

March 2017 – the H&S relationship between client and contractor



From a health and safety perspective, the relationship between a client and a contractor can often be viewed as complex but if managed well it doesn't have to be that way!

What does a client have to do to ensure the interface with a contractor is planned, coordinated and managed to ensure the desired outputs are delivered without harm to the health and safety of employees, third parties and the general public?

The first thing the client should do is to determine who is, and who isn't, a contractor. Contractors are generally associated with construction activities but can be engaged for a variety of one-off or on-going activities in support of a business who critically are not employed by or under the direct control of the client organisation. All clients should be clear about their contractual arrangements.

The HSE has identified the role of the client as critical to the health and safety performance at the interface with contractors so let's be under no illusion where the HSE investigation will focus if they get involved! The CDM Regulations 2015 state "the client has a major influence over the way a project is procured and managed. Regardless of the size of the project, the client has contractual control, appoints designers and contractors, and determines the money, time and other resources available".

You may be under the illusion that the CDM Regs don't apply to the relationship you as the client has with a contractor but the definition of 'construction' in the CDM Regs (Regulation 2) includes many conventional activities such as repair, refurbishment and maintenance (NB the HSE have stated that if the work being carried out uses construction materials and involves construction techniques / tools / equipment then it probably falls under the definition of 'construction work' found in the CDM Regs).

The initial client engagement with the contractor should include discussions regarding specification, costs, resources, etc but at an early stage the client should carry out checks to satisfy themselves that the contractor is competent to deliver the specified work. Clients should have a procurement process that assesses the H&S performance and competence of contractors and this process provides an opportunity for the client to discuss their H&S culture and performance expectations.

The client must make suitable arrangements for managing the project so that health, safety and welfare is secured. What does this mean?

To be suitable, the arrangements for H&S should include:

- Appointing a competent design and delivery team
- Ensuring everyone has clarity regarding their roles and responsibilities
- Ensuring sufficient resources and time are allocated
- Ensuring effective communication and cooperation
- Where CDM applies, how the client will take reasonable steps to ensure that the designer and contractor comply with their separate duties (eg copied into minutes of meetings)

- Ensuring suitable welfare facilities are provided

This should also include the provision of relevant health and safety information regarding the existing location, such as asbestos survey, location of utility services, etc.

Once the work commences, the client should be able to demonstrate they are doing all that is reasonably practicable at the interface with the contractor:

- Monitoring to provide assurance the contractor is following the agreed safe system of work (eg RAMS). The level of monitoring will depend upon the level of risk, experience of the contractor and supervision being provided
- Awareness and acknowledgement of the use of sub-contractors
- Communication of H&S issues (eg induction)

It is important to remember that there does not have to be an accident or incident for an offence to be committed; the mere exposure to risk is sufficient. Agreeing RAMS will not exempt the client from potential prosecution. An audit trail will be required to be able to demonstrate the client has done all that was reasonably practicable

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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