



Scottish procurement: construction policy note

CPN 3/2022

20 December 2022

Retention in construction contracts

Purpose

This Construction Policy Note advises contracting authorities of new guidance in [The Client Guide to Construction Projects](#) on the use of retention in construction contracts.

Summary of provisions

Contracting authorities considering using retention in construction projects must follow the provisions noted in the guidance for public contracts commencing procurement procedures from 20 February 2023. These are summarised below:

- assess the likelihood and impact of defective work occurring
- ascertain whether or not retention is needed at all
- avoid defaulting automatically to standard retention percentages
- analyse evidence, use experience and assess risk to implement retention
- apply retention as the minimum required amount
- accumulate and hold retention for the shortest appropriate duration
- administer one assurance process per project where possible
- aim for and prioritise the objective of zero defects
- acknowledge the possibility of defective work occurring
- agree a remediation estimate to supplant the accumulated retention
- automatically release retention when the contractual trigger is achieved
- activate clauses which apply these principles fairly in the supply chain

Background

The [report](#) of the short life working group on retentions recommended that Scottish Government should publish a retention best practice policy note for contracting authorities. That guidance is henceforth incorporated into The Client Guide to Construction Projects as [Project Initiation and Business Case Handbook, chapter 17](#).

These provisions are intended to help Scottish Government to move towards achieving its long-term aspiration to reduce or remove the need for retentions. Where retentions are used they should be applied judiciously and fairly as the commercial element of a project delivery strategy which seeks to eliminate defective work.

Coverage

This note and the associated guidance applies to bodies in scope of the [Scottish Public Finance Manual](#) (SPFM). In particular the staff involved in planning, procuring and delivering related public works projects.

Dissemination and contact

Please convey this CPN to staff involved in the planning, procurement and delivery of construction projects in scope of the Scottish Public Finance Manual. If you have any questions about this CPN please contact:

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