

REF: SC/09/034

GUIDANCE NOTE: INDEPENDENT REVIEW THROUGH PEER ASSIST

This should be read in conjunction with the Draft Form of Agreement (REF: SC/09/035).

Introduction

- 1 The industry does not always derive optimum value from project reviews; indeed project reviews are not always carried out. Time pressures, availability of key staff, communication issues and culture contribute to this challenge.
- 2 The 'Independent review' (IR)¹ has been developed with these issues in mind and has been endorsed by the Sponsors of SCOSS. The objective is to promote a more inter-active and timely process tuned to the specific needs of the project team. This should lead to reduced risks, greater efficiency and an improved service for clients. It should also stimulate learning, continuous improvement and mentoring.
- 3 This is achieved by utilising the professional, practical, commercial and legislative (e.g. health and safety) experience of the IR to examine project intents, outputs and decisions so as to allow the IR to suggest where significant risk may be eliminated or mitigated in order to deliver the desired outcomes of the client.

Additional Benefits

- 4 The concept of IR has been applied by a number of consultants.² Experience has demonstrated its effectiveness and has highlighted some extra benefits. These include:
 - Engaging a fully represented project team in this open and interactive process which has stimulated greater awareness and communication within the team.
 - The raising of useful questions and suggestions by members of the project team that may never have been considered without the stimulus of an IR
 - Responding to questions in the open and inter-active forum engendered by IR has enabled initial assumptions to be re-evaluated and misconceptions addressed early and effectively. Examples here might include re-evaluating and clarifying the brief and deliverables, duty to warn, and sustainable development.
- 5 With regard to mentoring, because IR is so direct and wide ranging, a strong contact with project team members is rapidly established. This stimulates a relationship that is not readily achieved in the traditional process of review. This has been clearly evident in the experience of IR implementation and has encouraged the initiation of follow-up sessions with the reviewer. It has proved particularly helpful to the younger members of the team in creating access to experienced staff in an open and meaningful way.
- 6 Successful examples of the IR approach will be useful drivers for the required cultural change – hence SCOSS would be pleased to receive examples for the purposes of knowledge sharing.

¹ IR is taken to refer to the process, or individual(s) carrying out the role, as appropriate.

² Specifically Mott MacDonald, from whose procedures this originates.

Independent Review Process

7 There are a number of elements to the review process:

- i) *Key Features*: These might include:
 - Presentations to the IR by the project team focusing on risks through highlighting and sharing concerns.
 - A review report for evaluation and approval by the IR, leading, if necessary, to further discussion and review.
- ii) *Reviews*: Reviews are initiated by direct briefing of the IR – principally through a presentation by the (fully represented) project team. The focus should be on the specific issues of concern. The project team should be pro-active in helping the IR to be effective. This would include careful preparation and timing of the review sessions and undertaking the majority of the administration for the IR. This should be cost-effective and will also help the IR focus on the key issues.
- iii) *Risk and Innovation*: Involving the IR in brainstorming and risk workshops can be very effective. The development of risk registers is encouraged. Such registers are a useful guide for an IR to consult. Early involvement of the IR should help to identify any issues that need addressing before change becomes impractical – including opportunities for adding value and innovation.
- iv) *Timing and Frequency*: It is desirable for the project director/manager to assess needs for IR at all stages of the project. The IR should be involved as soon as practicable – including the bid stage if appropriate. Consideration needs to be given to continuity, how the project will develop, and how the aid of IR can best be utilised. Involvement and input of the IR should extend throughout the project including the construction phase and post project review.
- v) *Mentoring*: Because of the inter-active nature of IR, it fosters rapport and creates strong opportunities for knowledge sharing and mentoring – particularly for the younger members of the team.
- vi) *Reporting*: A draft of each Project Review should be produced promptly by the project team for final review and approval by the IR. This has the following important advantages:
 - Efficiency. It involves and engages the team and provides a vehicle for verification in the project format, and optimises the time input of the IR.
 - Communication. The draft report is a powerful test of communication within the project team and between the project team and the IR, and creates a stronger link overall between the team and the IR.

Form of agreement

- 8 A possible form of agreement is indicated on SC/08/076. Users should review this to ensure it covers the necessary aspects for the particular project e.g. in Clause 15 the ownership of intellectual property rights may occasionally be placed with the IR.

Schedule 1 of the Form of Agreement

- 9 These should be sufficiently specific to identify the key areas to be examined by the IR e.g. cost, occupational safety, buildability, safety margins, and how the client is to facilitate subsequent feedback documentation for the IR.

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This form presents aspects to be considered in any appointment. It should be tailored and reviewed to suit particular circumstances.

APPOINTMENT OF INDEPENDENT REVIEWER THROUGH PEER ASSIST

PARTICULARS

Agreement Date	
Client	
Supplier	
Reviewer	[name] and includes any replacement provided under clause 3
Project	

AGREEMENT

BACKGROUND

1. The Client is engaged on the Project.
2. The Client wishes to have the views of an independent reviewer, to assist the Client in identifying risks and opportunities on certain aspects of the Project.
3. The Supplier is willing to provide the services of an independent reviewer on the terms set out below.
4. The Client and the Supplier jointly acknowledge that an open and trusting relationship between the Client, the Supplier and the Reviewer is necessary in order that the full benefits of the appointment are obtained.

APPOINTMENT

1. The Client appoints the Supplier to provide an independent reviewer on the Project.
2. The Supplier agrees to provide to the Client a suitably qualified professional person at reasonable times on reasonable notice to act as the Client's independent reviewer on the Project. Subject to the Client's agreement the Supplier may provide suitably qualified assistants to the independent reviewer.
3. The independent reviewer will be the Reviewer stated in the Particulars or (if the Reviewer is no longer available to the Supplier or if there are other good reasons to change the Reviewer) some other professional person who is acceptable to the Client. In the absolute discretion of the Supplier if participation in the Project under this Agreement creates a conflict of interest for the Supplier then the Supplier may terminate this Agreement forthwith.
4. The benefits of this agreement shall not be assigned without the written consent of the Supplier.

SCOSS (the Standing Committee on Structural Safety) is an independent body sponsored by the Institution of Structural Engineers, the Institution of Civil Engineers and the Health & Safety Executive to maintain a continuing review of building and civil engineering matters affecting the safety of structures.

email scoss@istructe.org website www.scoss.org.uk

5. This agreement shall be interpreted in accordance with the laws of England and Wales.

DUTIES OF REVIEWER

6. The Reviewer's specific duties are as set out in Schedule 1.
7. In carrying out the specific duties, the Reviewer will examine project intents, outputs and decisions and will join in a collaborative effort involving the Client and the Client's professional advisors to identify areas where there appear to be good prospects of reducing risks, improving safety, simplifying construction or adding other value to the Project.
8. The Reviewer will report to the Client at reasonable intervals on his progress in carrying out his duties.
9. All comments, reports, suggestions and all other outputs of the Reviewer are here called 'Comments'.

LIABILITY

10. The Client acknowledges that:-
 - a. The Reviewer/Supplier will not be given all of the background information to the Project;
 - b. The Reviewer/Supplier will not be afforded sufficient time to verify all of the information provided or to make detailed calculations or to check the full impact of Comments or to identify all points which would be worthy of comment;
 - c. The Reviewer's duties are in the nature of applying his experience to provide insights and suggestions for further assessment but not fully calculated and checked designs or solutions;
 - d. If the Supplier or the Reviewer were exposed to the risk of legal liability, they would require more information and more time than is available to them and substantially higher fees commensurate with the additional responsibility. Such risk would also prevent the Reviewer from giving his views in complete confidence and so would reduce the value obtained by the Client from this appointment.
 - e. Without the protection afforded by clause [11] the Supplier would not have accepted this appointment and the Reviewer would not have agreed to provide Comments.
11. In consequence of the considerations in clause [10] the Client agrees that:
 - a. The Client will not (and the Client will ensure that no other person will) place reliance on Comments (or the absence of Comments).
 - b. All Comments will be treated only as suggestions requiring later and more detailed assessment by appropriately qualified and experienced professional or technical persons and which (if then acted upon) would be acted upon in reliance on work by other parties to the exclusion of the Reviewer's work and Comments.
 - c. To the fullest extent permitted by law the Client:-
 - i. waives any right to make any claim against the Supplier and the Reviewer and the Supplier's staff, directors or suppliers for any liability which may arise (whether in contract or tort (including in negligence) or under statute by operation of law or in any other way) from or out of this Appointment or the performance (or alleged non-performance) of the Reviewer's duties hereunder; and
 - ii. agrees to indemnify and hold harmless the Supplier the Reviewer and the Supplier's staff, directors and suppliers from and against all claims

- demands and liability (including those of third parties) howsoever arising (including in negligence and from breach of statutory duty) from or out of this Appointment or the performance or non-performance of the Reviewer
- d. The provisions of this clause are reasonable in consideration of the matters set out in clause [10].

FEES

12. The Fees payable to the Supplier under this Agreement shall be as set down in Schedule 1.

THIRD PARTY RIGHTS

13. No person or entity shall have any rights in relation to this Agreement whether as third parties or otherwise save the parties to this Agreement and the Reviewer.

CONFIDENTIALITY

14. Neither party shall disclose to any other person any matter to do with this Agreement save in so far as any disclosure is necessary and relevant for the effective performance of the independent review process. Each party will notify the other of the involvement, if any, of any other party in the independent review process. The requirements of this clause shall remain effective for 3 years from the expiry of this Agreement save as otherwise may be required to comply with any law or court order.
15. Where the Supplier and/or the Reviewer contributes to the creation of any intellectual property in the performance of the independent review process then the Client agrees to grant to the Supplier an irrevocable royalty free licence to use such intellectual property for any purpose in connection with the Supplier's business.

SCHEDULE 1

Clause 6 The Services shall consist of.....

Clause 12 Payment shall be made as follows.....

(January 2009 version)