

## East Lothian Council

FOI Ref: 2018/537333

**1. What steps have you taken (in accordance with section 15(5)(d) Procurement Reform (Scotland) Act 2014) to ensure that payments in construction works sub-contracts and sub-sub-contracts are made no later than 30 days after presentation of invoice or similar claim?**

**[Please indicate any answers that describe your current position – it could be more than one]**

**A). we require that the relevant payment clause is inserted in every sub-contract and sub-sub-contract**

**B). we have put in place measures to check that along the supply chain payments are being made within 30 days.**

**If B, please indicate what measures you have taken**

**C). we are using or intend to use project bank accounts**

**D). we have not taken any steps to comply with section 15(5)(d)**

B) For contracts managed by Council in house design teams the Council monitor subcontractor payments as part of ongoing contractor's performance reviews. In addition, the Council is currently in discussion with HUB South East regarding a trial of a new payment process that will streamline subcontractor payments to 30 days on HUB contracts

**2. If you haven't taken any steps, please indicate when you intend to take such steps?**

Not applicable

**3. For construction and building maintenance contracts established since 1 January 2017, do you deduct cash retentions from your main contractors/suppliers?**

**[Please indicate any answers that describe your current position – it could be more than one]**

**A). we do not deduct cash retentions**

**B). we deduct cash retentions up to 5%**

**C). we deduct retention above 5%**

B) Yes we deduct retention up to 5%

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**4. When you regularly deduct cash retentions, do you use the cash:  
[Please indicate any answers that describe your current position – it could be more than one]**

- A). as working capital for general use**
- B). to fund other construction-related activities**
- C). to fund other activities (not related to construction)**
- D). to invest in overnight money markets**
- E). keep in ring-fenced account with no other use**
- F) OTHER: Please specify**

F) Finance will pay the sub-contractor invoices net of any deductions and does not make separate provision for cash retentions in the accounts. We are currently reviewing this area.

**5. Further to Question 1, what steps have you taken to ensure cash retention monies are released to your subcontractors within 30 days of their being invoiced or applied for?**

**[Please indicate any answers that describe your current position – it could be more than one]**

- A). we require that all tier 1 suppliers insert in their sub-contracts that retentions will be released within 30 days and that this is cascaded down into sub-sub-contracts**
- B). we have put in place measures to check that along the supply chain cash retentions are released within 30 days.  
If B, please indicate what measures you have taken.**
- C). we have not taken any steps to ensure that cash retentions are released within 30 days along the supply chain**
- D). OTHER, please specify**

B) For contracts managed by Council in house design teams the Council monitor subcontractor payments as part of ongoing contractor's performance reviews. In addition, the Council is currently in discussion with HUB South East regarding a trial of a new payment process that will streamline subcontractor payments to 30 days on HUB contracts

Please also refer to the response to Q4 above.

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***6. What (if any) steps have you taken to ensure the protection of cash retention monies belonging to sub-contractors and sub-sub-contractors?***

It may help to explain that Freedom of Information legislation only applies to information which is held or recorded by a public authority. It does not apply to views, opinions, intentions, general questions or questions which simply require a yes/no answer. In view of this, some of the questions asked are not technically valid for the purposes of this legislation as they are not requests for specific recorded information that East Lothian Council (ELC) may or may not hold.

In view of this, under Section 17(1)(b) of the Act, I must formally advise you that ELC has been unable to fully comply with your request as not all of the information you require is held. In order to assist you, however, colleagues have addressed the questions posed to the best of their knowledge.

For future reference, a link to the "Tips for Requesters" page of the Scottish Information Commissioner's website has been provided which you may find useful:

<http://www.itspublicknowledge.info/YourRights/Tipsforrequesters.aspx>