

RICS Practice Standards, UK

Contract administration

1st edition, guidance note



RICS

the mark of
property
professionalism
worldwide

rics.org/standards



Contract administration

RICS guidance note

1st edition (GN 69/2011)

Published by the Royal Institution of Chartered Surveyors (RICS)

Surveyor Court

Westwood Business Park

Coventry CV4 8JE

UK

www.ricsbooks.com

No responsibility for loss or damage caused to any person acting or refraining from action as a result of the material included in this publication can be accepted by the authors or RICS.

Produced by the Building Surveying Professional Group of the Royal Institution of Chartered Surveyors.

ISBN 978 1 84219 666 3

© Royal Institution of Chartered Surveyors (RICS) April 2011. Copyright in all or part of this publication rests with RICS, and save by prior consent of RICS, no part or parts shall be reproduced by any means electronic, mechanical, photocopying or otherwise, now known or to be devised.

Typeset in Great Britain by Columns Design XML Ltd, Reading, Berks

Printed in Great Britain by Annodata Print Services, Dunstable, Beds

Acknowledgments

The development of the RICS Contract administration guidance note was facilitated by RICS Building Surveying Professional Group under the direction of the Working Group.

The members of the Working Group formed to oversee drafting were:

Lead author

Terry Northwood BSc (Hons) FRICS, Northwood Collings Ltd

Working group

Ian Haywood BSc (Hons) MRICS, Property Tectonics Limited

Andrew Loveland BSc (Hons) MRICS, King Sturge LLP – Building Consultancy

Douglas Field, Community Solutions for Primary Care

Roland Finch BSc FRICS ACI Arb, NBS

Ian Bull MRICS, Galliford Try Construction Limited

Duncan Salmon, Speechly Bircham LLP

John Parsons, RICS

The Working Group expresses its thanks to the RICS members, for their co-operation and advice in the detailed consultations that have taken place.

Contents

RICS guidance notes	1
1 Introduction	2
1.1 Scope	2
1.2 What/who is a contract administrator?	2
1.3 Terms used / definitions	3
2 Context	4
2.1 The role of the contract administrator	4
2.2 Summary of basic responsibilities of the contract administrator	4
2.3 The contract administrator and design	4
2.4 Identity of the contract administrator	5
3 Appointment of the contract administrator	6
3.1 Terms of appointment	6
3.2 Design responsibility	6
3.3 The contract administrator as an employee	7
4 Roles and responsibilities of a contract administrator	8
4.1 Building contract	8
4.1.1 General	8
4.1.2 Initial familiarisation	8
4.1.3 General administration	8
4.1.4 Records	9
4.1.5 Site inspections	10
4.1.6 Meetings	10
4.1.7 Reporting to the client / employer	12
4.1.8 Clients / employers instructions	12
4.1.9 Time	13
4.1.10 Interim valuation of the works	13
4.1.11 Contract instructions / variations	14
4.1.12 Contract completion date, extensions of time, early or partial possession and practical completion	16
4.1.13 Loss and expense	18
4.1.14 Adjusted contract sum / final account	18
4.1.15 Administration / insolvency of the contractor	18
4.2 To the employer	18
4.2.1 Terms of appointment	18
4.2.2 Overall budget – total project cost	19
4.2.3 Compliance with the specification of works	19
4.3 Other considerations	20
4.3.1 Health and safety	20
4.3.2 The Construction (Design and Management) Regulations 2007	20
4.3.3 Means of escape in case of fire	20
4.3.4 Environmental legislation	20
4.3.5 Statutory obligations	21
4.3.6 Consents, licences, etc.	21

4.3.7	Insurance	21
4.3.8	Letters of Intent	22
4.3.9	The Housing, Grants, Construction and Regeneration Act 1996	22

Appendices

A	Checklists	23
B	Office administrative procedures	26
C	References	27

RICS guidance notes

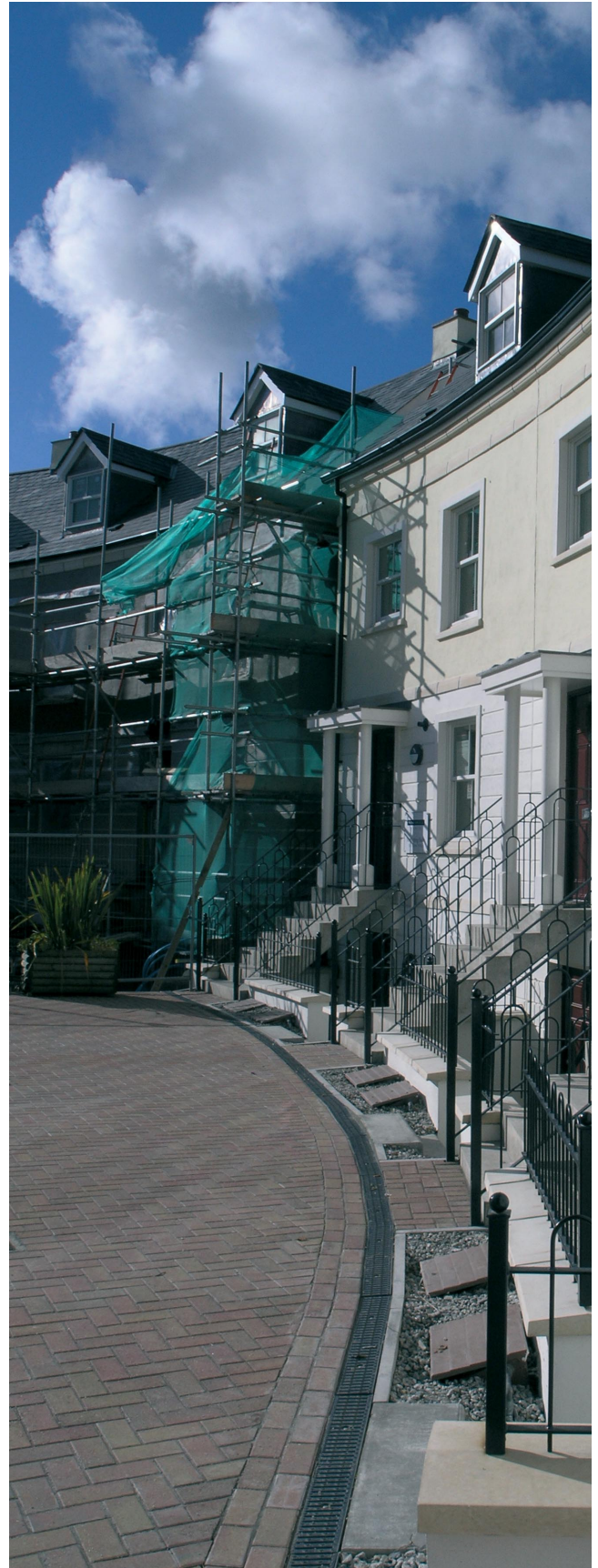
This is a guidance note. It provides advice to RICS members on aspects of their work. Where procedures are recommended for specific professional tasks, these are intended to represent 'best practice', i.e. procedures which in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the advice and recommendations contained in the note, they should note the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal is likely to take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

Alternatively, it does not follow that members will be found negligent if they have not followed the practices recommended in this note. It is for each surveyor to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this note, they should do so only for a good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice. Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel. In addition, guidance notes are relevant to professional competence in that each member should be up-to-date and should have knowledge of guidance notes within a reasonable time of their coming into effect.



1 Introduction

1.1 Scope

The purpose of this guidance note is to provide practical guidance to RICS members in England and Wales who undertake the role of 'contract administrator' (CA).

The role of the CA covers a wide range of possible services and projects from the smallest residential scheme through to larger commercial projects.

The responsibilities of the CA will be defined by the form of building contract and the professional appointment under which the CA is appointed. As the majority of surveyors only deal with small to medium sized contracts, this guidance note will concentrate on the role of CA at this level; and in particular within the provisions of contracts issued by the Joint Contracts Tribunal (JCT – minor works, intermediate and standard building contracts). In addition, many of the principles set out in this guidance note will also apply where no standard form of contract has been entered into, particularly for smaller works. While the guidance note does not deal with full 'design and build' contracts, the issue of the employer's responsibility for design is considered.

On this basis it should be noted that this guidance note does not cover other forms of JCT contract, GC works, BPF/NEC or ICE forms, other than to distinguish the role of the CA. It also does not deal with the responsibilities of employers' representatives under design and build arrangements, where the responsibility is to act exclusively in the interests of the employer, albeit honestly and with integrity.

1.2 What/who is a contract administrator?

The role of CA in a wide sense has been in existence on building projects for centuries, although the term was not formally introduced until amendment 4 to the JCT 1980 form in 1987.

The role involves managing the contract between the employer and building contractor. This is a role that was historically performed by the architect; and in fact, the JCT form refers to 'architect/contract administrator', indicating that for the purpose of the role identified in the JCT forms there is no contractual difference between the two terms.

While the role of CA can be undertaken by several possible professionals, with the architect traditionally filling the role, the scope of who can be the CA has widened to include building surveyors, quantity surveyors, management surveyors and engineers. Sometimes this can lead to blurring of the roles of members of the professional team.

1.3 Terms used/definitions

In this guidance note, the following terms and expressions shall have the following meanings:

CA	contract administrator, appointed by an employer to administer the contract between the employer and the contractor.
building contract	contract between the employer and contractor, whether or not in writing or in a standard form. This guidance note refers to the following JCT standard forms: <ul style="list-style-type: none">● Minor Works Building Contract 2005 Edition (MW)● Intermediate Building Contract 2005 Edition (IC)● Intermediate Building Contract 2005 with contractors design (ICD)● Standard Building Contract 2005 Edition (SBC)
contractor	building contractor engaged by the employer to undertake construction works and operations on behalf of the employer.
designer	person(s) or practice(s) employed to design the works being undertaken by the contractor. This may be for building works, the structure, mechanical and electrical services etc. and can include the contractor or sub-contractors where appropriate contract provisions are used.
employer	person or organisation engaging the CA and contracting with the contractor.
employers agent	For the purposes of this guidance note the role is as defined in the JCT Design and Build Contract 2005 and is different to the CA as the obligation is to act exclusively for the employer.
pre-commencement	the period of a project between creation of the building contract, when the CA will have been appointed, but before the contract works have commenced on site.
pre-contract	the period of the project before the building contract has been entered into by the employer.
surveyor	an individual or organisation that is governed by RICS Rules of Conduct.

2 The role of the contract administrator

2.1 When does the role begin?

2.1.1 The role of contract administrator does not technically commence until a building contract is in place between the employer and the contractor; however, in practice the responsibilities of the CA will have commenced before the building contract exists. This guidance also addresses those responsibilities.

2.1.2 There may be an implied requirement for the CA to perform pre-contract services, which will be covered by a formal or informal arrangement with the employer. These often include activities such as the selection of the method of procurement, calculation of liquidated damages and deciding on the type of building contract.

2.1.3 The CA becomes responsible for a series of services following commencement of the building contract, which are reviewed further in this guidance note.

2.2 Summary of basic responsibilities

2.2.1 The CA is responsible for administering the terms of the building contract between the parties. The CA will act as the agent of the employer in some circumstances but will be required to make impartial decisions in others (see 2.2.2). The obvious contradiction of this 'dual' role can give rise to difficult issues.

2.2.2 The CA has two distinct functions, described as:

- an agency function, and
- a decision-making function.

Despite the seemingly conflicting agency function, the decision-making function should always be impartial where parties to the building contract may have conflicting interests. The decision-making will reflect the professional expertise of the CA. A major benefit of this impartiality for the employer and contractor is that either party may challenge the decision of the CA. This can be distinguished from the role of employer's agent under a 'design and

build' contract where the employer would not normally be able to challenge the employer's agent's decisions.

The qualities required of a CA can be summarised as follows:

- Have the knowledge and skill to understand the relevant contractual provisions and know how to apply them
- Act in a manner which is independent, impartial and fair when making decisions
- Have in-depth knowledge of construction and the inter-relation between trades and construction operations so that the changes and the impact of the changes can be traced
- Be able to set up appropriate office procedures and record keeping commensurate for the scale and nature of the building contract and the works
- Be aware of, and where necessary be conversant with, the different types of critical path and project programming techniques

The key CA tasks required under the standard forms of building contract will generally include:

- chairing meetings
- periodically inspecting the works
- giving instructions, including variation or change orders
- determining any applications for extensions of time by the contractor
- authorising interim payments to the contractor
- certifying the date of completion
- settling the adjusted contract sum (final account).

2.3 The CA and design

2.3.1 Under the JCT MW, IC and SBC forms the role of the CA does not include design. Typically the role of designer is undertaken by any one of the following: architect, lead consultant, structural engineer, services engineer or indeed the surveyor who has been appointed as contract administrator.

2.3.2 A conflict can arise in the CA's relationship with the employer where the CA:

- gives advice to the employer or instructions to the contractor in relation to variations to the works, e.g. specifying substitute materials, changes in layout or assembly. This can easily happen on site when giving verbal instructions
- gives advice to the employer during the early stages of a project where the employer is deciding what is wanted for the project
- specifies materials, the performance of which will affect the works.

Care should be taken to ensure any instructions given to the contractor are expressly approved by the employer and designers, with the CA clearly not accepting responsibility for the assembly or choices of materials made.

It should be noted that for every project, the role of designer is regulated by the *Construction (Design and Management) Regulations 2007* and so the surveyor who takes on the role of designer, even inadvertently, needs to be aware of, and comply with, the obligations of these regulations.

2.3.3 The appointment between the employer and CA may also provide for periodic inspections of the works. This is an integral part of the service provided by the CA but the CA should ensure the purpose of inspections is made clear to all parties. For example the CA should not allow this responsibility to extend to checking compliance of the works with the design of the works. This is an obligation that should remain with the Employer which may then be delegated to members of the design team.

2.4 Identity of the CA

2.4.1 It is not uncommon practice to have an individual undertake the role of CA and the JCT forms lend themselves to this.

2.4.2 It is recommended to avoid personal appointments where possible by naming the professional practice concerned as CA in the building contract; for example 'one stop surveying shop Ltd.' rather than 'John Smith'. This will mean that if either the employer or contractor challenges a decision of the CA then it is the corporate entity that is responsible and not the individual. Should employers insist on one or more individuals working on a project this should be achieved through identifying the individuals in the consultant's appointment with the employer, and confirming that they (or reasonably acceptable alternatives) shall provide the services of CA on behalf of the corporate entity named in the building contract.

In any event it is always wise to check the practice's professional indemnity insurance (PII) policy to ensure that the appointment meets with the policy terms.

3 Appointment of a contract administrator

3.1 Terms of appointment

3.1.1 The surveyor when acting as CA should comply with RICS rules and by-laws which include:

- confirming the terms and conditions of appointment in writing
- detailing the services to be provided
- confirming the basis of fees to be charged for those services
- identifying that a complaints handling procedure exists.

The appointment would, under normal circumstances, be a company appointment, with details of the personnel likely to be involved in the delivery of the CA services outlined in the appointment.

3.1.2 The exact details of the appointment should be agreed with the employer at the outset, and should include:

- a clear explanation of the scope of services to be provided
- a clear indication of what services will not be included within the appointment
- information on how the appointment may be terminated by either party
- a dispute resolution procedure (which will be mandatory where the employer is a business).

The CA should be aware that there is every possibility that the scope of service will change during the life of the building contract works and those changes should be confirmed in writing with the client.

3.1.3 The level of PII to be provided may also be confirmed at this stage and detailed within the formal agreement. The level of PII cover should take into consideration the nature and extent of the project for which the appointment is being made.

3.1.4 In providing the services of CA the surveyor should be required to do so exercising reasonable skill and care.

3.1.5 The CA should be mindful that typically the terms of appointment will not, without explicit prior

agreement of the employer, allow for the issue of instructions that could alter or vary the extent of the proposed works, which may subsequently have financial or programme implications. The extent of the CA's authority with regard to expenditure of contingency monies and provisional sums, as well as dealing with additional or unforeseen works should be confirmed within the appointment agreement.

3.1.6 The CA should promptly advise the Client in writing of any circumstances that occur during the project, which could result in increased cost or additional time to complete the project.

3.1.7 The CA is expected to undertake routine inspections in order to report to the client on quality, progress and conformity with the contract documents. The CA would not be expected to undertake continuous or exhaustive inspections.

3.2 Design responsibility

Typically, a surveyor's appointment with the client will provide for the roles of both designer and CA, but the surveyor should be aware that there is a clear distinction between the two.

The distinction will be more obvious where others are appointed by the employer such as architects and structural or services engineers.

In such cases, the CA will need to ensure at an early stage that appointments for the other members of the professional team for the works are, or will be, put in place, and that those appointments provide for the CA to be supported in the administration of the contract. This support will involve:

- undertaking any necessary design changes
- advising on any particular programme and sequence of work implications
- advising on any costings for their field of expertise
- production of design documentation sufficient for the employers obligations under the building contract to be met

- inspecting the works to ensure the design/specification is met by the contractor and advising the CA of any implications where not met
- preparing documents sufficient for the CA to issue Instructions under the building contract
- in the case of the CDM co-ordinator, advising on the adequacy of information provided for the health and safety file.

3.3 The CA as an employee

3.3.1 There are occasions where the CA may be the employee of the employer under the building contract, for example, where the organisation has an in-house design, property or estates department.

In such circumstances it is important to be mindful of:

- how independent they can be in their role as CA
- there being no conflicts arising from their terms of employment, and
- insurance, which may be required for any personal liability that may arise.

4 Roles and responsibilities of a contract administrator

4.1 Building Contract

4.1.1 General

It is the CA's duty to administer the project in such a way that the correct contractual procedures and good administrative practices are followed, and that the life of the building contract from inception to completion is accurately and completely recorded.

Where specific procedures do not exist the CA should carefully consider what activities ought to be undertaken and how they are communicated in order to ensure that the project is fairly and effectively administered. The CA should devise and promulgate procedures that will address this.

The conditions of contract are intended to regulate not only written matters that arise during the course of the building contract, but also set out the parties' agreement as to how they will resolve potential disputes. The building contract conditions should not be regarded as an intention to seek conflict and the CA should recognise the part that can be played in achieving the completion of a project in a manner satisfactory to both the employer and the contractor. The proper administration of the building contract by the CA is one way in which this can be achieved.

Appendix A contains a checklist of matters that will need to be considered or undertaken by the CA.

4.1.2 Initial familiarisation

The CA should be aware of the actions that are required to be performed by all those affected by the building contract, as well as the time limits for those actions. To achieve this at the time the building contract is formed, the CA should read through the:

- building contract conditions, to become familiar with the requirements and obligations;
- specialist sub-contract documents
- specifications of works/bill of quantities or similar

- drawings
- the appointment agreement for other consultants.

The CA will also have additional responsibilities to the employer under the CA's terms of appointment; again, the CA should read the documents to become familiar with their requirements and obligations.

In addition Appendix A provides a list suggesting various matters the CA may need to deal with during the life of the building contract.

4.1.3 General administration

The nature of the project may require the CA to undertake fewer, or more, activities than those listed in this guidance note. It is worth the CA carefully considering what activities ought to be undertaken in order to ensure that the project is fairly and effectively administered. The CA will also have a number of set activities to undertake, details of which are determined by the building contract itself.

Where the JCT contract provides for a named CA that person will have a specific role, duties and rights. Using JCT ICD 05 (Intermediate Contract with Contractors Design) as an example, these may include the following:

Reference numbers are as used in the JCT Form.

Provision of information:

- **Ensure** the provision of information – clause 2.10 requires that the Contract Administrator shall ensure that two copies of the information referred to in the Information Release Schedule are released at the time stated in that Schedule.
- **Supply** documents, drawings and setting out, etc. – clause 2.8 identifies certain information that is to be supplied free of charge.
- **Provide or give** additional information (clause 2.11).

Financial matters:

- **Certify** – e.g. the amount of interim payments to be made by the Employer to the Contractor, while specifying to what the amount relates and the basis on which that amount was calculated (clause 4.6). NB The building contract requires certificates to be issued to the Employer with a copy to the Contractor.
- **Consider** – Interim valuations shall be made by the Quantity Surveyor whenever the CA considers them necessary (clause 4.6).
- **Send** the computations of the Adjusted Contract Sum to the Contractor (clause 4.14).

Supervision:

- **Approve** the quality of materials or goods or of the standards of workmanship (clause 2.2.1) – where and to the extent that approval is a matter for the CA, such quality and standards shall be to his reasonable satisfaction..
- **Instruct** the Contractor (clause 3.10) – this may or may not require a variation under clause 3.11.
- **Obtain** the Contractor's consent.
- **Issue** to the Contractor on behalf of the Employer identifying the part or parts taken into possession and giving the date when the employer took possession (clause 2.25).
- Consent to the removal of unfixed materials on site 'in writing' (clause 2.17) or to sub-letting (clause 3.5)
- **Make** a fair and reasonable extension of time for completion of the Works or Section (clause 2.19) in writing.

Miscellaneous:

- **Undertake** the role of CDM Coordinator, unless someone else is identified in the articles (The CA may also carry out some of the functions of the Quantity Surveyor if named as such in the articles).
- **Give notice** – identifying default by the Contractor prior to termination under clause 8.4
- **Direct** the Contractor for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole – where the ICD05 is used.

It should be remembered that some of these activities are discretionary ('may'), while others are

mandatory ('shall'). At the same time, the CA is expected to accept and respond to various notifications, advice, information, requests, proposals and applications as part of the day-to-day administration duties.

It is also important that all these things, but particularly notices and certificates, are issued by the correct party, and sent to the correct party, following, in some cases, a quite specific procedure.

If, for example, a Notice is required to be issued by the Employer it must not be issued by the CA, although the Employer will probably expect the CA to advise on the form and timing of that Notice.

4.1.4 Records

A project may last from a few days to several years; for longer projects it may be that more than one person will act in the role of CA. For this reason the CA should keep accurate and accessible records. These records should include:

- **Notes of site inspections:** recording the date, time and duration of the visit; the weather, persons on site, progress and status of the works; any defects in workmanship and the action taken; and instructions given, particularly if verbal.
- **Office files:** collated so that information (letters, emails, notices, telephone notes, instructions, drawings etc.) can be easily found and tracked.
- **Photographs:** filed in a manner so that the location and date taken can easily be identified.

It is also worth the CA considering what further documentation is required to record actions and events that take place during the project and are relevant to the performance of the contractual obligations of all parties under the building contract.

The CA should, wherever possible, ensure that all records and documents in connection with the project are agreed between the parties and that there are no ambiguities or disagreements regarding the accuracy or authenticity of the information.

All records and other such documents should be identifiable in relation to the building contract with the date and name of the author clearly marked. Particularly for larger projects, it is recommended

that all records and key documents be kept safely, for instance, in locked fireproof storage when not in use.

Upon completion of the contractual procedures the CA's records will need to be properly and safely archived.

4.1.5 Site inspections

It is advisable for sufficient site inspections to be undertaken to ensure that the CA's responsibilities are effectively discharged. The frequency will vary from project to project and within the life of a project.

The CA's terms of appointment may dictate the frequency of visits, which typically will state that the CA is not expected to make exhaustive or continuous inspections. Where frequent inspections are required, consideration may be given to the employment of a clerk of works.

The frequency of site inspections can broadly be determined by:

- the complexity of the project
- the calibre of the contractor and site personnel
- progress of works
- predetermined stages (if applicable).

The value of the works (particularly if they are quite low) should not affect the frequency and number of inspections

The inspections may be delegated but it is the CA's responsibility to ensure that following such visits any necessary actions are identified and followed through.

Inspections can be made jointly with the contractor's agent and the clerk of works (if appointed). It might be that the CA will wish to inspect undisturbed to help follow a logical inspection sequence.

The inspection should include:

- (a) The CA recording basic information, which can usefully be done on a standard sheet noting such matters as:
 - date and time of inspection
 - weather conditions
 - number and type of operatives on site

- basic details of any instructions given on site
 - progress of the works, including any specific activities being undertaken during the visit or not yet undertaken
- (b) A review of the quality of workmanship related to the contract documents. The CA will need to be familiar with the preliminaries or preambles in the specification and relevant codes of practice, etc.
 - (c) A review of progress in relation to the contract programme. The CA may need to discuss with the contractor action to be taken to ensure the programme is followed.
 - (d) A check on materials being used. Instructions may be required for substitute materials.
 - (e) A check that the works conform to the specification and drawings. The CA may need the assistance of specialist designers of the works (e.g. structural or services engineers) and their inspections should ideally be co-ordinated with those of the CA.
 - (f) Noting general information to enable the CA to report to the employer on the progress and quality of the works.
 - (g) Records of any measurement of work that might be needed for certification purposes, particularly where they may be covered up before the valuation date.
 - (h) A general awareness of health and safety arrangements on site, with any concerns being brought to the attention of the contractor.

It is advisable to confirm the outcome in writing.

It can be useful to issue 'site directions' at the end of an inspection to confirm any instructions given. It is recommended that the CA issues copies to the employer and contractor's head office upon return to the office. Self carbonating pads can be useful to facilitate this. The site direction will have the dual purpose of providing a clear record of the instructions given, and satisfying the CA's obligations of confirming instructions in writing. The site direction can then be converted to a formal contract instruction shortly afterwards.

4.1.6 Meetings

Meetings attended by the CA may be formal or informal and for whatever the purpose, should be recorded for the file, particularly where actions need to follow.

Informal meetings on site, may be with operatives, contracts managers, specialist suppliers, other professionals or indeed the employer.

Some projects will have formal progress meetings which the CA will attend or may even chair. Such meetings should be minuted and issued very soon afterwards to clearly record the decisions taken and actions required.

Normally it should be possible to agree a programme of meetings at the commencement of a building contract, and typically formal meetings will cover such matters as:

- progress to date and expected completion, as well as any possible risks that might affect the completion date
- the contractor reporting delays, or problems etc to the CA and to seek any further instructions they require
- health and safety
- contract instructions, including changes requested by the employer
- information required and timing of its provision
- sequencing of work
- input by other interested parties, e.g. specialist sub-contractors
- queries relating to the drawings and specification
- progress of procedures in connection with:
 - (a) extensions of time
 - (b) claims for loss and expense
 - (c) instructions and their valuation
 - (d) payments
 - (e) dayworks
- quality of work
- review of nominated sub-contractors and suppliers
- effectiveness of communications between parties during the project.

It can be helpful to have an initial meeting soon after the order for the works has been placed by the employer to 'set the scene'; often this meeting is termed the 'pre-contract' meeting although strictly speaking it is a 'pre-commencement' meeting. The agenda can include:

Contacts

- introduction of the various personnel to each other identifying their roles, responsibilities and contact details;
- emergency contact arrangements.

General matters

- confirmation of the general arrangements for working on site including access, egress and emergency procedures;
- licences and obligations under the *Party Wall etc. Act 1996*
- enabling works, for example, asbestos, scaffolding, opening up
- working hours
- site arrangements, including welfare facilities
- protection and schedules of condition
- identity of proposed sub-contractors
- addressing insurance obligations of the employer and contractor
- confirming the VAT status of the works and the contractors notification obligations under the building contract.

Statutory matters

- CDM; including F10 and construction phase plan
- fire precautions and means of escape provisions, especially when working in existing buildings including co-ordination of obligations under the *Regulatory Reform (Fire Safety) Order*
- confirming the status of the necessary statutory consents and obligations created by them (e.g. planning and listed building consents, building regulations)
- confirming the status of any obligations under environmental legislation (e.g. site waste management, restrictions on noise, sources of materials for the works, protection of fauna and flora).

Programme and timing

- initial programme
- timing of future meetings
- timing of valuation of works.

4.1.7 Reporting to the client/employer

At the time of selecting the building contract, the employer should have been advised by the relevant consultants of the employer's obligations under the terms of the building contract. Nevertheless, as many employers rarely undertake building works they will not necessarily have absorbed the information or will not understand the concepts within the provisions of the building contract used. They may also not be able or want to attend meetings.

Regardless of the employer's knowledge about the building contract, the CA should keep the employer up to date with what is happening generally. This in part can be addressed by the employer being copied in on correspondence (having agreed beforehand the level of communication).

At appropriate times, the CA should also identify the relevant obligations held by the employer under the building contract and provide the employer with an overview that includes advising of any risks or concerns with regard to quality, cost and time. This is particularly important where the employer is unlikely to understand the implications of the correspondence received.

One matter that is almost always in the forefront of the minds of clients and employers is the cost of the project, which will be not only be the cost of the works but also fees, VAT and ancillary costs such as initial investigations. The CA's appointment will need to clearly set out the extent of responsibility for reporting progress against estimated total cost. To achieve this the CA will need to keep and manage a running record of the estimated final adjusted contract sum (ACS) which will need to include costs for such elements as:

- preliminaries
- specified works
- outstanding unspent provisional and contingency sums
- additions
- omissions
- employer variations (additions and omissions)
- anticipated variations
- loss and expense
- prolongation costs, and
- potential contractor claims.

The CA should also provide regular reports to the client on the likely final ACS. In this way effective decisions can be made by the CA and employer ahead of time, particularly with regard to keeping the cost of the project within budget.

4.1.8 Clients/employers instructions

The CA may need to issue instructions to change works in two common scenarios:

- **Additional or unforeseen works.** Although the pricing documents included within the building contract should have dealt with such risks as far as possible at the time of tender, the need for such works does occur. In cases where the CA's appointment does not give the authority to instruct such works, particularly where such instructions will incur additional expenditure, the CA will need to obtain the employers express authority before instructing the works in question. The CA will need to be mindful of the contractual implications of issuing late instructions.
- **The employer changes their mind.** At the outset the employer should be advised of the potential adverse consequences of changing his or her mind (e.g. adding, omitting or varying the works, taking early possession) particularly at a late stage in the progress of the works on site. If the mind of the employer does change then the CA should endeavour to advise the employer of the implications (primarily time and cost) even if only in general terms and keep the employer up to date.

With regard to the ACS there are two principle scenarios that will arise from employers' instructions during the works:

- **Cost Savings.** Where works are omitted or varied that give rise to a cost saving the CA must be mindful that the monies released are not available to spend on other works and therefore the 'notional' contract sum is reduced by the sum saved.
- **Additional Costs.** Similarly where there is an addition or variation that gives rise to an additional cost the sum involved should be added to the contract sum and not taken out of other omissions or contingencies which are intended for the works in general.

4.1.9 Time

The building contract will state a start and end date for the works and it is the CA's responsibility to monitor progress and ensure the contract completion date is achieved. If there is a risk of delay to the contractual completion date the CA should advise the employer at the earliest opportunity.

In some standard forms of contract (e.g. The Engineering and Construction Contract), the contractor's programme is a contract document and so the CA will need to ensure that a copy is available for reference.

There are several ways in which the CA can monitor progress of the works and the choice will often depend on the scale and nature of the works; Such means may be by reference to any combination of:

- the contractors programme
- the portion of the works valued to date as part of the whole
- experience of the CA
- checking with specialist suppliers
- use of a bespoke project planning computer software, or
- other information that may be available.

For such documents as the contractors programme, the CA should review it to make sure that all the major elements of the project are included and sensibly sequenced. The programme may also need to be updated during the works to reflect changes to the extent of works and progress.

Where concerns exist they should be voiced by the CA to the contractor and the employer.

It is worth the CA considering other factors that may influence progress of the works, such as:

- the weather
- contract instructions
- quality of site management and organisation.

If weather is likely to be of concern then records should be kept on site and, if suitably located, at the office of the CA. These will be supplemented by the records taken at site visits,

Contract instructions can vary, add to or omit works all of which can have an influence on

progress not just by the sheer fact of issuing an instruction but also the timing of the instruction in relation to the progress of the works.

The CA should be aware of the quality of site management in the dealings with the Contractor on site. In support site records can be reviewed by the CA for example general filing of documentation related to the contract and the works.

4.1.10 Interim valuations of the works

The CA is required, both under the contract and case law to ensure that the preparation of all valuations are carried out impartially and fairly and to follow the arrangements stated in the form of building contract used.

The building contract may state the basis on which interim valuations are carried out, as well as what sums should be included in the valuations, and against what elements retention monies should be allocated. In particular it will state the intervals at which the valuations should be undertaken and the CA should adhere to these. Where the intervals are not stated and statute applies then the statutory intervals must not be exceeded.

Where contract instructions have been issued, it is the CA's responsibility to consider if the contractor has incurred any loss or expense that will need to be included in the valuation.

The CA may need to remind the employer of the time limits for payment when issuing the valuation certificate.

On larger or more complex projects, often there will be a quantity surveyor (QS) preparing the valuation for the CA to issue; however, this guidance note covers building contracts where a QS will not be employed and so the CA will be named as the QS in the Articles of the building contract. Where the valuation is prepared by somebody other than the CA, it is important that the CA is satisfied with the amount being certified.

Other considerations relating to valuation include:

- **Specialist works:** In most cases surveyors acting as a CA will be able to assess the elements of building works that can be included within a valuation, however, for other specialist works, such as complex mechanical and electrical services, or structural elements, the CA may not be able to determine if the works

have been 'properly executed' such that they are eligible for inclusion in the valuation. In such cases, the CA should seek the advice of the relevant specialist consultants.

- **Materials on or off site:** Particular attention should be paid to whether or not the value of materials off site or on site, where they are not fixed to the works, should be included, and some contracts include specific provisions for this. Where no such provisions are in the building contract then the CA should be certain that legal title for the materials will pass to the employer if the items have not been fixed and are included in the valuation. To do this the CA may have to see evidence of receipted invoices from suppliers and check the physical existence of goods and materials.

Building contracts may also use such phrases as 'reasonably and properly brought onto the site'. In such cases materials brought onto site well in advance of when they are needed cannot be included in a valuation.

- **VAT:** Value Added Tax (VAT) in relation to buildings is a complex area. VAT does not form part of the valuation. The standard forms of building contract generally set out procedures at the start of the contract for how the contractor should advise the CA and employer of the applicable rates of VAT. Such information may be used by the CA for information purposes only when issuing the valuation.

In the case of alteration works to listed buildings it is the contractor's responsibility to decide what works are zero-rated and what rate applies to other works. The employer will have an interest in this where VAT cannot be recovered (typically for residential property) and so the CA may have to discuss with the contractor which elements of the works are subject to VAT and which are not. This should only be within the scope of the CA's abilities and so, if in doubt, further advice should be sought from HMRC or an appropriate specialist.

- **Retention monies:** The contract will state the amount to be deducted for retention as a percentage of the sum valued. It should be noted that some contracts state that certain items will not be subject to retention. For valuations issued after practical completion but

before the final certificate, the percentage used to calculate the retention will normally be halved.

It should be noted that the retention monies held by the employer are held in trust for the benefit of the contractor.

- **Delay and prolongation costs:** This is an aspect of a CA's duties that is not often dealt with by individuals on smaller projects but, nevertheless, is a matter for which the CA to be aware of and know how to deal with, at least in principle. This issue is further considered at section 4.1.13 below.

In order to help identify the relevant costs, the contract documents should include a breakdown of the contractor's preliminary costs. If this has not been done, the CA should have obtained this breakdown before the works commence on site. This breakdown will also be useful in preparing interim valuations. In the event a breakdown is not obtained it will be very difficult for the CA to properly assess how reasonable the costs submitted by the contractor in support of a claim actually are.

- **Liquidated damages:** Where the employer intends to deduct liquidated damages the CA must not adjust the valuation of works or the ACS, it is up to the employer to make the adjustments when paying the contractor. Where the employer intends to make such a deduction, there may be a requirement for the employer to give notification to the contractor beforehand; the CA's appointment may provide for the CA to advise the employer of these obligations.

It is also important for the CA to be aware of the rules governing payment of VAT where liquidated damages have been deducted, regardless of the fact that it is technically the obligation of the employer. In particular it is important to clarify that the VAT amount is not adjusted to take account of the damages that have been deducted from the sum certified or authorised for payment.

4.1.11 Contract instructions/variatio

In the majority of cases, contract instructions will be generated by either the design team or the contractor. Circumstances in which this may occur include:

- the issue of detail design drawings clarifying what is required
- instructions to place orders with specialist sub-contractors
- the contractor requiring clarification of the contract documents
- additions, omissions or variation to the works
- instructions for the expenditure of provisional sums.
- emergency action taken by the contractor
- opening of completed works for the CA to verify compliance with the building contract
- dealing with unforeseen situations that have arisen on site.

It is solely the CA's responsibility to issue instructions which should be given in writing and issued promptly when required in accordance with the building contract provisions.

Although building contracts frequently recognise verbal instructions, these are not effective unless subsequently and promptly confirmed in writing. To deal with this it can be useful to have 'site direction' pads at site inspections so that instructions can be issued immediately to facilitate progress of the works on site. It might be that the site directions are then affirmed in a formal contract instruction.

The CA will need to be aware of the cost implications of issuing instructions (which may be additions, neutral or deductions). The calculation of those costs should be in accordance with the rules set out in the building contract. Where such instructions give rise to additional costs outside the building contract provisions, or the CA's appointment, then the employer's approval for the expenditure will need to be sought before the instruction is given.

It is worth the CA considering the impact instructions will have on the programme and sequence of works, as well as the contract completion date. Again, the CA will need to make the employer aware of the implications.

Where an instruction issues drawings, the instruction should itemise any variations that are shown on the drawings so that the cost and time implications can be considered.

It will inevitably be necessary to issue instructions to the contractor which in part will be dictated by the provisions of the contract specification, e.g. for expenditure of provisional sums. Before the works commence on site the CA should review the contract documentation and identify the elements of works for which instructions will need to be given and the professional work needed to enable those instructions to be issued in good time.

Where instructions are issued for the expenditure of provisional sums, the CA should be mindful of the two types of provisional sum as defined in the Standard Method of Measurement for Building Works (RICS 1998) as they will give rise to different liabilities. The two types are:

- 1 'defined', where the provisional sum given is for defined work the contractor will be deemed to have made due allowance in programming, planning, and pricing preliminaries; and
- 2 'undefined', for undefined work the contractor will be deemed not to have made any allowance in programming, planning and pricing preliminaries.

Ideally, if at all possible, the latter should be avoided at specification stage but this may not always be the case and so it is often helpful for the CA to make the employer aware of the time and cost implications.

It is not unusual for contractors to issue 'confirmation of verbal instruction' (CVIs) notes to the CA. The CA should be wary of relying on these not least because CVI's are not recognised by most forms of building contract and, in any event, it is the CA's responsibility to issue instructions to the contractor. If CVIs are being issued then the CA will need to check their contents to make sure they are accurate and, if not advise accordingly. If site directions are issued by the CA then there should be no need for CVIs.

In principle contract instructions to add or vary the works should not be issued after practical completion as the works should, in any event be complete. Exceptions exist within standard building contracts, for instance, where the employer wishes to have any defects rectified other than by the contractor. It may also be necessary, for the purpose of transparency, to confirm Instructions that have been given before practical completion that have not been issued.

4.1.12 Contract completion date, extensions of time, partial possession and practical completion

The contractor has undertaken to deliver completed works by a specific date stated in the building contract to the employer. The factors to be considered and procedures for extending the contract completion date vary between building contracts and so it is important for the CA to check the building contract wording to ensure that the correct notices and certificates are issued.

- **Contract completion date (date for completion):** This will be defined in the contract documents and in most cases will remain fixed unless altered by the CA following a request from the contractor for an extension of time.

Most specifications call for the contractor to produce a programme at an early stage in the life of the project and to keep it up to date. Regardless of this the CA should use the programme as an active document recording how each element of the project progresses, which, at a basic level will be the start and end dates of the tasks; and any adverse weather conditions.

Some building contracts require the CA to issue a 'certificate of non-completion' in order to preserve the employer's right to claim liquidated damages, the time limits for this and any other notices or requests stated in the building contract must be adhered to.

- **Extension of Time (EOT):** Without the EOT and liquidated damages provisions, if the contractor is prevented from completing the works by the date for completion for reasons beyond his or her control, time would become 'at large' and liquidated and ascertained damages would be unenforceable. To overcome this, the standard forms of building contract provide for extensions of time to be given by the CA.

The calculation of an extension of time can be very complex but, in principle, the CA assesses whether or not the delay has had an effect on the contract completion date and what that effect is. Furthermore most building contracts require the assessment to be 'reasonable', recognising that the assessment is not an exact science.

Typically the building contract will provide for the contractor to notify the CA that a delay has occurred and that a procedure is to be followed, which might include requesting further information from the contractor. In addition, the CA will use the records held for the project to help establish the EOT to be given.

The CA should refer to the building contract for reasons that are eligible to be considered for EOT those reasons being beyond the control of the contractor. Some building contracts list the reasons (sometimes termed 'relevant events') that are eligible for an EOT being granted to building the contractor.

In principle the reasons fall broadly into two categories:

- circumstances beyond the control of either the contractor or the employer; and
- delays caused by the employer or the CA.

It is recommended that the CA checks the building contract to identify time limits that apply to the process, and if necessary set up a system to ensure that the time limits imposed by the building contract are met and that any notices (e.g. to preserve the employer's right to claim liquidated damages) are issued at the correct times.

It is also important to remember that the employer needs to be kept informed of any extensions of time and also of any further delays that are the contractor's responsibility.

Some of the grounds for extensions of time are within the control of the CA and so the CA should always be alert to prevent these circumstances arising.

- **Early or partial possession:** Ideally, whether or not the employer may require possession of part of the works prior to completion of the project, is an issue that should have been considered and recorded at the time of selection of the building contract. As a consequence, if partial possession is likely to occur then a building contract that allows for partial possession will have been used for the works. In such circumstances the CA should review the obligations of both the employer and contractor in the building contract and advise the employer accordingly. For the element of the works for which partial possession is

obtained, the CA will need to implement the procedures stated in the building contract, which will usually include such requirements as obtaining any necessary consents, commissioning and certification of mechanical and electrical (M&E) services, provision of information for production of the Health and Safety File and identifying the period for rectification.

If partial possession is granted the CA will also be obliged to issue a certificate granting practical completion for the part of the works for which possession is obtained.

If the employer decides during the course of the building contract to take possession before all or part of the contract works are complete, and the building contract does not have express provisions for early or partial possession, the CA will have to advise the employer of this. The implications are that the CA may have to grant practical completion of the entire works, whether or not the contract works are complete. In such an event consideration will have to be given to omitting the outstanding works from the contract so that the necessary financial adjustments can be made, but this will still leave the employer with works that are outstanding. These outstanding works may have an impact on the safe use and operation of the works and the CA will have to clearly advise the employer of such matters.

- **Practical completion:** The CA can be put under a lot of pressure by the parties to the building contract and other stakeholders in respect of practical completion. The situation is not helped by building contracts not being clear on what should and should not be taken into account. Please refer to RICS guidance on this topic for more information.

There may also be a number of pre-requisites on granting practical completion and they can include:

- Where a health and safety file is to be produced, that the CDM co-ordinator is satisfied sufficient information has been provided by the contractor to enable the health and safety file to be produced. It should be noted that there can be

obligations on the CDM co-ordinator to request the information and so sufficient time will need to be allowed for this

- The production of all the necessary testing and commissioning certificates, particularly to verify that the premises are safe to occupy and the design objectives have been achieved. The CA may have to rely on the actions and advice of design consultants to procure and verify these documents.

It is not unusual before practical completion for the CA to prepare schedules listing outstanding or snagging works. While this is common practice most building contracts do not allow for 'snagging lists' and state it is the contractor's obligation to complete the works. Accordingly, if possible, preparation of such schedules should be avoided. If prepared, a distinction should be drawn between 'outstanding' works and 'snagging' items; if any works are outstanding then it is worth giving serious consideration to whether practical completion can, in fact, be granted.

Certification of completion of the works will, in particular, trigger transfer of responsibility of the works from the contractor to the employer. With this transfer a number of obligations will shift from the contractor to the employer, including insurance and maintenance. The CA will need to advise the employer in good time what these obligations are to allow the employer to prepare accordingly.

In cases where the employer wishes to, or does, in fact, take occupation or make use of all or part of the works in advance of practical completion being granted, the wording of the building contract should be checked for any particular procedures that need to be followed.

In some cases the building contract will be silent on early occupation and so the CA may be required to grant practical completion. This might have a severe impact on the employer's rights under the contract, particularly in relation to the works that have not yet been completed by the contractor. In these circumstances it is important for the CA to advise the employer of the implications of early occupation.

4.1.13 Loss and expense

The loss and expense provisions provide for the contractor to be reimbursed for deferment of possession, or the regular progress of the works having been affected by certain specified circumstances, where the contractor will not be reimbursed by other provisions of the building contract.

Although those circumstances may also result in an extension of time being given, there is no direct relationship between the two sets of provisions.

Some building contracts make detailed provisions, setting out the circumstances in which claims can be made and the way in which direct loss and expense is to be ascertained and paid. The matters relate to acts or defaults of the employer or the CA.

The CA should be familiar with the relevant contract clauses concerning loss and expense and the following points are of particular importance:

- If the building contract lists the matters that may give rise to claim, the CA should be satisfied that the claim falls within at least one of those provisions.
- The contract conditions may require the CA to ascertain the direct loss and/or expense or allow the CA to instruct the quantity surveyor to do so.
- The loss and expense must be actual; and the CA should therefore not estimate value but actually find out what the contractor has expended or lost. This will involve the CA making enquiries of the contractor.
- Where the contract conditions contain the provision that the contractor must make written application to the CA that direct loss and expense will be incurred the CA must be satisfied that the contractor's application has been made as soon as required under the conditions of the building contract. Delay in doing so could preclude a claim and this should be considered. The building contract may also require that the contractor support the application with information or submit it to the CA upon request, such details of loss and expense that are reasonably necessary for ascertainment.
- Whenever even part of the loss and expense is ascertained, it should be taken into account in the computation of the next interim certificate.

The CA should inform the employer whenever a claim for loss and expense is received in writing and then keep the employer regularly updated on progress in dealing with the matter.

Where the actions, default or omissions of the CA have given rise to the employer incurring costs under the building contract, the liability of the CA will need to be considered and so it may be necessary to notify PI insurers.

4.1.14 Adjusted contract sum/final account

It is the CA's responsibility to determine the ACS. This will be based on the contract documents, records held by the CA and information and evidence provided by the contractor. Building contracts provide for the CA to request documentation to assist in the computation of the ACS, for which there are time limits and that should be adhered to.

In order to properly report to the employer during the life of the works on site it is useful for the CA to keep a record of the likely final ACS. If this is kept up to date with supporting information (e.g. calculations of the amounts included or contractor's quotations) then it should be a relatively straightforward exercise to finalise the ACS.

4.1.15 Administration/insolvency of the contractor

If a contractor goes into administration or liquidation during the life of the building contract the contract should be checked to establish procedures to be followed.

Where procedures do not exist or the situation is more complex than envisaged by the building contract then the employer should be advised to get appropriate financial and legal advice as soon as possible.

4.2 Relationship with the employer

4.2.1 Terms of appointment

Typically standard terms of appointment will restrict the CA's authority to give instructions and expend monies to those defined in the building contract. Some employers may have their own, more stringent, requirements that the CA should be aware of, and follow.

Obligations may include:

- Seeking the employer's authority to instruct works that will incur expenditure not covered in the building contract.
- Reporting in a particular format and at specified times.
- Undertaking the design responsibility for the works.

If the CA has not been given authority or permission to make decisions that could have financial implications, it is useful for the CA to agree with the client at the outset a method for dealing with unforeseen and additional works, as well as expending contingency monies.

As well as identifying the obligations of the CA, consideration should be given to ensuring that the appointment includes a statement of the obligations of the employer to the CA, particularly where those obligations will impact on the CA's effectiveness in administering the building contract. Examples include: the provision of information and decisions to the CA in a timely manner; and the nomination of a single point of contact who can build up a knowledge and understanding of the contract works.

4.2.2 Overall budget/total project cost

In most cases the employer is primarily interested in the total final cost of the project. In many cases this will include fees from all the consultants involved, as well as VAT. The CA's instructions should state what information the employer will be provided with and its frequency.

One of the best times to advise the employer will be when preparing interim valuations, when the CA will have to assess the value of instructions issued and should be able to predict the likely ACS based on anticipated instructions and adjustments for the expenditure or non-expenditure of provisional and contingency monies.

As the CA will not always have knowledge of the terms of the employer's appointments with other consultants, the CA will not always be able to provide a complete summary of the total project cost and so the employer should be advised of any limitations.

4.2.3 Compliance with the specification of works/quality

It is recommended that the CA makes sure that the terms of appointment define clearly the duties and roles and where they are not clear, have them clarified.

The CA will need to be clear where the responsibility for ensuring compliance with the specification of works rests, not just for specialist items (e.g. M&E services or structure) but also construction. Where a designer is employed for works within the competence of the CA the boundaries may be blurred and difficult to maintain.

Before the start of the works it will be necessary for the CA to ensure that the employer has appointed appropriate professionals to monitor the works for compliance with the building contract. Those appointments will need to allow for:

- sufficient inspections of the works to verify that they comply with the building contract
- the provision of information and documentation to the CA in a timely manner to ensure that the CA can issue instructions to the contractor within the time limits imposed by the building contract, or any documentation that has been issued, e.g. an information release schedule
- the witnessing or undertaking of any testing or commissioning that is necessary to verify that practical completion has been achieved.

In conjunction with this it will be helpful for the CA to ensure that the professionals concerned are aware of the particular obligations of the contract being used for the works with which they need to comply. This will then allow the duties of the CA to be fulfilled.

If defective workmanship or materials are found or suspected, the CA should be aware of the building contract provisions available that may allow the CA to:

- request information to prove that materials are in accordance with the specification
- issue instructions for opening up
- issue instructions to remove work, materials or operatives from the site.
- The CA can then follow through with the arrangements provided for in the building contract.

There may be occasions where the works, when opened up, are found to comply with the building contract; in such cases there may be an opportunity for the contractor to claim for costs and an EOT. It is the CA's responsibility to advise the employer of this possibility and discuss it before the instruction is made.

4.3 Other considerations

4.3.1 General health and safety

It is important for the CA to be aware of health and safety in its widest sense which will include:

- the CA's own personal health and safety whilst visiting the site
- general health and safety measures on site
- the health and safety of those affected by the works.

Apart from the CA's employer's own health and safety policy and procedural documentation, guidance has been issued by RICS (Surveying Safely) as well as other organisations, including the HSE. It will be useful for the CA to be familiar with all of these.

When visiting site the CA will also need to follow the contractor's own health and safety procedures. It may be required by the contractor that the CA and any colleagues, attend the contractor's site induction, which will outline the site health and safety rules and advise of any particular risks and hazards on the site and how to deal with them.

The proper health and safety personal protective clothing and equipment should be worn on site at all times or as directed by the contractor's site manager. If the CA does not have the correct personal protective clothing then consideration should be given to not entering the site.

As a professional within the construction industry it is good practice for the CA to set a good example of commitment to best health and safety practices at all times.

4.3.2 The Construction (Design and Management) Regulations 2007

The employer has a number of duties under the regulations that are applicable to all works, whether

or not the employer is 'domestic'; the CA should check that the employer has been advised of these duties

The regulations are applicable in varying degrees to all works and the CA should be familiar with the requirements of the regulations and, where applicable, liaise with the CDM co-ordinator, designers and principal contractor.

4.3.3 Means of escape in case of fire

Means of escape provisions also fall within the heading of health and safety, in most cases within the provisions of the *Regulatory Reform (Fire Safety) Order 2005*.

Particularly where working on existing buildings, the building contract documentation should have addressed the specific requirements of the premises to ensure that an effective means of escape is maintained during the contract works. Examples include ensuring that the contractor has adequately priced for the requirements and allowed for them in the programme of works. The CA will need to be aware of the details of the risk assessment undertaken at design stage to ensure that its requirements are adhered to during the works.

4.3.4 Environmental legislation

The requirements and obligations to meet environmental legislation are constantly growing and changing, and it is recommended that the CA keeps abreast of these changes.

Environmental legislation not only impacts on the design of buildings but also the process of construction. There are growing demands on sourcing of materials, how they are transported, recycling on and off site and where waste products are disposed of.

It is important that the CA is aware of the legislative obligations and how they affect the contract works. This might include:

- ensuring that proper investigations have been carried out before the works commence on site (e.g. for asbestos containing materials)
- evidence of sourcing of materials
- appropriate disposal of waste materials
- any particular protection measures for flora and fauna

- noise generated by the works.

In some cases certificates will need to be produced by the contractor (e.g. to meet planning obligations) and the CA may need to check the provenance of them.

4.3.5 Statutory obligations

The CA should be aware of general current legislation that may affect the conduct of the building contract and the contract works, as well as statutory obligations that are specific to the works or site of the works. These may include:

- town and country planning; including consent conditions and planning agreements under Section 106 of the *Town and Country Planning Act 1990*
- tree preservation orders
- the *Building Regulations 2000*
- *The Party Wall etc. Act 1996*
- *Access to Neighbouring Land Act 1992*
- Environmental legislation, e.g. waste, noise, etc.
- Highways Acts/New Roads and Street Works Act.

Consents, approvals or awards can contain numerous obligations which, at a simple level, might require approval of materials for the external finishes, and more onerously require liaison with local residents or completion of certain elements before occupation or use may be permitted. These obligations can have an impact on the programme and sequence of work and so, particularly where the obligations fall on the employer, it is the CA should make sure these obligations are undertaken so that the contract works can proceed uninterrupted.

More severe obligations exist when working on listed buildings or, in some cases, in conservation areas. The extent of work will be limited by the wording of the consents and it is important for the CA to obtain copies of all relevant documents before the building works commence, and to make sure that all concerned are familiar with the obligations contained in them.

4.3.6 Consents, licences, etc.

Ideally the need for any consents from neighbours or statutory authorities should have been identified at an early stage in the design and specification process.

Such consents could include:

- licences for access to facilitate demolition or construction
- licences to erect a scaffold on or over the land of neighbours, or from the Highway Authority
- air rights for cranes
- building over sewers
- obligations set out under 'schemes of management'.

The CA should become familiar with the obligations in these agreements and make sure at an early stage that the contractor has copies and has taken account of the obligations in the construction programme and pricing. In most cases the tender documents should have included all the information to facilitate accurate pricing.

Where statutory rights do not exist neighbours will have an absolute right of refusal, which can have a significant impact on the works.

4.3.7 Insurance

Whilst the CA should have a broad understanding of the insurance provisions within the selected building contract, the CA has a duty to recommend to the employer that they get their own specialist advice on insurance cover, in terms of level, scope and relevance to the works and provisions of the building contract.

The CA should check that all the appropriate insurances (e.g. public liability) are in place at the time the building contract is signed; in practice, for even what appears to be relatively simple works, the contractual insurance provisions can prove to be quite time consuming to arrange ready for the commencement of the works.

It is important, therefore, for the employer to have been advised of their insurance obligations under the building contract well in advance of the contract being entered into, and preferably in advance of the request for prices from contractors

Standard forms of contract make provisions for the contractor's compliance with the Code of Practice for Fire Precautions on Construction Sites, which has been regularly updated over the years; compliance with the Code is a requirement of many insurance policies and so the CA should be familiar with the requirements of the Code.

4.3.8 Letters of intent

Letters of intent give rise to a substantial number of construction contract disputes, and for this reason, should be addressed with great care and thought.

Letters of intent are typically used to facilitate a start of works on site, pending agreement of the contract terms, and so strictly speaking the role of the contract administrator (CA) is unlikely to have commenced at the time a letter of intent is issued.

Nevertheless, it is quite likely that the surveyor will have responsibilities under the letter of intent and so the surveyor should take the time to read and understand the contents, obligations and responsibilities embodied within the letter, as they would with any other contract.

If any matters are unclear or anomalies are identified at any stage then the surveyor should immediately draw those concerns to the attention of the employer in order to avoid disputes arising.

It might be that the surveyor will be asked to advise on the preparation of a letter of intent – this should only be embarked upon if the surveyor is sufficiently experienced and up to date in the law relating to letters of intent; otherwise the task should be passed to the employer's legal advisers.

4.3.9 The Housing Grants, Construction and Regeneration Act 1996

Commonly called 'The Construction Act' this Act was borne out of the Latham review which introduced new procedures into construction contracts to primarily deal with resolution of disputes and ensuring cash flow is maintained. The Act has now been amended by the *Local Democracy, Economic Development and Construction Act 2009*.

The Act's provisions primarily relate to construction contracts where a consumer is not involved. It should be noted, however, that there are contracts where the Act's provisions have been incorporated into the terms and conditions, and these are often used in contracts with consumers. Where the employer is a consumer and such a building contract has been used, the employer should have been advised at the time of selection of the building contract of the obligations that exist to deal with dispute resolution and payment, as these are not otherwise obligatory.

The CA will need to be familiar with the procedures of the Act, including the default provisions as well as the interpretation of the Act's provisions in the building contract.

Appendix A: Checklists

The following checklists are produced as a guide and are not exhaustive, nor are all the items appropriate for all projects:

Pre-commencement phase

a) Obtain copies of the following from the employer and be satisfied that all is in order:

- written employer authority accepting tender/ quotation
- written employer authority to commence works
- planning permission/listed building applications and approvals
- reserved planning matters identified and process for obtaining approval established
- building regulations approval
- hoarding licence
- road closure notice
- wayleaves/rights of way
- oversailing licence
- party wall agreements
- archaeological notice
- asbestos notice
- fuel/chemical/refrigerant tanks/pipes notices:
- live services:
 - underground
 - above ground
 - overhead.

b) Obtain copies of the following from contractors and be satisfied that all is in order:

- tax certificate
- VAT certificate
- bank details
- insurance certificates:
 - employer's insurance broker to approve
 - renewal dates
- HSE form F10
- performance bond
- parent company guarantee
- warranty
- master programme

- information required by dates
- Names and contact details of key project personnel
- road closure notice.

c) Agree the following and confirm in writing:

- persons authorised to issue instructions
- system for issuing and confirming instructions
- employer's approval procedure for instructions/ changes
- names of key personnel, responsibilities and contact details
- procedure for drawing approvals, distribution and issue
- boundaries of the site and site restrictions (cross reference to tender documents)
- works to be sub-let by contractor and approval procedure under provisions of the building contract
- insurance claims notification and procedures.

Construction phase

a) General

- All contract documentation to be kept in fireproof lockable storage, if possible
- All instructions, confirmations, approvals, records to be issued in writing
- All information, documents and correspondence to be 'date received' stamped
- Confirm date that contract works commenced on site
- Confirm contract completion/sectional completion dates

b) Financial matters

- Certificates issued in time as stipulated in the building contract
- Procedures during holiday and sickness periods
- Valuation dates

- Employer payment procedures, e.g. invoice / accounts payable dept.
- Employer latest payment dates
- Employer payment method, e.g. BACS / cheque collected / cheque posted
- Indemnity for payment of materials off site – compliance with contract requirements

c) Records (agreed by all parties)

- Weekly site staff, labour and plant
- Daily weather and effect on the progress of works
- As-built programme
- Progress photographs
- Concrete / mortar cube results
- Test certificates
- Sub-contractors employed and works carried out
- Major materials suppliers

d) Instructions, confirmations and approvals

- Dated, reference, revision and author
- Instructions for expenditure or omission of all provisional sums
- Instructions, changes, variations and drawings issued under cover of CI/CVI
- Reasons for instruction, change or variation
- Revised drawings to stipulate amendment
- Postponed/deferred/suspended works to be instructed under AI/CAI
- Extensions of time/revision to date for completion
- Consent to sub-letting

e) Insurances

- (a) New insurance certificate at renewal date

Post-construction phase

a) Notifications required at practical completion

- Employer's insurers (insurance then becomes the employer's responsibility)
- Utilities (employer then becomes responsible for bills), for example:
 - water and sewage
 - gas
 - electricity

- telephone
- electronic data.

- Local authority (rates and taxes then become the employer's responsibility)
- Funders – P.C. issued to Contractor
- Set date for inspection before end of rectification period

b) Contractor leaving site

- Contractor's personnel and contact details
- Procedure for dealing with defects
- Re-direct contractor's post

c) Archiving original signed contract information – fireproof, safe and easily accessible

- Contract
- Design agreements
- Other specialist appointments
- Warranties
- Guarantees
- Final account
- Certificates, for example:
 - final
 - completion of making good defects
 - practical completion
 - sectional completion
 - partial possession
 - revision to date for completion.

d) Archiving other contract information (originals where possible) – fireproof, safe and accessible

- Employer's requirements
- Contractor's proposals
- Bills of quantities
- Specifications
- Contract instructions
- Construction drawings
- As-built drawings and records
- As-built programme
- Site progress photographs
- Ground remediation records and certificates
- Concrete cube test results
- Other test results
- Technical queries and matters

- Site meeting minutes
- Contractor's insurance details
- CDM documentation.

Appendix B: Office administrative procedures

General

An essential requirement for successful administration of building contracts is to be organised with office procedures, including filing. This process has got more complicated with the reliance upon email to distribute information, placing the obligation on the recipient to reproduce and file the documentation for day-to-day use.

Alongside this, online software is available for the administration of tender procedures and administration of contracts; use of the latter has now extended to building contracts of quite modest size.

With email it has become much easier to send more information that may not be relevant to all recipients, thus, the recipient will spend time establishing if the documentation is relevant to their role in the project. As a consequence, thought should be given to what information is issued, and to whom.

With information arriving and being sent out by different means, the CA will need to establish both paper and electronic filing systems that facilitate easy identification and access, as well as recording the history and sequence of events in a transparent manner.

Data storage

Everyone is familiar with paper filing and retrieval; however, electronic filing and retrieval can be unfamiliar territory for some. If the decision is taken not to print out all documentation then procedures will need to be put in place to deal with both short and long term storage.

In the short term the electronic data will need to be accessible on a daily basis, and not lost during the life of the project, to ensure that role of the CA can be performed effectively. With several people working on the same project, emails can be sitting on one computer and not accessible to others in the office. It is possible to share email folders in popular network software to overcome this; alternatively, paper filing could be the only option.

There is the potential for more problems in the longer term both in respect of longevity of data storage formats as well as obsolescence of data file systems.

Versions of once popular (10 to 15 years ago) word processing software are no longer available. Alternatively, for software that is still around, data files cannot now be read because file formats are no longer supported by the manufacturer. As a consequence archived electronic data becomes unusable without active management.

It will be up to the organisations concerned to decide how best to manage their archive records.

Appendix C: References

Legislation

- *Architects Act 1997*
- *Construction (Design and Management) Regulations 2007*
- *Party Wall etc. Act 1996*
- *Regulatory Reform (Fire Safety) Order 2005*
- *The Town and Country Planning Acts – Section 106 agreements*
- *The Building Regulations 2000*
- *The Housing Grants, Construction and Regeneration Act 1996 as amended by The Local Democracy, Economic Development and Construction Act 2009*
- *Local Democracy, Economic Development and Construction Act 2009*

Further reading

- *The management of risk*, RICS information paper, RICS Books, Coventry, 2000
- *Standard method of measurement for building works (SMM7)*, RICS Books, Coventry, 1998
- *Surveying safely*, RICS guidance note, RICS Books, Coventry, 2011
- *FPA Joint Code of Practice for Fire Prevention on Construction Sites*, 7th edition, 2009
- *The Latham review*, 1994

RICS also publishes a range of guidance notes and information papers which are available for members to download from www.rics.org/standards.

Contract administration

1st edition, guidance note

This guidance note aims to provide practical guidance to RICS members in England and Wales who undertake the role of contract administrator ('CA').

The role of the CA covers a wide range of possible services and projects from the smallest residential scheme through to larger commercial projects.

The guidance note covers the following guidance:

- Appointing a contract administrator
- Roles and responsibilities of a contract administrator
- Appendices containing useful checklists and office administrative procedures.



RICS

the mark of
property
professionalism
worldwide

rics.org/standards

