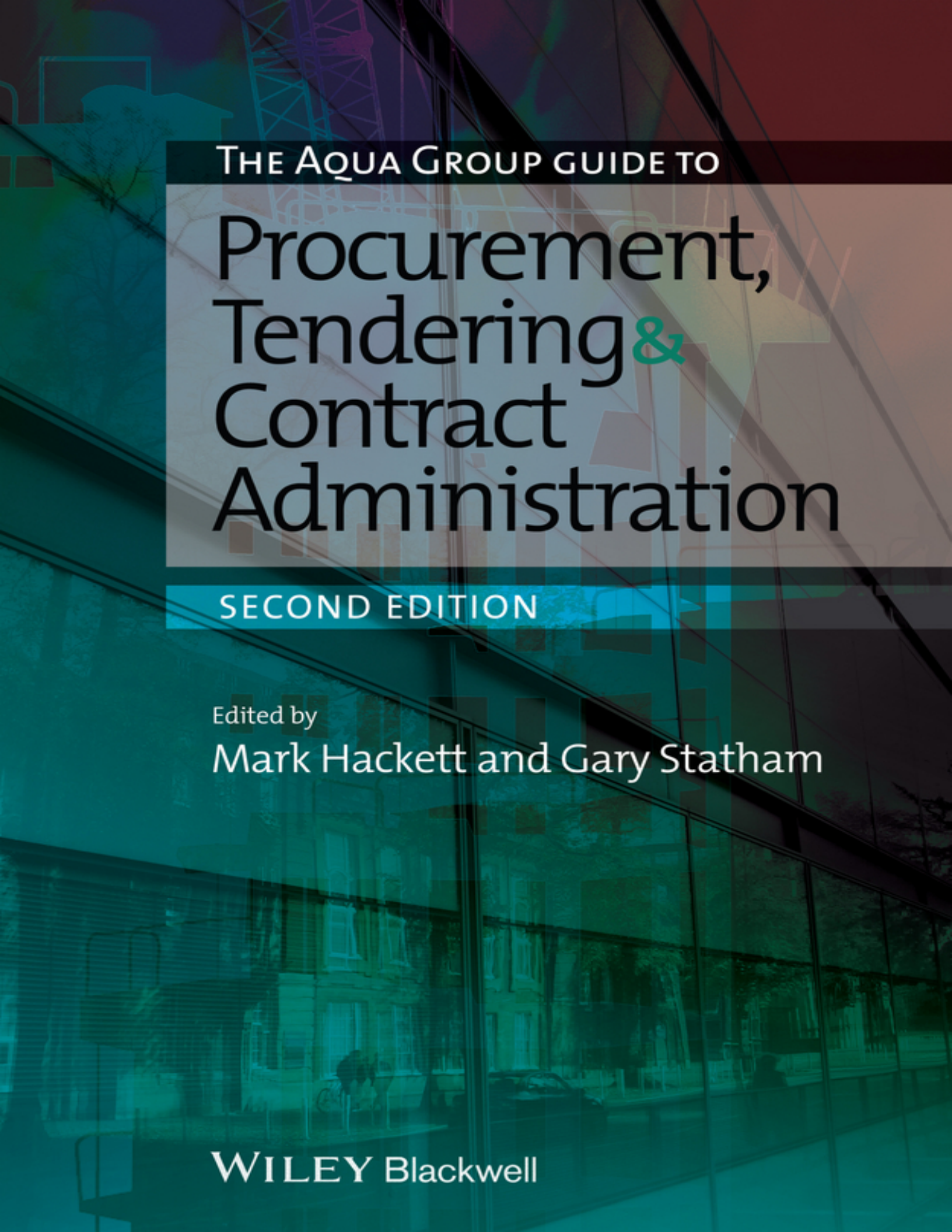
THE AQUA GROUP GUIDE TO
Procurement, Tendering & Contract Administration
SECOND EDITION
Edited by
Mark Hackett and Gary Statham
WILEY Blackwell

Table of Contents

List of Illustrations

List of Tables

The Aqua Group Guide to Procurement, Tendering and Contract Administration

Second Edition

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Part I
Briefing the Project Team

Chapter 1
The Project Team

Introduction

Since the first editions of the Aqua Group's books, the process of constructing and running a built asset has become increasingly complicated. From inception to completion, through site acquisition, design, tender, contract and construction, each stage of the process is time-consuming and can be considerably expensive. The need to optimise the process is of paramount importance and the best base from which to achieve this is proper and efficient team work. It is therefore vital that all members of the project team are fully conversant, not only with their own role but also with the roles of others and with the inter-relationships at each stage of the project. All members of the project team can then play their part fully and effectively, contributing their particular expertise whenever required.

The make-up of any particular project team will depend upon the scope and complexity of the project, the procurement route and the contractual arrangements selected. There are already many different methods of managing a project and, no doubt, others will be developed in the future. This chapter is set in the context of traditional procurement and, although not exhaustive, provides an indication of the principles involved and the criteria by which other situations can be evaluated.

Parties to a building contract and their supporting teams

The parties to a building contract are the employer and the contractor. Those appointed by these two will complete the *project team* which can include:

The design team

- *employer
- *architect
- *quantity surveyor
- *principal designer
- project manager
- structural engineer
- building services engineers
- sub-contractors

In addition, the employer may appoint:

- *clerk of works

The construction team

- *contractor and/or principal contractor
- *site agent (or foreman, described in the contract as the person-in-charge)
- sub-contractors

It should be noted, however, that only those marked with an asterisk are mentioned in the Joint Contract Tribunal (JCT) Standard Building Contract With Quantities 2011 Edition (hereinafter referred to as the ‘SBC’). This list is not exhaustive and to it could be added planners, landscape consultants, process engineers, programmers and the like. Furthermore, some roles may be combined and roles such

as the project manager or principal designer may be fulfilled by individuals, firms or companies from varying technical backgrounds.

Rights, duties and responsibilities

The SBC is comprehensive on the subject of the rights, duties and responsibilities of the employer, the contractor and the other members of the project team mentioned in it. Not all the members of the project team are mentioned in the SBC and those not mentioned will usually be given responsibility by way of delegation from those who are mentioned. The delegation of any duties and/or responsibilities must be spelt out elsewhere in the contract documents and this will usually comprise part of the bills of quantities.

Whatever the size of the project team, all members should be familiar with the contract as a whole and, in particular, with those clauses directly concerning their own work, so that the project can be run smoothly and efficiently. It should be noted that the duties comprise (i) discretionary duties; (ii) mandatory duties; and (iii) statutory duties.

The employer

The employer is referred to throughout the contract and is expressly required to perform specific duties. The vast majority of these duties are codified and are carried out by the architect/contract administrator on behalf of the employer. However, the employer, as one would expect, retains the important duty of payment to the contractor for works which are completed in accordance with the contract. Such is the importance of the payment provisions in the SBC, and indeed in all construction contracts, that failure to adhere to the provisions may lead to statutory repercussions against the employer.

The architect/contract administrator

The architect/contract administrator is named in the contract and, as the designation contract administrator suggests, is not only responsible for carrying out the design of the works but also for the vast majority of the administrative duties under the contract on behalf of the employer. The architect/contract administrator is also the only channel of communication for any un-named consultants with delegated powers. Historically, the architect was recognised as being the person responsible for administering the contract. However, since the designation ‘architect’ is a protected title under section 20 of the Architects Act 1997, it can be used in business or practice by only those with the requisite education, training and experience. In this regard, if a person happened to carry out the duties of administering the contract and that person was not entitled to practice as an ‘architect’, then he could be held to be in breach of the Act. The title ‘contract administrator’ was added in order that other professionals could administer the contract without fear of breaching the Act.

The quantity surveyor

Quantity surveyors are named in the contract and their principal duties are in relation to the payment provisions, value of the works including the value of variations and, if so instructed, ascertainment of any loss and/or expense suffered by the contractor as the consequence of a specified matter.

The principal designer

The Construction (Design and Management) Regulations 2015 (hereinafter referred to as ‘CDM 2005’), which came into effect on 6 April 2015, introduced the ‘Principal

Designer’ to the project team (having been previously referred to as the planning CDM co-ordinator in the Construction (Design and Management) Regulations 2007). When a project is notifiable, the principal designer is appointed by the employer, pursuant to regulation 5(1)a of the CDM Regulations. Standard contracts such as the SBC make provision for the appointment of a Principal designer. For instance, Article 5 of the SBC identifies that the Principal designer is the architect/contract administrator unless such other person is appointed.

The Principal designer is required to:

- plan, mange, monitor and co-ordinate matters relating to health and safety during the pre-construction phase to ensure the project is carried out without risks to health and safety;
- liaise with the principal contractor regarding the contents of the health and safety file, the information which the principal contractor needs for preparation of the construction phase plan, and any design development which may affect planning and management of the construction work;
- assist the client in the provision of the pre-construction information required by regulation 4(4) and to provide such of that information as is relevant to designers and contractors as is necessary;
- ensure that designers comply with their duties under Regulation 9 and ensure that all persons working in relation to the pre-construction phase cooperate with the client, the principal designer and each other; and
- prepare and update as necessary the project ‘health and safety file’ and, at the end of the construction phase, pass that file to the client; and

The clerk of works

The clerk of works may be appointed by the employer to act as an inspector of the works, solely under the direction of the architect/contract administrator. Traditionally, the role would have been taken by an experienced tradesman such as a carpenter, joiner or bricklayer. However, with today's highly complex and high-tech buildings, the architect/contract administrator, who will normally recommend the appointment, may need someone technically experienced or qualified and here the Institute of Clerks of Works will be able to assist in finding the right person. The clerk of works should be ready to take up the duties before the date of possession (how early will depend on the size and complexity of the project) and that person will either be resident on site or will visit the site on a regular basis during the period of the works.

The status of named consultants

While the architect/contract administrator and the quantity surveyor are expressly referred to in the contract and are expressly required to perform specific duties (many clauses include the phrase ‘the architect/contract administrator shall’), they are not parties to the contract. Should the contractor have a grievance regarding the named consultants failing to carry out their duties prescribed in the contract, the only contractual recourse is to seek redress from the employer.

Unnamed consultants with delegated powers

The project manager, the structural or any other consulting engineers are not referred to in the contract and nor do they have any express powers under the contract. They do, however, have a duty, as the employer's persons, not to impede the progress of the contractor. Their position within

the project team depends on the agreement they have with the employer or the architect. Where they have been given responsibility by way of delegation, perhaps for design or site inspection, they should be named in the contract documents and the extent of their delegated responsibility should be defined so that they have contractual recognition. Since they have no powers under the contract, if they need to issue instructions then this must be done through the architect/contract administrator.

As with the named consultants, if the contractor has any grievance against an unnamed consultant, the only contractual recourse is to seek redress from the employer.

The project manager

A project manager, who may be considered as an employer's representative, is likely to be appointed at the outset by the employer to whom he is directly accountable. The project manager is likely to be responsible for the programming, monitoring and management of the project in its broadest sense, from inception to completion, to seek a satisfactory outcome. This will involve giving advice to the employer on all matters relating to the project, and may include the appointment of the architect, quantity surveyor and other consultants. However, since the project manager is not mentioned in the contract, the project manager's position in respect of the contract works, which will be only a part of his overall duties and responsibilities, must be clearly determined and described in the contract documents. The duties and responsibilities delegated must not exceed those set out in the contract in respect of the employer.

The principal contractor

Whilst a main contractor may feature as a person in the design team for certain elements of the works, the contractor is usually appointed to construct the works. That same contractor is usually appointed as the principal contractor whilst carrying out the works. Under Article 6 of the SBC, the principal contractor is stated to be the contractor or such replacement as the employer shall appoint as the principal contractor pursuant to regulation 5(1)b of CDM 2015. The definition of a principal contractor in CDM 2015 allows for some flexibility but for the majority of construction contracts carried out under the SBC, the main contractor will be appointed as the principal contractor.

Since a principal contractor must always be appointed while work is in progress on-site, problems could arise where enabling works contracts, such as demolition or piling works, are required before the commencement of the main contract, or where a fitting-out contract follows completion of the main contract. In these circumstances, the employer will probably appoint a succession of principal contractors but care will need to be taken to ensure responsibility passes properly from one principal contractor to the next. In the event that the employer (client) fails to contractor, Regulation 5(4) provides that the employer must fulfil the duties of the principal contractor.

The principal contractor's duties are extensive and they are contained within three Regulations

12 – Construction phase plan; and health and safety file.

13 – Duties of a principal contractor in relation to health and safety at the construction phase.

14 – Principal contractors duties to consult and engage with workers.

These duties can be summarised as follows:

(Construction phase plan and health and safety file)

1. Draw up a construction phase plan which sets out the health and safety arrangements and site rules; ensure that the plan is appropriately reviewed, updated and revised from time to time.
2. Provide the principal designer with any information in its possession relevant to the health and safety file and, where the health and safety file is passed to the principal contractor (on conclusion of the principal designer's duties) the principal contractor must ensure that the file is appropriately reviewed, updated and revised to take account of the work and any changes that have occurred.

   (Duties of a principal contractor in relation to health and safety at the construction phase)
3. Plan, manage and monitor the construction phase and coordinate matters relating to health and safety during the construction phase to ensure that, so far as is reasonably practicable, construction work is carried out without risks to health or safety.
4. Organise cooperation between contractors.
5. Coordinate implementation by the contractors of applicable legal requirements for healthand safety.
6. Ensure that employers and, if necessary for the protection of workers, self-employed persons apply the general principles of prevention in a consistent manner and follow the construction phase plan.
7. Ensure that a suitable site induction Is provided.
8. Ensure that the necessary steps are taken to prevent access by unauthorised persons to the construction site.

9. Ensure that welfare facilities that comply with the requirements of Schedule 2 of the Regulations are provided throughout the construction phase.
10. Liaise with the principal designer and share information relevant to the planning, management and monitoring of the pre-construction phase and the coordination of health and safety matters during the pre-construction phase.

    (Principal contractor's duties to consult and engage with workers)
11. Make and maintain arrangements which will enable the principal contractor and workers engaged in construction work to cooperate effectively in developing, promoting and checking the effectiveness of measures to ensure the health, safety and welfare of the workers.
12. Consult workers or their representatives in good time on matters connected with the project which may affect their health, safety or welfare, in so far as they or their representatives have not been similarly consulted by their employer.
13. Ensure that workers or their representatives can (with certain limited exceptions) inspect and take copies of any information which relate to the health, safety or welfare of workers at the site.

Sub-contractors

Sub-contractors may feature as members of the design team as well as members of the construction team. This is because, in addition to carrying out work on site, they are often involved in the design and planning of specialist works in advance of the appointment of the main contractor. All sub-contractors employed by the contractor under the SBC have ‘domestic’ status and are fully