

RISK REVIEW

Noel Arnold & Associates - Risk Management Consultants

Contractor OHS Management – Risky Business?

8 December 2009

Engaging contractors to conduct work for an organisation can potentially be risky business. Why? Organisations who engage contractors have an OHS legislative duty of care to contractors that is similar to the duty owed to employees, for matters which the organisation has control.

There is a common belief that an employer rids itself of health and safety obligations by engaging a contractor, and by passing specific safety obligations to that contractor by terms of the contract. This belief is held most strongly where a number of contractors and subcontractors are involved. These circumstances do not remove the duty; they only make compliance more difficult.

Key Factors

The transition of occupational health and safety legislation in Australia from a prescriptive to performance based approach has placed greater emphasis on organisations to adopt a systematic approach to managing health and safety risks. This trend and the greater demands for outsourcing of services have in turn considerably increased the need for effective management systems in relation to contractors.

A number of key factors contribute to the historically poor performance in the management of contractor health and safety issues. These include:

- Lack of understanding of occupational health and safety legal obligations to contractors.
- Insufficient consideration of contractor occupational health and safety management systems & performance in the selection process.
- Insufficient pre-planning of contractor works, specifically in relation to determining hazards,

work procedures and site specific risks.

- Limited supervision and monitoring of contractor operations with respect to health and safety aspects.
- Responsibilities of the various parties not clearly assigned or understood in relation to health and safety aspects.

What the Courts Say

There have been numerous incidents and prosecutions relating to contracted work where the human and financial impact has been significant.

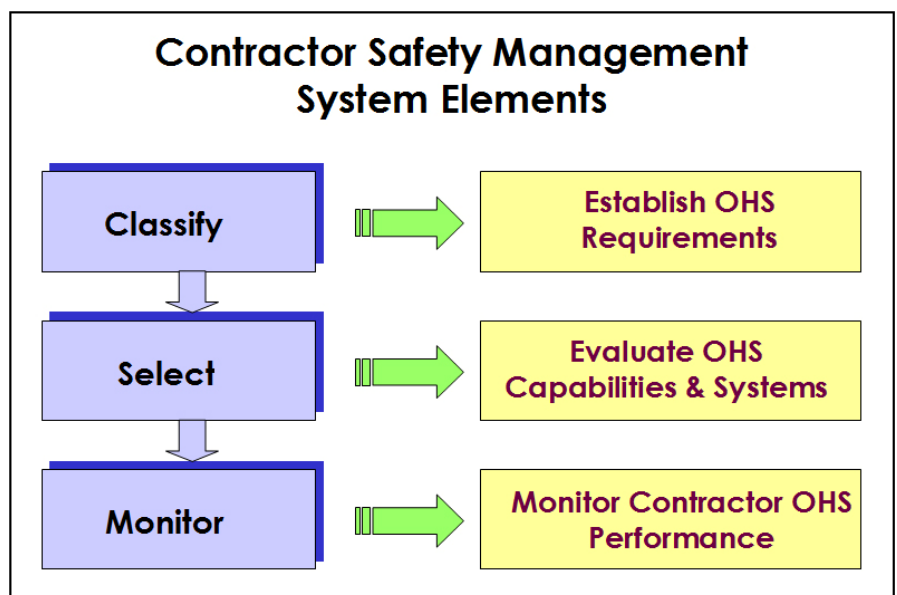
For example, an employer engaged a subcontractor to undertake cement rendering work. The subcontractor during the course of his work fell 4.6 metres and sustained serious injuries. The court found the employer did have a system to ensure subcontractors were aware of their OHS obligations; however they did not follow through by ensuring these systems of work were adhered to. The employer was fined \$77,225. In another case where there was a fatality, a principal contractor was fined \$250,000.

The key finding of this case was the principal contractor did not ensure the subcontractor had systems for assessing the risk of the work, safe systems of work for the actual task being performed and that those systems were implemented at the worksite.

How Does an Organisation Manage this Responsibility?

Many organisations understand the need to manage the safety aspects of contractors but struggle to establish processes that are both effective and practicable. Importantly organisations engaging and managing contractors should have a clear understanding of their responsibilities. More than one party such as the contract principal, project manager, architect, site manager and superintendant have OHS responsibilities in relation to work undertaken by contractors.

An organisation's contractor OHS management processes should be flexible in order to address the varied risk levels of contracted works, however the following 3-step process should remain the same.



RISK REVIEW

Noel Arnold & Associates - Risk Management Consultants

Step 1 Understand the Risks

Establish OHS Requirements

As part of scoping the project determine what OHS issues will need to be addressed by the contractor(s). This will assist in understanding whether the contracted work should be classified as a high or low risk contract. The risk classification of the contract will assist in determining the OHS capabilities the contractor will need to demonstrate.

If OHS requirements are incorporated into tender and contract documents, contractors will be aware from the start what is expected of them. OHS requirements could relate to OHS procedures, specifications for equipment, contractor competency, emergency response arrangements, induction requirements and/or training.

Some organisations prequalify contractors in order to engage them to conduct frequently required services.

Project Specific Risks

Prior to engagement a contractor should demonstrate how they are going to conduct the work safely. This can be done by providing completed documents such as a Safe Work Method Statements (SWMS) or a Job Safety Analysis (JSA). Higher risk tasks such as confined space work, excavation or asbestos removal will require more detailed risk management processes.

In Victoria, New South Wales and Queensland, high risk construction work requires a Site Safety Plan to be prepared. There are also other prescriptive OHS legislative requirements that need to be understood prior to the engagement of contractors.

Step 2 Evaluate the Contractor

Assess Capabilities and Systems

Prior to engaging the contractor to commence work, the contractor's

submitted OHS documents should be reviewed by the principal to ensure they address the contract specific OHS requirements.

For projects where there is a formal tender evaluation process, OHS capability and performance should include a review of contractors OHS management systems, qualifications, incident statistics and induction records.

Contractors should not be engaged unless they can demonstrate they are able to meet OHS legislative requirements and control the risks associated with their activities.

Step 3 Monitor Contractor Performance

The monitoring step is to ensure contractors OHS procedures are "living and breathing" while they are conducting work. What does this mean? The purpose of monitoring contractors is to ensure they are conducting work safely by implementing the processes they have described in their OHS systems and processes.

It is important that a systematic approach is adopted when monitoring and supervising contractors. Requirements of the contractor and principal should be clearly identified in the contract documentation. Appropriate records of activities related to monitoring and supervision of contractor operations clearly demonstrate the principal's commitment to meeting its occupational health and safety legal obligations. These records are important legal documents and can be relied upon when a non-compliance or serious health and safety incident occurs.

Cm3 Web Based Contractor OHS Prequalification System

Noel Arnold & Associates, for 25 years, has assisted numerous organisations with the development of Contractor OHS Management systems. Commonly, organisations do not feel they have

adequate knowledge to evaluate contractors OHS capabilities.

In response to this need Noel Arnold & Associates developed Cm3, a web based contractor OHS prequalification system. Cm3 assists with Steps 1 and 2 of a contractor OHS management system.

Cm3 enables the following:

- Independent & robust OHS prequalification process.
- Ability to select a broad range of OHS prequalified contractors.
- Review & verification of the currency of contractor's insurances, trade licenses & other relevant documents.
- Classification of the OHS risk level of contracted work.
- Assurance that prequalified contractors have "living and breathing" OHS processes.

Visit the Cm3 Contractor Prequalification System at the following websites:

[NAA Website](#)

[Cm3 Website](#)

Further Information

For further information, please contact your local NAA office on the number below.

Melbourne: Tricia Moritz on (03) 9890 8811 or tricia.moritz@noel-arnold.com.au

Sydney: Gina Moutzouris on (02) 9889 1800 or gina.moutzouris@noel-arnold.com.au

Brisbane: Delwynn Wecker on (07) 3514 9222 or delwynn.wecker@noel-arnold.com.au