

The Construction (Design and Management) Regulations 2007: Industry Guidance

Annex F: CDM 2007 and contracts

There are many different ways of procuring construction projects and various forms of contract have been developed to allow clients to procure work with contracted relationships and risk profiles to meet their needs.

CDM 1994 was designed to cater for procurement via 'conventional' contract form, where a client would engage a design team to carry out design which, when well advanced, would allow them to appoint a contractor to construct the project. Since then procurement methods and contractual relationships between parties have developed, as design-build procurement has developed into PFI/PPP (Private Finance Initiative/Public Private Partnerships). Forms of procurement and new risk sharing concepts, such as NEC (New Engineering Contract), have been developed.

Several forms of contract may alter relationships where designers may be appointed by contractors. In some cases under CDM 2007 the role may move to another party, as in the case of PFI contracts where the original clients will hand over their role to an SPV (Special Purpose Vehicle) once the contract has reached an agreed stage of development.

No matter which form of contract is chosen there are a number of underlying principles which must be considered when structuring the contract to the project, as follows.

Principles to consider when structuring the contract

1.	The contract must be structured to allow CDM 2007 to function so that all duties are carried out at all times.
2.	In order to achieve 1 above, each party must clearly understand which role they are carrying out at all points in the life of the project.
3.	Parties must agree and clearly communicate which duty falls to them to carry out, in particular: <ul style="list-style-type: none">• who will notify HSE• who will prepare the pre-construction plan• who will prepare the construction phase health and safety plan• exactly what the client will be expecting from the CDM co-ordinator.
4.	Duties and responsibilities should be clearly developed as sub-contractors are brought into the scheme.
5.	Sub-contractors' forms of procurement must mirror the main contract provisions.
6.	Robust systems must be agreed and implemented to ensure the relevant parties recognise and carry out their CDM duties.

The following example illustrates the previous points.

A developer wishes to build a retail park which requires access via a new bridge over a major highway. Minor roadworks are to be adopted by the local authority and a number of retail units are to be purchased by the retail companies. In this instance the original client will evolve into a number of clients during the course of the work.

- a) The developer will be the principal client and may have a role as designer if choosing to provide input for the specification. The developer may retain ownership of common areas and require a health and safety file for the areas they will control.
- b) The Highway Authority procures the bridge, via the developer, but may have a role as designer if work is required to their specification. At the end of the project it will adopt the bridge and require a health and safety file for it.
- c) The local authority procures work, via the developer, but may have a role as designer via its input to the specification. At the end of the project it will adopt the roadworks and require a health and safety file.
- d) The retailers may have involved their own specification and/or designers to the shell of the retail shed, which they procure via they developer, and hence may be deemed to have a role as designer.
- e) Once the retail sheds are substantially complete, the developer will hand them over to the retailer who will become the client for the ongoing fitting-out work and, as such, will appoint a principal contractor to carry out this work and a CDM co-ordinator.
- f) The developer's CDM co-ordinator will need to prepare a health and safety file for the retail shed and hand it to the retailer prior to work commencing on the fit-out. The retailer's team will add to the health and safety file.
- g) Whilst this may appear complex, considering who does what for the whole life of the project will facilitate smooth running and avoid wasted effort. Making the sub-contractors of the developer's principal contractor aware that the information they provide for the retail shed will need to be capable of being broken down into individual sheds will enable them to plan this in advance.

Many of the more recent forms of contract, such as NEC, are based upon the principles of working together and embrace the ideas in the recent 'Accelerating Change' report.

The key CDM 2007 principles of co-operation and co-ordination lie at the heart of these forms of risk-sharing and trust-based contract. They tend to have lead-in periods which give time to consider risks, commercial as well as health and safety, and to work together to derive the optimum solution for the whole life of the project.

Private Finance Initiative (PFI) and PPP (Private Public Partnership) contracts also depend on the co-operation of all parties to arrive at the best overall solution to meet the client's requirements. In these forms of contract there is usually a long lead-in period between the initial concept and work commencing on site. If used well this period can be used to develop cost-saving-value-engineering, along with the possibility of innovation and the opportunity to design-in health and safety measures before work starts on site. Many times this produces a win-win situation, where safer and healthier methods have proved to be cost-effective in the long-term life of the project.

In PFI and PPP contracts, the role of the client will almost certainly change.

The project originator is the client until someone else takes on this role, so they should establish that there are appropriate arrangements for managing the project. This includes ensuring the roles of all those involved in the project are made clear at all stages and that adequate time and resources are available to maintain health and safety throughout the project.

To meet the aims of CDM 2007 it is crucial that early designs and specifications take full account of the principles set out in the section entitled 'The designer'. If this is left until a contract is awarded it may be too late. Addressing these issues at such a late stage is likely to be ineffective and expensive.

Project originators are responsible for any requirements they impose. This may make them designers under CDM 2007, with the additional duties of a designer. They must provide any relevant information to inform the designer and ensure that a pre-tender health and safety plan is provided to bidders.

A special purpose vehicle, or design-build contractor, once appointed, normally takes over as the client for the remainder of a project.