

insights to **'effective'** contractor management



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# Insights to 'effective' contractor management

## Abstract:

***How safe is your contractor working on your site? Why do you need to manage contractors? Do you have a system in place to source, manage and evaluate your contractors?***

*Whatever, your answer, this paper examines various ways in which an organisation can adopt a 'proactive management stance' in sourcing, approving and monitoring contractors who work for them Thus ensuring their own 'Duty of Care' responsibilities are covered during the contractual arrangement and liability risks reduced*

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## INTRODUCTION

There is little doubt that engaging contractors to do work within an organisation can raise many questions and debate, especially amongst the persons having management and control over the contractual arrangement and associated work activities. In short, confusion or naivety may exist in relation to stakeholder accountabilities, their responsibilities or lack of knowledge of the need for a process.

To provide clarity as to why this complacency often occurs, I will firstly highlight some of the common issues associated with the contractor management arrangement.

I will also shed some light on the applicable Occupational Safety & Health legislation 1. and applicable duties of care responsibilities. In addition, an analysis of contractor management litigation cases and the court findings will assist to improve knowledge.

This paper will then proceed to highlight the essential components required to implement a sound and compliant contractor management system.

Specifically, I will outline a model that encompasses three main stages. The model will also include a variety of risk control methodologies that an employer can adopt to ensure that their planning, management, and evaluation of contractors. Adoption of all or some of these strategies will assist both parties meet legislative compliance and foster relationship building to ensure best safety practice.

### **What are the common issues?**

In today's working environment, there is no doubt that there is a growing trend, for employers to outsource their work or to look at alternative forms of labour supply.

Attached to this need, is a common perception or false belief, that an employer can significantly reduce cost outlay or reduce their legal responsibility, by adopting this tact. In short, such labour hire arrangements can undoubtedly increase internal safety risks.

It has been my experience in working within many large and diverse organisations, that there is a certain naivety and complacency factor amongst management, when it comes to managing contractors.

Further to this, there is often some internal confusion as to what constitutes a 'minor' or 'major' contract, or an established contractor management procedure or system process exists in an ad-hoc format or quite simply does not exist at all.

Similarly, an employer may just not have the dedicated procurement resources; necessary experience; or an internal administration system to manage the process stages.

If they do have a process, there can be time management or significant cash flow pressures on either party before starting work in the vetting and approval stages. Thus, cutting corners to get the job under way often occurs.

Further to this, we have what I call a 'risky thinking' mentality. I have often heard comments like, *'we just need to get it fixed quick'*, or *'we just had to get a local guy as there was know one else available'*.

Similarly, placing a strong emphasis on accepting the lowest tender; adopting drastic cost cutting measures; or contractors portraying sloppy or unsafe work practices, can all contribute to a sacrifice in ensuring safe and risk free work practices.

We also need to look into the growing phenomenon of the use of contractual staff through 'labour hire' companies.

On a personal level, I have observed many occasions, where contractors or labour hire staff have been contracted and often with no information, instruction or ongoing work supervision. They suddenly start work without anyone knowing about it. Such a process is often instigated by line managers due to emergency HR needs, logistics or plainly just a lack of process knowledge.

It is also evident in these types of employment arrangements that the principal can be a little complacent and doesn't have their 'finger on the pulse' so to speak. It can often be the case also, that their thinking on outsourcing somewhat diminishes their legal obligations. When in actual fact, the potential breach of the OSH Act and risk exposure increases, mainly due to lack of supervision or monitoring.

Either one, or all of aforementioned issues, can lead to increased exposure to hazardous conditions and higher risks of serious injury, ill-health or potential fatality. Additional concerns include non-compliance or litigation threat, administered under the OSH & Workers Compensation Acts.

## Why manage contractors?

The Occupational Safety & Health Act (WA) 1984, clearly places duties on employers to ensure, so far as is reasonably practicable, that persons not in their employment but who may be affected, are not exposed to safety risks.

Therefore, it is very important that every organisation fulfils its legal obligation to ensure that contractors visiting their premises operate in a safe way and that they are supervised and managed.

Having engaged the contractor, the employer or the main 'principal' must demonstrate that they have provided safe systems of work that assist to reduce the risk of harm or ill-health.

The 'principal' has the duty of care responsibilities when engaging a contractor for services, as well as any employees of the contractor, or others engaged by the contractor and visitors.

In short, the contractor and their employees are in reality, also seen as employees of the principal. Although, the principal's duty applies only to matters that they are able to exercise some control.

However, it is important to understand that, if a serious incident occurs involving contractor's whilst working on their premises, the responsibility and liability ultimately remains with the 'principal'.

It is important also to understand that it is a '**joint obligation**'. In other words, both the contractor and the principal have duties of care to their employees.

It is often the case, that a main contractor will employ the services of other people, namely sub-contractors or casual labour. In referring back to the OSH legislation <sup>1,2</sup>, it clearly states that, contractors 'must' retain the same duties of care of employers and show similar compliance towards these employee types.

Thus, the contractor in certain circumstances may need to satisfy two duties of care. Firstly, they need to provide a duty of care to these employee types; and secondly; because the contractor has working relations with the principal, they themselves need to perform certain employee duties of care towards that principal employer.

### Principal & contractor liability risks

How is this principal and contractor arrangement being dealt with in the legal court system, when things go wrong?

During my brief research and scrutiny of both Australian and UK, OSH and Environmental court cases <sup>3</sup>, it is evident that many court hearings exist and can demonstrate the real risks involved in engagement of contractors.

Similarly, the fines imposed by the Courts reflect the true culpability on matters involving negligence or an OSH Act breach.

Case evidence does exist, in that, the principal, contractor, and sub-contractors have all been fined and convicted respectively in separate proceedings when a serious incident occurs.

In other case analysis, court proceedings have concluded that liability can be enforced even when the incident is not the direct fault of a principal or the contractor.

Similarly, I have referenced court cases, whereby, all parties involved are prosecuted despite actions taken by contractual parties to avoid harm. Additionally, courts have imposed penalties on the principal even when the contractor was largely at fault.

In final analysis, I suppose the take away message in all this, is that, case hearings can be complex and liability decisions can flow to either side of the principal and contractor arrangement. So, in the event of any serious incident or fatality, both parties can face significant liability.

## **STAGE 1: CONTRACTOR PLANNING**

Therefore, in order to commit to excellence in contractor management to meet OSH obligations, there is a need to provide specific guidelines for contractors who wish to perform work for the employer.

In summary, the employer needs to only engage contractors who can demonstrate their competence, knowledge and qualifications for conducting any specified work tasks safely.

Similarly, contractors who perform work for the principal employer must do so in a manner that protects the safety of themselves, the public and any third parties.

To begin a 'pro-active' rather than a 're-active' stance to contractor management, the principal must develop and adopt the following system processes to ensure any non-compliance shortfalls are met.

### **Contractor management procedure** (*process*)

There may also be some debate relating to the need for such a procedure. Specifically, as it relates to a 'minor' contract, low budget or short one off occurrences' as compared to a 'major contract' that requires more formality.

However, the duty of care required of a principal, enforces a need to provide instruction, and supervision at all types contractual arrangements.

This may vary in complexity in relation to the level of risk, time duration, or personnel. In other words, the risks may be just as high for a one off situation (*eg electrical work conducted by one tradesman in a confined roof space*) as they would be for a major site project involving multiple trade teams.

Therefore, it would be good practice for the principal to develop a procedure that covers either arrangement. The main purpose and scope of a procedure for managing contractors is to provide guidance in the selection, management and monitoring of contractors

engaged by the employer and its scope should apply to the specific workplaces involved.

In general, its content should outline references to the applicable legislation; specific definitions (eg *working at heights*); staff nominees for OSH and contractor responsibilities; and outlining the steps in requesting, approving, and evaluating a contractor.

I am of the opinion that for 'major contracts', the principal and contractor 'must' develop and present a more formalised OSH Management system and plan for the proposed services.

As for 'minor contracts' a contractor 'must' demonstrate appropriate OSH Competencies and sign off receipt and acceptance of the principal OSH Guidelines handbook. In short, either type must be accepted and signed off.

### **Contractor evaluation survey questionnaire** (pre-tender process)

In order for a contractor or sub-contractor to gain work at an organisation, the contracting business must achieve best practice and complete a variety of OSH documentation. It makes good business and safety sense to have a set criteria checklist questionnaire that surveys a contractor pre-tender.

A completed 'OSH Evaluation Survey Questionnaire' can assist to provide verification on a set criterion.

Criteria should include valid insurances (*workers compensation & public liability*), licenses, or contractor competency training certification or previous safety performance.

The copies of any requested documentation can then be reviewed by the workplace manager / OSH nominee to achieve a satisfactory status.

The principal's OSH and or Management nominees should assess the quality of responses and documentation offered by a contractor. However, if a contractor is assessed as not meeting the criteria standard, the contractor should not be used as the risks will be high.

You may ask them to provide further evidence to comply before moving onto the next stage of the proposed procurement.

### **Contractor selection** (process 'approval list')

A good strategy to adopt into an organisation is to develop an 'Approved Contractor List'. There are some organisations have them in place and do it well and others don't.

It is so important to invest time in the selection process and assess contractor competency and then invite them to tender for the work.

The principal can gain a better understanding of a contractor's safety culture, policies, systems of work and competency of their employers, by dealing directly with them through a dedicated procurement resource and vetting and approval process.

Getting a 'feel' for the contracting company you are about to employ makes good business sense and ensure effective risk management.

Common strategies to adopt may include, the use of informal networks and internal stakeholders who can advise or recommend on their past experiences. Industry sector network contacts also provide a useful avenue for providing names of competent contractors with good safety practices.

There is a lot to be gained also in interviewing potential candidates at a pre-award meeting to analyse their set up and safety approach. There are also added advantages to employing contractors who have gone through the lengthy process of accreditation already, such as the ISO 9001 or AS/NZS 9000 quality series.

Adopting this strategy will ensure that many of your initial questions on their safety standards or work process queries would have already been audited within the scope of the contractor accreditation auditing process.

Information attained from your pre-tender questionnaire survey should also confirm as to whether a contractor satisfies your internal expectations and provides your organisation with acceptable documentation, insurances, licenses and sound safety record.

Recognition should be given to contractors who receive a higher rating but also not to be hired because their quotation is the cheapest or most competitive in price.

### **OSH guidelines handbook** (*code of conduct*)

Contractors need to be adequately informed by the principal of what is expected of them during an assigned work project.

Their performance during the contract in a lot of cases will fluctuate depending upon what information, instruction and supervision they receive prior to or during the work project.

A good starting point in the planning process would be to develop a '*Contractor's Safety Handbook*'. A handbook or guidelines can easily portray the organisational expectations and advise contractors of their responsibilities.

These should also include explanation of any sign in and key collection procedures, safety and permits to work requirements, emergency management and the expected behavior and conduct of a contractor (*eg housekeeping*), whilst working at a principals facility or building premises.

Another 'must' strategy is to ensure that the engaged contractor (*and their employees*) receive a copy of the handbook prior to starting work and that they provide an agreement signatory to understanding its contents.

It is also promoting good practice have a copy with them whilst they are on site.

### **Outsourcing** (*consulting process*)

It can be debated that there are potential savings to be made in both direct cost and management time.

The principal may decide to entrust to an external consulting company with specific expertise. Specifically, one that has tried and tested contractor management experience and a sound understanding of tender approval processes.

Consideration could be given to external third party accreditation schemes. As they can be tailored to meet the contractor approval process through a dedicated human resource that best fits your specific industry or business requirements.

Personally, I lean to move a positive motion on this idea. As there are many principal's who simply do not have the time, resources or expertise to set a system up and then manage.

However, it should be noted, that some preferred contractors may choose not to join this type of scheme. A weakness being, that if they do not achieve the pre-set accreditation criteria, then they can be seen as less capable.

Additionally, a complacency factor may surface. The principal may feel that they have deferred their responsibility for OSH back onto a contractor/s, which is not the reality.

## **STAGE 2: CONTRACTOR MANAGEMENT**

The ultimate goal in managing contractors, is to ensure as far as practicable an incident and accident free project is implemented.

There needs to be a 'proactive' and systematic joint approach between the principal's project management team and contractor/s, once a contract has been awarded.

## **Contractors Safety Management Plan (SMP)**

It must be said that the complexity of any safety management plan will correlate with the extent of the contractual arrangements and work activities that are about to take place.

In other words, factors relating to the size, length of time, number of personnel involved and the foreseen hazards and risks, and the associated legislative risk management responsibilities.

In the case of a principal employing the services of a contractor under a 'Major Contract' a contractor '**must**' supply a SMP. The SMP may be a manual type document and should include the contractors OSH policies & structures, safe working procedures, their staff induction training, emergency procedures and hazard management procedures for the work.

## **Contractor consultation (pre - work meetings)**

In satisfying the duty of care expectation, there is an expectation that the principal and contractor consult on the foreseen hazards and associated risks, prior to work project start up.

Pre-work partnering meetings are a sensible risk management strategy. They can assist in ironing out any contract specification shortfalls, and help determine how the contractor will manage hazards.

This also fosters good 'relationship building' and assists to determine lines of reporting and ongoing communication protocols.

In other words, the principal can continuously work with their contractors to assist them to improve their safe systems of work and reporting procedures. Engaging with them regularly allows for a more customer service focus and often leads to entry into, the principals 'approved contractor list'.

### **Contractor induction** (*physical or online*)

As previously stated the principal must provide information of the known hazards and instruction on the control procedures to their employees and similarly contractors.

Therefore, development and implementation of a contractor induction program is 'priority'.

Similar programs exist today within the construction and mining industry (eg 'Blue Card' or 'MARCSTA' process). A 'no card, no start' is a good philosophy. In short, all contractor personnel must participate in an induction program, prior to starting work.

Before any work proceeds at a facility site or within a principal building a 'physical induction' should be set in place. The principal nominees must run through the organisational procedures, emergency management, major hazards, reporting and permit processes and contact sign in procedures.

Adopting an 'online induction program' is another cost effective best practice tool. This can work equally well for both employee and contractor induction and is growing in popularity.

The benefits of online induction software has is that it can be specifically designed to directly target the induction issues facing your organisation. It also allows the principal to tailor a program that can meet their specific industry hazard risks and internal policy.

### **Contractor monitoring** (*observation*)

Regular monitoring and observation in conjunction to work progress meetings will also assist to identify any shortcomings in the contractual arrangement.

Observation and monitoring on the job also allows for further discussion with the relevant stakeholders and any need for remedial risk control actions.

My experience tells me that a meet and greet with a contractor coupled with short burst observations during the work tasks are a fruitful and non threatening tact to take.

This approach also allows the relations to remain harmonious, but at the same time you can communicate any issues there and then and coach and mentor them with feedback to help them achieve expected safety standards.

## **STAGE 3: CONTRACTOR EVALUATION**

A post contract evaluation process allows for an assessment and review of the contractors performance and acts as a continuous improvement process for the principal.

## **Contractor performance** *(reporting process)*

An important step in the contractor management process is evaluating what has happened against what was proposed to happen or stated in the contractor's pre-bid documentation.

It is also important to note, that during a major contract *(eg longer term duration)* a 'snap shot' analysis may be conducted as a proactive risk control strategy, at intermitting periods, rather than just relying on a one off post project assessment.

Whatever the case may be, it needs to happen. In other words, any information gathered, and reviewed and assessed, need to be evaluated against the specified standards set prior to work commencing.

There may be a set matrix that gives an indicator score or there may be just a 'yes' or 'no' check-listed format used to determine the contractor performance, or there may be nothing in place but hearsay.

As a starting point, I would recommend a two pronged approach, in order to get a 360\* response, A principal can then decide as to whether the contractor is reliable and continues onto the '*approved contractor list*'.

Firstly, a quantitative analysis *(eg amount of incidents reported, LTI's, meetings attended)* and secondly, a qualitative approach *(eg verbal feedback)* should suffice.

## **Non performance** *(reporting process)*

If the outcome of your evaluation review and assessment highlights contractor inefficiency or incompetence against expected standards and safety management expectations. Then there is a need to conduct further analysis and discussion with the principals' project management nominee or team.

It may also be the case, that there is a dual breach of the expected standards. I have experienced both, whereby a contractor has been through the process and blatantly shown disregard for the safety of themselves but also third parties in close proximity to their work tasks.

Similarly, there is a very competent contractor trying to do the right thing but has had no internal procedure or OSH information or supervision from the principal or nominees. Thus works blindly to what is required.

I suppose it would be safe to say that the more experience a person has in relation to this process stage the more efficient and effective they become. Hence, the need for an unbiased analysis as to the non compliant contributing factors and ability to consult effectively and action plan any highlighted deficiencies.

One thing is certain though, that an action plan needs to be decided upon and communicated to the contractor. An outcome based on the facts and intuition is often a sound approach. Whatever decision is made it needs to be implemented.

## CONCLUSION

In concluding this paper, there is no doubt that a robust and manageable system for sourcing, monitoring and evaluating contractors can be a proactive injury prevention management tool.

I have highlighted the some of the common contractor management issues found within an organisation. I outlined the legal 'duty of care' obligations placed upon the principal employer and contractor and the importance of relationship building, with the stakeholders.

I mentioned the growth trend in the usage of labour hire companies and contractors and how this approach requires more knowledge than ever to project manage, and portray due diligence to ensure best safety practice.

The paper has also suggested that to manage the risks involved in a contractual working project, it should be a joint responsibility.

In summary, the principal needs to establish contractor competence and their preparedness to comply with internal policy and OSH laws. They need to provide any contractor with sufficient information on their internal hazards and associated risks, and support this with adequate instruction and supervision.

Furthermore, this paper has also provided advice on implementation of appropriate contractor management systems and associated processes that help achieve this.

To offer a further reminder, robust systems should also be supported with contractual provisions that ensure adequate insurances are in place. Plus, a clause of indemnity of the principal for harm or loss, relative to cases of non compliance from the fault of a contractor.

In knowledge of the nature of the contract, whether a 'minor' or 'major' one, a contractor still needs to undertake its own risk management process to ensure the risks are shared and that they do not get unfairly punished if there is harm or loss.

A contractor needs to obtain; adequate information on the hazards at hand from the principal; attend regular meetings to consult on safety risk issues at hand; and ensure up to date and relevant insurance protection also.

In closing, the trick to any principal to contractor relationship building is '*communication, communication, and more communication*'.

## REFERENCES

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