

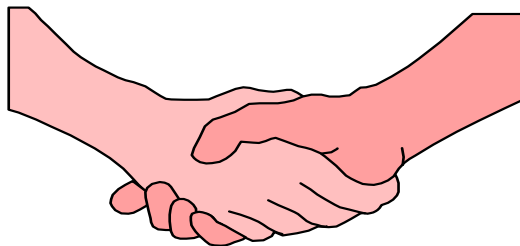
**Recommendations for Acting as a Principal- Prepared by ? for X Company-Prepared by George Robotham**

Quotable Quote

"A health & safety problem can be described by statistics but cannot be understood by statistics. It can only be understood by knowing and feeling the pain, anguish, and depression and shattered hopes of the victim and of wives, husbands, parents, children, grandparents and friends, and the hope, struggle and triumph of recovery and rehabilitation in a world often unsympathetic, ignorant, unfriendly and unsupportive, only those with close experience of life altering personal damage have this understanding"

## INITIATING CHANGE

- When initiating change remember “People support what they create”



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## Introduction

X company has requested advice from ? in relation to their safety role and responsibilities as a Principal managing contractors. This report summarises the legal safety requirements of Principals in charge of contracts. It recommends an audit of contractor safety arrangements as they relate to the Principal and it recommends the formation of part-time OHS project teams to oversee the safety requirements of the projects that utilise contractors.

## Scope of report

This report addresses statutory safety obligations of Principals towards contractors, best practice approaches for managing contractors and recommendations for further action.

## Effects of accidents

The following quote was made by a safety professional involved in managing an incident with multiple fatalities- “Those who complain about the effort and cost of implementing safety measures should have been around to see the slump in the company share price, shareholder dissatisfaction, pain and suffering, cost, effort, media crucifixion , ruined reputations, wrecked careers, psychological trauma, union backlash, enormous investigation effort, massive counselling effort, threat of regulator action, legal action against the company and company officials and strained relationships I saw.”

## Legislative requirements

The following summarises / paraphrases 2 documents that are available on the New Zealand Department of Labour web-site.

1 “A Guide to the Health & Safety in Employment Act 1992-4.3 Duties of Principals and Contractors”

2 “ Contracting to Meet the Health and Safety in Employment Act-,Draft Guidance for Principals”

The object of the Health and Safety in Employment Act 1992 is the prevention of harm to people at work, or affected by work. Section 18 of the Act creates a duty requiring Principals to a contract to take “all practicable steps” to ensure contractors, sub-contractors and their employees are not harmed while undertaking work under the contract. Broadly a “principal” is any person who engages another (other than as an employee) to do any work for gain.

“All practicable steps”

This duty to take all practicable steps is defined in terms of taking all steps that are reasonably practicable. When dealing with any case the question asked by the courts is “What would a reasonable principal do in the relevant circumstances?”

The following process for meeting the “all practicable steps” requirement for principals is extracted from document 2 mentioned above.

### 1.4 OVERVIEW OF PROCESS

The chart below outlines the usual features of a process for principals to manage and assist with the safety performance of contractors.

## Best practice process

STAGE OF CONTRACT	HEALTH AND SAFETY ISSUES	TASK AND DOCUMENTATION
<p><b>Pre-tender</b></p> <p><i>Scoping the work</i></p> <p><i>Pre-qualifying the contractor</i></p>	<p>Determining what work needs to be contracted out, considering the broad health and safety implications.</p> <p>Assessing capability of potential tenderers</p> <p>(i.e. for an "approved list").</p>	<p>Initial appraisal of major hazards and overview of likely risks associated with different options. Relevant tender and contract information developed by the principal.</p> <p><b>Pre-qualification questionnaire</b></p> <p>Assessing health and safety management and, depending on the scale or significance of the hazards, a detailed appraisal of technical competence.</p>
<p><b>Tender</b></p> <p><i>Managing the tender</i></p>	<p>Developing and agreeing on a health and safety <b>plan</b> for the project.</p>	<p>Relevant information is given to tenderers by the principal through the information for tenderer document.</p> <p><b>Draft health and safety plan</b></p> <p>Principal provides information and answers questions specific to the job, assists with completion of hazard assessment and method statements where appropriate.</p>
<p><b>Awarding the contract</b></p>	<p>Developing a job-specific health and safety plan.</p>	<p><b>The contract itself</b> will often draw on the tender documents above.</p> <p>Job registration or permit-to-work may be used to inform risk assessments.</p> <p><b>Completed health and safety plan</b></p> <p>Principal provides information and answers questions specific to the job, assists with completion of hazard assessment and method statements where appropriate.</p> <p>Incorporation of health and safety plan in contract</p> <p>Includes agreed detail of lines of communication, responsibilities, accountability, safe systems of work, method statements, use of client services, etc.</p>
<p><b>Monitoring the contract</b></p>	<p>Monitoring/checking throughout duration of contract.</p>	<p>Checking and ensuring contractor performance meets the agreed standards.</p> <p>Meeting as appropriate to plan for and resolve health and safety issues.</p> <p>Principal's reporting, notification and hazard management documentation as required by the</p>

## Best practice process

STAGE OF CONTRACT	HEALTH AND SAFETY ISSUES	TASK AND DOCUMENTATION
Post-contract review	Concluding review to determine success or otherwise of the	contract.

The following advice is extracted from document 1 mentioned above.

### **Contractor selection and negotiation of terms**

Case law has set a high standard for principals to include health and safety issues in the negotiation of contracts. A Court of Appeal judgment has stated\*:

.... in contract negotiations between principal and contractor or subcontractor - no matter how informal - safety is as critical factor as the contract price or duration. As between principal and employer who will supply and maintain safety equipment; who will bear any losses if that equipment fails or is unavailable, who will negotiate directly with the employees to ensure the safest working methods and conditions in the circumstances of the contract. If a principal lets a contract to an employer which does not incorporate and allocate responsibility for such features, the principal may well assume the burden of assuring that workers are not harmed.

### ***Is the principal responsible for advising on the appropriate safety standards to be observed?***

The short answer to this question is, "yes". Depending on the nature of the work being undertaken, where a principal is required to take all practicable steps to avoid harm to contractors and their employees, this should involve an awareness of the required standards.

### ***The contractor should submit a health and safety plan***

For any significant contract, the contractor should submit a plan on how they intend to manage health and safety in relation to the proposed work - before the contract is formed.

This plan should as a minimum contain the following details:

- Hazards identified and control measures to be taken;
- Emergency procedures;
- Training, experience and qualifications of employees (including OSH certificates of competency where required); and
- Procedures for reporting and recording of accidents/incidents.

The health and safety plan or policy needs to be adequate, and appropriate to the hazards and circumstances of a particular contract. The plan should describe the lines of accountability, and responsibilities for supervision.

#### Evaluation

Post-contractual evaluation by the principal should cover the safety and health performance of the contractor. Where appropriate, evaluation information should be included in the selection process for new contracts.

#### **Information sharing between principals and contractors**

The "practicable steps" required in the exchange of information varies according to the nature of any given contract.

#### **Reporting arrangements**

##### *Nominated contact persons for both the principal and contractor*

Representatives nominated should have the appropriate level of knowledge for the role and be at a level of authority within the organisations that allows them to be effective. They should also be resourced and available to carry out the role effectively.

##### *The planning and running of joint meetings*

Meetings should be regular, and conducted in a format that allows a free and open exchange of information.

##### *Procedures for reporting hazards*

Although principals are required to take all practicable steps to monitor and manage hazards, there may be situations where they are reliant on the contractor to report hazards.

##### *Responsibilities where work is notifiable to OSH*

The Health and Safety in Employment Regulations 1995 require employers to notify OSH of certain categories of work at least 24 hours before work begins.

Section 18 requires that the principal to any contract involving such work be aware of the notification requirements and ensures the contractor complies.

##### *Method for reporting accidents and incidents to the principal*

The principal should ensure that they are advised by contractors of all accidents and incidents with respect at least to the hazards or potential hazards that they exercise control over.

Principals and self-employed persons have accident recording and notification duties under section 25(1A) and 25(3).

## **Information to be given by the principal about the workplace or procedures**

Information to be given by the principal may include the following categories:

- Hazards that are known to exist in the place of work and may affect the contractor or their employees;
- Restricted areas;
- Any work permit procedures, e.g. hot work permits;
- Any company rules that the contractor will be required to comply with during the contract;
- Emergency procedures that exist and first-aid facilities available; and
- Specific job instructions and work methods.

The practicable steps are unlikely to include instruction on any specialised work for which the contractor has been employed.

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## **Monitoring contractors' performance**

The case law has established that there is a positive duty for principals to monitor contractors' and subcontractors' performance.

This is not a duty to constantly check for hazards, but at least to bring to the attention of the contractor any unsafe practices or conditions.

The principal may not have directly engaged subcontractors, but they still have a duty to ensure their safety at a level that could be reasonably expected - for example, by the provision of a safe power supply or access on a construction site.

What it is practicable for a principal to do will usually decrease the further the principal is removed from the subcontractor's engagement, but they are still required to do what could reasonably be expected in the circumstances.

In summarising and paraphrasing the above documents for the purposes of brevity some meaning may have been excluded, you are strongly recommended to refer to the source documents in your decision making.

The legal requirements above are the absolute minimum “MUST DO’S”

## Discussion

The use of contractors in industry is widespread and the requirements on employers and Principals to ensure contractors perform to a high standard in Occupational Health & Safety is increasing, both in legislation and community expectations. Some contractors are cowboys when it comes to safety and will take shortcuts unless appropriate safety systems are in place to regulate their behaviour.

## Best-practice guide to contractor OHS management

The legislative requirements stipulate what you must do to comply with legislation. It is often found in practice that complying with legislation alone is not sufficient to ensure best-practice in safety and one should take a few steps further.

The project team members will have their own ideas on how to manage contractor safety.

The following are suggested as appropriate avenues to explore (Some of this may be an over-kill for your needs, what is required is that you identify your needs and tailor an approach to meet your identified needs)-

Develop safety requirements to go in the contracts with the contractors. You may wish to develop a safety checklist of your requirements you want the contractor to complete. You need to clearly define your safety expectations of contractors. The safety legislative requirements for the proposed work needs to be identified. You need to satisfy yourself that contractor management, supervision and workers are aware of their safety obligations. Pre-qualify contractors based on their accident experience and proven approach to safety.

Develop a short, sharp safety induction training program for contractors.

Develop a contractor's safety induction handbook.

In some circumstances it may be necessary to verify maintenance records on contractor's equipment.

Develop a system for checking for required licences and training.

Where appropriate have pre-start hazard inspections of the contractor's equipment.

Have regular inspections of the contractor's work area.

Have regular audits of the contractor's safety systems.

Have a designated person acting as the safety go-between between your company and contractors.

Ensure there are safe working procedures and / work method statements for at least the high risk tasks. The Job Safety Analysis technique helps for this.

Ask contractors to submit a safety management plan as part of the process of deciding who gets the contract. As a minimum this document will describe the safety policy, how they will comply with statutory requirements and how they will control the hazards of work. A lot of examples of contractor safety management plans can be found on the internet. Many of these will be for work of higher risk than yours and will require some work to be really relevant to your risks.

Demand proof of the required insurances.

Ask for accident investigation and reporting procedures and ensure these are reported to you.

Ask for Emergency Response Plans and understand your role in these, if any.

Continuously performance manage safety of the work.

Have a meeting to discuss safety arrangements prior to the commencement of work.

Major projects will have a Project Management Plan. Ensure safety is appropriately covered in this.

Ensure your right to terminate a contract because of poor safety performance is written into the contract and be very up front that you will use this if necessary.

Build dispute mechanisms over safety into the contracts.

When it comes to safety treat contractors as if they were your permanent employees.

Have regular meeting with the contractors to discuss safety performance.

The very minimum you must demand from your contractors is compliance with legislation.

Have a post-contract review of how safety was managed.

### Recommendations

X company has a number of discrete contracts where they act as the Principal. It is recommended that ? carry out an audit of contractor safety arrangements as they relate to the principal.

It is also recommended that for each contract a small OHS part-time project team be established to plan and oversee OHS on the contract. Some of the specifics of what are suggested as being required are covered in the preceding section. The project team should consist of the contract manager, operational supervision, maintenance supervision, operational employee representative, maintenance employee representative and the OHS Professional as an adviser.

Project team members should generally be receptive to change and formal or informal influencers in the workplace. If you have people you know will obstruct change there may be value to putting them on the project team so they are part of the change process.

? will be available as required to advise the project teams and facilitate meetings. A technique we find of value when commencing such project team meetings is the Force-Field Analysis technique (A description of this process can be provided on request) We would recommend facilitating an approx. 2 hour force-field analysis session as a pre-cursor to the project team meetings.

? have a well developed range of contract management solutions. Refer to [www.safesite.co.nz](http://www.safesite.co.nz)-Home-Contract Management Solutions .These are specifically designed to ensure you meet the minimum statutory requirements. These are proven approaches to contractor safety management.

### Conclusions

Our experience is that it is not particularly difficult or costly to make significant improvements in managing the safety of contractors as the Principal. It mainly requires some thought, identification of needs and a disciplined approach. ? have proven approaches to contractor safety management.

If you have any questions when you receive this report please ring George Robotham on vvvvvvvvv and I will clarify issues for you. A detailed proposal for our services can be prepared on request.

Thank you for requesting the assistance of ? for this project.