

Management of Prime Contractor requirements and the Mitigation of Corporate Liabilities Related to WorkSafe BC Legislation

Introduction

Prime Contractor requirements in forestry settings are complicated and often poorly understood and have been mistakenly thought to apply only to British Columbia's Major forest tenure holders. Prime Contractor requirements apply to all multiple employer worksites (e.g. contractors and their sub-contractors), including those on Woodlots and Community Forests.

The complex nature of the Prime Contractor process and the common misunderstandings related to its application can have implications for worker safety implications and lead to Woodlot Licence and Community Forest Agreement holders being exposed to potential corporate liabilities. The intent of this document is to identify the primary liability risks associated with the Prime Contractor process and to provide an overview of measures that can be taken to mitigate those risks through the application of procedural controls at various stages of the process.

In broad terms there are four stages in the Prime Contractor process where the application of procedural controls would both increase worker safety and reduce the Tenure holder's liability risk, particularly as it relates to the enforcement of the Workers Compensation Act and its regulations. These four stages are;

1. Prime Contractor suitability and assessment
2. Communication of Prime Contractor responsibilities
3. Pre-Work meeting and the communication of worksite safety information
4. Periodic monitoring/inspections and implementation of corrective actions as identified

Prime Contractor Agreement

The best place to start is to understand the purpose and role of a Prime Contractor, as provided for by the Workers Compensation Act (Part 2, Division 4, Section 24). Prime Contractors are the directing contractor, or persons, in a multiple employer worksite, who are responsible for the coordination of safety activities for all companies operating at the worksite. These responsibilities are transferred to a contractor, or person(s), through a Prime Contractor Agreement (PCA), reviewed and signed by the Prime Contractor and by the Owner of the workplace (Woodlot Licence or Community Forest Agreement holders are considered to be the **Owner**).

It is the Owner's responsibility to develop or use an appropriate PCA package that defines the responsibilities and reporting requirements of both the Owner and Prime Contractor. Without a signed PCA in place, the Owner remains responsible for coordination of safety activities for all companies. This process will be expanded further in this document

Prime Contractor Suitability

It is not enough to simply develop or utilize an existing PCA and have it signed by a contractor; the Owner must ensure that; the Prime Contractor is qualified to undertake the role. The Owner must confirm that the contractor, through a combination of education, training and experience and the hazards involved has the capacity and means to control the hazards.

Confirming a contractor's suitability to act as the Prime Contractor is best accomplished through an assessment process. This process can be made more efficient if coupled with upfront prequalification requirements identified in the contracting process.

The assessment should address the full range of work activities being undertaken on site, and should confirm that the Prime Contractor has the knowledge, capacity and control to successfully coordinate the safety activities. The Prime Contractor must understand the applicable WorkSafe BC legislation related to the Prime Contractor role, as well the safety rules for all activities undertaken at the worksite. A Prime Contractor also must be knowledgeable about the work, the skills and processes needed to safely do that work.

If the designated Prime Contractor is not qualified to fully carry-out the Prime Contractor obligations it is the Owner's responsibility and they may be liable should safety related incidents occur. Similarly, if there is no PCA in place, the Owner assumes the responsibility of coordinating the safety activities for all companies. If the Owner is fulfilling the Prime Contractor role, they are subject to the same Prime Contractor qualification requirements as the contractor. If the Owner lacked the requisite qualifications to be the Prime Contractor, then the same liabilities would exist, should inspection orders be written or if safety related incidents occur. It should be noted that, if neither the contractor nor the Owner are fully qualified for the role of Prime Contractor, then another party meeting the qualification must be employed to fill the role.

Communication of Prime Contractor Responsibilities

In addition to ensuring that the Prime Contractor is knowledgeable about all of the work activities to be undertaken (as evaluated via the contractor assessment), the Owner must ensure that the Prime Contractor recognizes their responsibility to allocate sufficient time and resources to ensure that their Prime Contractor responsibilities are fully exercised.

In addition to having the required capacity, the Prime Contractor must also have sufficient control of the worksite to maintain effective coordination of safety activities. The Prime Contractor must be guided by the authority given by the PCA and further supported by the Owner through the Owner's communication with other contractors - making sure they are aware of both the role and authority of the Prime Contractor.

To ensure that all key components related to safety are addressed, a complete description of the scope of responsibilities and reporting requirements of both the Prime Contractor and Owner are critical. In the absence of clearly defined responsibilities, it is possible that key components related to site safety may be neglected. Such neglect may increase the Owners exposure to penalties, fines or liability. The Owner must ensure that the PCA, at a minimum, address both Owner and Prime Contractor responsibilities, communication protocols and frequency, multiple employer coordination, and reporting requirements. A checklist, to be completed by the Owner, is a good way to ensure that issues related to Owner and Prime Contractor responsibilities are not overlooked. There are good examples of both PCAs and Prime Contractor worksite checklists that can be used directly by the Owner, or modified to address tenure specific requirement (see links at the bottom of this document).

Communication of Worksite Plans and Site Hazards

As provided by the Workers Compensation Act (Part 2, Division 4, Section 25), the Owner must ensure that the land and premises being used as a workplace, are provided and maintained in a manner that ensures worker health and safety. This Section also states that the Owner must provide, to the Prime Contractor, information known to the Owner that is necessary to identify, eliminate and control hazards to the health and safety of workers. Without the adequate communication of site level plans and site hazards to the Prime Contractor, it is possible that key components related to site safety may be neglected. Again, the failure to provide all known information to the Prime Contractor will increase the Owners exposure to penalties fines or liability.

The Owner must undertake a comprehensive pre-work meeting with the Prime Contractor where information, compiled from site plans, hazard assessments and related best practices is transferred to the Prime Contractor. Similarly, the Owner must inform the Prime Contractor of all changes to site hazards or work plans that might affect their coordination of the safety activities. The transfer of new information should be recorded as part of the ongoing administration of the tenures safety management system.

Information provided to the Prime Contractor should include both spatial and aspatial material and be provided in readily usable formats (digital and/or hardcopy) as necessary for the specific activity(s) being undertaken. Using an Owner/Prime Contractor pre-work checklist is a good way of confirming that all the information related to work-site plans and site hazard information has been passed to the Prime Contractor.

Periodic Monitoring/Inspections and Follow-up

The owner, or their designate, should undertake a periodic written assessment of the discharge of the Prime Contractor's responsibilities as outlined in the Prime Contractor Agreement. The periodic assessments based on worksite inspections should look to confirm that worksite operations are consistent with the Safety Program and its safety systems and that activities are compliant with the Workers Compensation Act. Additionally, the inspections should ensure that proper tracking and communication related to the Prime Contractor safety assessment of equipment, facilities and supplies is being undertaken for all Prime Contractor and sub-contractor on site operations

Conclusion

As outlined earlier, the complex nature of the Prime Contractor process and the common misunderstandings related to its application can have implications for worker safety and lead to Woodlot Licence and Community Forest Agreement holders being exposed to potential liabilities. Often, these liability risks are tied to the omission or execution of some key aspect of the Prime Contractor process. The process controls, identified in the document, aid the Owner in confirming and recording information related to contractor qualifications, identification of Owner and Prime Contractor responsibilities, the transfer of site plan and hazard information and ongoing communication.

The following summary of actions is required by the owner to address worker safety and mitigate risks related to safety incidents or violations of safety legislation.

1. Develop or use an established PCA that identifies the complete set of responsibilities of Owner and Prime Contractor.
2. Undertake a written assessment of the contractor's experience, capacity and knowledge and use a Prime Contractor Pre-qualification checklist to ensure that the contractor is qualified for the role of Prime Contractor.
3. Use a checklist for the initial pre-work meeting with the Prime Contractor to confirm that the Prime Contractor knows their responsibilities as described in the PCA and that they are given the requisite authority to execute their responsibilities. The checklist will also be used to ensure that information related to existing site plans and site hazards is passed to the Prime Contractor.
4. Record the transfer of any new information to Prime Contractor as part of the ongoing administration of the tenure's safety management system.
5. Carry out regular inspections and monitoring to ensure that the Prime Contractor is fulfilling their obligations as outlined in the PCA. Follow-up if those inspections identify corrective actions are necessary. Links and Information

*Note: Visit the following website to download the Prime Contractor Guide (http://www.bcforestsafe.org/files/tr_pdfs/rpkg_prm_cnt.pdf) for examples of:

- a. A Prime Contractor Agreement form
- b. A Prime Contractor Pre-Qualification Checklist (contractor/Owner assessment)
- c. A Prime Contractor Worksite Checklist
- d. A Prime Contractor Pre-Work Form
- e. "Frequently Asked Questions" about Prime Contractors