

Employing Contractors

SUMMARY

- This GN sets out good practice for agents that employ contractors/providers for services and maintenance.
- It sets out criteria to be used to vet contractors.
- Sources of help to agents vetting possible contractors are listed.

VETTING CONTRACTORS

All agents should have criteria for vetting contractors before employing them. The usual basic criteria will include:

- Check identity
- Check financial position
- Check competency
- Insurance
- Tax
- VAT
- Health and safety

CHECKING IDENTITY

The easiest ways to check identity are to obtain a copy of the certificate of incorporation of a company and then check Companies House records to make sure the contractor has not been struck off. For sole traders ask for personal I.D. such as passport or driving licence with a personal address.

FINANCIAL POSITION

A copy of the contractor's accounts or a bank reference will help to reassure. Avoid the risk of giving a large value contract to a small contractor which will overstretch its resources.

COMPETENCY

There are a number of ways of checking competency. For specialist trades there will be professional organisations such as CORGI for gas and the Institute of Plumbing and Heating Engineers. For general builders it is much harder to assess competency. One helpful scheme is the Construction Skills Certification Scheme. It records the assessed competencies of workers in the construction industry and has over 500,000 registered operatives - www.cscs.uk.com.

HEALTH AND SAFETY POLICY

All contractors should have a health and safety policy. If you wish to use a sole trader who is not required to have a written policy, ask the trader to sign a typical policy to protect the agent's position.

TAX AND VAT

Agents or their clients who employ contractors for construction operations (which include repairs and decorating) may be "deemed contractors" under the Construction Industry Scheme operated by HMRC. The rules are complex but if the agent or client has not spent an average of more than £1m per annum in the last three financial years, they will fall outside the Scheme. See guidance leaflet HMRC 01/06 Ref CIS340 from www.hmrc.gov.uk/new-cis.

VAT status should also be checked because if the contractor is operating outside of VAT illegally then you could be accused of collusion.

INSURANCE

What cover does the contractor hold? Obtain copies of current policies. As a minimum you will want public liability and employer's liability cover if the contractor has staff.

Is the cover held by the contractor suitable for the works you may wish to have done? If necessary, seek advice from your broker or insurer. ARMA recommends that an absolute minimum public liability cover of £1m is required for contractors; however it is necessary to assess the risks from the type of work to be carried out. Hot works to a flat roof could result in a major fire to a block with costs running into millions.

What about the cover held by you or your client if you are placing an order for major works? JCT contracts often place the requirement on the employer to insure. Check with your broker or insurer whether any policies you have may cover you if things go wrong with a contractor. What if the contractor starts a fire, but is not negligent, who is covered for the damage caused? Check the public liability cover you hold for the block is adequate.

SOURCES OF HELP WHEN VETTING CONTRACTORS

There are organisations that vet contractors and have quality assurance schemes that an agent can use to reduce the time and effort needed to vet contractors. Some are specialist trade associations with codes of practice. Others are Government or commercial schemes. Here are some of the main examples:



- **NICIEC** is the voluntary regulation body of the electrical contracting industry. It has a roll of approved contractors who are assessed annually. www.niceic.org.uk.
- **CORGI** holds the register of firms and their operatives who are qualified to work on gas appliances and fittings. The register can be searched by the type of work required. www.corgi-gas-safety.com.
- **TRUSTMARK** is a Government supported scheme to help the public find trustworthy trades people. Firms are checked for financial position and health and safety, and have to operate to a code of practice. See www.trustmark.org.uk for a list of trades including painters, plumbers, general builders.
- **Constructionline** is run by the DTI and is a service to vet contractors for their financial standing so that they do not repeatedly have to fill in pre-qualification forms. Over 50% of the contractors have a turnover of less than £1m. It is free to those who want to search its database for contractors but you do have to register your details first. www.constructionline.co.uk
- **CHAS** holds a list of contractors who have been vetted to demonstrate adequate compliance with health and safety requirements. www.chas.gov.uk.
- **Safe Contractor Scheme** - a database of contractors whose health and safety policies have been independently vetted. Run by National Britannia. Free to use but you have to sign a client agreement. www.safecontractor.com.
- **Vetted contractor and vetted supplier** - is an independent accreditation scheme that holds a list of vetted contractors who have demonstrated adequate insurance, and environmental and health and safety policies. www.vettedcontractor.com or 0845 456 1914.
- **Asbestos** - the HSE keeps a database of contractors that are licensed to handle asbestos. www.hse.gov.uk/asbestos/licensing.
- **Security Services** - the Security Industry Authority operates an approved contractor scheme for private security services which is in addition to its licensing scheme for employees. www.the-sia.org.uk

- **Local authorities** - most local authorities keep a public record of contractors that are on their approved list. To reach the list they will have been vetted for the basics. Go to the internet site for the local authority. Some authorities also operate lists of trades people similar to Trustmark above.

S20 AND THE NOMINATION OF CONTRACTORS

Having set out the criteria an agent should use to vet contractors, agents are often left in situations where their clients want them to employ contractors who do not meet these criteria. Furthermore, S20 procedures require agents to invite nominations from lessees and RTAs without requiring that the nominated contractors are competent, qualified, willing or able to do the work required.

ARMA recommends that agents should take reasonable steps to require that any nominations from lessees or RTAs meet reasonable publicly recognised standards, without seeking to prevent nominations. It is good practice for agents to state on the S20 notice of intention or in a covering letter what criteria it will use to assess contractors. A requirement for certain competencies or qualifications for specialised work, tax, VAT, insurance, and health and safety policy are acceptable to use.

THE RISKS TO AGENTS OF USING UNVETTED CONTRACTORS

An agent may find its client insists on using a contractor who does not meet minimum vetting criteria used by the agent. In such cases the agent should seek to protect its position to prevent any future claims against it. The client should be asked to engage the contractor directly, not the agent, and the agent should put in writing why it will not supervise any works by that contractor. It is possible that the agent's PI insurance will be invalidated by working with unvetted contractors.

INFLUENCING CONTRACTORS

Choosing the right contractor is essential in getting a task completed as effectively and cost effectively as possible. Using a contractor over whom you have some influence is helpful if work is less profitable or desirable. Some ways in which agents can have influence over contractors are:

- Being able to offer more lucrative contracts should this one proceed satisfactorily.

- Having an effect on the cash flow of the firm, should the work not proceed effectively.
- Working with other current and potential clients of the contractor and being able to offer a reference.
- Having a penalty, or incentive scheme, built into the contract.

INSTRUCTING CONTRACTORS

You must make sure that contractors are not at risk from your premises and the contractor has a duty not to put the premises, residents and the public at risk from his activities.

Agents have an obligation to be clear when instructing contractors and to ensure all instructions are recorded in writing. The agent should consider the most suitable form of contract for the service or works - an exchange of letters or a standard form of contract. Verbal instructions to a contractor should be followed up with written confirmation. If possible also have a contemporaneous file note of instructions given.

Instructions about the work to be done will be required but consider also what can and cannot be done, defining what areas the contractor can go into, hours of working, noise and nuisance to owners, any staff and visitors rules. Make the contractor aware of your health and safety policy for the scheme, fire procedures and accident reporting procedure. Consider getting the contractor to sign these 'site rules' to reduce the risks to you if things go wrong.

Make the contractor aware of any special risks thrown up by your own assessments and you must issue an appropriate notice if asbestos is known to be present in any area to which the contractor will have access.

Inform residents of where and when contractors will be working if there may be any risk to them from the work or noise or disturbance.

CDM REGULATIONS

Agents need to be aware of the Construction(Design and Management) Regulations often known as CDM or CONDAM regulations. For some types of works it will be necessary to comply. New regulations are due from April 2007. www.hse.gov.uk/construction/cdm.htm

RICS CODE GOOD PRACTICE

Chapter 13 of the RICS code sets out good practice for dealing with contractors. In addition to points already made in this GN the Code adds:

- The landlord or management company should be the employer of the contractor, not the agent, under any contract.
- You should declare to your client and to lessees any financial or other connection you may have with any contractor you propose to engage.
- You should require all contractors to take appropriate care as to the security and the avoidance of damage to lessees' possessions and unreasonable disturbance while undertaking works.
- Agents should have a procedure to deal with complaints by lessees alleging shoddy work or damage.
- Contractors should be told that harassment of lessees is strictly forbidden.
- The code of racial equality in housing recommends agents make any contractor aware that it will not tolerate any form of racial discrimination by the contractor or its employees and sub-contractors. In addition, agents are recommended to make contractors aware that any other form of discrimination will not be tolerated.

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