

Contractors – Declaration of Conflict of Interest and Authority their entry to Premises

◆OC 26/10

Target Audience:

**All FOD Staff
HID Inspectors
Nuclear Inspectors**

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SUMMARY

This OC revises and replaces OC 26/4 *Conflict of interest and authorising contractors to enter premises*. The OC now has a more appropriate title and allows for the substitution of SERCO Assurance for AEA Technology (Consulting). It sets out a combined process for:

declaring a conflict of interest (COI);

gaining the consent of a business to allow a contractor to enter their premises etc unaccompanied by an inspector; and

authorising contractors to enter premises when accompanied by an inspector.

The instructions from para 5 onwards are specifically for use with the agreement for the provision of field technical services by SERCO Assurance (SERCO) (OC 26/5 refers). However, the broad principles may, if appropriate, be adapted to suit other contracts that HSE has, or may enter into in the future.

BACKGROUND

1 HSE's reputation is based on its independence and integrity. This guidance is designed to ensure that the advice HSE receives from a contractor, and the judgements HSE makes on the basis of that advice, are seen not to be influenced by commercial considerations. It will also help avoid difficulties associated with site visits and any subsequent enforcement action that may result.

CONFLICT OF INTEREST

2 A conflict of interest (COI) or potential COI may arise as a result of any link between a contractor and a business that might influence, or be seen to be potentially influencing, a contractor's impartiality when carrying out a task, associated with the business, on behalf of HSE.

3 Even though the contractor and business may be in agreement with the contractor's undertaking of a task, HSE must still consider the risk of impropriety arising from, for example:

- (1) a commercial relationship where a business is, has recently been, or is about to become, a client of the contractor or vice versa;
- (2) a commercial relationship where the contractor is, has recently been, or is about to become, a stake/shareholder in a business or vice versa;
- (3) an individual relationship, where a relevant employee or associate of the contractor may have undertaken work for the business or may have been employed in the past by that business.

4 Such knowledge may be held by HSE, the contractor or the business. Examples of identification criteria and possible resolutions are given at Appendix 1.

SCREENING OF TASKS

5 HSE must consider the potential outcome of any task that it is proposing SERCO, or another contractor, to undertake in particular where SERCO may be asked to provide assistance in any inspection or enforcement action, including appearing as a prosecution witness. →

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NOTIFICATION OF INTENT

6 The Band 2 SG must agree the use of SERCO with the band 2 (operations) responsible for the business associated with the proposed task.

7 Thereafter, while the band 2 SG discusses the task with SERCO, the band 2 (operations) should promptly notify the business, in writing, of HSE's intent using a standard letter (see Appendix 2). This should be copied to the band 2 SG and SERCO.

8 Please note that, where a task involves a site visit to premises occupied by a number of businesses, it may be necessary to inform other dutyholders associated with that task.

DECLARATION

9 The agreement between HSE and SERCO makes it clear that it is the responsibility of SERCO to decide whether, in its opinion, a COI exists, and notify HSE accordingly.

10 SERCO has in place procedures, agreed with HSE, that will enable SERCO to check and respond to a COI. SERCO is required to inform HSE of any issue of COI at the earliest opportunity and decide whether the COI is such that it would be improper for SERCO to undertake a task or whether a potential COI could be resolved by alternative service provision within SERCO.

11 Where SERCO has not identified a COI it must make a declaration to that effect.

12 The declaration must be made in clear, unambiguous terms and without qualification:

'There is no conflict of interest'.

OBJECTION BY A BUSINESS

13 If an objection to a visit or any other concern is raised by a business, HSE will need to clarify and discuss the reason with that business and decide what action is necessary to attempt to resolve it.

14 HSE should consider the value and cost of a task and decide whether the time and effort necessary to resolve the objection or concern can be justified.

15 Where SERCO declares an irresolvable COI, HSE either accepts an objection from a business or decides it is improper for SERCO to undertake the task, HSE will then need to make alternative arrangements for completing the task, ie resourcing in-house or using a different contractor.

16 A flow chart setting out the above process is at Appendix 3.

AUTHORISATION

17 HSW Act s.20(2)(c) allows an inspector appointed under s.19 to take with them on entering any premises any other person duly authorised by the inspector's enforcing authority.

18 This option may be used where:

- (1) the business is objecting to SERCO undertaking a visit;
- (2) SERCO is subsequently refused entry; or
- (3) SERCO cuts short a visit because the occupier is being uncooperative.

19 Where SERCO is required to undertake an immediate response task involving a site visit, SERCO must still make a declaration on COI. Such a circumstance may not, however, allow HSE sufficient time to notify the business. SERCO must be authorised using LP21 procedures outlined below and accompanied on the visit by an appointed inspector.

20 SERCO staff may be authorised by completing form LP21 (file 190 and intranet). This must be signed by an inspector appointed under s.19 but not necessarily by the person who will be carrying out the visit. The Executive has delegated the power to authorise under s.20(2)(c) to inspectors at band 3 and above.

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FOOD AND ENVIRONMENTAL PROTECTION ACT 1985

22 For work associated with enforcement of the Food and Environmental Protection Act 1985 (FEPA) and the Control of Pesticides Regulations 1986, band 2 inspectors should follow the procedures in paras 6 and 7. However, if consent to the visit is not forthcoming, there are no equivalent methods under FEPA to authorise SERCO. The visit should then be conducted principally by an inspector authorised to enforce the relevant parts of FEPA Part III.

HEALTH AND SAFETY COMMISSION ENQUIRIES

23 These arrangements do not apply to special enquiries carried out under HSW Act. Section 14(2)(a) gives HSC separate powers to appoint persons, other than HSE staff, to investigate specific incidents and prepare special reports. Section 14(2)(g) also allows HSC to appoint others to enter and inspect premises, under the Health and Safety Inquiries (Procedure) Regulations 1975.

CONTRACTUAL ISSUES

24 In circumstances where SERCO fails to declare the existence of a COI then this will be a breach of contract.

25 Complaints from occupiers about SERCO staff should, in the first instance, be directed to SERCO. If an occupier is not satisfied with the outcome, they can write or speak to HSE's contract manager who will undertake to investigate the complaint and inform them of the outcome.

26 All queries concerning any of the procedures above should be directed to the HSE Contracts Manager, Richard Moss, FOD FSU1, at either Room 1915, McLaren Building, Birmingham, VPN 510 6213 or Room 906, Daniel House, Bootle, VPN 523 3302.

27 For general queries concerning HSW Act s.20(2)(c) procedures, and the collection of evidence for enforcement notices and legal proceedings, FOD staff should contact FOD FSU 2 (Legal and Enforcement), Room 912 Daniel House, Bootle. HID staff should contact HID OPU, St Anne's House, Bootle.

CANCELLATION OF INSTRUCTIONS

28 OC 26/4 - cancel and destroy.

First issued: 27 February 2002

(220/FOD/1005/2002)

Disc ref: j:\Editors\Intranet\ocfiles\001-099\26_10.lwp

¹ Exemption 4 – Law enforcement and legal proceedings

² Exemption 4 – Law enforcement and legal proceedings

APPENDIX 1
(para 4)

IDENTIFICATION AND POTENTIAL RESOLUTION OF CONFLICT OF INTEREST

1 In order for a contractor to make a declaration of COI, the contractor must consider any links it has, may have had, or is likely to have in the future with a business, that could constitute a COI.

2 Links may result from a relationship between the contractor and business or through the technical value and nature of a task. When considering the significance of the relationship and technical value, the following orders of importance should be used.

| Relationship | |
|------------------------|---|
| 1 | A commercial relationship, where the business is, has recently been, or is about to become a client of the contractor or vice versa. |
| 2 | A financial relationship, where the contractor is, has recently been, or is about to become a stake/shareholder in the business or vice versa. |
| 3 | An individual relationship, where an employee or associate of a contractor may have undertaken work for the business or may have been employed by the business in the past. |
| 4 | A professional relationship through a trade organisation. |
| 5 | A social relationship. |
| Technical value | |
| 6 | An identical task recently carried out, being carried out, or likely to be carried out in the near future for the business. |
| 7 | A similar task carried out some years ago at another site belonging to the business. |
| 8 | A loosely related task carried out so long ago that its technical value has been overtaken. |

3 The types of contractor/business relationships when combined with the technical value and nature of the task concerned, form the basic criteria for consideration by the contractor.

4 For example, where links as described in items 3 and 7 of the table are identified, a possible solution for the contractor could be the use of 'Chinese Walls' provided that this was agreed as being acceptable by HSE.

5 Alternatively, where there has previously been a commercial relationship, as described in item 1 of the table, the contractor would need to consider whether that relationship still gives rise to a COI. Where the commercial relationship is found to be of direct relevance to the task being considered, such as defined in item 6 of the table, this would almost certainly be unresolvable.

APPENDIX 2
(para 7)

STANDARD LETTER

The following text should be used. The letter should be copied to the appropriate SG Specialist, and the Operations Manager, SERCO Field Services Management Unit, F5 Culham, Abingdon, Oxfordshire OX14 3DB Fax 01235 463747.

Company Name and Address

Ref (HSE job ref no)

Date

Health and Safety at Work Act etc 1974

HSE has contracted SERCO Assurance (SERCO), to carry out the following work associated with your business.

Task descriptor here.

If the work involves a visit to your premises/site, SERCO will contact you to make the necessary arrangements and provide you with details of the person who will be visiting. Please inform SERCO, prior to a visit, of any health and safety issues specific to your site.

SERCO regularly carries this type of work for HSE and the contract with SERCO requires them to maintain confidentiality and declare a conflict of interest should it arise.

If you have concerns or object to HSE using SERCO for this work then please complete the section below and return it to me, either by fax or post, within 10 working days from receipt of this letter. I can then make alternative arrangements should they be necessary.

Should you require any further information in the meantime or wish to discuss the matter then please contact me in the first instance. If I am not available then contact HSE's Contract Manager, Richard Moss FOD FSU 1, Room 906 Daniel House, Trinity Road, Bootle, Liverpool L20 7HE, Tel: 0151 951 3302, Fax 0151 951 3019; or Room 1915, McLaren Building, 35 Dale End, Birmingham B4 7NP, Tel 0121 607 6213, Fax 0121 607 6287.

If you agree to the visit and subsequently have a complaint about SERCO staff which cannot be resolved by SERCO, then please speak or write to the Contract Manager who will investigate the complaint and inform you of the outcome.

Thank you,

[Name - Band 2 Ops]

Company Name Ref

Letter Dated

I do not agree to HSE's use of SERCO for the reasons outlined below

Name Position held

Signature Date

APPENDIX 3
(para 16)

PROCESS FLOW CHART

