

# Subcontractors - The difference between BFSC & LOSC



## Insurance – Bona Fide or Labour-only?

### The things you need to know

Whilst it is difficult to provide an accurate definition (as the law does not provide one), it is important to try to correctly determine the status of sub-contractors to ensure that the correct insurance cover is in place. If a sub-contractor is a **bona-fide subcontractor (BFSC)** Employers' Liability Insurance is not required but if a Sub-contractor is a **labour only subcontractor (LOSC)** Employers Liability is required.

As the owner or manager of a construction firm, you know that construction projects, no matter the size or scope, can be significant undertakings full of challenges. One such challenge that you may encounter deals with that type of subcontractors you hire – knowing the differences between these two classifications can help protect your business from costly and damaging risks, including fines, penalties or even very large insurance claims.

***The insurance definition of BFSC & LOSC is different to HMRC. Ensure you have the correct procedures in place to ensure your insurance policies respond in your time of need.***

### Who are Labour-only Subcontractors?

The defining characteristics of labour-only subcontractors are as follows:

- They work under your supervision and direction.
- They use your materials, kit, equipment and tools.
- They must comply with your health and safety policies.
- They do not have a guarantee for work done and may leave part way through.

### Who are Bona-fide Subcontractors?

The defining characteristics of bona-fide subcontractors are as follows:

- They work under their own supervision and direction.
- They provide their own materials, kit, equipment and tools.
- They are responsible for their own health and safety.
- They may have additional employees.
- They provide their own method statement, carry out risk assessments and are responsible for their own guarantees and maintenance.

# How do You Tell the Difference Between the Two?

## LOSC

Labour-only subcontractors are additional employees that you hire to assist with a build project that is too large or complex for your full-time staff to handle in a timely manner. As these subcontractors are employed for the duration of the build project, you are required to pay them the same wages as your full-time staff and classify them as employees. In addition, your firm must cover each labour-only subcontractor under your employers' liability and public liability insurance.

You should check with your insurer if you are unsure but if you can answer **yes to several** of the questions below; it's more likely they are a **labour-only sub-contractor** rather than a bona-fide subcontractor.

- Do you pay the person hourly, weekly or monthly? (Bona-fide subcontractors tend to be paid by invoice).
- Do you pay the person overtime or bonuses?
- Do you supply them with the majority of their tools?
- Do they do all the work required of them, themselves?
- Can the main contractor direct them how, when, where and at what time they should do work?
- Do they work a fixed number of hours?
- Can the contractor reassign them to another task?

## ➤ BFSC

Bona-fide subcontractors are hired to complete a specific job—such as plumbing or electrical work—on a build project that your full-time staff is not capable of completing on its own. As your firm would be hiring them on for a specific job, you would pay them as if it were a normal separate job, typically via invoice. In addition, because they are working independently of your firm, bona-fide subcontractors should have **their own liability insurance and invoices include VAT**.

On the other hand if you can answer yes to the majority of these questions they are **more likely to be a bone-fide sub-contractor**:

- Are they on a fixed-price contract irrespective of what is needed to get the job done?
- Are they on a service rather than employment contract?
- Do they decide their own hours, how to do the job, when to do it and where to do it?
- Do they work for other parties as well as the main contractor?
- Are they obliged to correct any quality deficiencies at their own expense and in their own time?
- Do they have public liability insurance that they can provide evidence of?
- Do they cover the costs of any materials, tools, etc. used on the job?
- Are they able to hire additional labour if required at their own expense?
- Are their earnings at risk if they have incorrectly priced the job?

If your policy provides cover for **bona fide sub-contractors on a contingent basis**, it is up to you to ensure that they carry satisfactory and adequate insurances and that their policy will include a business description to cover the work they are doing for you. Their policies must have an adequate limit of indemnity and contain an indemnity to principals' clause.

You must keep a record to show that their insurances have been checked and a diary system to identify when they are due for renewal.

We have sub-contractor liability insurance questionnaire templates available to use:

- Employers' Liability, Public Liability, Contractors All Risks and Professional Indemnity

**Ascend Broking can assist you in this exercise and please do not hesitate to contact us for further advice.**