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“PRIME CONTRACTOR”

The Alberta Occupational Health and Safety Act and Regulations establish rules for all parties on a work site. The Act exists to make workplaces safe – to prevent serious injuries and deaths. On February 17, 1995 the Act was amended by the proclamation of Bill 48. Despite the changes, there is still confusion as to exactly who is responsible if a person sustains an injury, illness or death at a work site. Bill 48 attempted to clarify this. Section 2.1 of the Act outlines the responsibilities of the *Prime Contractor*.

Prior to February of 1995, the Occupational Health and Safety Act held parties responsible who had no control over workers on a site. Construction people working in Alberta recall the terms *General Contractor* and *Principal Contractor*. These terms remain prevalent in construction industry language, but not in legislation. Unlike other Canadian provinces/territories, where legislation defines the contractor in charge of the work site as the General Contractor, Alberta legislation uses terms for *Prime Contractor*, Contractor, Employer, Supplier and Worker. The new term for the party responsible to manage work site health and safety is *Prime Contractor*.

Changes within Bill 48 affected the role and responsibility of the *Prime Contractor* in workplace safety. The purpose of the bill was threefold:

- To grant overall responsibility for compliance with the Act to one party;
- To allow owners to transfer this responsibility to people who are directly involved in day to day activities at the work site; and
- To provide guidance on how to fulfill these responsibilities.

In theory, Bill 48 should not be difficult to understand and comply with. It's easy to govern H&S matters when one has financial control over other employers / contractors on a work site. But there are many situations in the work environment when the prime contractor may not have contractual connections with all employers on a work site.

It is important for all parties to understand how Alberta Labour's Workplace Health and Safety Officers perceive the *Prime Contractor's* role on a construction site. These officers look to the *Prime Contractor* as the party responsible for managing all Health and Safety matters on a worksite. The operative word is “managing.”

Four key elements of the new legislation Bill 48 address the *Prime Contractor's* role and responsibilities.

SECTION 2.1(1) EVERY WORK SITE MUST HAVE A PRIME CONTRACTOR IF THERE ARE TWO OR MORE EMPLOYERS

The above deals with the number of *employers* rather than *employees*. It is imperative to identify the boundaries of a specific work site. If workers are separated by sufficient time (i.e., not there at the same time) or sufficient space (far enough away from each other) with no possibility that their activities will create a hazard to other workers, then they can be considered to be on separate work sites.

2.1(2) THE PRIME CONTRACTOR FOR A WORK SITE IS (A) THE CONTRACTOR, EMPLOYER OR OTHER PERSON WHO ENTERS INTO AN AGREEMENT WITH THE OWNER OF A WORK SITE TO BE THE PRIME CONTRACTOR, OR (B) THE OWNER OF THE WORK SITE, IF NO AGREEMENT HAS BEEN MADE OR IF NO AGREEMENT IS IN FORCE.

Owner is defined as the person in legal possession of the work site or, the person with an ownership interest in the work site who requests the work to be done.

The owner has the initial responsibility of *Prime Contractor*. This section allows the owner to transfer this responsibility to another party in a better position to carry out the functions of the *Prime Contractor*.

The Owner is expected to exercise "Due Diligence" in transferring this responsibility. That is, the Owner must do everything that is reasonably practicable to ensure that the party it has transferred the responsibility to is capable of meeting these obligations.

After entering such an agreement, the Owner is no longer responsible for ensuring compliance with the OHS Act at the work site. However, if the owner assumes responsibilities previously transferred to the *Prime Contractor* (e.g. begins to direct activities), then the responsibility for compliance may revert back to the owner.

Contractors entering into transfer agreements have the right to outline any preconditions of acceptance. Presently, the law does not require this agreement to be in writing. For example, a foreman, on behalf of the Contractor, could enter into a *Prime Contractor* agreement verbally with the Owner's representative after the project started. Such an agreement may qualify as legally binding. Any Contractor entering into an agreement with an Owner should ensure the agreement is in writing.

SECTION 2.1(3) IF A WORK SITE IS REQUIRED TO HAVE A PRIME CONTRACTOR UNDER SUBSECTION (1), THE PRIME CONTRACTOR SHALL ENSURE, AS FAR AS REASONABLY PRACTICABLE TO DO SO, THAT THIS ACT AND THE REGULATIONS ARE COMPLIED WITH IN RESPECT OF THE WORK SITE.

This subsection outlines *Prime Contractor* responsibilities. The *Prime Contractor* is required to do everything “reasonably practicable” to ensure the OHS Act and its regulations are complied with at the work site. This requirement is consistent with the intent of the 1995 changes in that one party at a work site is charged with overall responsibility for occupational health and safety. This does not relieve any other parties (eg. Employers) from responsibilities they have at the work site.

This subsection also outlines the responsibilities of the *Prime Contractor*. The key words in determining what is required to meet this obligation are the words *reasonably practicable*. This concept shouldn’t be confused with the ideas of ‘reasonable’ or ‘practicable.’ *Practicable* means that something is possible, not whether it is easy to do or inexpensive. *Reasonably* is measured in terms of whether or not the steps possible could reduce the risks to workers, taking into account some consideration of cost. *Reasonably practicable* combines the two concepts and results in high standard of responsibility. The industry standards are the minimum that are reasonably practicable.

Ultimately, the *Prime Contractor* needs to consider whether workers’ safety and health are being protected. If not, another solution needs to be found.

SECTION 2.1(4) ONE OF THE WAYS IN WHICH A PRIME CONTRACTOR OF A WORK SITE MAY MEET THE OBLIGATION UNDER SUBSECTION (3) IS FOR THE PRIME CONTRACTOR TO DO EVERYTHING THAT IS REASONABLY PRACTICABLE TO ESTABLISH A SYSTEM OR PROCESS THAT WILL ENSURE COMPLIANCE WITH THIS ACT AND THE REGULATIONS IN RESPECT TO THE WORK SITE.

This subsection provides guidance to prime contractors on how to meet their obligations.

In construction terminology, the system or process referred to is a *Project Safety Plan*. The Project Safety Plan is a systematic approach to the management of OHS on a particular work site. The development and implementation of this plan is the key to the success of an employer fulfilling the role of *Prime Contractor*. This should be formulated under the direction of the *Prime Contractor*’s most senior representative on the work site, normally the project superintendent. It should include input from a Project Safety Committee comprised of representatives from all site employers who meet regularly.

The plan has to incorporate a reporting and monitoring system to effectively manage health and safety matters on the work site.

Documentation is essential. *Prime Contractors* should set up a file system on site for the retention of all H & S documentation.

Many construction companies in Alberta have no difficulty in the role of *Prime Contractor*. Regardless of the old terms, (General Contractor, Contractor, Sub Contractor) they have always taken the approach that they would be held responsible and accountable when a person becomes injured, ill or killed due to conditions on the work site.

Having the required knowledge of the role and responsibilities of the *Prime Contractor* is important for contractors and their employees.

Although Bill 48 designates prime contractors as ultimately responsible for managing health and safety matters on a multiple employer work site, this does not relieve any other parties from their responsibilities at a work site. Safety is everyone's business.

All Contractor Managers and Supervisors, before they arrive on a multiple employer work site, should ask: "*Who is Prime Contractor?*"

For further information, call the Alberta Construction Safety Association. The ACSA offers a one-day course on this topic.