

## **Chapter 19: Dealing with BC Timber Sales Contractors**

### **Introduction**

The purpose of this chapter is to provide guidance and procedures to BCTS staff relative to how they effectively plan, advertise, award, monitor and report on the safety aspects of work completed by contractors who are conducting work for BCTS.

This chapter closely follows and is meant to be used in conjunction with the MOFR Contract management manual. In addition contract administrators need to be familiar with the content of Chapter 21 of this manual which addresses multi employer work places (MEWP).

In this manual, contractor means any party who is engaged to do BCTS work under a contract of hire or contract of service and is not defined an employee under the Public Service Act. The term principal contractor is used to specifically denote the contractor that holds a contract of hire or contract of service with the province (BCTS) and is interchangeable with the contractor but used to provide additional clarity and differentiation from sub contractors.

In order to deliver on the objectives for the BC Timber Sales Program, BCTS staff rely on private sector contractors/consultants to complete a significant amount of the actual field work required to be done by the program. Work such as forest engineering of roads and harvesting sites, timber cruising, site assessments, road construction, bridge installation and maintenance, silvicultural surveys, tree planting and other silvicultural treatments is most often done under contracts rather than by BCTS staff.

Contractors are engaged to do BCTS work which is beyond the expertise of the normal compliment of BCTS employees or is beyond the capacity or amount of work which can be delivered by the normal compliment of BCTS employees or a combination of both.

The majority of BCTS contract tenders are widely advertised to qualified interested parties. Contractors are selected and contracts awarded based on the contractors capability to meet advertised criteria. BC Timber Sales pays for satisfactorily completed work based on the terms set out in the contract.

### **Types of Contractor BCTS May Engage**

A critical step in planning contracts and understanding the safety responsibility of BCTS as the owner of the work being done under contract, is to understand the *Workers Compensation Act (WCA)* along with WorkSafeBC policy and definitions described in the WorkSafeBC Assessment manual as they pertain to independent firm, worker, independent operator, and contracted worker. It is important to note that these definitions apply only to safety legislation under the WCA and may be applied differently under other statutes.

Under Section 96.1 of the *WCA*, WorkSafeBC has exclusive jurisdiction to determine a person's status under the *WCA Act*. It therefore does not matter what labels BCTS may put on a work arrangement, WorkSafeBC have the final authority to make a ruling for the purposes of safety legislation, as who is working independent of BCTS as a contractor(employer) or independent operator and who is deemed to be a BCTS worker.

This is a complex matter and when in doubt it is best to seek guidance from a safety professional, legal counsel or directly from WorkSafeBC. The policy on who is an employer, who is an independent operator and who is a worker is under review and could change in the future. Such changes could have a significant impact on BCTS contracting. This chapter deals with policies in effect as of January 2007.

WorkSafeBC policy describes the following types of situations which BCTS may find itself encountering when developing contracts to get work done.

#### Independent Firms.

Such a firm would be an incorporated company or a firm with full time workers. WorkSafeBC would generally recognize these firms as independent employers and would require they be registered and pay premiums and provide insurance for workers. Owners of firms (non incorporated firms) with employees, who are not workers but are involved in the work, would be eligible to obtain personal optional protection (POP) from WorkSafeBC to be covered by similar insurance to workers.

A firm or company which has **two or more** pieces of revenue producing equipment (hand tools, personal transport vehicles and vehicles used to move equipment are not considered revenue producing) is required by WorkSafeBC to be registered and pay premiums for workers employed by them or to have POP for the owner operator. These would also be considered independent firms. Examples of a revenue producing piece of equipment include a power saw, a road grader; gravel truck.

These situations are generally clear. Independent firms are employers and carry the responsibilities of employers under the WCA

### Independent Operators

A non incorporated firm or company which has **only one piece** of revenue producing equipment is referred to as an independent operator. WorkSafeBC looks at these firms as neither employers nor workers. BCTS must ensure and see evidence when we engage these types of firms that they have an employee and therefore be registered as an employer **or** if they are owner operators, that they have POP insurance with the WorkSafeBC. If they can provide evidence of this insurance, they will in most cases be looked at as independent firms and BCTS would need to ensure they have their own safety program and are registered or certified with the SAFE Companies program.

If an independent operator (no workers and one major revenue producing piece of equipment) has no POP then they become the contracted worker of the person hiring them. This is further discussed below

### A Contracted Worker.

A labour contractor (supply labour only (no materials) to another party) has the option to register with WorkSafeBC if they have workers and also have the option for POP. If they have neither, they and all of their workers become "contracted workers"

Typically this might be a road construction foreman or someone else hired to check bridges, or do other duties where they operate without employees. Currently, these types of contractors may apply and be successful in getting POP from WorkSafeBC.

These types of contracts are almost always going to result in the contractor being declared a worker of BCTS and BCTS will be responsible for their safety.

Key points to consider in setting up contracts so that BCTS does not unknowingly get into a situation where BCTS is deemed to be the employer of contracted workers. .

1. Contracts should be set up so that the tenders require that the successful applicant be an independent firm and be registered with WorkSafeBC and/ or qualify for POP. In some cases this could go so far as to set out that the successful applicant must have one or more employees. If WorkSafeBC agree to register the firm or provide POP, BCTS has some assurance these types of firms will not be looked at as BCTS workers.
2. BCTS staff, do not direct or supervise the contractor or the contractor's workers. BCTS must set up the specifications and deliverables and compensate the contractor when those are met. The contractor must be in control of how the deliverables are achieved and be at risk of loss if they are not achieved. If BCTS is directing workers of another employer or a single person contracted to BCTS, then there is a high likelihood these workers could be viewed as contracted workers of BCTS.

3. Contractors should be required to be certified as SAFE Companies under the BCFSC SAFE Companies program.
4. Contracts should be set up so as not to create works that will be incompatible with each other from a safety perspective regardless of a multi employer worksite circumstance. (i.e Karst feature assessment may be incompatible with rock blasting operations even though the assessment activity is outside the normal influence area of blasting)

Please note again that WorkSafeBC has the final decision making authority to determine the status of worker, employer, and independent operator.

The remainder of this chapter will describe BCTS responsibilities when dealing with contractors who are independent firms and are required to maintain their own insurance or pay premiums and implement their own safety program.

Labour contracts and contracted workers are further discussed in Chapter 20.

In this same fashion these contractors will be required to certify under the SAFE company program when deemed appropriate by BCTS.

In emergency or special situations, BCTS may need to contract workers who will be deemed to be workers of the BCTS. Note: Chapter 20 will describe how BCTS must deal with contracts or situations where persons doing work will be determined to be workers of BCTS.

### **How do Contractors Fit Into the Overall Safety Scheme?**

In British Columbia, the Workers Compensation Act general duty clause for employers states that they must ensure the health and safety of “all workers working for that employer, and ...any other workers present at a workplace at which the employer’s work is being carried out”.

At those worksites where BCTS contracts its work to be done, it is BC Timber Sales work which is being carried out by another employer (our contractor) and in accordance with the duties described above, BCTS has higher level responsibilities to ensure the health and safety of the contractor and workers.

To be able to show due diligence in applying safety legislation and moral commitments, BCTS cannot simply state that a safety plan must be in place and that legislation and the safety plan must be followed. BCTS contract administration staff must check to see the program is adequate and that it is effectively implemented.

### **Contractor Responsibilities for Safety and Safety Program**

Contractors and consultants (contractors) operate independently and at arms length from BCTS. BCTS will require and expect contractors to deliver on the following responsibilities for safety:

### Workers Compensation Act Base Responsibilities

Under the *Workers Compensation Act (WCA)* contractors, if they have workers, carry the responsibilities of employers as defined under Section 115. Contractors may also be workers, or supervisors, as defined under the *WCA* and carry those responsibilities as well.

### Workers Compensation Act Multiple Employer Responsibilities

In some cases, contractors may be prime contractors or required to co operate with prime contractors as set out in Section 118 of the *WCA*. (See Chapter 21 Dealing with a Prime Contractor). Where they are operating in a multiple employer situation and are not the prime contractor, the contractor must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at the workplace.

### **BC Timber Sale Requirements of Contractors**

All contractors are required to maintain and implement their own occupational health and safety program or ensure that individuals or companies working for them implement a safety program which meets the requirements in the *WCA* and if required by BC Timber Sales also meets the requirements of the BC Forest Safety Council, SAFE Companies program certification standard.

The requirements for safety programs are clearly laid out in WorkSafeBC documentation and in the BC Forest Safety Council SAFE company standards and contractors must address the content requirements. Some key general requirements include:

- Safety orientation for workers on the job site or workers returning to the job site after an absence. The contractor shall ensure that every employee knows and abides by all safety requirements.
- Management and safety committee and toolbox safety meetings specifically including discussion of hazards or procedures applicable to the work being done on the site.
- Employee/worker supervision. The contractor is responsible to ensure workers are adequately supervised in conducting their work as required in WorkSafeBC legislation.
- Worksite inspections. The contractor shall conduct inspections of worksite to identify and mitigate safety hazards.
- Safe work procedures. The contractor must ensure that they have safe work procedures.
- Accident or incident reporting and investigations. The contractor shall investigate incidents required by WorkSafeBC or the SAFE company standard. Reports will be submitted to WorkSafeBC and if requested to the BC Timber Sales contract officer. The report shall outline accident causes and provide information on corrective action taken to prevent a similar accident from happening in the future.

- Emergency response procedures. The contractor is responsible for ensuring that appropriate emergency response procedures are developed, made available, and tested with staff working on site.
- First Aid. The contractor is responsible for ensuring that a first aid attendant and facilities are provided and maintained as required in WorkSafeBC regulations.
- Personal Protective Equipment. (PPE) The contractor is responsible for ensuring that all workers wear required PPE and keep it in good condition.
- Communication with other employers in the vicinity of the contractor's worksite. Forestry work involves frequent contact with other employers, use of forest roads, and contact with the public. The contractor is responsible for communicating and co-ordinating work on the contract with others in the worksite vicinity.
- Workplace hazardous materials information system. Written instruction that assigns responsibility for the program.
- Maintenance records for equipment.

### **BCTS General Responsibilities when Dealing with Contractors**

Under Section 119 of the *WCA*, BCTS retains the role and responsibilities of an owner of the workplace and of the work being done under the contract. While contractors must maintain an independent safety program, BCTS staff and in particular contract officers and contract administrators, have responsibilities as owners of the work to ensure that the contractor fully implements the safety program, meets WorkSafeBC requirements, and any additional requirements such as the SAFE company standard. Key responsibilities are listed below.

### **BCTS Work Planning/Contract Planning**

- Work should be planned to provide the adequate time for project completion, appropriate start times to avoid adverse weather conditions,
- Work should be planned to avoid or address multiple employer situations.
- Preliminary work in setting up the contract must identify the hazards on these worksites and further identify options to mitigate these hazards if possible. Such hazards could include danger trees along existing roads, high levels of industrial traffic, and danger trees in planting areas.
- Preliminary work should identify issues with unique emergency response planning considerations which need to be made known in the contract tender. Issues such as isolated locations, areas of poor or no radio coverage, areas of poor access due to fog or inclement weather (rough seas, rough roads).

In summary, BCTS staff should plan contract work to allow the contractor to be able to implement a safety program to deal with the situation and at minimum identify challenging situations in the tender so that contractor can include mitigative solutions in bidding on the contract.

## **BCTS Contract Advertising**

BCTS contract administrators must ensure the following is made known in contract tenders and when advertising contracts:

- Prospective contractors must be made aware of any observed or known hazards and mitigation strategies on the contract work area identified at the planning stages of the contract preparation as well as known hazards along roads or access corridors to be used by the prospective contractors or their workers.
- Legislated requirements (See Section 22.4) for safety programs and awareness that if contractors create a multiple employer situation, they have responsibilities for being a prime contractor including acquiring and deploying all necessary capacity to address prime contractor responsibilities as required in Section 118 of the *Workers Compensation Act*.
- Requirement to meet Workers Compensation Act standards and if required the SAFE company certification standard of the BC Forest Safety Council.
- Requirement to be registered with WorkSafeBC and have a valid registration number or have POP.
- Requirement to file a notice of project unless relieved of this by BCTS in writing with WorkSafeBC prior to starting work and adhering to the expectations of said notice of project.
- A firm understanding that contractors are independent of BCTS and are able to plan and conduct their operations as they choose provided they meet the overall stated objectives and deliver the work products stated in the contract. Prospective contractors must also be informed that they cannot be obligated to anything which is unsafe.
- Make prospective contractors aware that BC Timber Sales as the owner of the work will require the contractor provide reports or verification of safety program implementation at the outset and throughout the life of the contract as specified in this manual. In addition, if required they will need to provide verification that all companies working on the contract are SAFE certified companies by the BC Forest Safety Council.
- Contractors must have an emergency response plan and communication equipment adequate for the job and area they are working in prior to commencing work on the contract.
- Requirement for contractors to name a site safety supervisor or contact with back up to deal with queries, briefings and inspections.
- May need to provide evidence of maintenance programs for equipment being used and deployed on the contract area.

## **BCTS Contract Evaluation and Award Safety Criteria**

BCTS contract officers must include and give weight to safety criteria in the evaluation and award of contracts.

### Minimum Standard

The minimum base for all contracts is for the prospective contractor to submit on request of BCTS, evidence of their WorkSafeBC registration. Prior to commencing work contractors may need to submit for consideration their company safety program. BCTS contract administrators will consider only those contractors eligible, that provide evidence of safe company certification except where the contract is exempted from this requirement and will only undertake works with those contractors whose safety programs fully describe the elements listed previously in this chapter and can demonstrate they have effectively implemented the program on previous projects. ,

BCTS work is open to new companies. Firms endorsed as “new entrants by BC Forest Safety Council will be eligible for BCTS work but may not be considered qualified to function as prime contractors. Firms new to BCTS without a proven record of implementing a safety program must submit their proposed program to BCTS. BCTS staff will monitor the program as work progresses.

#### Implementation of the SAFE Companies Certification

After Dec 31 2008 all contracts advertised by BCTS will require bidders and all parties working under the contract to be working for SAFE certified firms. (Except as provided for in exemptions or to recognize “endorsed new entrants” or other firms appropriately recognized by BCTS and or BC Forest Safety Council) Schedule 1315 of contract templates stipulates the standard expectations that must be met where SAFE Companies participations expectations are intended to be a component of the contract.

#### BCTS Exemptions from the Requirement for SAFE Company Certification

BCTS managers will have the flexibility to exempt contracts from the requirement to be SAFE Company registered/certified in the following situations based on the risk to workers doing the contract:

- Contracts which involve only travel on public highway or by scheduled commercial air or water transport (certified carriers) and which do not involve fieldwork by the contractor or the contractor’s workers. (i.e. GIS or meeting facilitation, human resource consulting)
- Contracts which can be reasonably expected to only attract bidders which do not normally work in the forest industry and for which the SAFE Company’s Certification may not be practical to expect on a continuous basis. (i.e. fencing contractors, nursery’s and associated highway transport firms, direct award contracts to community groups intended for economic or relationship development purposes.)
- Contracts of an emergency nature where the timing or the work may make the registration and certification unreasonable. In these cases the BCTS manager may require that additional work procedures be developed by the contractor for the work being undertaken

In addition TSM may exempt particular firms from expectations for SAFE Certification if it is too onerous to expect these firms to meet the expectations or exemptions are necessary to support pursuit of certification and all other avenues have been exhausted. (i.e. Firms that carry other safety certification relevant to the industry they commonly work in) TSM should make said exemptions time certain and potentially business area specific unless discussed and agreed at TSLT for broader application. TSM's should regularly discuss any exemptions being granted to ensure consistent application. For parties to be deemed eligible to bid they must have a written exemption from the appropriate TSM prior to bidding and submit same with their bid or be able to produce same on request. Exemptions should not be routine and should be the exception. BCTS may work towards a standard listing of other certifications it may recognize as stipulated in Schedule 1315 and if such listing is produced BCTS will publicly communicate same. This will not be a determination of equivalence between standards but rather a reflection on whether BCTS is prepared to contract to these parties.

**Any exemptions issued as indicated above do not effect or reduce the application of worksafe requirements and BCTS expectation of diligence under those requirements internally and by our contractors.**

It is recognized that many, if not all of the contracts issued by Headquarters may fall into the first two bullets above. In consideration of efficient contract management Headquarters Director of Business operations can issue contract directives exempting groups of contracts and or general forms of contracts but must ensure these directives provide sufficient guidance to contract officers to ensure only contracts which meet the bullets above are excluded from the requirements.

## **BCTS Contract Monitoring**

### WorkSafeBC Clearance Letters

If the business you enter into contract with is not registered or not making its payments to WorkSafeBC, BCTS could be liable for insurance premiums owing in connection with the work or service being performed on your behalf. Contract administration staff must always obtain a clearance letter before a business or contractor starts working for BCTS and again before you make the final payment. The process for quickly obtaining clearance is available on the WorkSafeBC website at

[http://www.worksafebc.com/insurance/managing\\_your\\_account/clearance\\_letters/default.asp](http://www.worksafebc.com/insurance/managing_your_account/clearance_letters/default.asp)

### Pre-work Contract Meeting

BCTS contract administrators will conduct a pre work meeting with all contractors to go over the work to be done under the contract. A discussion of safety is required at this pre work meeting and needs to be recorded as part of the due diligence and record keeping on the project.

Key points to be discussed during the pre-work meeting are laid out in the checklist referenced at the end of this chapter.

### Contract and Safety Inspections

BCTS contract officers and inspectors need to make an assessment of the contract work relative to the hazards and risk to workers and set up a schedule to check on the continued implementation of the safety program including the adherence to commitments made in the tender.

The safety inspection should be done in conjunction with other work quality inspections. This assessment should be done with the contractor to allow for open dialogue on the subject of safety performance and the Contractor and BCTS respective roles. Discussion points are to be recorded as part of the inspection. The following is an initial guide for risk assessment. It is expected that with staff input and experience an improved guide will be made available to staff:

- **HIGH RISK WORK** This would include contracts which involve tree falling, tree topping or limbing, blasting, road construction or maintenance, log bucking, yarding or hauling or similar activities. Safety on high risk activities should be formally checked at the pre work meeting and monthly thereafter for the life of the contract.
- **MEDIUM RISK CONTRACTS** This would include contracts which involve non logging type field work such as tree planting, silvicultural work, brushing, and assessment or forest engineering work in isolated locations. Safety on medium risk contracts should be checked at the pre work meeting, at the end of one month of contract operations and every three months thereafter as the contract progresses.

- **LOW RISK CONTRACTS** This would include contracts which involve assessment, engineering or survey work in non isolated locations. Safety on low risk contracts should be checked at the pre work meeting and at least once during the term of the contract.

Risk assessments should be documented and recorded on the contract file.

Frequencies of inspection in this section are a guide for normal situations and continuous work. Contracts which involve a variety of worksites, changing worksites, or are interrupted or are seasonal may require additional checks to ensure the safety program of the contractor is working.

BCTS staff, are not safety professionals. Inspections for safety are designed to test whether the contractor has implemented and maintains the commitments made in their safety program submitted prior to work commencement. BCTS staff suspect about the safe circumstance associated with contracted works should open dialogue with the contractor to explore the concern and consider the contractors experience and knowledge to ascertain if more formal response is warranted. Key points to look for are described in the checklists referenced at the end of this chapter.

Contractors must inform in writing BCTS of all serious incidents or safety concerns (those reportable to WorkSafeBC). In addition, BCTS contract officers may ask the contractor to provide the following information at any time in the life of the contracts:

- A copy of the notice of project submitted to WorkSafeBC on the contract.
- Postings providing employees with WorkSafeBC legislation, rights to refuse unsafe work and rights to report observed unsafe work or conditions.
- Copies of safety committee minutes and toolbox safety meeting records.
- Supervisor training records.
- Worker orientation records.
- Safe work procedures.
- Injury statistics including frequency and severity rates or similar data.
- Worker safety training records including the training authority used length of the course, dates of training and copies of certificates.
- Employer safety inspection reports, and follow up.
- WorkSafeBC inspection reports and compliance reports.
- Accident and incident investigation reports.
- Copies of company safety alerts.
- Evidence of the contractor and /or sub contractor SAFE company registrations or certification certifications.
- Copies of any prime Contractor designations ( see chapter 23)
- Any known safety hazards or activity discovered by the contractor.
- Maintenance Records

## **Review of Contract Performance**

At the end of a contract or annually for contracts which have an option to renew or multiple year contracts the contract officer needs to undertake a Safety Performance Review. This review will develop statistics about the contractor based on BCTS monitoring observations. (See checklist 19-4) The aggregate of these observations in addition to other applicable information will be used to inform the conclusion of the safety performance review. In time the 19-4 will be replaced by reports from our database. It is expected that most safety concerns would be addressed proactively by our contractors or at least in response to concerns raised during routine monitoring thus the purpose of the review is to ensure the BCTS reflects on the aggregate performance of the contractor and has diligent records to this end. The performance review should not be overly swayed by incidence but rather focus on the contractors management approach and responsiveness to safety concerns. Should a review result in a negative conclusion about a contractors performance administrative action will need to be considered.

## **Enforcement of Contract and Legislated Safety Standards**

Maintaining a rigorous safety program and in future SAFE company's certification is a condition of the tender and of the contract. BCTS Contract administrators must take the following action in the cases where deficiencies or changes are found in the contract operations compared with what was proposed in the contract or tender.

Follow the procedures set out in the contract management manual.

Have both parties agree to and formally amend the contract to deal with new or changed work, new circumstances, or new personnel on the contract

In situations where minor or low risk deficiencies are found, provide the contractor with a list of items that need to be corrected and a timeline for having the corrections done.

Serious deficiencies may require that the work on the contract not be started until deficiencies are fixed, or that the contract be suspended, cancelled or not renewed if the contractor cannot meet the terms of contract or the tender.

## **Manual Tree Falling**

Some contracts issued by BCTS may include manual tree falling (trees > 6 inches DBH) or these activities are opted for by the contractor. Historic incident rates show manual tree falling to be among the highest risk activities in the sector.

Under WCA regulations these activities can only be undertaken by certified fallers. Further the regulations stipulate that qualified assistance must be readily available and the operations must be supervised by qualified parties. BCTS will ensure all contractors undertaking these activities; provide the appropriately qualified staff to discharge falling, qualified assistance and qualified supervision.

This will be discussed at per-works and followed up during monitoring of contracts. While it is the employer's responsibility to ensure adherence to these expectations it is BCTS intent to ensure employers are cognizant of same and complying. In addition BCTS will contract for manual falling, in a manner to expect the contractor to provide all required staff and other resources. BCTS will generally not engage in the supervision of manual tree falling, nor render qualified assistance. BCFSC can provide further information regarding faller certification program and verify any fallers certified under their program.

### **BCTS Contract Closing and Reporting**

At the closure of each contract, BCTS contract officers should review all safety aspects of the contract including;

- Planning and preparation
- Advertising
- Monitoring and administration
- Contractor compliance and records

BCTS contract officers and Safety program contacts will prepare a summary of contract information to be reviewed by local management and include this in the overall management review as part of the continuous improvement cycle.

This safety summary will be integrated into the management review.

### **Local Procedures**

None

### **Checklists**

Appendix 19-1 Contract Planning Safety Checklist  
Appendix 19-2 Contract Pre Work Safety Checklist  
Appendix 19-3 Contract Inspection Safety Checklist  
Appendix 19-4 Contract Safety Performance Checklist  
Appendix 19-5 Certification Exemption Template