

Practice Directive 1-1-7 (A)

Labour Contractor Criteria

Effective May 1, 2005

Reference Assessment policy number 1-1-7

Practice

MAJOR REVENUE-PRODUCING EQUIPMENT

Ownership of major revenue-producing equipment is often the sole basis by which a Board officer determines whether a subcontractor is a labour contractor or a worker. Historically, Board officers have used different interpretations of the meaning of this phrase when applying policy. Over time, the general principles of this policy have expanded in ways that it may not have originally contemplated. Industries change; the constant pace of change necessitates the Board consider things as 'equipment' that fall outside the usual meaning of the word. For example, horses and special pieces of software may now be deemed major revenue-producing equipment for some contracts.

What follows is a brief discussion of some criteria Board officers may consider when determining "major revenue-producing equipment" that would allow a subcontractor to register as a labour contractor. To determine if a subcontractor's equipment is major and revenue-producing, review the terms of the contract under which the subcontractor is working.

Board officers may use several criteria to determine if equipment is major and revenue-producing:

- 1) Whether the potential labour contractor is in the business of providing equipment to fulfill a contract (making the subcontractor a labour contractor), or providing talent and expertise in utilizing equipment to fulfill a contract (making the subcontractor a worker).
- 2) If a specialized license is required to operate the equipment the subcontractor provides, and the contract stipulates the subcontractor must supply the equipment, the Board may deem it as major revenue-producing equipment.
- 3) Policy states that equipment that allows subcontractors to register as labour contractors must be "major." Thus, "minor" equipment does not qualify to give a subcontractor labour contractor status. The Board may make the distinction between major and minor equipment based on whether the equipment is of professional- or industrial-grade or of light- or home-use-grade. However, the fact that a piece of equipment is of professional-grade is not enough on its own for the Board to deem it as major. For example, professional-grade drills or other similar hand-tools are not major revenue-producing equipment. Below are three criteria to use to determine the difference between major (generally, professional-grade) and minor (home-use-grade) equipment. Any of the three could serve to indicate major revenue-producing equipment.

- a) Cost: is the equipment priced out of the reach of those who would only occasionally use it, so that only those who truly need the equipment to fulfill contracts can afford to purchase and maintain it?
- b) Size: is the equipment too large to be appropriate for home-use applications, or for easy home-storage or portability?
- c) Scarcity: is the equipment difficult to obtain, custom-manufactured on a limited basis or of a one-of-a-kind nature?

In light of the above criteria, consider these two examples:

- i. A truck-mounted pressure washer is obviously expensive, designed for professional use, and not easily obtainable, whereas anyone can purchase a small, portable pressure-washer quickly and easily for home use.
- ii. A custom-programmed, dedicated piece of software held out by a subcontractor for use in a particular industry is generally expensive to produce, designed for professional use, and not easily obtainable. In contrast, common programs (such as Word, WordPerfect, Excel, PowerPoint, or PowerBuilder) are relatively inexpensive and easy to obtain for home use.

The above considerations are for Board officers to use when determining whether a particular piece of equipment is major and revenue-producing. Board officers may use any or all of these criteria to make a decision based on the situation of the subcontractor.

For ease of reference, an industry-specific list of established pieces of major revenue-producing equipment follows. This list is not exhaustive or complete; Board officers should use their judgement to determine whether equipment not on this list satisfies the requirements to be considered major revenue-producing equipment.

- Software that is not commercially available from any other supplier except the labour contractor providing the use of the software. (This does not include subcontractors who create software on order specifically at the request of only one client.)
- Single-axle motor vehicles in the trucking/delivery/courier industry.
- Truck-mounted pressure washers.
- Single-axle trucks used for construction cleanup.
- Pilot cars.
- Light-duty excavating equipment such as backhoes, front-end loaders, and bobcats.
- Any service vehicle specifically custom outfitted to provide repairs or maintenance of equipment for a particular industry. (i.e. Trucks outfitted with cherry-pickers, large cable reels, or with other similar, extensive modifications.)

- Truck-mounted mobile welding units. (In addition, any arc-welding equipment.)
- Oil well servicing and drilling equipment, including truck-mounted gin-poles, perforating guns and dewaxers, picker, steamer, vacuum, and hot oil trucks, ditchwitches, power tongs, and drilling rigs.
- Ambulances used to provide first aid services.
- Agricultural equipment such as tractors, hay-balers, harvesters, combines, and hoof trimmers.
- Horses used as part of a horse-logging contract.
- Boom boats as used in the forest industry.
- Fishing boats as used in the fishing industry.
- Skidders, feller-bunchers, grapple loaders, or similar heavy equipment used in the logging industry.
- Tracked earth-moving equipment such as bulldozers and excavators.
- Graders.
- Dual-axle trucks such as logging trucks, tractor-trailer trucks, dump trucks, and oilrig transport trucks.
- Mobile cranes.
- Chainsaws are not usually considered revenue-producing equipment. However, chainsaws will be deemed major revenue-producing equipment for contractors classed in CUs 703013 (Manual Tree Falling and Bucking) and 703002 (Brushing and Weeding or Tree Thinning or Spacing (not elsewhere specified)), and may be considered such in exceptional circumstances in other CUs. The rationale for this is that the chainsaws used to fulfill such contracts are generally required by the contracts to be of the highest professional grade (thus very expensive) and of a large size.
- Bicycles, if the owner of a bicycle is licensed to operate a courier bicycle by a municipal or other governmental authority.

Please note that equipment used for crew transportation (such as a pickup or a crummy) is not deemed to be major revenue-producing equipment where used in any industry but the transportation industry.

ONGOING SIMULTANEOUS BASIS

Labour contractors are also identified in policy as being those who “contract a service to two or more firms on an ongoing simultaneous basis.” Policy goes on to provide an example: “a janitorial contractor having simultaneous contracts with two or more unaffiliated firms.”

For the purposes of this policy, “ongoing simultaneous basis” means any simultaneous contractual obligations. Consider a subcontractor (in any industry) who contacts the Board for registration July 30, has a contract due for completion on August 20, and one due for completion on September 5. While the subcontractor may be unable to work on both contracts at the same moment, they overlap in time. The subcontractor has simultaneous contracts on an ongoing basis, subject to the subcontractor finding other contracts to complete after the due dates of the current contracts.

In order to register because of ongoing simultaneous contracts, the subcontractor must be contracting to at least two unaffiliated prime contractors. Working for two different divisions of a single prime contractor with divisional accounts does not qualify as working for two separate prime contractors. The exception to this is a subcontractor working for the provincial government; if the subcontractor has ongoing contracts with two or more separate ministries, the Board will allow registration based on the simultaneous contracts. This is due to the singularly separate and distinct nature of government ministry operations.