



Welcome to the May edition of *Insight*, Fenwick Elliott's newsletter which provides practical information on topical issues affecting the building, engineering and energy sectors.

In this issue we take a look at developments to BIM since our last issue on the subject in January 2012.

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BIM: an update

In Issue 7 of *Insight*, we outlined some of the key things you needed to know about Building Information Modelling (or BIM) and considered the possible legal implications of its widespread use. Since then, as we had anticipated, there have been a number of developments, which we discuss below.

One real driver for the implementation of BIM is the government's construction strategy which has mandated the use of Level 2 BIM on all government projects by 2016. Level 2 BIM involves the shared use of information or models in a common data environment, in other words integrated into a single source of project information. Cabinet Minister Chloe Smith, speaking at the BIM4SME Building Information Launch on 15 April 2013, said that BIM lies "*squarely at the heart of*" the government's push to reform the construction industry, that it was "*a great leveller*" and "*was becoming a catalyst*" for growth.

It is clear that the use of BIM is increasing. An NBS survey of the construction industry conducted between December 2012 and February 2013 found that 39 per cent of respondents were using BIM, up from 13 per cent in 2010.

In the past few months there have been four major documents released:

- (i) The CIC Protocol
- (ii) The new PAS 1192-2:2013
- (iii) The RIBA Plan of Work
- (iv) The NEC3 Guide: *How to use BIM*

(i) *The CIC Protocol*¹

In March 2013, the Construction Industry Council (CIC) published its much anticipated *Building Information Modelling (BIM) Protocol*. The Protocol is intended to set a standard for the future and was published alongside two other BIM documents: *Best Practice Guide for Professional Indemnity Insurance when using BIM* and *Outline Scope of Services for the Role of Information Management*. The CIC BIM Protocol is UK-wide and is specifically for the use of Level 2 BIM.

The Protocol, in eight clauses, establishes the contractual and legal framework for the use of BIM on a project and clarifies the obligations of the team members. If it is accepted in the construction industry as a standard document then it is thought that this will encourage the use of BIM.

What impact will it have on contractual arrangements and insurance?

The CIC *Best Practice Guide for Professional Indemnity Insurance* suggests that professional indemnity insurers do not currently consider that there are any significant issues with Level 2 BIM. Indeed, the use of BIM itself should reduce the number of claims against insurers. This should mean that the effect on premiums will be minimal.

This is one of the intentions behind the production of standard form documents like the CIC Protocol. That said, as the CIC recommend, if undertaking BIM for the first time, it would be sensible to check with insurers and brokers before commencing a project to make sure everyone is happy with the contractual arrangements and the role you are going to play.

The idea behind the Protocol is that it would be incorporated as a contract

document using the standard enabling provisions that have been provided. It should take precedence over other documents in relation to BIM matters. It therefore fits neatly with the approach of the JCT and NEC, the latter, for example, having suggested that the Protocol needs to be inserted into the Works Information.

Clause 3.1 of the Protocol says that the Employer should arrange for the Protocol to be incorporated into all the Project Agreements – an important requirement. The same clause also requires that the Employer ensure that there is a BIM Information Manager appointed at all times during the project.

The CIC has also prepared details of the scope of services of the Information Manager. There are two versions: a detailed version compatible with the CIC scope of services, and a simpler version said to be suitable for incorporation with any appointment. It is important to remember that the Information Manager should have no design-related duties. The Information Manager's role is to manage the processes and procedures for information exchange on projects. They will therefore be responsible for initiating and implementing the Project Information Plan – who does what and when.

Clause 4 sets out the obligations of project team members. They must produce models to the specified level of detail. This is subject to the same level of skill and care required under the main appointment. Other obligations, such as the incorporation of the Protocol into subcontracts, are subject to a reasonable endeavours' obligation.

Clause 6 deals with intellectual property (IP) rights. It clearly states that the use of the BIM model is limited to the particular project in question and that the information loaded onto that model remains the property of the party that produced it.

Therefore using the CIC Protocol should not lead to substantial amendments to existing contracts. However, as with all contracts and all standard forms and amendments, it is important to make sure that the contractual documents

1. All the CIC documents referred to here can be downloaded at: <http://staging.cic.org.uk/publications/>



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and project specifications fit the demands of the particular project.

(ii) PAS 1192-2:2013²

The CIC Protocol notes that the encouragement of common standards or working methods under PAS 1192-2 is a good example of best practice. PAS 1192-2:2013³ came into effect on 28 February 2013. It is designed to help support the Construction BIM Strategy to achieve Level 2 compliance and provides specific guidance for the information management requirements associated with projects delivered using BIM. Indeed, further than that, compliance with the standard will be mandatory on all public sector jobs from 2016.

It sets out how to share information on BIM projects. The idea behind producing a PAS (or Publically Available Standard) is to reduce and ultimately eliminate problems caused by people using different BIM practices, standards and software, which can lead to costly delays and conversion costs if those practices cannot be coordinated.

PAS 1192-2:2013 is intended to provide a framework which parties can apply to specific projects. It includes a glossary of terms, references to other relevant British Standards Institution (BSI) standards, Construction Product Information (CPI) guidance and other documents, definitions for process and data needs, details about roles and responsibilities as well as sources for key templates for the documents referenced within the PAS.

(iii) RIBA Plan of Work

The RIBA Plan of Work⁴ was published in May 2013. Replacing the traditional eleven stages defined by the letters A–L, are eight stages defined by the numbers 0–7, and eight task bars.

BIM is an integral part of the Plan of Work and the RIBA recognises the importance of properly establishing the project team at an early stage, especially given the increasing use of technology that enables remote communication and project development using BIM. In this, the RIBA is recognising a move away from the traditional design team.

The Plan of Work advocates the development of a technology strategy which is established at the outset of a project. As you would expect, this should set out the technologies, specific software packages, including Building Information Modelling (BIM), and any supporting processes that each member of the project team will use. The strategy can also include details about how information is to be communicated, including the file formats in which information will be provided and any file-naming protocol. This information can then be set out in a Project Execution Plan and should help in ensuring that information can be used and shared. As the RIBA states, any interoperability issues can then be addressed before the design phases commence.

(iv) The NEC3 Guide: *How to use BIM*

On 22 April 2013 the release took place of the first set of major amendments to the NEC3 suite since it was first published in 2005. As well as the introduction of a new Professional Services Short Contract and provision being made for the use of project bank accounts, the NEC published seven “how to” guides including one entitled *How to use BIM with NEC3 Contracts*. This includes guidance on using the CIC BIM Protocol. It also provides suggested additional clauses for use with each of the main NEC3 Contract forms, the intention being that they are included as additional contract clauses under Option Z. Unsurprisingly, the Guide also says that it is important to include as part of the Works Information or Scope any particular information requirements and also tables which may be required,

for example, in relation to the timing of Model Production or manner (i.e. use of software) in which it is to be produced.

The Guide also suggests the need to include additional compensation events: first, where a party is unable to provide its model as required because of events outside of its control; and second, in acknowledgement of the difficulties that may arise if an employer is obliged to revoke any sub-licence that may have been provided to use information provided by others. In these circumstances, it may be necessary to remove that information for your own model.

Conclusions

The fact that the NEC has prepared a “how to” guide rather than sought to introduce widespread revisions to their contracts, demonstrates that at Level 2 at least, from a legal point of view, there is no need to make substantial changes to your contracts.

It is far more important to understand what you (and others) are being asked to provide in terms of BIM, and when you need to provide it. It is equally important that someone in your organisation is tasked with keeping up to speed with the developments, both contractual and technical.

In the introduction to the RIBA BIM Overlay, author Dale Sinclair uses the term “BIM(M)” meaning “Building Information Modelling and Management” – an important reminder that BIM is not only about the technology. It is just as important to be able to manage the use of that technology as well.

Should you wish to receive further information in relation to this briefing note or the source material referred to, then please contact Jeremy Glover. jglover@fenwickelliott.com. Tel +44 (0) 207 421 1986

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2. A specification for information management for the capital/delivery phase of construction projects using building information modelling.
3. A free copy can be downloaded –at: <http://shop.bsigroup.com/en/forms/PASs/PAS-1192-2/>
4. Information about the Plan of Works can be downloaded at: <http://www.ribabookshops.com/plan-of-work>