



# Contract Advice Notes (Part 2)

Administration of Works Contracts

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Professional Guidance Series

PGS11



## Introduction

*Contract Advice Notes Part 1* sets out the broad legal obligations and duties that derive from a contract agreement. Frequently, ecologists and environmental managers are involved in designing and supervising, for example, habitat management and/or creation schemes which involve acting as an agent for the client and supervising the works undertaken by a contractor. Advice Note 2 sets out the elements of managing a contract that a professional ecologist should be aware of and makes recommendations for ensuring that the quality of work is maintained until contract completion.

Managing these types of contracts is about ensuring that the quality of the works specified in the tender documents is achieved and completed on the ground.

Before managing a contract, you should familiarise yourself with some of the standard contract forms; these will give you a basic understanding of the elements of contracts. There are no forms written exclusively for ecologists or environmental managers but the ones issued by the British Association of Landscape Industries (BALI) and the Joint Council for Landscape Industries (JCLI) provide clear definitions and processes of the works involved.

If you adopt one of the forms to provide the basis for your contract it is essential that you are fully aware of each of the clauses, as the standard contract formats are slightly different.

## Tender Documents

The Professional Guidance Series No. 5 *Tendering* explains the need for detailed and accurate information to be included in the tender package. This tender package then forms the basis of any works contract. The importance of clear and accurate drawings, accurate works and materials specifications and quantities, a clear description of how the work should be undertaken and an appropriately detailed scope of work soon becomes clear when supervising the work on the ground.

Accuracy and attention to detail at the tendering stage is vital as an error can have serious legal and/or cost implications.

Although every eventuality should have been foreseen at the tender stage it is inevitable that issues may occasionally arise during the actual contract works that were unforeseen. To avoid having to add to the agreed contract sum it is always an advantage to have included a consideration for contingencies in the tender documents.

## Communication

It is essential that good relations and good communications are established at the outset and maintained between the contract parties: the ecologist/manager and the contractor. The lack of a well-defined relationship can cause innumerable problems during the contract period. It is essential, therefore, that the contractor understands and empathises with the aim of the project, understands his responsibilities and your responsibilities together with the clearly defined roles, the communication line, the limitations of authority, any constraints arising from the legal obligations such as licencing, all the processes to be used and the intended end result.

It is obviously equally important that a good relationship is maintained with your client during the duration of the contract; that the client understands all the ramifications and cost implications of the contract and the client is kept well-informed of the contract's progress.

On larger schemes a team of other professionals are usually involved. It is important to develop good communications within the team so that all other professionals are aware of the process being undertaken within the ecology contract and any implications that this may have on their works. Similarly, it demonstrates a professional approach if the ecologist is aware of all the implications in respect of the other disciplines, particularly in respect of any conflicts that may arise.

It is always advisable to have a precommencement meeting. The contractor will have the tender documents but a site visit or meeting to discuss the project prior to commencement adds clarification to the documents and avoids misunderstandings.

The pre-commencement meeting should include at least:

- All contact details and evidence of insurance details for the team



- Dates for the contract commencement, agreed stages, inspections of all materials and works and completion, both partial and final
- Health and Safety procedures including records of who will be on site and when
- Discussion and clarification of contract documents including any inconsistencies, queries or concerns
- Clarification of costs if necessary including identification of additional costs if required, for example if further survey works are required
- Clarification of site conditions, any constraints, access, security, staff conditions etc.
- Proposed control and monitoring of quality – site inspections, material inspections, progress meetings, method of communication
- How instructions in contract variations will be agreed and issued
- Payment agreement.

## Contractor's Obligations

Both the BALI and the JCLI documents set out the responsibilities for parties in a contract. The contractor will know that he is obligated to complete and carry out the works as they are described and illustrated in the tender documents in a 'good and workman-like manner'.

The contractor is obligated to ensure that they have undertaken all appropriate risk assessments and follow Health and Safety procedures set by the contract and the client.

If problems arise and/or delays occur or are likely to occur for any reason the contractor must immediately inform the ecologist/manager explaining the reason and providing a timescale for the delay.

## The Contract Administrator's Duties

Duties may vary slightly depending on the contract form used but certain basic elements will be common to all the contracts.

The contract can only be made between two parties – the client and the contractor. The contract administrator will have their own written contract with the client outlining their professional responsibilities and the work expected of them. The ecologist or manager will be acting as an agent for the client and will be responsible to the client for all actions during the running of the contract.

It is essential to have a complete and comprehensive audit trail and all actions and discussions taken during the contract period must be recorded in writing and be distributed around the team, in accordance with the agreed mechanism for communication.

The contract administrator is responsible to the client for the smooth and accurate running of the contract and must maintain a close appraisal of all works in progress; ensure that all materials used are to the required specification in terms of quality and numbers and that all workmanship is to the required standard. Site visits and site meetings should be held on a regular basis and cover all crucial stages of the project.

Errors in the contract documents, which may come to light at the pre-commencement meeting or as the works progress, can be corrected by a written instruction.

If, for any reason, the works are found to be unsatisfactory the administrator must immediately instruct that the faulty materials are removed and faulty works are re-done at the contractor's expense, again recording the issue in writing. The importance of regular supervision becomes clear as all stages of the works must be up to standard.

As well as managing the construction part of the contract, the contract manager is responsible for signing off works and invoices. Invoices submitted by the contractor must be checked for numerical accuracy, signed off and sent to the client within 48 hours from receipt. A record must be kept of the monies being spent in the contract. Any overspend or variation from the original tender document prices must be queried and resolved, with written evidence.

## Contract Administration

### **Contract Awareness**

A full knowledge of the contract details, including all the clauses in any standard form used and a constant awareness and monitoring of a project's progress is essential for good contract administration. An inadequacy of

knowledge or surveillance and monitoring during a contract could result in errors, misunderstandings and complex and costly delays. Documenting all surveillance and monitoring is a key to a successful contract administration process. Written records of all telephone conversations, site meetings, inspections and all agreements must be kept and the client kept informed of progress on a regular basis. Records provide an audit trail of discussions, decisions and actions that would be vital as evidence in any dispute.

Management tasks such as convening regular site meetings, reviewing the reporting requirements and ensuring that all discussions with the contractor and client are recorded and distributed around the team are essential.

### ***Responsibilities: Permissions***

There should be clarity in the contract as to who is responsible for obtaining consents and relevant permissions in respect of accessing land not owned by the client (to avoid trespass) and to avoid issues with the statutory authorities responsible for underground cables or pipes. It is important to remember that ecology, particularly habitat design and construction, cannot be dealt with in isolation – elements such as statutory authority permissions and way leaves must be understood.

### ***Response to Queries***

It is essential to always be aware of the status of a project and to be ready to respond promptly and efficiently to queries, concerns or requests for site visits to discuss problems arising on site. The contract administrator should never be responsible for unnecessary delays.

### ***Inspection of Materials***

If the contract requires any materials to be supplied, for example top soil, plants, paving, seats, litter bins, material for walking tracks, cycle tracks etc the original tender documents will have specified clearly the standards of quality required and, in the case of the planting, the varieties and numbers of plants required.

It is essential that all materials are inspected before they are incorporated into the scheme. For example, it is vital to check that the plants, seeds or turves that have been supplied are as specified in the tender – the correct varieties, numbers; that they are in good condition and are being handled and stored correctly.

If incorrect or poor quality items have been supplied, the contract administrator must reject them and ask for the correct material to be supplied promptly as specified. The financial responsibility for the replacement of incorrect or faulty goods would lie with the contractor. If the incorrect plants are supplied, make sure that the correct types and numbers are available before planting begins.

It is the contract administrator's responsibility to ensure that the client's money is being correctly spent and the invoices from the contractor can be legitimately signed off.

### ***Variations***

Once work commences, it is sometimes the case that changes are required. These may have implications for the costs and the duration of the contract programme. Variations in a contract can be agreed in writing as and when they become necessary. Errors in the contract documents, which may come to light at the pre-commencement meeting or as the works progress, can be corrected by a written instruction, known as a variation.

Unforeseen elements may occur at any time during a contract programme such as the ground conditions may require slight variations in the proposals; or if a particular plant listed in the planting scheme cannot be sourced as required, an alternative may be suggested. If the alternative is agreed this must be recorded and the client informed.

Variations must be discussed with the client and the contractor and any agreement reached must be issued as a written instruction with an estimate of any cost changes or programme revision that would be involved. The client must be informed of all changes in costs and the programme and instruction obtained to proceed before the instruction for the variation is issued to the contractor.

Written agreement of a variation should be issued within 48 hours of the decision.

### ***Delays***

If delays occur through no fault and the timeframe can be reasonably extended, all parties must be informed of the revised programme dates in writing.

If the reason for the delay is unacceptable then a reduction in cost may be recommended of the overall fee due to the contractor. If this is proposed full discussion with the contractor and the client must take place to clarify the issue and reach agreement. The discussion and agreement must be recorded in writing. The JCLI contract form also allows for a day rate penalty clause to be included in the contract. Totally unacceptable delays on the part of the contractor or the contract administrator could result in a breach of contract.

## Payments

How payments are organised will depend largely on the length of the contract. Works that take a relatively short period such as a few days or a week will probably only have one payment on completion of works. A contract that extends over several months or has distinct work stages can be managed by 'Stage Payments'.

The contractor submits the invoice to the contract administrator who must monitor all payments to ensure that all the invoices are numerically correct and refer to works satisfactorily completed to that date; and do not exceed the agreed amount. Any queries about the invoice should be raised with the contractor immediately, as the administrator has the responsibility to pass the invoice on promptly, within 48 hours, to the client for payment. It is advisable to keep a copy and, if the contract is dealing with Stage Payments, keep a running total.

The client should be informed of any variations that would result in additional expenses over the agreed contract terms; and agreement for such additional works be obtained in writing from the client prior to their implementation.

To avoid having the responsibility for the payment of large sums, it is advisable for the administrator to ensure that the client pay the contractor direct.

## Practical Completion

The JCLI document uses the term Practical Completion. Practical completion is reached when the works are effectively complete and the land owner can take over the site to use as proposed. It is essential that the works are inspected before practical completion is agreed to ensure that everything has been satisfactorily undertaken and completed. Often the first inspection results in a 'snagging list' of minor items that need rectifying. Once the snagging list has been dealt with and agreement is reached, the project is complete. The contractor and the client must be informed in writing.

Following practical completion, the JCLI standard contract form allows for a period called the Defects Liability Period. This period usually lasts either a year or a growing season after the practical completion date and allows for any defects to be corrected. A percentage of the final contract figure is usually withheld to cover this period. The advantage of this period is that if any further faults are found or if plant material dies during the period, it is replaced and corrected at the contractor's expense.

At the end of the Defects Liability Period a full inspection should take place and all faults noted in writing. These faults must be corrected and a re-inspection take place before the contract is deemed completed.

## Final Completion

Only once the contract administrator is fully satisfied that the works are completed to the required standard can the works be signed off with a final completion notice or certificate. With the issue of this notice or certificate the contractor receives the payment of the final sum.

## Legalities

Please remember that contract law is an area where a little knowledge can be a dangerous thing. As a professional it is essential that you understand the detail of what you are doing and the implications to other professionals but, in terms of matters legal, always refer to an expert.

## Further Reading

This advice note can only provide a broad outline of contract administration. To be sure that all responsibilities are understood further reading will provide additional information.

## References

JCLI Landscape Works Contract.  
JCLI Landscape Maintenance Works  
Contract. BALI Contract for Domestic Work.  
Spon's Landscape Contract Handbook, Hugh Clamp.

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