



June 3, 2020

Wilf Maloney, P. Eng
Regional Engineer, Central Regional Office
Department of Municipal Affairs and Environment

email: WilfMaloney@gov.nl.ca

Re: Prime Contractor Safety Requirements

Dear Mr. Maloney,

On behalf of our members representing 20 consulting engineering companies which employ approximately 1,000 personnel, the Association of Consulting Engineering Companies of Newfoundland and Labrador (ACEC-NL) wishes to voice our concerns regarding a recent email dated April 9, 2020.

Our concerns are centered around the “Prime Contractor Safety Requirements” that the Department of Municipal Affairs and Environment (DMAE) is now implementing and how this affects the Prime Consultant on DMAE projects, specifically:

1. Designation of Principal Contractor remains ambiguous as it is left open to interpretation with references to different proponents throughout the document.
2. The overall document does not define the precise responsibilities of the various stakeholders.
3. Questions remain as to the overall liability of the Prime Consultant for the Contractor’s safety practices.
4. It is unclear as to whether the Prime Consultant is responsible to review and approve the Contractor’s Site-Specific Safety Plan (SSSP) or whether their only responsibility is to confirm that the Contractor has a SSSP in place.
5. DMAE’s expectations of the Prime Consultant in monitoring and enforcing Contractor safety on a work site are ambiguous.
6. It is unclear as to whether completion of the “Construction Worker Safety Course” by the Prime Consultant’s field staff is sufficient, in itself, for training requirements. Moreover, does this replace the need to complete the specific training courses (i.e. Confined Space Entry., Powerline Safety, Fall Protection, etc.) as was stipulated in the November 26, 2018 DMAE Circular?

With respect to Items 1 and 2, we recommend that DMAE revisit the document and make revisions that more clearly define these areas and remove all existing ambiguities.



With respect to Item 3, it is ACEC-NL's expressed opinion that an engineering consultant cannot be held liable for unsafe work practices of any General Contractor. This needs to be clarified in the document.

With respect to Item 4, engineering firms would not be comfortable with, or capable of, reviewing and approving a contractor's SSSP. As Consulting Engineers, we do not have the specialized training in safety practices or specific knowledge of safety policies required to complete such review and approval. As such, we are simply not qualified to review and approve these documents. It is imperative that qualified Provincial government personnel that have specific training in safety practices and policies be responsible for this, as is the case with Federal government departments. We make reference to the attached excerpt from the Municipal Master Specification, which clearly states that acceptance of the Contractor's SSSP is viewed as acknowledgement only. The onus is still on the Contractor to ensure completeness. However, given that site safety is an important aspect of any construction project, most firms treat a SSSP submission in much the same way as a shop drawing submission, reviewing it for completeness as best we can. However, we cannot take responsibility for any errors or omissions, and the Master Specification supports this interpretation. The Master Specification is quite clear on what is required and while it remains the default DMAE guideline document, recently issued memos, circulars and directives have introduced some ambiguities and the potential for interpretation. This needs clarification. The other issue is that there needs to be a coordinated response from DMAE, as the Regions presently seem to have different requirements. This also needs to be addressed.

With respect to Item 5, some clarification of the specific responsibilities of each party is required in the document. Resident Site Inspectors, or other field staff member, must possess familiarity with the General Contractor's (GC) SSSP and are responsible to report any transgressions that they observe to the GC and Client representatives. Their role is not enforcement, but rather informant. This is an important role because even though the governing principle is that safety is everyone's responsibility, an Inspector is independent of the GC and as such would not feel the trepidation that a GC employee may feel in raising a safety concern. That said, Inspectors at project sites are generally fully occupied with their technical responsibilities (i.e., inspection, quality assurance, quality control, ensuring adherence to the design, quantity tracking, etc.). Therefore, the role of the Inspector is not to oversee site safety, but rather be familiar with the SSSP requirements. The Consultant should also provide their own SSSP and ensure their Inspector and other field personnel are informed of its content and adequately trained as per DMAE requirements. The other important thing to note is that the ultimate and final say regarding safety responsibilities on construction sites lies with the Provincial Department of Occupational Health and Safety (OHS). Their requirements will override the Master Specification and any other directives from DMAE with respect to safety. DMAE always references the OHS regulations as well. Therefore, any clarification on the Consultants' responsibility vis a vis safety needs to be coordinated by DMAE with OHS.



Finally, with respect to Item 6, regarding inspector training, our understanding, is that the NLCSA online safety course is sufficient to meet the needs of 2.1.6 (b) of the Circular. However, it has been communicated that if an inspector is working in a confined space (to inspect work), then specific Confined Space Entry training will be required. Similarly, if the inspector is working at heights (to inspect work), then Fall Arrest training is required. However, on “typical” water and sewer projects, the inspector should be able to work without entering confined spaces or at unsafe heights, meaning that no specific safety training beyond the general course is needed. There is a requirement for First Aid training for consultants when working on a job when the contractor is not there, an example being site surveys. It is important to also ensure that inspector training requirements are consistent across DMAE’s various regional offices and then clarified for all Consultants throughout the province.

In addition to the above items, it is our opinion that these new requirements are:

- Inconsistent with the standard Contractual Terms in the national RAIC and CCDC documents;
- Inconsistent with the Letters of Assurance used in multiple jurisdictions around the country;
- Inconsistent with the National Building Code and its derivative documents in other provinces;
- Likely to attract liability that consultants do not have anywhere else in Canada; and,
- In some cases, probably uninsurable.

We appreciate your consideration of these concerns and look forward to hearing from you.

Sincerely,

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cc.

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Enclosure DMAE Circular dated November 26, 2018