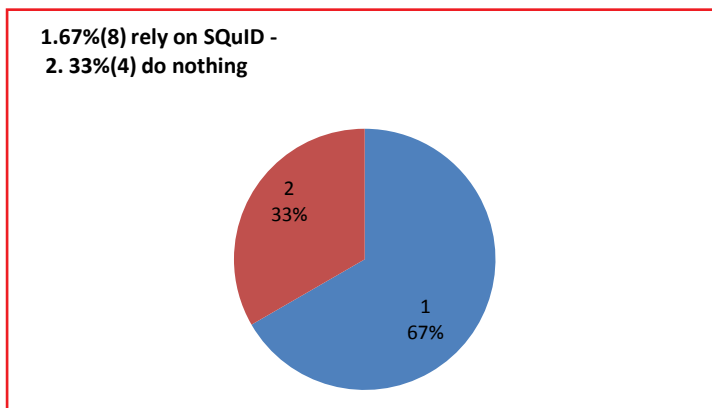
## Other steps taken to ensure payment down the supply chain in the absence of regular monitoring

In the absence of regular monitoring, most public bodies rely upon their Tier 1 contractors complying with the payment commitments in SQuID.

There is clearly further progress to be made.

The public bodies which do not monitor payment performance at all are listed below.

Mid and West Wales Fire and Rescue  
 North Wales Police  
 Vale of Glamorgan Council  
 Ceredigion Council  
 Merthyr Tydfil Council  
 Neath and Port Talbot Council  
 Wrexham Council



**Fig. 2: Reliance on SQuID**

### The bodies in this list responded as follows:

<b>Ceredigion</b>	A Prompt Payment Certificate is requested at the time of tender and this is incorporated into the contract. The Council also uses the Welsh Government Supplier Qualification Information Database (SQuID) standardised pre-qualification questionnaire, and this has selection questions relating to the prompt payment of sub-contractors.
<b>Merthyr Tydfil</b>	Currently we do not include fair payment as a requirement in our construction procurement processes, however, we intend to do so in the future.
<b>Neath and Port Talbot</b>	We have no plans to ensure fair payment is applied along construction supply chains.
<b>Wrexham</b>	No other measures in place.
<b>North Wales Police</b>	Ensure contractors are reminded of their obligations to pay their subcontractors in a timely manner during pre-contract and site meetings, but no formal contractual conditions are imposed.
<b>Mid and West Wales Fire and Rescue</b>	Ad hoc intervention when required
<b>Vale of Glamorgan</b>	We are currently looking to include within our contracts the requirement for contractors to report all sub-contract payment terms to us. Also all contracts let under the SEWSCAP framework have this requirement as a KPI. (Vale of Glamorgan Council may also introduce project bank accounts).

It is interesting that Ceredigion County Council refers to the requirements in SQuID.

**Further research may be necessary to establish the actions taken by public bodies where there is non-compliance by Tier 1 contractors with the SQuID requirements. Perhaps there should be a standardised approach through guidance from Value Wales.**

Public bodies could make direct payments to sub-contractors in the event of non-payment by a tier 1 contractor. Such option is available to be taken up by member states following revisions to the EU Public Procurement Directives. However, the option must first be transposed into regulation.



## Average time taken to discharge payment to main contractor

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

DAYS	PUBLIC BODY	DAYS	PUBLIC BODY
10	Pembrokeshire	30	Ceredigion
14	Gwynedd	30	Neath & Port Talbot
14	Merthyr Tydfil	30	Swansea
14	South Wales Police	30	Wrexham
15	Denbighshire	30	South Wales Fire & Rescue
21	North Wales Police	30	Mid & West Wales Fire and Rescue
21	Glamorgan	30	Monmouth
30	Cardiff	30	Bridgend

**Fig. 3: Number of days taken to pay main/direct contractors**

In Wales, as in the main survey, the majority of organisations pay within 30 days (see fig 3. above). However only five of the public bodies 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 many public bodies believe it to be sufficient if they pay within 30 days in compliance with the Late Payment of Commercial Debts Regulations 2013.

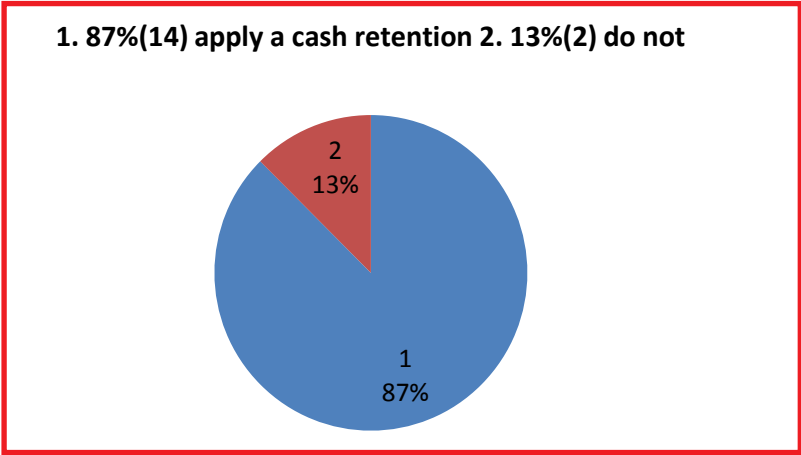
**Value Wales may consider it necessary to remind procuring authorities of the payment periods in the Fair Payment Guidance and the commencement of such periods.**

**“Mid and West Wales Fire and Rescue Service** pay 71% of invoices within 10 days”

**“South Wales Police** pay direct or main contractors in accordance with statutory requirements, which currently stand at 14 days”

**“In the last 12 months Gwynedd** has paid 82% of its invoices within 14 days.”

# Extent of use of cash retentions in works contracts



**Fig. 4: Those who apply a cash retention**

The extent of the practice of applying a cash retention in Wales is very similar to that in England; the average amount retained is 5%. However the fact that the overwhelming majority of public bodies in Wales still deduct cash retentions is disappointing given progress elsewhere in improving cashflow. Moreover deduction of retention monies signifies a lack of trust which undermines collaborative working.

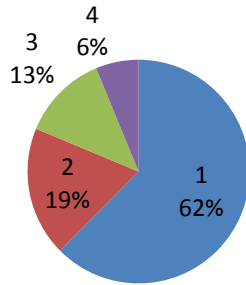
Approximately £30 million of cash retentions will be outstanding at any one time on Welsh public sector construction. The bulk of these monies will have been provided by small firms in the supply chain. Moreover the monies are always at risk because of the possible insolvency of the tier 1 contractor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

**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.**



## Use made of cash retentions while held by public bodies

- 1.62%(10) leave it in general funds
- 2.19%(3) keep it in the client budget
- 3.13% (2) invest
- 4. 6%(1) deduct a notional amount from payment to contractor



**Fig.5: Uses made of cash retentions**

The cash retention is generally retained in cash balances until it is due for release to the lead contractor. Until then it is – presumably – used to fund other activities. Less than a fifth of public bodies keep it in a ring-fenced account (i.e. in the client budget). One authority, Denbighshire County Council, states that it deducts notional amounts from contractor payments rather than a retention; this appears to be a retention by another name. Of some concern is that two authorities (Monmouthshire County Council and South Wales Fire and Rescue Service) appear to use the cash for investment purposes. This is unlikely to be greeted with acclaim by small firms which fund most of the retention.



*“The construction sector in Wales is largely dominated by small to medium enterprises (SMEs), many of whom play critical roles through the supply chain in delivering our public sector contracts. Access to finance and cashflow are vital to smaller sub-contractors and it is only fair that they receive prompt payment in accordance with contract performance.”*

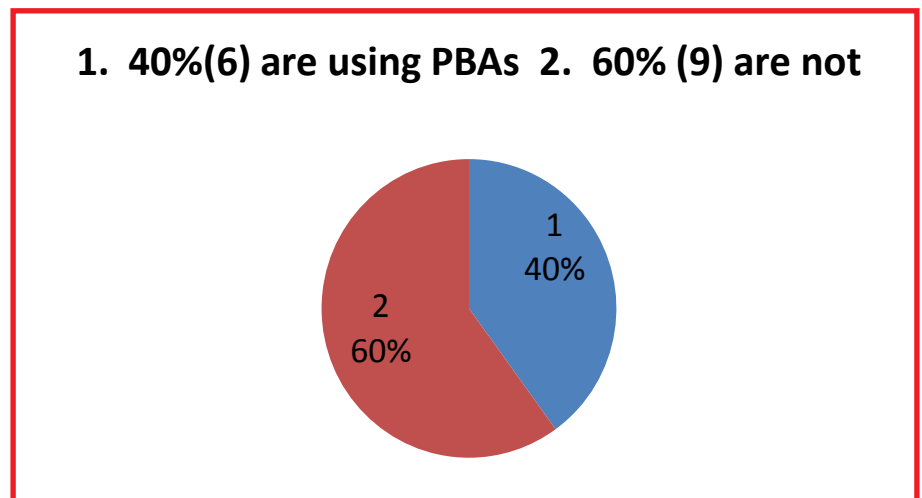
**Jane Hutt**, Minister for Finance when announcing on 14 January 2014 the three projects that were to pilot project bank accounts.

## 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 England and Wales in general. To date PBAs are the most effective method of ensuring that there is both regular cashflow and that due payments are protected against upstream insolvencies. For public bodies PBAs provide greater transparency over the payment process and remove the need for detailed oversight of payment performance along the supply chain.

Whereas 40% of the bodies questioned are aware of and are actually pursuing PBAs as a goal, a mere 8% overall in the whole of England and Wales are doing this. Many respondents from Wales indicated that they feel under pressure from the Welsh government to adopt PBAs. Those who are not yet using them are aware of them, but often feel that their projects may be too small to warrant the use of a PBA. Guidance on PBAs recently published by Value Wales indicates that often the duration of a project is more relevant to the decision whether or not to have a PBA rather than size of project; for a project of very short duration a PBA is unlikely to be necessary.

**Figure 6: Use of PBAs in Wales**



*“**North Wales Police** do not currently have Project Bank Accounts in place, although the Welsh Government are piloting project bank accounts from March 2014 for public sector projects over £1 million in value and over 4 months in duration.”*

*“**Vale of Glamorgan** have looked at project bank accounts and staff have been training. Three projects are being run as pilots through SEWSCAP framework and guidance will then be drafted on their use in Wales.”*

*“Preparations underway to implement project bank accounts in accordance with the recommendations of Welsh Construction Strategy (**Monmouthshire**).”*

## General commentary on the responses to the payment questions

It is encouraging that there is currently much deliberation amongst Welsh public bodies 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. The use of SQuID, which addresses payment in the supply chain, helps ensure that subcontractors' cashflow is improved.

In some cases the contracts are audited regularly to ensure that both main contractors and subcontractors are paid regularly. The fair payment clauses provided by the Welsh Government are in a number of cases incorporated into contracts. **It is not clear whether or to what extent public bodies are prepared to take action against firms guilty of poor payment practices.**



## Standardising the prequalification process

In England and Wales in general we noted a gradual trend towards adopting PAS 91 or a modified version of it within the next few years. Many authorities have used PAS 91 as a basis for their own prequalification questionnaire.

None of the 15 Welsh respondents to the pre-qualification questions have any plans to use PAS 91 as they are almost all committed to the Welsh Government's SQulD prequalification questionnaire. Two of the 15 (Vale of Glamorgan, Mid and West Wales Fire and Rescue Service) reported that they use Constructionline. Applying SQulD as the standard approach to supplier qualification in Wales was a key objective in the Procurement Policy Statement launched by the Finance Minister in December 2012.

An oft-repeated complaint from small firms in Wales is that they are often required to input the same information many times over. To avoid this, it is suggested that the relevant data is held by Value Wales to be accessed by public bodies at pre-qualifying stage for each procurement.

Firms in membership of the SEC Group member associations in Wales will have undergone rigorous independent checks on their technical proficiencies and competencies. It is suggested that Value Wales encourages all public bodies to insist on the use of such firms up and down the supply chain.

## Conclusion

It can be seen that procurement in Wales is in a better place than that for England and Wales as a whole. The Welsh Government has been extremely pro-active in improving the payment culture in Wales and in reducing waste and duplication in the prequalification process through promoting the use of SQulD. The Welsh Government's announcement earlier in 2014 that it intends piloting PBAs on three schools projects appears to have encouraged public sector clients in Wales to take up this option. SEC Group Wales has been actively involved in this process and remains committed to working with the Welsh Government, Value Wales and Constructing Excellence in Wales in adopting forward-thinking practices that support SMEs in Welsh construction.

Within construction there exists a general climate of fear which prevents firms from complaining about bad practice. Currently complaints can be directed to Value Wales but we are not aware of any firm which has heard of this facility. Even so firms would be reluctant to use this because of their overriding need to preserve their anonymity. Inevitably, the investigation of complaints is likely to require that the complainant be identified at some point.

We believe that there is a case for the creation of a Procurement Ombudsman. In March 2012 the Institute for Competition and Procurement Studies at Bangor University submitted a paper to the Welsh Government which referred to the role of the Canadian Procurement Ombudsman. This role is a pro-active one. The Ombudsman promotes fairness, transparency and openness in public sector procurement through, amongst other things, publishing guidance, reviewing procedures and monitoring procurement practices. The Scottish Government is currently giving consideration to this option. The Welsh Government could decide to get there first.

But further work needs to be done if we are to significantly reduce the incidence of poor practice and, thus, achieve a more cost effective and collaborative delivery process. We encapsulate this in our recommendations at the beginning of this Report but, as a matter of priority, we suggest that consideration is given to how we can best protect supply chain retentions and how we can deal with those – whether public bodies or firms supplying to the public sector – who perpetuate bad practice.

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 that retentions are kept in trust.

# Appendix 1: FOI questionnaire



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:

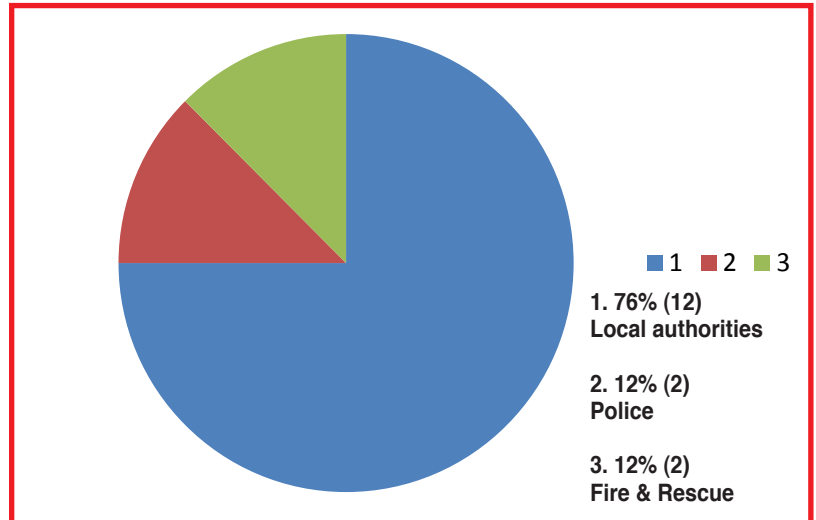
[Please note that the information requested relates to your construction procurement activities over the past 12 months.]

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 bodies

Bridgend Council  
Cardiff Council  
Ceredigion Council  
Denbighshire Council  
Gwynedd Council  
Merthyr Tydfil Council  
Mid and West Wales Fire and Rescue  
Monmouthshire Council  
Neath and Port Talbot Council  
North Wales Police  
Pembrokeshire County Council  
South Wales Fire and Rescue Service  
South Wales Police  
Swansea Council  
Vale of Glamorgan Council  
Wrexham County Borough Council



**Andrew Marchant**

*National Executive Officer*

**Specialist Engineering Contractors' Group, Wales/Cymru**

Garden House', Tyle House Close, Llanmaes, Vale of Glamorgan, CF61 2XZ

Tel: 01446 790159 Mobile: 07795 394499

Email: [andrew.marchant@b-es.org](mailto:andrew.marchant@b-es.org)

[www.secgroup.org.uk](http://www.secgroup.org.uk)





# **Follow-up survey of Welsh local authorities' procurement practices**

The Specialist Engineering Contractors' (SEC) Group Wales/Cymru represents the largest element of construction (by value) in Wales. Its member organisations are:

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

## 1. Introduction

This short report is based upon a survey of local authorities in Wales that was carried out in the first quarter of 2016. The local authorities which responded are listed at Annex 1. The survey was conducted using the Freedom of Information Act (the questions are listed at Annex 2).

This survey builds on a previous survey carried out two years ago. The results of the earlier survey were included in a report published in August 2014 (downloadable from [www.secgroup.org.uk](http://www.secgroup.org.uk)).

In this report we make a number of recommendations which we shall discuss with our colleagues in Value Wales and with the new Welsh Government.

In our report in August 2014 we invited Value Wales to:

- set phased targets for mandating the exclusive use of SQuID throughout Welsh public sector construction – up and down the supply chain (unless there are demonstrable overriding reasons for so doing, the questionnaire should not be amended or added to);
- make available guidance for public bodies on verifying and monitoring compliance with responses to the questionnaire and actions that could be taken against suppliers providing false information or not complying with statements made;
- to establish a digital database to hold data from firms supplied in response to SQuID (to avoid repeated requests for such data).

Construction firms in Wales continue to report that they have not seen SQuID used. This current survey appears to support this view.

We also inquired into the approach adopted by local authorities when assessing technical competence; the questionnaire responses indicate that there isn't a standard approach. The majority of authorities do not attach value to trade association membership.

Finally we inquired into the extent of the use of standard construction contracts. It is disappointing that half of local authorities amend the standard forms and that the majority have little or no interest in the contractual terms offered to SMEs in the supply chain.

We intend to pursue these issues in our on-going dialogue with the Welsh Government and Value Wales.

**Andrew Marchant**  
National Executive Officer  
SEC Group Wales/Cymru

## 2. Standardising prequalification in Welsh construction

The policy of the Welsh Government 2011-2016 was that all public bodies in Wales should adopt the Supplier Qualification Information Database (SQulD), the construction pre-qualification standard questionnaire. All local authorities responding stated that they used SQulD as their pre-qualification questionnaire in the tendering process, but not all use this exclusively. Some also used PAS 91. Assumptions that SQulD is being used often conflict with what is found to be general practice on the ground, as reported by suppliers. The general trend, however, was towards using SQulD as the standard.

Further analysis of responses reveals a more complex picture. Sixteen authorities responded to the question which invited them to state whether they used SQulD. Of those, three stated that they used PAS 91 in conjunction with SQulD. Another stated that they are “working towards” the use of SQulD, which suggests that they are not actually using it at present. Three others stated that they use the SQulD questions in conjunction with SEWSCAP or Sell2Wales or their own PQQ questionnaire. **So overall there are only seven authorities which state unequivocally that they use SQulD exclusively.**

	Use SQulD	Also use PAS91	Use SQulD where appropriate	Use SQulD Questions	working towards SQulD	Framework based on SQulD
Anglesey	√					
Bridgend	√					
Caerphilly	√					
Ceredigion	√					
Conwy	√				√	
Denbighshire	√	√				
Flintshire	√	√				
Monmouthshire	√					
Neath Port Talbot	√					
Pembrokeshire	√					
Powys	√			√		
Rhondda	√			√		
Swansea	√	√				
Torfaen	√					√
Vale of Glamorgan	√					√
Wrexham	√					

The responses were often ambiguous:

*Bridgend County Borough Council use SQulD where appropriate for the pre-qualification questionnaire for suppliers. BCBC also utilises the SEWSCAP2 framework which has included SQulD as the prequalification questionnaire.*

**FROM THE SURVEY RESULTS IT IS APPARENT THAT THE MAJORITY OF THE RESPONDENT WELSH LOCAL AUTHORITIES ARE NOT USING SQUID EXCLUSIVELY.**

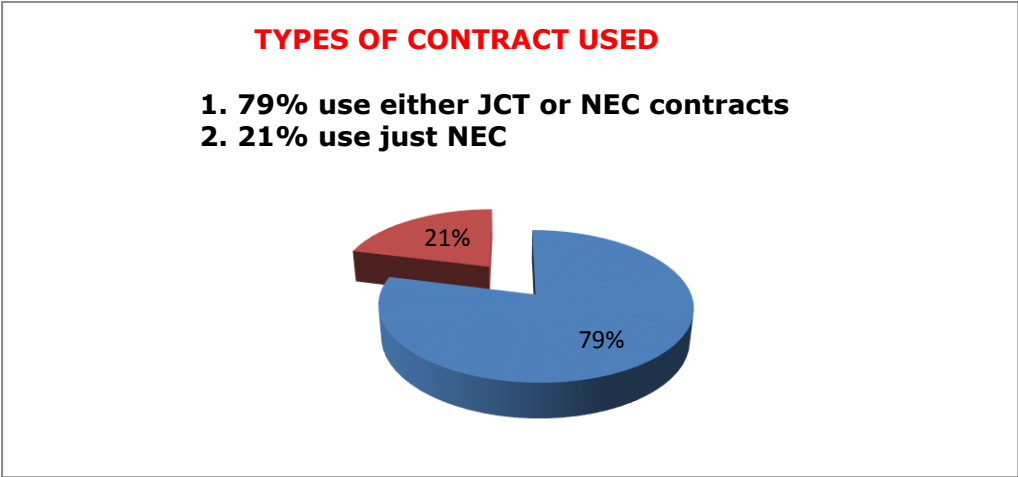
**3. Use of standard construction contracts**

The standard construction contracts used in the Welsh public sector are either those published by the Joint Contracts Tribunal (JCT) or by Thomas Telford (commonly referred to as NEC).

JCT contracts reflect a traditional approach to contracting whereas NEC contracts place greater focus on processes that involve collaborative risk management.

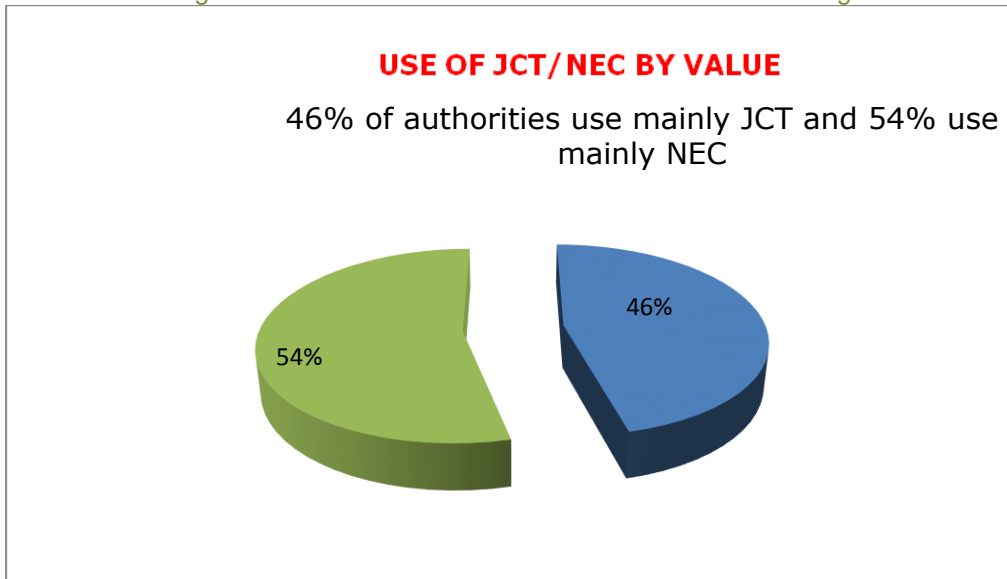
The overwhelming majority of local authorities in Wales (79%) prefer to have the option of being able to use either JCT or NEC contracts. The rest use NEC exclusively.

The table at the bottom of this page shows the spread of use of JCT and NEC contracts by value of contracts let. Thirteen local authorities were able to indicate the relevant percentages for their use of either JCT or NEC. On average NEC contracts were used on almost 54% of contracts by value.



	JCT	NEC
Torfaen	75%	25%
Cardiff	70%	30%
Gwynedd	unknown	
Wrexham	80%	20%
Monmouth	10%	90%
Rhonnda	1 job in last 12 months	
Swansea	10%	90%
Bridgend	70%	30%
Merthyr	100%	0%
Carmarthen	0%	100%
Pembrokeshire	0%	100%
Powys	10%	90%
Newport	40%	60%

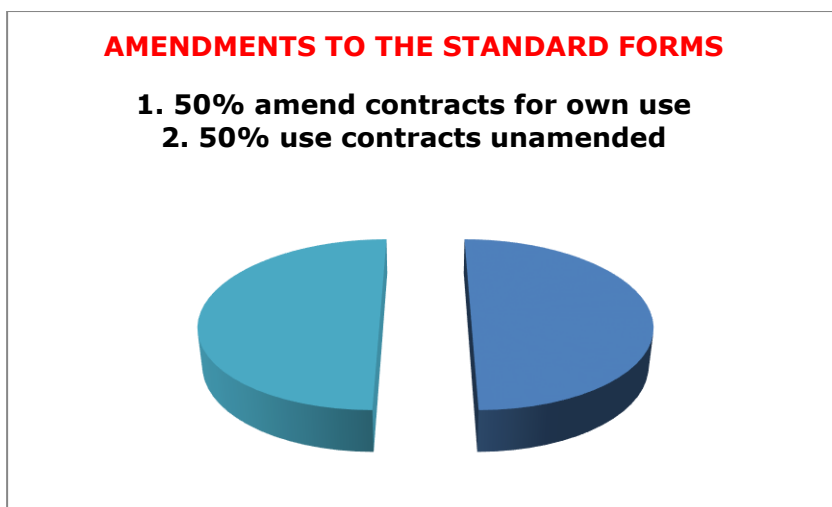
Flintshire	100%	0%
Ceredigion	35%	65%
Vale of Glamorgan	both are used but no exact figures	



#### 4. Do local authorities amend the standard forms?

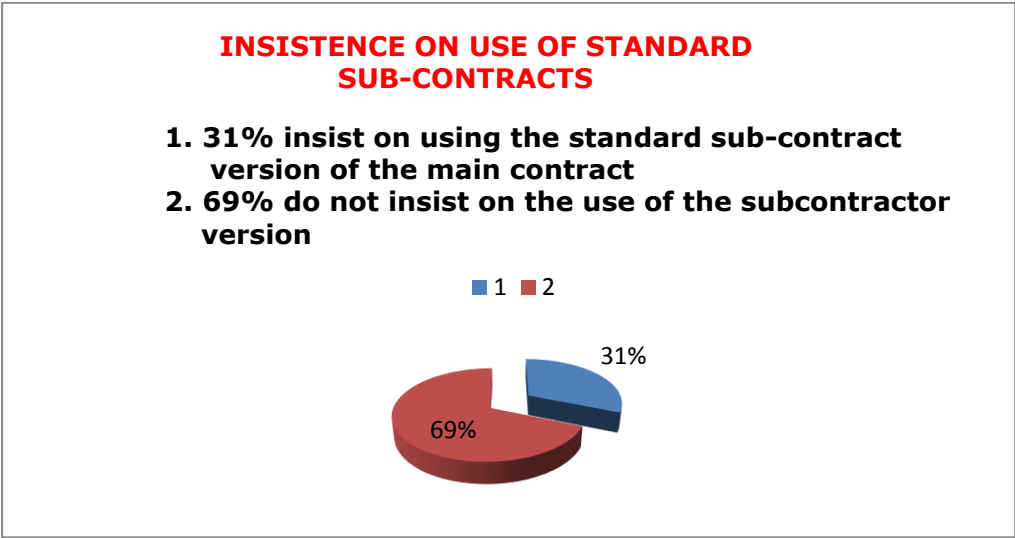
Whichever of the two types of standard contracts they use, 50% of Welsh local authorities readily amend them. Both standard forms of contract are intended to be used unamended. NEC does, however, enable amendments to be made by way of inserting additional “Z” clauses but such clauses should only be used where an amendment is necessitated by characteristics unique to the project in question.

In the majority of cases amendments are made in order to effect risk transfer. It is disappointing, therefore, that some authorities continue to believe that amendments constitute good practice.



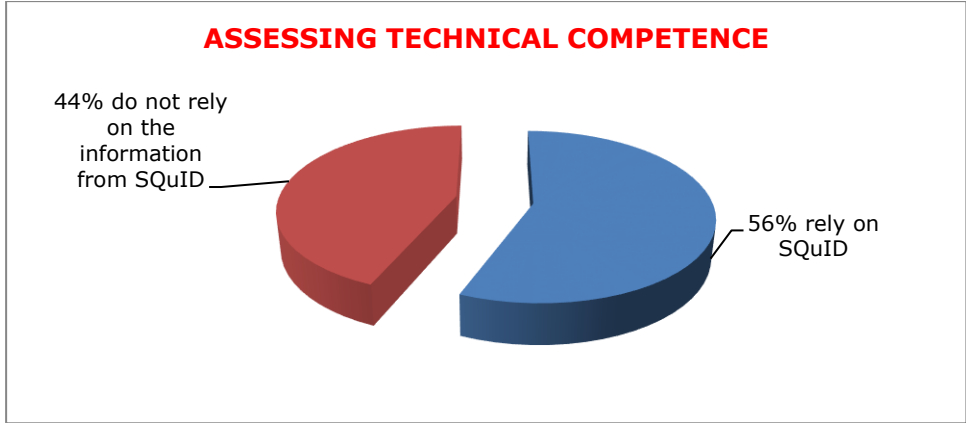
**5. Use of the same contract at sub-contractor level**

Of greater concern perhaps is that the use of the standard JCT/NEC contracts is not followed through to the sub-contractors (usually SMEs) engaged as part of the supply chain. There appears to be little monitoring of this by councils. Some of them stated that this would be their preferred practice, but that it is controlled by the tier 1 contractor. This is not entirely true. Local authorities can insist at tender stage that the standard sub-contract versions of the main contract are used along the supply chain.

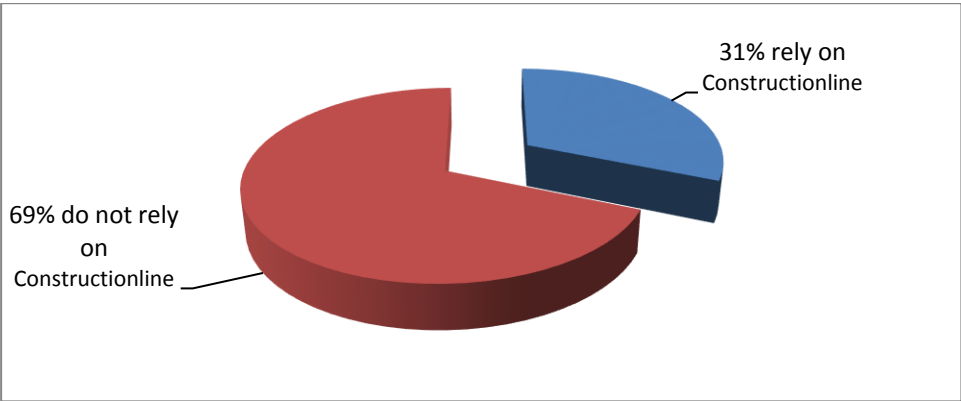
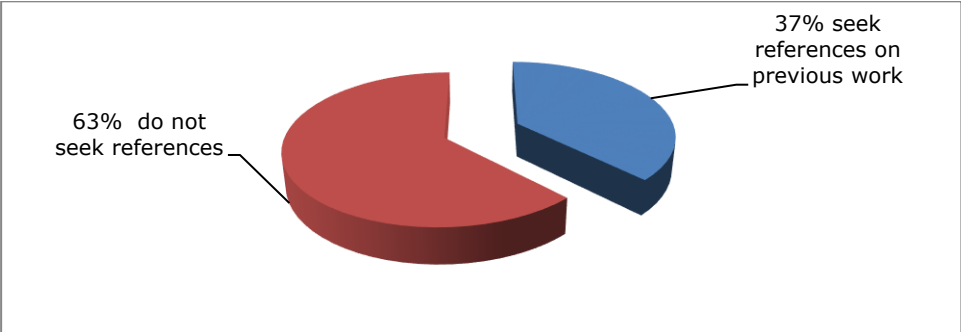
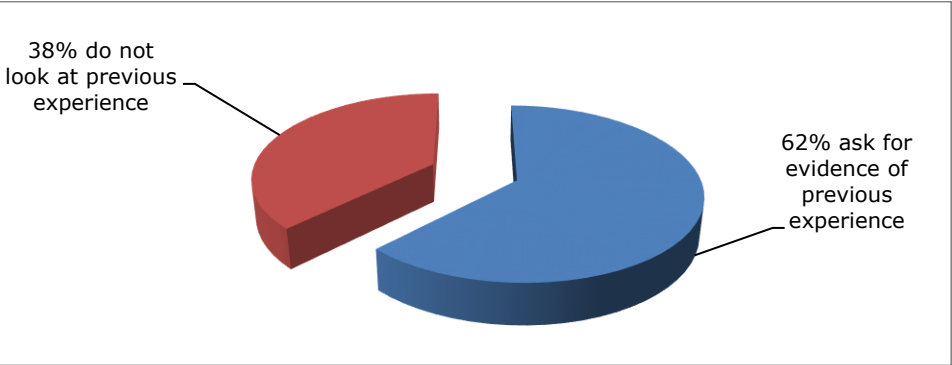
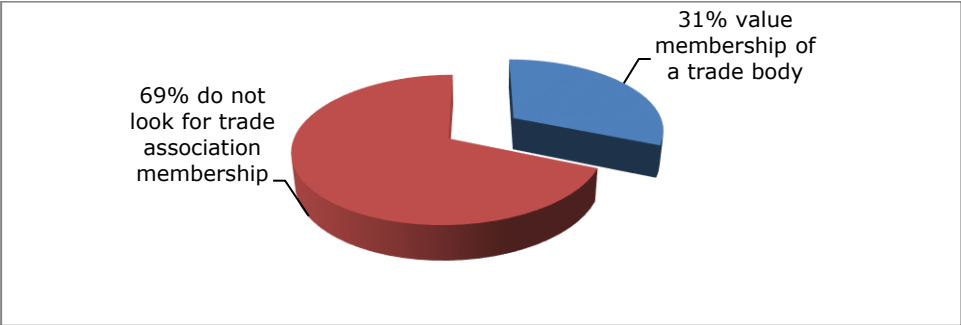


**6. Assessing technical competence**

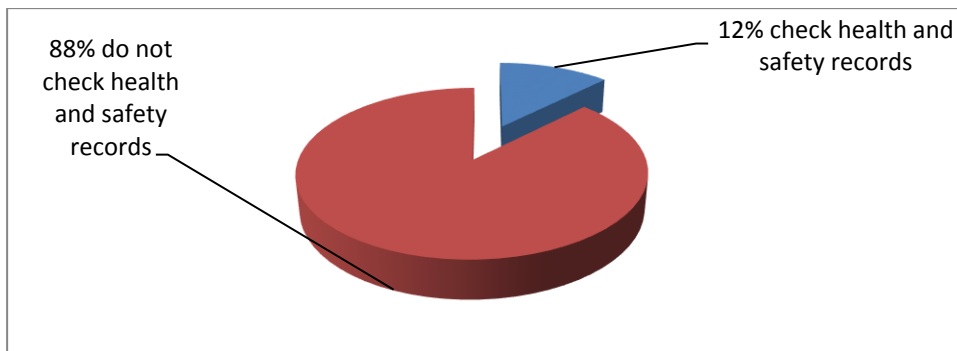
There doesn't appear to be a standard method of assessing competence, although the assumption is made that the standard routes to pre-qualification - such as SQuID and Constructionline - will effectively filter out those firms which are unlikely to be reliable. In addition to this, some local authorities check technical qualifications and experience, and also ask for references from previous jobs. In addition they may ask for information about any previous terminations of contract and are keen to check the financial status of the firm. Most authorities use a combination of methods.



A more detailed analysis of the responses is set out in the pie charts below.







Trade associations in the specialist engineering sector have in place robust, arms-length technical competence and assessment schemes. Trade association membership will only be offered where firms have been audited for their technical proficiencies. It is, therefore, disappointing that only 31% of local authorities value trade association membership. Of particular surprise is that 88% of local authorities do not check health and safety records.

**List of authorities which responded**

Anglesey	Neath Port Talbot
Bridgend	Pembrokeshire
Caerphilly	Powys
Ceredigion	Rhondda
Conwy	Swansea
Denbighshire	Torfaen
Flintshire	Vale of Glamorgan
Monmouthshire	Wrexham

## Questionnaire

## THE REQUESTED INFORMATION:

Please note that the information requested relates to your construction procurement activities over the past 12 months.

1. *Please could you let us know if you use the **Supplier Qualification Information Database (SQuID)** as your prequalification questionnaire for suppliers*
2. *What standard contracts are used for construction?*
3. *Are these standard contracts used unamended?*
4. *If you are using standard contracts, do you insist on the use of the sub-contractors' version of these contracts along the supply chain?*
5. *Please could you let us know what proportion by value is let each year using respectively NEC?JCT contracts?*
6. *As part of your PQQ process, how do you assess technical competence? Is this done through the contractor's membership of a reputable trade association or references for previous work or through some other mechanism?*