

APPOINTING CONSULTANTS FOR BUILDING DESIGN AND CONSTRUCTION

Appointing a consultant refers to the situation where the client contracts designers (such as architects, engineers, specialist designers, specialist contractors etc.) or other consultants (such as cost consultants, principal designers, independent client advisers, site inspectors, project managers, client representatives etc.).

Where the client contracts contractors this is described as the 'tender process' or 'contracting', rather than 'appointment'. On publicly-funded projects, the consultant team will often be contracted along with the main contractor as part of a complete 'integrated supply team', and so appointments may be restricted to independent client advisers and project managers.

Consultant team for design and construction

Consultants are professionals, typically, appointed to by the client to perform expert tasks on a project. This might include:

- Providing advice on setting up and defining the project
- Developing and co-ordinating the design
- Preparing production information and tender documentation
- Contract administration
- Inspecting the work of contractors

The members of the consultant team that are likely to be required on most projects are:

- Architect
- Principal designer
- Cost consultant
- Services engineer
- Structural engineer

The client may wish to allocate the roles of lead designer and lead consultant to one or more of these consultants to co-ordinate the work of the rest of the team. It might also be appropriate to appoint a design co-ordinator for the co-ordination and integration of design prepared by specialist contractors, and an information manager for building information modelling.

During the early stages of a project, the client might appoint independent client advisers to give them independent professional advice. They might also appoint a project manager to represent the client and take responsibility for the day-to-day management of the project.

Other consultants who might be required on some projects include:

- Access consultant
- Acoustic consultant

- Approved inspector (for building regulations approvals)
- Archaeologist
- Business management consultant
- Client design adviser
- Client's representative
- Civil engineer
- Construction manager
- Contract administrator
- Ecologist
- Employer's agent
- Employer's BIM adviser
- Environmental consultant
- Facilities manager
- Fire engineering consultant
- Furniture, fixtures and equipment (FF&E) consultant
- Health and safety consultant
- Information and communications technology (ICT) consultant
- Interior designer
- Landscape architect
- Local consultants with specialist knowledge of local procedures, culture and so on
- Lighting designer
- Management contractor
- Master planner
- Party wall surveyor
- Planning consultant
- Programme consultant
- Public health consultant
- Rights of light surveyor
- Security consultant
- Site inspector (clerk of works)
- Specialist contractor
- Surveyor
- Transport/traffic engineer

For consultants to work effectively as a team they should adopt collaborative practices as early in the project as possible. The requirement to adopt such practices should be included in appointment documents.

Given the increasing complexity of many construction projects it is becoming more common that a consultant appointed on a project, will in turn themselves appoint consultants to undertake some or all of the work for which they have been engaged. In this case, the client's consultants may be referred to as prime consultants or first tier consultants whilst the consultants that they appoint are generally referred to as 'sub-consultants' or second tier consultants. This is similar to the relationship between clients, contractors and sub-contractors.

Appointments may be made by a process of:

- Recommendation, for example, one consultant may recommend others, which can save time for the client and make it easier to establish collaborative working practices (it is important to set out requirements for collaborative practices during the appointment procedure to ensure that the consultant team works effectively together throughout the project)
- Research and interview
- Open competition (with or without design)
- Selective competition (with or without design)

- An existing relationship or framework agreement

A survey by the RIBA in 2014 (Ref RIBA Journal February 2014) revealed that the most common methods of appointing architects were:

Direct appointment	50%
Competitive fee bid or financial tender only	21%
Framework agreement with or without further competition for specific projects	10%
Invited competitive interview (no pre-qualification questionnaire PQQ)	4%
Expression of interest / PQQ only (no design work)	3%
Expression of interest / PQQ followed by competitive interview (no design work)	3%
Expression of interest / PQQ followed by design competition	2%
Invited design competition (no PQQ)	1%
Open design competition	1%
Other	4%

Smaller practices tended to be appointed mostly by direct appointment (61%), whereas this was less common for larger practices (25%).

Appointments on publicly-funded projects may fall under the requirements of OJEU procurement rules in which case strict procedures must be adhered to, including advanced advertising of appointments. This procedure can take some time and so should be initiated as soon as the client has identified a possible need for an appointment.

Request for proposals

Whatever the process of selecting potential consultants, agreeing the scope of services and fee for the appointment will generally require that the client prepares some form of 'request for proposals'. This may include:

- A strategic brief, describing the client's assumptions, aspirations, budget and programme
- A management structure for the organisation of the project
- Assumptions about the procurement method that will be adopted
- The scope of services required
- Guidance on how fees should be quoted and broken down against stages of the project
- A description of the form of appointment and conditions of engagement (such as step-in rights and the level of professional indemnity insurance required)
- Employer's information requirements (BIM)
- Requirements for collateral warranties (for use where a warranty is to be given to a purchaser or tenant of premises in a commercial and/or industrial development, for example the British Property Federation (BPF) model forms CoWa/F CoWa/F and CoWa/P&T)
- It should request details of resources and curriculum vitae of staff along with a summary of their relevant experience on similar projects

- It should request references
- It should seek hourly rates to be applied to any work outside the proposed scope of services
- It should request identification of any sub-consultants the consultant intends to use
- For the appointment of design consultants, it may include a request for design proposals. If so, it is good practice for the client to offer payment for the work involved in preparing designs. This benefits the client as it will encourage the consultants to prepare their proposal more carefully, and will also demonstrate to them that the client is serious about the project and is likely to treat them fairly

Some clients may feel they need assistance from an independent client adviser to decide on the form of appointment, to identify a short-list of potential consultants, to prepare the request for proposals, assess submissions and negotiate fees.

Under the CDM regulations, it is the client's responsibility to take reasonable steps to assess the competence of those they appoint. The client should also confirm the consultants' level of professional indemnity insurance before appointment.

Standard forms

Standard forms of appointment for consultants are available, a range of which are listed below:

- RIBA Standard Agreement for the Appointment of an Architect 2010.
- ACA SFA 2010: ACA Standard Form of Agreement for the Appointment of an Architect: (English Law).
- RICS Standard Form of Consultant's Appointment
- B103 - Appointment of a Structural Engineer
- B100 - Appointment of Professional Consultant
- NEC Professional Services Contract
- RIBA Standard Agreement 2010 - Consultant
- CIC conditions of contract for the appointment of consultants on major building projects
- ACE Agreements
- SCALA (Society of Chief Architects of Local Authorities) Red Book for the appointment of consultants
- JCT Pre-construction services agreement
- JCT Consultancy agreement

Other forms of appointment are also available, and in some circumstances appointment may be made by letter or by a bespoke agreement. The NBS National Construction Contracts and Law Survey 2012 indicates that approximately 40% of appointments are made using bespoke agreements. This may be inadvisable because of the risk that bespoke agreements might not adequately or fairly make provision for all circumstances, and that they are not supported by a history of case law. It is also a poor reflection of how inflexible and ineffective the industry perceives many of the standard forms of agreement to be.

NB Where appointments include the development of a building information model, (BIM) the CIC BIM protocol (or equivalent) should be appended to the appointments of members of the design team and to the building contract. Project team members should arrange for it to be incorporated into subcontracts.

Scope of services

With all forms of appointment it is important that there is clarity about the scope of services being provided, particularly where a range of consultants is being appointed. There might otherwise be uncertainty about which consultant is responsible for which aspects of the project. Areas where clarity is particularly important include:

- Interior design and artwork

- Landscape design
- Highways, fencing and gates
- Acoustics
- Vibration control
- Below and above ground drainage
- Fire protection and safety systems
- Lightning protection
- Process engineering
- Chemical handling
- Specialist design such as laboratories
- Security systems
- Information and communications technology
- Connections to statutory utilities
- Planning applications (in particular outline planning applications)
- Furniture and equipment
- Fixtures and fittings
- Geotechnical surveys
- Topographical and setting-out surveys
- Demolition
- Specification writing
- External lighting
- Alterations to existing buildings
- Lifts and escalators
- Models and mock-ups
- 3D modelling
- Building control submissions
- Supervision and inspection during construction
- Record drawings
- Provision of certificates
- Insurance claims

In addition, some standard forms of appointment may consider certain tasks to be 'additional services' not covered by the consultant's fee unless specifically requested by the client. These might include:

- Acting as lead designer, contract administrator or lead consultant
- Detailed thermal modelling
- Environmental assessments
- Options appraisal
- Preparing or compiling the brief
- Post-occupancy evaluations (which might include both a post-project review (to evaluate the project delivery process) and performance in-use assessments). NB Ideally the client should commit to carrying out post-occupancy evaluation at the beginning of the project so that appointment agreements and briefing documents can include a requirement to test whether objectives were achieved
- Outline planning applications
- Planning appeals
- Assistance applying for grants or other funding
- Post-occupancy advice on letting, rating, maintenance, energy consumption, insurance, tenant queries and facilities management
- Assisting in the preparation of tender documents for maintenance and operation contracts
- Preparing a building user's guide (a non-technical guide with information for users about environmental controls, access, security and safety systems etc)
- Provision of unusual visual representations or models
- Building information modelling (BIM)
- Preparation of marketing materials
- Preparation of as-built information

- Party wall services
- Site surveys
- Whole-life costing studies
- Environmental and ecological studies
- Site selection
- Provision of site inspectors
- Assessment of alternative designs submitted by others (for example during the tender process for the main contractor)
- Dealing with claims and disputes
- Services in relation to legal agreements
- As-built drawings (many key systems will be shown 'as manufactured and installed' on specialist drawings and so general arrangement drawings may only be relevant as location drawings or for indicating zoning issues such as compartmentation)

Building information modelling

The adoption of building information modelling (BIM) on a project requires the definition of specific obligations and liabilities, and limitations must be placed on the agreed use of the model. This is generally achieved by adopting a BIM protocol. BIM protocols can be incorporated into appointment documents by the addition of a model enabling amendment such as that proposed in the CIC BIM protocol.