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AGFMA WHS Contractor Management

Audience

Participating Agencies AGFMA FMSP Contractors

Introduction

All South Australian public sector agencies enter into a wide variety of arrangements with contractors, subcontractors and other person's conducting a business or undertaking (PCBU). One such arrangement is the Across Government Facilities Management Arrangements (AGFMA) which is an agreement between the Department for Infrastructure and Transport (DIT), Participating Agencies (hereafter Agency/s) and the Facilities Management Service Provider (FMSP). The purpose of this document is to provide guidance and clarity with regards to the roles, responsibilities and relationships of the various parties to this arrangement as they relate to managing the health and safety of contracted workers. It does not relate to works outside the scope of the AGFMA.

Determining Roles and Responsibilities

There are several factors that will determine which party or parties owe a particular duty to a contracted worker in a given arrangement, namely:

- Which party or parties has **management and control** of the workplace;
- Which party or parties has the authority to **direct and influence** the contracted workers;
- What is **reasonably practicable**; and
- **Contractual** arrangements (so long as they don't contradict the above).

Per Section 46 of the *WHS Act 2012* (SA), the key to applying these principles (and a legal requirement for all PCBU's with shared duties) is consultation, coordination and cooperation between all parties involved. Namely, *'If more than one person has a duty in respect of the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter'*.

In a contracted work arrangement such as the AGFMA, which is a multi-stakeholder arrangement, it is critical that communication is clear and consistent and that all parties (e.g. concurrent duty holders) understand and agree the division of duties and responsibilities.

Consider for example the basic two-party contractual arrangement, one a direct employer whose workers will attend the site of the other to carry out contracted works. Both parties owe duties to the workers in relation to provision of safe systems of work and safe workplaces.

However, it is not true to say that both parties have identical responsibilities in relation to these duties. In fact, using the principles described above, it can be demonstrated that each party will bear responsibility for the

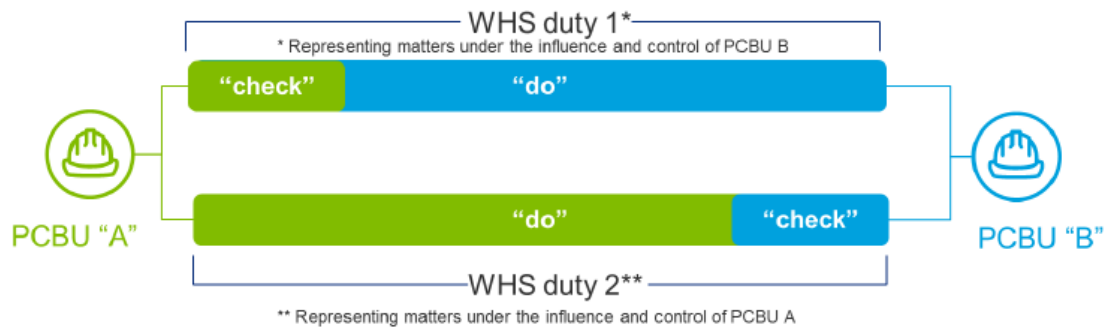


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aspects of these duties that would logically be expected to be within their ability to influence and control, whilst the other party would be responsible for ensuring that these responsibilities have been discharged.

It is helpful to think of these arrangements as a “sliding scale” with the slide being moved towards either party between “do” (i.e. discharging of the responsibility) and “check” (i.e. ensuring that the responsibility has been discharged). This concept is illustrated in **Diagram 1**.

Diagram 1: Sliding scale of influence and control.



AGFMA scenarios

The responsibilities of an Agency and a contractor or subcontractor are straight forward however, the AGFMA presents a more complex relationship.

Under the AGFMA there will always be concurrent duty holders. The Participating Agency, Contract Administrator (in this case DIT), Facilities Management Service Provider (FMSP) and the subcontractor may all be responsible for the same risks, and each duty holder (or PCBU) must comply with the WHS Act and Regulations to the extent that it can reasonably control those risks. The method for ensuring that AGFMA processes are effective with all duty holders playing their part is through effective communication (**consultation, coordination and cooperation**) between all parties.

Under the AGFMA, DIT will discharge its duties by:

- Ensuring the FMSP has adequate WHS capacity and capabilities;
- Ensuring the FMSP has safe and adequate systems of work for activities that will be undertaken;
- Ensuring that safe systems of work are maintained by the FMSP;
- Monitoring the effectiveness of safety systems and controls; and
- Ensuring that all parties are adequately consulted.

The FMSP will discharge its duties by:

- Providing and maintaining safe systems of work;
- Ensuring subcontractors and sub-subcontractors are pre-qualified;
- Ensuring subcontractors are adhering to safe systems to perform works safely;
- Ensuring subcontractors are inducted into the FMSP WHS systems; and
- Participating in the Site Risk Exchange to ensure subcontractors are being sent to safe workplaces (Agency Designated Locations).

The Agency (through their Designated Location Representative, being the person with management or control of the workplace) will discharge its duties by:

- Keeping the workplace environment under their management or control, safe;



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- Ensuring that their workers are aware of works being undertaken and their safety responsibilities;
- Ensuring the Site Risk Exchange is undertaken; and
- Inducting a subcontractor if required.

The subcontractor will discharge its duties by:

- Ensuring they, or their workers, are appropriately skilled and licensed to undertake the work;
- Ensuring they, or their workers, follow the subcontractor's safe systems of work;
- Ensuring any plant or equipment used is safe and compliant with legislation and Australian Standards;
- Participating in the Site Risk Exchange and Pre-task inspection;
- Informing the Agency Designated Location Representative of any hazards arising from the planned work;
- Discussing how these will be safely managed;
- Adhering to site rules and induction; and
- Keeping the Agency Designated Location Representative informed of their and their workers' whereabouts.

To formalise the communication between the subcontractor and the Designated Location Representative about the type of risks and hazards identified and the measures to manage them, it is recommended that the details are documented and the form is signed by both parties. A sample Form – *Contractor Safety – Site Hazard and Risk Identification and Control Assessment (Attachment A)* or Agency equivalent should be used to document the exchange. For guidance refer to the AGFMA WHS Site Risk Exchange Guide Note.

AGMA Scenarios

Summary of Key Principles (planned and unplanned works <\$450k)

	DIT (AGFMA)	Participating Agency (Workplace Manager)	FMSP ¹ (See note 1 - if direct employer)	Subcontractor (Direct employer)
Has management and control over....	Engagement of contractor (FMSP) with adequate safety system by defining minimum safety requirements.	Entry/exit to the workplace. Physical condition of the workplace (in conjunction with building owner).	Prequalification and engaging subcontractors with safe systems of work including documented procedures, training etc. or provide subcontractors with safe systems of work e.g. SWMS.	Subcontractor's workers (employees), safe system of work.
Responsible for....	Monitoring the performance of the FMSP in the fulfilment of the contract.	Controlling who has entry to the site. Maintaining current risk and hazard information related to the physical environment, work groups etc. and ensuring all workers are inducted to site and aware of hazards that may impact the work being undertaken.	Can direct workers to attend training (if directly employed) or ensure that subcontractor's workers are trained (if subcontracting). Deploying adequately trained and competent subcontractors to designated locations.	Directly hires, fires and deploys workers. Can direct workers to attend training (if directly employed).
Duties....	Engage a FMSP with capability to provide services as per the contract. Ensuring the FMSP is carrying out their duties.	Maintain the safety of the physical environment and operating activities where works are to be undertaken to ensure the safety of all workers at the workplace	Deploy subcontractors to designated locations. Ensure that subcontractors are not being sent into unsafe workplaces.	Directly engage and deploy workers to designated locations. Ensure that workers are trained, provided JSA/SWMS

¹ If the subcontractor is a sole trader/operator then the FMSP assumes greater control.



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	Ensure that safe systems of work are provided and adequate, and that safe systems of work are maintained.		Verification (audits and inspections) of requirements. Investigate hazards and incidents.	and personal protective equipment. Report hazards and incidents. Follow action plans including mitigation strategies.
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Summary Key Principles (construction works \$450k - \$1.0m)

	DIT (AGFMA)	Participating Agency (Workplace Manager)	FMSP	Principal Contractor	Subcontractors (Direct employer)
Has management and control over....	Engagement of FMSP.	Entry/exit to the workplace.	Engaging Principal Contractor with safe systems of work including documented WHS Management Plan, Construction Management Plan and Subcontractor Management Plan. Prequalification of contractors.	Ensuring Subcontractors have safe system of work.	Subcontractor's workers, safe system of work.
Responsible for....	Monitoring the performance of the FMSP in the fulfilment of the contract.		Monitoring the performance of the Principal Contractor and Subcontractors.	Principal Contractor can engage subcontractors. Can direct subcontractors to attend training.	Directly hires, fires and deploys workers. Can direct workers to attend training (if directly employed).
Duties....	Ensure that the FMSP has capability to manage and is actively managing their Principal Contractors.	Maintain safe entry/exit to the workplace (this may not necessarily be the physical work site).	Ensure that the Principal Contractor is carrying out their duties including that safe systems of work are provided and adequate, and that safe systems of work are maintained.	Deploy subcontractors to designated locations. Control known hazards Ensure that subcontractors are not being sent into unsafe worksites. Investigate hazards and incidents.	Directly engage and deploy workers to designated locations. Ensure that workers are trained, provided JSA/SWMS and personal protective equipment. Report hazards and incidents. Follow action plans including mitigation strategies.



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Attachment A

Contractor Safety - Site Risk Exchange (example)

1. Basic information (to be completed by Contractor and Agency Representative) – Contractor and Agency/Client to retain a copy of Form

Contractor name (Contractor completing form)		Contracting company	
Site Representative name (Site Rep completing form)		Agency/Client	
Job details	Reference no.		Date
	Location		
Description of work			

2. High risk task information (to be completed by Contractor) - Identify high risks/hazards associated with the job you will be doing

2.1	Work at heights (greater than 3m)	<input type="checkbox"/> No (go to 2.3)	<input type="checkbox"/> Yes (go to 2.2)
2.2	List controls in place to prevent falls		
	List controls in place to prevent falling objects from striking others		
2.3	Confined space PERMIT REQUIRED	<input type="checkbox"/> No (go to 2.5)	<input type="checkbox"/> Yes (go to 2.4)
2.4	Name of person signing confined spaces permit <i>(controls must be listed on the permit and in place before work commences)</i>		
2.5	Hot work (welding etc.) PERMIT REQUIRED	<input type="checkbox"/> No (go to 2.7)	<input type="checkbox"/> Yes (go to 2.6)
2.6	Name of person signing hot work permit <i>(controls must be listed on the permit and in place before work commences)</i>		
2.7	Asbestos - Have you consulted the site asbestos register?	<input type="checkbox"/> No DO NOT PROCEED with work. Contact your supervisor	<input type="checkbox"/> Yes (go to 2.8)
2.8	Are there asbestos containing materials (ACMs) in the area where you will be working?	<input type="checkbox"/> No (go to 2.10)	<input type="checkbox"/> Yes (go to 2.9)
2.9	Is it possible that you will disturb the asbestos, (e.g. drilling or cutting through ACMs)?	<input type="checkbox"/> No (go to 2.10)	<input type="checkbox"/> Yes DO NOT PROCEED with work. Contact your supervisor
2.10	Are there other high risk construction work tasks being undertaken? <i>(Refer to list on reverse side of Form)</i>	<input type="checkbox"/> No (go to 3.1)	<input type="checkbox"/> Yes (go to 2.11)
2.11	Do you have Safe Work Method Statements (SWMS) or other safety documentation for the high risk construction tasks you will be undertaking?	<input type="checkbox"/> No DO NOT PROCEED with work. Contact your supervisor	<input type="checkbox"/> Yes (go to 2.12)
2.12	Have you advised the site representative you have SWMS or other safety documentation for the high risk construction tasks you will be undertaking?	<input type="checkbox"/> No Advise Site Rep you have the necessary SWMS	<input type="checkbox"/> Yes (go to 3.1)

3. Other task-related risks (to be completed by Contractor)

3.1	Identify possible risks to yourself and/or others from the work that you will be doing (e.g. fumes, noise, dust, falling objects, chemicals) and list control measures to manage these risks (e.g. barricades, signage)	
	Risks/Hazards	Controls in place (see reverse for acknowledgment and sign off)



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4. Site-related risks (to be completed by Agency Representative)			
4.1	Has the contractor advised you of the high risk construction tasks being undertaken and that they have SWMS or other safety documentation?	<input type="checkbox"/> No <i>Confirm with Contractor they have SWMS</i>	<input type="checkbox"/> Yes
4.2	Identify possible risks to contractors and others (e.g. vehicle or foot traffic, presence of dangerous chemicals etc.) and list control measures to manage these risks (e.g. barricades, signage). If site is unattended, see Note below.		
Risks/Hazards		Controls in place (see reverse for acknowledgment and sign off)	
<p>Note: If site is unattended, then contractor should follow these steps: a). Contact Agency Representative by phone to complete this section verbally (contractor to record response from Agency Representative on this form); or b). If unable to contact Agency Representative complete Site Related Risk Assessment (4.2) above and proceed with work <i>if safe to do so</i></p>			

5. Authorisation, Acknowledgement and Handover						
Agency Representative: I have ensured the requirements of this Site Risk Exchange, associated documents and risk controls have been met and discussed with the Contractor.					WORK SUSPENDED / WORK COMPLETION HANDOVER: I confirm that the work is (tick) <input type="checkbox"/> incomplete <input type="checkbox"/> complete and the job site has been left clean and safe.	
Contractor: I understand and accept all requirements of this Site Risk Exchange and associated documents. I will/have ensured appropriate risk controls are in place.						
Date	Time	Name	Signature	Contact Ph. #	Time	Contractor sign
		Agency				
		Contractor				



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High Risk Construction Work (as defined under Work Health and Safety Regulations 2012, Chapter 6, Part 1, Regulation 291)

High risk construction work means construction work that:

- (a) involves a risk of a person falling more than 3 metres; or
- (b) is carried out on a telecommunication tower; or
- (c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure; or
- (d) involves, or is likely to involve, the disturbance of asbestos; or
- (e) involves structural alterations or repairs that require temporary support to prevent collapse; or
- (f) is carried out in or near a confined space; or
- (g) is carried out in or near—
 - (i) a shaft or trench with an excavated depth greater than 1.5 metres; or
 - (ii) a tunnel; or
- (h) involves the use of explosives; or
- (i) is carried out on or near pressurised gas distribution mains or piping; or
- (j) is carried out on or near chemical, fuel or refrigerant lines; or
- (k) is carried out on or near energised electrical installations or services; or
- (l) is carried out in an area that may have a contaminated or flammable atmosphere; or
- (m) involves tilt-up or precast concrete; or
- (n) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians;
or
- (o) is carried out in an area at a workplace in which there is any movement of powered mobile plant; or
- (p) is carried out in an area in which there are artificial extremes of temperature; or
- (q) is carried out in or near water or other liquid that involves a risk of drowning; or
- (r) involves diving work.

For More Information

Contact the AGFMA Directorate - DIT.AGFMAAdmin@sa.gov.au