

Chapter 21: Dealing with Situations which Require a Prime Contractor

Introduction

The BCTS safety program and individual contractor safety programs are extremely important in improving forest sector safety at BCTS workplaces. There are, however, situations which arise where more than one contractor/ or other employer is working on the same workplace at the same time. In these cases the safety programs and the timing of work phases by the various employers for events such as, shutdowns, lockouts, emergency response procedures must be co-ordinated or directed by a single entity in order to ensure the overall safety plan for the workplace achieves the objectives. The entity responsible for this co-ordination is known as the prime contractor.

The prime contractor can only be designated by the owner or employer in a written agreement designed for that purpose after carefully ensuring that the person or company accepting this role has the experience, capacity and control at the workplace to execute the responsibilities of the prime contractor. BCTS will not normally consider BC Forest Safety Council “Endorsed New Entrants” as qualified to function as prime contractors thus limiting their ability to sub contract. There may also situations where BCTS does not have sufficient control over all parties to designate a prime contractor. In such circumstances prime contractor must be mutually agreed to by all effected parties. If there is no written agreement or if the person designated cannot function effectively as a prime contractor, then BCTS as the owner of the work being done at the workplace retains the role of the Prime Contractor for that workplace.

While there may be situations where BCTS wishes to be the prime contractor, most often, BCTS will want to enter into agreement with someone else at the worksite to take on that role. Two distinct circumstances can create a multi employer workplace. The first is a result of BCTS principal contractor engaging the services of subcontractors. The second is where BCTS engages directly more than one contractor on a project site where works will interface in such a manner as to create the need for a prime contractor. BCTS Prime contractor schedule #1313 and schedule #1354 are designed to address both circumstances but must executed as part of our contracts to be effective. Older contracts with old versions (2008 and earlier) of the schedule #1313 may have integrated prime contractor agreements provisions. Contract clauses must be reflected upon carefully to ensure appropriate designation and communication of expectations. In addition to ensure absolute clarity and authority of the prime contractor designation all subservient contractors or parties must be aware of and or agree to the arrangement. BCTS will not acknowledge our principal contractor, subcontracting prime contractor responsibilities but it is reasonable for the principal contractor to utilize other resources including those of contractors to discharge responsibilities on their behalf. BCTS will look at this as representatives of the principal contractor so as to avoid a tri-lateral contract

arrangement. This is an important concept to understand as virtually allows all of our principal contractors to make themselves qualified through acquisition of resources to meet prime contractor expectations.

In the event that BCTS creates a multi employer workplace by engaging multiple contractors for the same project or working in a manner where their interface demands the need for a prime contractor than BCTS must notify all the parties as to which party, is the prime contractor and the authorities and responsibilities of this party. Any change to this circumstance must be supported by follow up notices as stipulated in schedule #1313 and this relationship and agreement documented through the schedule #1354 Prime contractor agreement.

All BCTS staff must understand that the designation of prime contractor through written agreement or by default in the absence of a written agreement carries with it statutory obligations and responsibilities under Section 118 of the *Workers Compensation Act*.

Description of a Workplace and a Description of Overlapping Work

Definition of a Workplace

Under the *WCA*, a workplace is defined as any place where a worker is or is likely to be engaged in any work and includes any vessel, vehicle or mobile equipment used by a worker in the work.

Forestry operations on Crown land cover expansive areas and there are varying opinions as to what the workplace refers to. Unless specifically defined in some other fashion, BC Timber Sales views workplace to include:

- The legal cutting permit or timber sale licence exhibit A boundary of an area as defined in the harvesting agreement documents.
- The boundaries of the work described in the contract such as location of a road or bridge construction project, cut block to be planted, brushed or surveyed where the extent of work is defined by a map or area description which is also identifiable on the ground.
- Care must be taken to provide some description of boundaries of the work place for larger contracts such as reconnaissance work, assessments, inventory or other survey or engineering work where workers are given some leeway to explore a larger land base to arrive at decisions on where to eventually do some specific work. In complex field situations, such work could easily and unknowingly cover the same workplace occupied by someone else on the forest land base however in most of these instances the safety interface would be of low significance or risk (i.e. Two timber cruising employers interfacing in the same forest area)

Work is ongoing with WorkSafeBC, BC Forest Safety Council and the forest industry to achieve common understanding of what is not a workplace for the purposes of this discussion.

At this time, BCTS does not consider the following as multiple employer situations requiring a designation of prime contractor, but rather, views these situations as requiring employer or owners to co-ordinate activities to protect workers as described in the general duties of employers under the WCA.

- Constructed forest roads used for crew transport and log hauling. In these cases special communication and signage may be needed where these roads are located within or abut active workplaces. (BCTS supports the production and issuance of standardized signs by BA's for denoting workplaces and identifying prime contractors and or appropriate site contact information. Such signs should consider the integration of other requirements such as posting of Timber Marks and BCTS branding. In addition if these signs are to be erected along FSR's consideration should be given to the need for approvals from the DM by the licensee or contractor erecting the sign)
- Adjacent but not overlapping legal cutting permit or timber sale licence or contract areas. Employers do have a responsibility to share information and co-ordinate work with adjacent employers.

Timing of Overlapping Work on Defined Workplaces

On defined workplaces, the work of two or more employers may not be overlapping and does not create a multiple employer situation if the work occurs at separate times and the work of one employer will not affect the safety of the workers of another employer.

As an example, if a road construction contractor has completed initial work on the first kilometre of a three kilometre project and stops work while a second contractor installs a bridge, it may only be necessary to ensure the bridge building contractor is aware of any hazards on the site before beginning work. However, if both contractors are working in the same area, possibly on different shifts or on weekends and the work of the road builder doing blasting or tree falling or other work could impact the bridge building contractor then a prime contractor is needed.

A second example might be a tree planting or cone picking crew working a section of a cutblock while an active timber sale holder's workers are finishing harvesting the same cutblock (or a salvage harvester) If harvesting operations are suspended for a reason and the tree planting contractor can identify the hazards for the tree planting crew during their work, then a prime contractor may not be required. If there are concurrent operations on the same block, a prime contractor designation would be required.

In conclusion, a rationale for having or not having a prime contractor on a site must address the question of whether the activities of one employer could impact the safety of another employer or workers.

Examples of Situations which Result in Multiple Employer Workplaces

BCTS Planned Situations

BCTS staff planning work may choose to do work with multiple contractors /employers at the same time on a workplace and as such plan to set up a multiple employer situation and the requirement for a prime contractor.

- A lower risk situation where for example you have a helicopter or boat access workplace and it is desired to have several assessment contractors, engineering contractors, cruising contractors and BCTS staff on the area at the same time to save access, transportation or accommodation.
- A road construction project where you may have a road construction contractor, a bridge installation contractor, an engineering firm under contract and others on site at the same time again for logistics.

This is common and many operations will not be able to avoid creating this situation. BCTS must in written notice on all parties clarify which party is the prime contractor and then exact monitoring to ensure this prime contractor is fulfilling the role of prime contractor and ensure appropriate coordination and management of works. In this instance following the expectation of the Schedule 1313 and putting in place the schedule #1354 Prime Contractor Agreement will establish the prime contractor responsibilities. Copies of this agreement can be distributed to all other parties and thus serve as formal notice of the prime upon them.

Contractor Planned Situations

BCTS contractors tendering bids or proposals for BCTS work may choose to hire a number of sub contractors (separate employers) to complete their work on a contract. If BCTS permits this to happen in the original contract advertising, then provisions of schedule 1313 cause the contractor to also present all necessary information to BCTS to verify the capacity as a prime contractor. Schedule 1313 will address this circumstance by establishing the expectation of prime or expecting the contractor to enter into a prime contractor agreement (depending on which version exists in the contract). The specific language associated with the contract must be reviewed and circumstances reflected upon to determine the need for schedule #1354 Prime Contractor agreement. Going forward as old contracts expire all situations in which prime contractor is to be assigned will be done via the schedule #1354.

Situations Which Arise After the Original Contract is Awarded

BCTS may get into situations where they have planned work so as not to create a multiple employer situation but conditions arise where additional or separate employers are required at the workplace to complete the project.

As an example, a single employer contractor is engaged under contract to build a road. During the construction, unforeseen circumstances require that the contractor or BCTS must engage another employer to work on the site (special engineering or construction techniques).

BCTS must ensure this change and the new requirement is then accounted for and a prime contractor is designated and effectively executes those responsibilities. This may require BCTS to be the prime, or a separate contractor to be hired to be the prime, or for a negotiation to take place so that one of the workplace contractors is qualified and takes on the role of the prime contractor. Including schedule 1313 in all contracts will position BCTS to address this circumstance without renegotiating the contract provisions but does allow BCTS to provide additional appropriate remuneration to the contractor for these unforeseen events.

Situations Which Involve BCTS Licensees or Other Employers Beyond the Control of BCTS

BCTS staff need to prepare for and be cognizant that other employers/owners may also be working on the same workplace where BCTS wishes to execute or contract some of its own work and this could create a multiple employer situation and require designation of a prime contractor. Good planning may prevent this from happening but the situation must be watched for in any event.

As an example, BCTS has silviculture responsibility on a timber sale licence block and finds it desirable to plant part of the block before the entire area is fully harvested. The licensee decides to actively start falling and yarding operations at the same time on the same block. If both operations proceed at the same time, a multiple employer situation may have been created and a prime contractor designation is needed. Staff should be familiar with guidance in advisory bulletin 05/15/08 Multi Employers on Timber Sale Licences available at: <http://www.for.gov.bc.ca/BCTS/bulletins/ab20080515.pdf>

Only One Prime Contractor at Any Given Time on a Workplace

In any situation which may arise, it is important to know that there can be only one prime contractor on a workplace at any given time. Care must be taken in communication and application of the old prime contractor schedule 1313 (2008 and earlier) as it establishes all BCTS contractors as prime contractors to address their ability to sub contract on their own exclusive project sites, however in the event BCTS planning, deployment or the natural progression of works, places two or more of these contractors on the same workplace and this circumstance requires a prime contractor additional written notice must be issued by BCTS to clarify the role of prime contractor to all engaged contractors. The newer version of the schedule 1313 depends on the execution of a schedule #1354 for all MEWP situations to establish the prime contractor regardless of how these are created. **WorkSafeBC policy clearly establishes that if an**

owner enters into more than one agreement purporting to create a prime contractor for the same period of time on a given workplace, the owner is considered to be the prime contractor.

The intent of this requirement is to ensure that only one person or company is responsible for the overall safety co-ordination at a workplace at any given time. Clearly it is also important to ensure clear communication and written notice to other contractors that are not the prime contractor so complete understanding exists.

This requirement does not prevent BCTS or any other owner the option of:

- Taking on the role of prime contractor at any time provided there is communication and clarity with all employers at the workplace and appropriate notices issued. (This is not normally BCTS preferred model)
- Not requiring that any person or company be the prime contractor during periods of time the workplace is not a multiple employer work place.
- Entering into a written agreement with some other person or company to be the prime contractor provided that any other agreements for this workplace are rescinded and all employers at the work place are informed of the changes.

General Duties and Authority of the Prime Contractor

The legislation requires the following

- The prime contractor must ensure that the activities of employers, workers, and other persons at the workplace relating to occupational health and safety are co-ordinated.
- The prime contractor must do everything that is reasonably practicable to establish and maintain a process that will ensure compliance with the WCA in respect of the workplace.

The BC Forest Safety Council and its forest industry members are working to establish more guidance and industry benchmarks on what specific requirements must be met by a prime contractor and how this can be accomplished in the forest industry

Prime Contractor Responsibilities

Until these standard industry benchmarks are established BCTS should ensure that at minimum designated prime contractors should:

- Ensure that all other contractors/employers/independent operators at the workplace have WorkSafeBC registrations and coverage.
- Ensure continuous supervision and coordination of activities of various employers and employees on the workplace. This may or may not be onsite as circumstances dictate but where presence is not on site the supervisors of various employers should be well aware of and implementing the coordination and compliance expectations of the prime contractor.

- Ensure adequate signage to convey understanding of who the prime contractor is and contact information for same to all visitors service providers and workers at the site. BCTS supports developing standardized signs for BCTS projects which can be issued to contractors to assist in branding of our program and provide enhanced client service.
- Ensure that a notice(s) of project has been submitted for the work being done.
- Have a documented safety program that addresses the coordination and compliance system expectations of prime contractor responsibilities that is germane to the given multi employer workplace.
- Ensure that all other contractors/ employers/ independent contractors have a written health and safety management system or program and participate in the prime contractors program.
- Ensure (when required) that the prime contractor is registered to be or is a certified SAFE company by the BC Forest Safety Council.
- Ensure (when required) that all other contractors /employers on the workplace are registered to be or are certified SAFE companies by the BC Forest Safety Council.
- Ensure that the workplace has adequate first aid attendants and supplies for the total number of workers at the workplace.
- Ensure that the workplace and all workers have a tested and functioning emergency response plan for the total number of workers at the workplace.
- Conduct workplace inspections, hazard identification and implement corrective actions as needed.
- Ensure that work place practices are followed including common practices such as radio communication and blasting signals.
- Ensure that incident and accident investigations occur, that reports are submitted and corrective actions taken and that safety alerts are provided to all workers at the worker place teed.
- Ensure that each employer has trained their employees and has adequate supervision for their workers onsite.

Prime Contractor Experience, Capacity, Authority and Delivery on Duties

In order to function as a prime contractor the designated person or company must have the experience, capacity and authority to deliver on the responsibilities described above. The person/company doing the prime contractor role must be competent to do the job. It is not adequate to simply contractually require someone assume this role. Required capacity, experience should be described in contract tenders or if brought into play after the contract is issued, may need to be assessed at that time. Contact schedule 1313 with appropriate tender provisions places the expectation on the contractor to deliver the necessary capacity in all cases. Where the expectation is not predetermined in the tender, opportunity exists under the schedule #1313 to provide appropriate additional remuneration based on circumstance.

Once a person or company takes on the role of prime contractor on BCTS workplaces, BCTS must monitor to see that the role is being adequately implemented at the workplace. This includes circumstances where the principal contractor is delivering via subcontractors and creating a MEWP.

In any case, if it is deemed that the prime contractor designated by BCTS did not have adequate experience, capacity and authority to effectively deliver on the responsibilities of the role, or did not deliver on the duties of the prime contractor at the workplace, then BCTS as owner of the work being done at the workplace could be deemed accountable to carry the responsibilities for executing the prime contractor duties.

Experience

The person or company who enters into a written agreement must be able to show they have experience delivering a safety program covering the type of work and size of program required for the work being done on the worksite. Previous experience as a prime contractor would be most beneficial but not an absolute necessity.

Capacity

The person or company who enters into a written agreement must be able to show they have the capacity to ensure the duties of the prime contractor are satisfied. This may involve showing job descriptions of managers or supervisors who have the time to dedicate to checking on operations, following up on corrective action and dealing with other employers on the site. In addition the prime contractor's safety program should speak to and adequately address the responsibilities of a prime contractor including principal contractors that create multi employer workplaces through sub contracting.

Control

The prime contractor must be given the control necessary to discharge their responsibilities. This will include the ability to receive information needed to coordinate the safety programs at the workplace. This will be addressed through written notifications and dialogue with BCTS and all contractors affected where BCTS creates the multiple employer workplace. The prime contractor must also have the authority to ensure corrective action is taken by an employer on the workplace if deficiencies are found. Contract Schedule #1313 establishes the expectation on other subservient contractors to cooperate and thus supports the authority of the prime.

Monitoring of Prime Contractors

BCTS, as the owner of the work being done at the workplace must continue to show due diligence by conducting checks or inspections on the prime contractor to ensure that prime contractor is fully executing the responsibilities assigned to that person.

BCTS Responsibilities and Procedure when Dealing with Prime Contractors

BCTS staff and in particular contract officers and contract administrators, have significant responsibilities as owners of the work to ensure that the prime contractor is properly selected, enters into a written agreement and fully implements a safety program and meets WorkSafeBC requirements and any additional requirements such as meeting the SAFE company expectations. Key responsibilities are listed below.

Work Planning/Contract Planning with Regard to Prime Contractors

- Work should be planned to avoid situations where a multiple employer situation is created on the BCTS workplace if it is desired not to have a prime contractor. BCTS planners can research any other work which may be planned for the workplace and avoid scheduling an overlap. BCTS planners can also require that the contractor they hire not engage any other employers or sub contractors to assist in completing the contract, in other words, restrict the contractor to using only its direct employees to do the work.
- Where BCTS contemplates allowing the creation of a multiple employer situation in order to get the work done through the issuance of a single contract (allow subcontracting of the work to a variety of employers), BCTS must make it clear in the contract tenders what the expectations will be for a prime contractor and what qualifications and duties of the prime contractor will be and only accept tenders from competent contractors in this regard (one of the eligibility/limiting criteria).
- Where BCTS creates a multiple employer situation, or finds its work complicated by a multiple employer situation with another employer/owner after the fact and this situation was not identified to the contractors submitting tenders on the original work, BCTS must then either a) take on the role of the prime contractor, b) put out a separate contract for a qualified party to be the prime contractor on the workplace, or c) amend the agreement with the original contractor to take on the role of the prime contractor if they have the experience, capacity, and authority to do so.

In summary, BCTS staff should plan contract work to address the prime contractor requirements or be prepared to take on the role of prime contractor for the workplace and do what is required to deliver on the duties of the prime contractor.

BCTS Contract Advertising

BCTS contract administrators must ensure the following information is made known relative to prime contractor expectations in contract tenders and when advertising contracts:

- Whether or not BCTS will allow the successful contractor to sub contract or hire other employers and create a multiple employer situation.

- What the expectations of BCTS will be if a multiple employer situation is created and how the contractor will be evaluated in regard to his/her experience, capacity and authority in delivering on prime contractor responsibilities.
- Additional requirements such as having met the SAFE company certification or registration expectations of the BC Forest Safety Council.
- BCTS monitoring program to ensure the prime contractor duties are delivered at the workplace and the consequences if this requirement is not met.
- An example of the form of written agreement BCTS will enter into with the prime contractor before operations start on the contract.

Schedule 1313 of BCTS standard contract templates is designed to be included in all contracts and establishes the contractual expectation to enter into prime contractor agreement and or discharge prime contractor responsibilities (depending on version) when our principal contractor elects to subcontract and in so doing causes a multi-employer workplace. The schedule 1313 addresses other expectations such as the notice of project and the responsibility of the contractor to bring to BCTS attention any safety concerns they may have. In addition it establishes the expectation of functioning as prime contractor should BCTS choose to designate the principal as such, relative to a multi employer workplace that BCTS creates. In any case the prime contractor must meet the qualification and capacity expectations described in this chapter.

BCTS Contract Evaluation and Award Safety Criteria

When BCTS plans to address a project by creating a multi employer worksite the contract advertised and intended to address the prime contractor responsibilities should include and give weight to the experience, capacity of those companies submitting tenders during the evaluation and award of contracts. Where the multi-employer worksite is proposed by the contractor or established by BCTS the contractor must satisfy BCTS that they have engaged and deployed applicable resources to discharge the prime contractor responsibilities prior to creating the multiple employer workplace.

Where the contract award is intended to attract a prime contractor and weight will be given contractor capacity in the selection, then the prospective contractors will need to submit with their tender, their WorkSafeBC registration number and information necessary to assess their competence as a prime contractor. This could be done at tender submission or subsequently but final award of contract must be contingent on BCTS being satisfied that the contractor is qualified and will be able to address the responsibilities of prime contractor for the project at hand. Where the multi employer workplace is planned or intended to be pursued through sub contract by the BCTS contractor than the BCTS contractor will need to satisfy BCTS of it's capacity and ability to meet the prime contractor obligations prior to creating the multi employer workplace. This may include sub contracting capacity which will represent the BCTS contractor and discharge the

prime contractor responsibilities. This will not be recognized by BCTS as a distinct third party to the contract merely an augment of the principal contractor's capacity. The principal contractor must enter into the schedule 1354 Prime Contractor Agreement.

BCTS work is open to new companies. Parties endorsed as "new entrants" by BC Forest Safety Council will not normally be seen as qualified to function as prime contractors. Companies new to the BCTS activities without a proven record of functioning as a prime contractor will be assessed based on their proposed approach to discharging prime contractor responsibilities including the capacity they intend on deploying. Their ability to recognize the responsibilities of a prime contractor and how they pertain to the works and circumstance will also be factors of consideration. In addition formal training of engaged parties relative to discharging prime contractor responsibilities and or previous experience in discharging the responsibilities in different work or activities will be considered and reflected upon in determining the readiness of the contractor to meet the prime contractor expectations. These factors will be supported and informed by the certification status standard of the proposed prime contractor. BCTS staff will monitor the prime contractor to ensure discharge of responsibilities and consider less experienced prime contractors or unknown prime contractors as higher risk.

BCTS is moving to require that all companies (except as provided for in exemptions) working on BCTS operations will be certified SAFE companies in accordance with the BC Forest Safety Council standard.

New contracts advertised after April 1, 2007 will require that the any party submitting a tender on the contract be registered with the BC Forest Safety Council as a first step toward formal SAFE company certification. All contracts advertised after Dec 31 2008 will require that bidders and their subcontractors be SAFE certified unless they themselves are exempted or the contract is exempted by a TSM.

BCTS Contract Monitoring

Pre-work Contract Meeting

BCTS contract administrators will conduct a pre work meeting with the prime contractor at the workplace to go over the work to be done under the contract(s). A discussion of safety and duties of the prime contractor 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 referenced checklist(s) at the end of this chapter.

Contract and Safety Inspections and Monitoring for Safety

Duties of the prime contractor should be checked on a frequency equivalent to the risk ranking frequency system identified in Chapter 19 for contractors based on the highest risk aspects of the project and recorded on the appropriate checklist. Contracts which involve new prime contractors, variety of worksites, changing worksites, or are interrupted or are seasonal, may require additional checks to ensure the safety program of the contractor and the discharge of prime contractor responsibilities is appropriate.

BCTS staff, are not safety professionals. Inspections for safety are designed to test whether the contractor has implemented and maintains the commitments made in the contractor's safety program submitted or described to BCTS. Key points to look for are described in the Checklist(s) referenced at the end of this chapter.

In addition to the inspections, BCTS contract officers may ask the prime contractor to provide the following information at any time in the life of the contracts:

- A copy of the notice of project submitted 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.
- Copies of the contractor and /or sub contractor SAFE Company registrations or certification certifications.
- A copy of the prime Contractor designation.
- Maintenance records.

Enforcement of Contract and Prime Contractor Responsibilities

Persons or companies signing on to be prime contractors must deliver on those duties at the workplace.

Maintaining a rigorous safety program and SAFE companies certification maybe an explicit 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 delivery of prime contractor responsibilities:

- 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 or be halted by the appropriate authority until deficiencies are fixed, or that the contract be suspended or cancelled by the appropriate authority if the contractor cannot meet the terms of the contract.

BCTS Contract Closing and Reporting

At the closure of each contract, BCTS contract officers should review the performance of the prime contractor relative to the duties 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 included in the overall management review as part of the continuous improvement cycle.

This will be completed as part of the Management review.

Local Procedures

None

Checklists

Appendix 21-1 Prime Contractor Agreement

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