

ELECTRICAL CONTRACTORS ASSOCIATION OF BC

FAQS

Prime Contractor Fulfilling Your Health and Safety Obligations

OVERVIEW

What is the definition of “Prime Contractor” of a multi-employer workplace?

The Prime Contractor is defined in section 118(1) of the *Workers Compensation Act* as,
“(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part (Occupational Health and Safety), or
(b) if there is no agreement referred to in paragraph (a), the owner of the workplace.”

When must there be in place a Prime Contractor responsible for health and safety at a worksite?

A Prime Contractor (the Prime) for health and safety is required whenever there is a “multi-employer” workplace. That is, “a workplace where workers of 2 or more employers are working at the same time” (Section 118). The Prime has responsibilities relating to the health and safety of all the workers and only *one* Prime is permitted for each multi-employer workplace.

APPOINTMENT OF THE PRIME

What is needed to appoint my company as the Prime for health and safety purposes?

The agreement needs to indicate in writing that your company is the Prime for purposes of health and safety at that workplace relating to the *Workers Compensation Act*, (and should include specific terms about those responsibilities – as noted later). A contract that only provides that a company will perform stipulated work at a given price, without the further agreement to be the Prime for health and safety, will not constitute a written prime contractor agreement.

What happens if there is no written agreement clearly appointing a Prime responsible for health and safety?

In that case, the health and safety responsibilities will “default” to the Owner. In fact, the Owner will have the Prime responsibilities for health and safety by default in cases where:

- There is no agreement in writing appointing a Prime for health and safety,
- An agreement is unclear about who is the Prime for health and safety, or
- Under an agreement more than one Prime is appointed for health and safety at the worksite

So if my company is not appointed in writing as the Prime for health and safety, I don't have to worry about those responsibilities?

No. Your company could end up with these responsibilities of the Prime “by default.”

The definition of “owner” under the *Workers Compensation Act* includes an agent, delegate, tenant, licensee or even an entity occupying the worksite. So the owner “by default” may not necessarily be the project owner - it could be a company that is one of these other entities. If your company is one of them then it could be the “default owner” that is responsible for health and safety.

How will I know if my company is the “default” owner?

WorkSafeBC looks to determine which contractor at the workplace has the most “knowledge and control” of the worksite. That contractor is then deemed to be the default owner, or in other words, the Prime for health and safety purposes.

How much “knowledge” is needed for my company to end up being considered the Prime?

If your company knows what contractors or trades are working at the worksite, the hazards and conditions there, and the likely harm and extent of harm that could result from the hazards, then it will have the necessary “knowledge” to be the Prime.

How much “control” is needed over the worksite to be deemed the Prime?

If your company has some control or influence over the safety at all the workplace so that your employees can take measures to eliminate or reduce the risk or extent of harm – such as giving information to others that can help them protect themselves – then your company may be considered to have the necessary “control” over the worksite.

What if there is a general or prime contractor under agreement with the Owner that is responsible for management and construction services over the whole project. Will the Prime responsibilities automatically “default” to that company?

Although not automatic, the designated general or prime contractor with project construction management responsibilities may often have the most “knowledge and control” and be deemed to be the Prime responsible for health and safety.

CONTRACT TERMS TO INCLUDE

If I do agree with the Owner to be the Prime for health and safety, what terms should I include in the agreement?

Qualifications – before you enter into the agreement, be sure that your company and your employees at the worksite have the knowledge, experience and competency to be the Prime for health and safety on that site. Consider the complexity of the activities, and the kind and extent of the hazards that will be there.

Clear wording about health and safety – as noted, the agreement needs to state that the company is the Prime for the *health and safety at the workplace under the Workers Compensation Act*, not just that it is the prime or general contractor for the project.

Authority – you and your supervising employees will need full authority over all the contractors on site to ensure ongoing health and safety. This could include taking steps such as giving warnings, and removing a contractor who repeatedly refuses to comply with safety requirements.

Owner’s workers – authority over all contractors needs to include authority over the Owner’s workers who may be working on site, or who may come onto site from time to time.

Start and end – be clear about when your obligations as Prime begin and end. Consider if your company will continue to be Prime once occupancy takes place and activities such as tenant improvements begin. Set out a method for giving notice to the Owner to advise when you consider that your obligations as Prime over health and safety will end.

RESPONSIBILITIES OF THE PRIME

If I am the Prime either by agreement, or by default, what are my obligations for health and safety at the workplace?

There are two key obligations. The Prime must:

- *Coordinate the activities* of contractors, workers and other persons (such as the general public) at the workplace, and

- *Establish a system or process* to ensure compliance with the health and safety legal requirements under the *Workers Compensation Act* and the OHS Regulation.

How will I know if I'm doing enough is being done to meet these obligations?

The Prime is required at law do “everything that is reasonably possible” and to take “all reasonable care” to fulfill the obligations of the Prime. If you can show that you have done this, then you will have met the test of “due diligence” that is expected of the Prime.

What do I need to do to be a “duly diligent” Prime?

The key activities of a Prime that is duly diligent include:

- 1) *Consideration of the qualifications of contractors*
- 2) *Being knowledgeable* about the workplace and the hazards at the workplace
- 3) *Monitoring* work activities to ensure contractors are complying with health and safety requirements
- 4) *Communicating and coordinating* work activities on an ongoing basis

What does each of these activities need to cover to be considered duly diligent?

In implementing these key activities, your company should have a “Prime Contractor Program” that includes policies and practices as the Prime covering the following.

1) Qualifications of contractors/trades

- “Pre-qualification” of contractors on the site (e.g. WorkSafeBC Prevention Clearance Letter/Inspection Report Summary; Certificate of Recognition; Third Party Verification)
- Assessing contractors’ qualifications and health and safety programs to ensure they are knowledgeable about their work, the hazards involved and the means to control the hazards

2) Knowledge

- About the workplace and its hazards – take reasonable steps to assess all potential existing and upcoming hazards
- About the work and hazards of the contractors should be sufficient so that you can assess if they are in compliance
- Through a process that ensures contractors:
 - Supply the name of their ‘qualified person’ for health and safety
 - Provide the name of the person designated to supervise their workers
 - Attend site meetings
 - Send their workers to orientation
 - Conduct safety meetings/tool box talks
 - Perform regular inspections of their work activities

- Report and investigate incidents (for both cause and system failure)
- Advise of WorkSafeBC orders
- Report upcoming activities that may create a hazard to others

3) *Communication and Coordination*

- Initial orientations about the site and hazards for all workers
- Regular site meetings to organize the work activities and explain safety aspect to the contractors
- Identification of any new hazards or problems that have arisen
- An emergency response plan (including after hours) that is communicated to all workers
- First aid services for the worksite including a equipment and facilities, a system for transportation of injured workers and first aid availability after regular hours

4) *Monitoring to ensure compliance*

- The extent of monitoring will depend on the nature of the hazards and risks and any indications of compliance problems
- Ongoing and active assessment taking into account the changing environment at the workplace
- Any noncompliance with your policies or the contractors' own policies should result in warnings and possible removal of the contractor if needed

CONSEQUENCES OF NONCOMPLIANCE

What happens if my company doesn't meet its obligations as the Prime?

In addition to putting the health and safety of workers in jeopardy, your company could receive orders for violations from WorkSafeBC, including under section 118 of the *Workers Compensation Act*, and be required to come into immediate compliance with the law.

In the case of repeated orders, or a serious incident at the workplace, your company could be required to "stop work" and be imposed a significant monetary penalty. In the most serious cases, a company, through its managers, supervisors and officers and directors, may be prosecuted in court and subject to fines and incarceration.