

WCB Policy 35.10.50, Status of Workers, Independent Contractors and Employers **Administrative Guidelines**

Please include the Board-Approved policy when referencing guidelines as they are intended to provide clarity and direction to ensure consistent administrative application of the policy.

When contract relationships exist between individuals or firms, the WCB needs to determine if the service provider is a worker, an employer, or an independent contractor. Also, if an independent contractor opts for personal coverage for their owners, the WCB needs to establish how this affects their coverage.

Principals

In a contract relationship, the principal is the person or firm that hires and pays a service provider to perform work for them. A principal can be a general contractor, a private individual (i.e. homeowner), or a business owner.

(Deemed) Employer

- A principal in a "non contract-based industry" can be deemed the employer of a service provider if the service provider is not an independent contractor.
- A principal in a "contract-based industry" can be deemed the employer of a service provider if:
 - the service provider is considered a worker or an independent contractor, and;
 - the work being performed adds value to the product or service the principal sells.
 - ♦ "Adds value" is defined as directly contributing to the quality or value of an end product or service of the principal. It does not, for example, include maintenance or services to the principal's property or equipment.

Commercial Property Owners

- A "Commercial Property Owner" is a principal that hires a service provider to perform a task that does not "add value" to the principal's goods or services sold.

Homeowner

- A homeowner is a person who hires a service provider to perform work on their personal residence. Homeowners cannot be deemed the employer of a service provider.

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Service Providers

In a contract relationship, the service provider is the person or firm that is hired to provide the labour, and at times the materials, to complete or perform certain tasks. This includes “Work Crews”.

Unless a service provider is defined as employer, they need to demonstrate they operate an independent business in order to register with the WCB. If a service provider cannot pass the Independent Business Test (“IBT”) - see Appendix A - they may be deemed workers of principal(s) that engage them.

Employer:

- A service provider that pays their workers more than the minimum annual earnings level is considered an employer.
 - If the service provider is the head of a work crew that pays the other members of the work crew more than the minimum annual earnings level, the head of the work crew is considered the employer, and the work crew members are considered their workers.
- If the service provider reports less than the minimum annual earnings level to the WCB in Manitoba, other “workers earnings” paid under the following specific circumstances may be included. This will mean the service provider has “Established Minimum Payroll” (“EMP”):
 - Earnings paid to workers **outside of Manitoba**:
 - ♦ If a service provider works outside Manitoba, and only a portion of their payroll is reported to Manitoba, they will be considered an employer provided their total payroll is more than the minimum.
 - Earnings paid through **associated firm(s)**:
 - ♦ If the combined payroll of all associated firms meets or exceeds the minimum, the service provider will be considered an employer.
 - ♦ To confirm if firms are associated refer to WCB Policy 35.20.15, Associated Employers.
 - Earnings paid to **WCB-registered contractors**:
 - ♦ If the service provider can provide a list of contractors they hire who:
 - Are independently registered with the WCB as employers or labour contractors (see page 5 for definition), and
 - Are collectively paid the equivalent of the legislated minimum annual earnings level in the labour portion of their contracts.

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- To determine the amount of labour in a contract, use the appropriate percentage associated with the type of work being performed as outlined in Appendix B, Labour Percentage Schedule.
 - Reported Payrolls Close to the Minimum
 - ◆ For service providers whose total payroll amounts go above and below the minimum annual earnings level from year to year, evaluate up to the last three years of reported payroll (last two year's actual and the current year estimate).
 - Do not include any personal coverage amounts reported.
 - Use arbitrarily assessed amounts if that is all that is available.
 - Do include the reported payroll of any associated firms.
 - Do annualize payroll where a service provider only operates for a portion of the first year, unless their operations are seasonal in nature.
 - ◆ If the service provider's reported payroll in two of the last three years are:
 - over the minimum, they will be considered an employer.
 - less than the minimum, the firm will be considered an Independent Contractor. They will not be required to pass the Independent Business Test as it is assumed they met that provision previously in order to register.
 - Service Providers with Annual Payrolls Less Than the Minimum
 - ◆ Service providers whose workers earnings amounts are under the minimum, and who do not qualify to be considered an "EMP" as described above, will need to pass the Independent Business Test (see Appendix A) in order to be registered with the WCB.

Independent Contractor:

- For a service provider to be considered an "independent contractor", the service provider must pass the Independent Business Test (see Appendix A).
 - "Work Crews", whether it be the head of the work crew, or the members of the work crew, must be able to pass the IBT in order to be considered Independent Contractors. Individuals in Work Crews that cannot pass the IBT are deemed to be workers of any principals that engage them as this is considered "evidence to the contrary" as outlined in the Policy.

▪ **In Non-Contract-Based Industries:**

- ♦ A service provider that passes the IBT and is engaged in a **Non Contract-Based** industry is an independent contractor, and:
 - must report the earnings of workers engaged in a mandatory industry to the WCB.
 - can opt for personal or voluntary coverage.
 - will not be considered a worker of principals that engage them.

▪ **In Contract-Based Industries:**

- ♦ Contract-based industries are those that have demonstrated a substantial use of contract labour.
- ♦ Examples of these industries include construction, trucking, logging, janitorial, tow-trucks, oil & gas wells, etc.
- ♦ A service provider that is:
 - engaged in one of the contract-based industries, and
 - an independent contractor, and
 - performing work that directly “adds value” to the product or service of the principal,

will be deemed a worker of that principal. The service provider will be required to report any workers employed while working for principals where the work is not directly “adding value” to the principal’s product or service.

- ♦ Members of a work crew paid less than the minimum annual earnings level will be independent contractors if they pass the IBT. Failure to pass the IBT is “evidence” that the work crew member is a deemed worker of the head of the work crew.
- ♦ The head of a work crew that pays the members of the work crew less than the minimum annual earnings level will be an independent contractor if they pass the IBT. Failure to pass the IBT is “evidence” that the head of the work crew, and all of the members of the work crew, are workers of a principal that hires them to perform work that “adds value” to the principal’s product or service.
- ♦ The independent contractor performing work in a contract-based industry is eligible for Labour Contractor coverage if the owners take out personal coverage (see “Labour Contractor” below).

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Labour Contractor:

- For a service provider to be considered a “labour contractor”, the service provider must pass the Independent Business Test (see Appendix A), and:
 - be engaged in a **Contract-Based Industry** (e.g. construction, trucking, logging, janitorial, tow-truck operations or oil & gas wells), and
 - opts to take out personal coverage for the owners of the business.
 - ♦ A partnership or a corporation may not be required to cover certain partners or directors for the firm to qualify for Labour Contractor coverage. The firm would need to sign a statement indicating the partner(s)/director(s) in question are not involved the firm’s day-to-day operations. Coverage for these individuals will not be in effect.
- Labour contractors must report all their workers’/deemed workers’ earnings to the WCB.

Worker/Deemed Worker:

- In the **Non-Contract-Based Industries**, if a service provider does not pass the Independent Business Test, they:
 - do not employ workers, and
 - are not permitted take out personal coverage for the owners.

If a non-contract based firm is not able to pass the IBT but employs workers in a mandatory industry, the account should be referred to the Assessment Account Supervisor for review.

- In the **Contract-Based industries**, when an independent contractor adds value to the products or service of their principal(s), the owner(s) and any workers they employ will be deemed workers of those principals.
 - This will include members of a work crew who are deemed workers of the head of the work crew. (i.e., head of the work crew is the employer).
 - This will also include the head of, and members of, the work crew who are deemed workers of the principal(s) that engage them. (i.e. the principal is the Deemed Employer).
- Where a principal is deemed the employer and required to report contract earnings to the WCB for assessment purposes, they need to:
 - Exclude any PST and/or GST paid.

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- Include only the labour portion of the contract. The WCB uses the labour percentage associated with the work performed as outlined in Appendix B - Labour Percentage Schedule. If the principal can provide an invoice from the service provider where the labour amount is specifically separate, the WCB may consider this instead.

Appendix A - Independent Business Test (IBT)

Before a WCB registration is permitted, a “small” service provider is required to satisfy the WCB that they are operating an independent business and are not considered a worker. For the purposes of this policy, the WCB defines a “small” service provider as one that does not employ workers, or employs workers who are paid less than the minimum annual earnings level.

The Independent Business Test (“IBT”) was created to establish whether a small service provider is an “employer” (i.e., can Establish Minimum Payroll (“EMP”)), an independent business/contractor, or a worker.

- If they “pass” the IBT, the service provider will be:
 - required to cover any workers employed in a mandatory industry, and
 - permitted to take out coverage for workers employed in an optional industry and
 - allowed to apply for personal coverage for their owners.
- If they “fail” the IBT, they will not be allowed to register with the WCB. They and any workers they engage will be deemed workers of any principal that engages them, with the exception of homeowners.

(To review a flowchart of the IBT, go to Page A-9.)

IBT Question #1: Do you work primarily within your own “establishment”?

- For service providers that indicate “Yes” to this question, the IBT ends here.
 - This question is meant to eliminate firms from the IBT that are not contracting labour-related services outside their own “establishment”.
 - “Establishments” are:
 - ♦ Owned or leased commercial, industrial or retail space (e.g., office, shop, unit, or plant);
 - ♦ Own land (where applicable);
 - ♦ Own/leased taxi cab operators
 - ♦ Own residence, provided more than 75% of their work is performed there. (Includes homeowners hiring workers to build/renovate their own home).

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Appendix A - Independent Business Test (IBT)

- Examples of establishments include:

Own Land, Timber Permit or Mining Rights (applicable only to logging, farming or mining).	Own Residence, provided more than 75% of their work is performed there.
Storage Facility	Manufacturing Facility
Retail Store	Restaurant
Wholesale Building	Vehicle/Equipment Service Garage
Laundromat/Dry Cleaning Depot	Rental Store
Concrete Plant/Aggregate and/or Soil Stockpiling	Accommodations (Hotel, Lodge, Resort)
Studio (Photography, Art, Dance, Etc)	Health Facility (Medical/Dental Office, Clinic, Hospital)
Laboratory	School/Training Facility
Museum, Theatre	Parks
Municipalities, Towns, Cities or Local Government Districts	Taxi Cabs (Only time a vehicle is considered an establishment)
Office Space (Not Listed Elsewhere)	Churches or Cemeteries
Transportation Dispatch Offices (other than trucking)	

- “Establishments” are **not** vehicle or equipment (exception: taxi cab operators).
- For service providers who indicate “No” to this question, continue to IBT Question #2.

IBT Question #2: Is your firm employing outside Manitoba?

- For service providers that indicate “Yes” to this question, the IBT may end here.

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Appendix A - Independent Business Test (IBT)

- If firms whose operations are both in and out of Manitoba and whose **total** annual payroll for all jurisdictions is over the minimum, the IBT ends here (i.e., they can “Establish Minimum Payroll” (EMP)).
- For service providers that indicate “No” to this question, continue to IBT Question #3.

IBT Question #3: Is your firm associated with other firms?

- For service providers that indicate “Yes” to this question, the IBT may end here.
 - If the total Manitoba earnings of any associated firms exceed the minimum when combined with any of their own payroll, the IBT ends here. (They have “Established Minimum Payroll” (EMP)).
 - If the total earnings of the associated firms do not exceed the minimum, continue to IBT Question #4.
- For service providers that indicate “No” to this question, continue to IBT Question #4.

IBT Question #4: Does your firm use registered sub-contractors?

- For service providers that indicate “Yes” to this question, the IBT may end here.
 - If the labour portion of all the registered sub-contracts they hire exceeds the minimum (when combined with any of their own payroll), the IBT ends here (i.e., they can “Establish Minimum Payroll” (EMP)).
 - The service provider must be able to provide the name of these subcontractors as well as the labour portion of their contract values within 30 days of registration or request. The WCB will then verify that:
 - ♦ the subcontractors are registered as labour contractors or employers, and
 - ♦ the labour portion of the sub-contracts, along with any of the firm’s payroll, exceeds the minimum.

If the sub-contract information is not received within 30 days or the information does not allow them to pass this part of the IBT, they will continue to IBT Question #5.

- For service providers that indicate “No” to this question, continue to IBT Question #5.

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Appendix A - Independent Business Test (IBT)

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Appendix A - Independent Business Test (IBT)

IBT Question #5: Do you regularly work for more than one customer?

- For service providers that indicate “Yes” to this question:
 - They need to provide proof within 30 days of having multiple customers by supplying at least two:
 - ♦ invoices they have issued to different customers within the last six months, or
 - ♦ cheque stubs received from different customers within the last six months.

Once this information is received and approved, continue to IBT Question #6.

 - If the sub-contract information is not received within 30 days or the information does not allow them to pass this part of the IBT, they will continue to IBT Question #8.
- For service providers that indicate “No” to this question, continue to IBT Question #8.

IBT Question #6: Do you employ T-4'd workers?

(NOTE - THIS QUESTION SHOULD ONLY BE ASKED
IF THE ANSWER TO QUESTION #5 WAS “YES”)

- For service providers that indicate “Yes” to this question, they have **passed** the IBT. Refer to the Administrative Guidelines under “Independent Contractor” to determine the firm’s status.
- For service providers that indicate “No” to this question, continue to IBT Question #7.

IBT Question #7: Do you use sub-contractors?

(NOTE - THIS QUESTION SHOULD ONLY BE ASKED IF THE ANSWER
TO QUESTION #5 WAS “YES” AND TO QUESTION #6 WAS “NO”)

- For service providers that indicate “Yes” to this question, they have passed the IBT. Refer to the Administrative Guidelines under “Independent Contractor” to determine the firm’s status.

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Appendix A - Independent Business Test (IBT)

- The service provider must be able to provide the name of these subcontractors within 30 days of registration or request. The firm will be advised of the need to include any deemed workers in the payroll amounts they report to the WCB.
- If the sub-contract information is not received within 30 days or the information does not allow them to pass this part of the IBT, they will continue to IBT Question #9.
- For service providers that indicate “No” to this question, continue to IBT Question #9.

IBT Question #8: Are you conducting work “integral” to the principal’s business?

(NOTE - THIS QUESTION SHOULD ONLY BE ASKED IF THE ANSWER TO QUESTION #5 WAS “NO” (OR THE PROOF REQUIRED IN QUESTION #5 WAS NOT PROVIDED AS REQUESTED))

- For service providers that indicate “No” to this question, they have passed the IBT.
 - The work the service provider is performing does not “add value” to the product or service sold by the principal.
 - ♦ “Adds value” is defined as directly contributing to the quality or value of an end product or service of the principal. It does not, for example, include maintenance or services to the principal’s property or equipment.
 - ♦ Refer to Appendix "C" of these guidelines for examples of work that is considered "integral" vs. "not integral" to the principal's business.
 - The rationale and information provided must be documented on the service provider’s account information.
 - Refer to the Administrative Guidelines under “Independent Contractor” to determine the firm’s status based on their industry.
- For service providers that indicate “Yes” to this question, continue to IBT Question #9.

IBT Question #9: Do you own/lease major equipment?

- For service providers that indicate “Yes” to this question:

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Appendix A - Independent Business Test (IBT)

- They can prove they own or lease a major piece of equipment. Generally, this equipment is large, drivable and is hired out as “equipment with operator”. If the firm indicates they can provide this proof, continue to IBT Question #10.
 - ♦ For example, this equipment can be logging machinery, such as skid steers and feller-bunchers, construction equipment, such as backhoes and loaders or trucks, including dump trucks and semi-trailers.
 - ♦ This equipment would not include passenger vehicles, for example in courier or taxi cab operations.
- For service providers that indicate “No” to this question, continue to IBT Question #11.

IBT Question #10: Does your equipment bear your principals’ logo(s)?

(NOTE - THIS QUESTION SHOULD ONLY BE ASKED IF THE ANSWER TO QUESTION #9 WAS “YES”.)

- For service providers that indicate “No” to this question, they have passed the IBT.
 - Document the type(s) of equipment the firm owns or leases.
 - If the firm has multiple pieces of equipment, and some bear the principal’s logo and others do not, continue to IBT Question #11.
- For service providers that indicate “Yes” to this question, they have failed the IBT. The firm is not permitted to register with the WCB, and the owners along with any workers they employ are deemed workers of the principal(s) whose logo appears on their equipment.

IBT Question #11: Is the service provider an independent contractor or a worker?

- Identify the characteristics that best reflect those of the service provider:
 - You don't have to consider all of these characteristics. Only include those that apply.
 - Consider the relative weight of the characteristics they meet/don't meet - some are more important than others.
 - Ensure you document the specific reasons for your decision so that it can be clearly explained to the service provider.

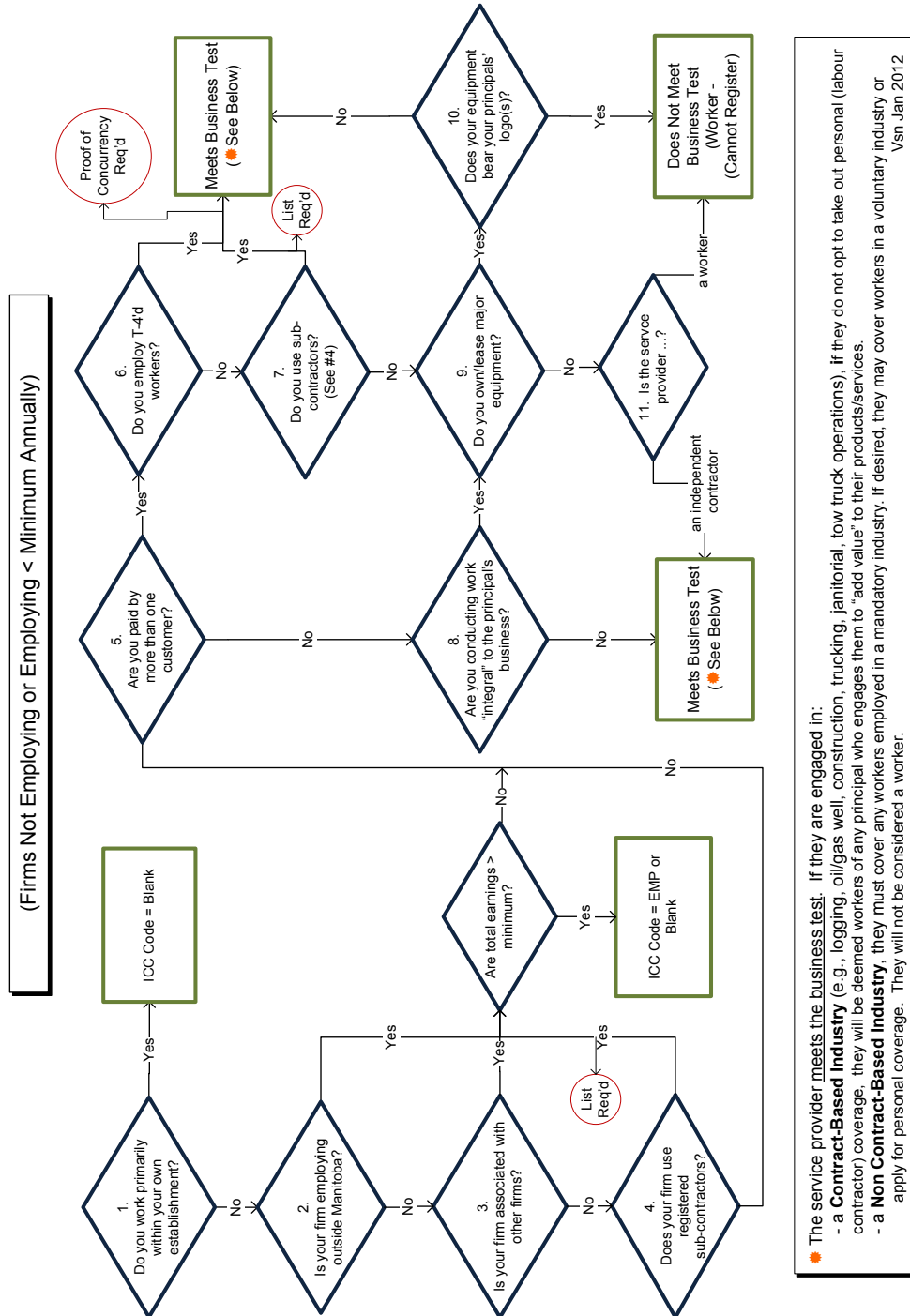
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Appendix A - Independent Business Test (IBT)

Indicators that the service provider is an <u>independent contractor</u> when they...	Indicators that the service provider is a <u>worker</u> when they...
...collect business income based on invoices they submit, and ...are responsible for business expenses, and ...calculate and remit own source deductions.	...are paid at regularly (e.g. biweekly), and, ...are paid based on hours worked, and, ...have their source deductions calculated and remitted by the principal.
...determine own hours of work and/or how tasks are to be performed.	...have the principal dictate their hours of work and/or how tasks are to be performed.
...are performing work that is not integral to the principal's line(s) of business.	...are performing work that is an integral part of the principal's line(s) of business.
...are hired because they possess a professional designation or license.	...are not hired because they have a professional designation or license.
...have significant financial investment in and responsibility over tools, vehicles, or equipment required to perform their job.	...have the tools, vehicles, or equipment required to perform their job provided by the principal.
...take financial risk or are rewarded by completing their work in a shorter period of time (e.g., paid the same amount regardless of the number of hours worked).	...take no financial risk; paid based on hours worked, therefore, the longer the job takes the more they get paid.
...are hired to perform a specific job.	...are working for the principal on a continuous and on-going basis.
...provides/can provide the service to a variety of clients.	...perform tasks unique to/exclusively for the principal.
...operate as a corporation.	...operate as a sole proprietorship or partnership.
...carry business liability insurance and can provide proof of that.	...do not carry business liability insurance.
...charge/collect GST.	...do not charge/collect GST.

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Appendix A - Independent Business Test (IBT)



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Appendix B - Labour Percentage Schedule

It is recognized that in some instances 100% of contractor labour may be reported. In these circumstances, the contractor does not provide any materials or equipment (for example no tools nor a vehicle are provided by the contractor) and it can be validated in discussions with the firm. Otherwise, with the exception of Security Services, please assign the appropriate major materials percentage or 85% (minor materials).

Schedule of Industries	Materials Supplied (if applicable)	Labour Portion of Total Contract
Acoustic Ceiling Installation	Major Materials	40%
Air Testing & Balancing		85%
Blasting	For Roadwork	25%
	For Other (i.e. Beaver Dams)	85%
Blinds Installation	Major Materials	40%
Bridge Repairs		25%
Brush Clearing		85%
Building Movers		25%
Cabinet Installation	Major Materials, Minor Installation	10%
	Major Materials, Major Installation	40%
Carpentry, General (Other than Framing & Finishing)	Major Materials	45%
Carpet Installation	Major Materials	25%
Chain Link Fence Installation	Major Materials	50%
Chemical Spraying		25%
Concrete Work	Major Materials	55%
Countertops	Supply & Install Granite, Stone	10%
	Supply & Install Laminate	40%
Courier Operations		65%
Demolition		25%
Diamond Drilling		25%

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Schedule of Industries	Materials Supplied (if applicable)	Labour Portion of Total Contract
Doors, Windows Installation	Major Materials	40%
Drapery Installation	Major Materials	40%
Drywall, Installation	Major Materials	40%
Drywall Taping	Major Materials	80%
Dump Truck Operating		25%
Dust Control on Roads (Oiling)		25%
Eavestroughing	Major Materials	45%
Electrical Installation	Major Materials	50%
Elevator Installation		25%
Equipment Operators - NEC		25%
Excavation		25%
Fascia, Soffit Installation	Major Materials	45%
Fiberglass repair - On site		80%
Finishing Carpentry	Major Materials	40%
Fixtures, Installation	Major Materials, Minor Installation	10%
	Major Materials, Major Installation	40%
Flooring, N.E.C	Major Materials	30%
Foundations		50%
Framing	Major Materials	45%
Garbage Removal		50%
Gasoline Tanks Installation		25%
General Maintenance/Handyman	Minor Materials	85%
Handi-Transit Owner-Operators		50%
Hardwood Flooring, Installation	Major Materials	30%
Hardwood Floor, Finishing/Refinishing	Major Materials	70%
Heating & Air Conditioning	Major Materials	50%

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Appendix B - Labour Percentage Schedule

Schedule of Industries	Materials Supplied (if applicable)	Labour Portion of Total Contract
Home Construction (Entire House)	Uses Sub-contractors	10%
Inspection of Buildings	Major Materials	40%
		85%
Insulation	Major Materials	50%
Janitorial Service		85%
Land Clearing		25%
Landscaping	Major Materials	50%
Linoleum, Installation	Major Materials	40%
Locksmithing	Major Materials	40%
Logging	Chain Saw	85%
Masonry	Major Equipment	25%
	Major Materials	50%
Mechanical Repair	Major Materials	50%
Mobile Pressure Wash (From Truck)		50%
Mobile Welding		50%
Nuisance Grounds, Mgmt/Supervision	Light Equipment	25%
Oil & Gas Wells	No Equipment	85%
	Major Materials	80%
Ornamental Iron/Metal Installation	Major Materials, Minor Installation	10%
Overhead Door Installation	Major Materials, Major Installation	40%
	Major Materials	40%
Painting & Decorating	Major Materials	80%
Pest Control (i.e.: dog catcher)		85%
Piling		25%

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Schedule of Industries	Materials Supplied (if applicable)	Labour Portion of Total Contract
Plastering	Major Materials	65%
Plumbing	Major Materials	50%
Power Line Construction		25%
Railway Construction		25%
Refrigeration	Major Materials	50%
Roadwork		25%
Roofing	Major Materials	40%
Sandblasting/Pressure Washing (Non-mobile)		80%
Security Services	with Vehicle	85%
Security System, Installation (Excl. Vehicles)	without Vehicle	100%
	Major Materials	50%
Sewage/Septic Tank Cleaning (Mobile and/or video services)		50%
Sewer & Water Construction		25%
Sheet Metal Installation (Commercial, Exterior)	Major Materials	40%
Ship Building & Repairs		75%
Siding Installation	Major Materials	40%
Sign Installation	Major Materials	40%
Snow Removal		25%
Soil Testing (infield)	Major Equipment	25%
Sprinkler System Installation	Major Materials	50%
Structural Steel		50%
Stuccoing	Major Materials	65%
Swimming Pools, Installation		50%
Tear-Out & Removal (ie. gutting buildings)		75%

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Appendix B - Labour Percentage Schedule

Schedule of Industries	Materials Supplied (if applicable)	Labour Portion of Total Contract
Tile Setting	Major Materials	35%
Towing		50%
Trenching, Drainage		25%
Trucking, Intra-city		50%
Trucking, Long Haul		25%
Ventilation	Major Materials	50%
Waterproofing Basements	Membrane Application	80%
Water Well Drilling	Excavation required	25%
		25%
Wharf Construction		25%
Window Cleaning	Major Equipment (ie. Cherry Picker)	25%
	Minor Equipment (ie. Scaffold, Swing Stage Ladder)	85%

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Appendix C - Examples of "Integral to Principal's Business"

When a subcontractor is only working for one customer, they will pass the business test if the work they are performing is not integral to the principal's business.

Work that is considered integral to the principal's business:

- "Adds value" to the principal's end products/services.
- Will normally benefit the principal's external customers, not their internal customers (i.e., staff).
- Would be considered an administrative expense opposed to the cost of a job. For example a construction company hires a janitor to clean their offices on a regular basis is considered an administrative expense versus paying a janitor service for a cost of a job. I.e. cleaning up after a flood.

Here are some examples of different relationships and when the work a subcontractor is performing for a principal may be considered integral or not integral:

"Integral" includes:	"Not integral" includes:
A construction company hires a janitor to clean house that has just been built or renovated; or a municipal body hires a janitor to work on wayside parks, campgrounds, rest stops, etc.	A construction company or municipal body hires a janitor to clean up after a flood in their offices.
A plumbing company hires an electrician to install plugs for fixtures they have installed for a customer.	A plumbing company hires an electrician to install plugs in their shop.
A town or rural municipality hires a firm to clean the parks, campground and wayside parks.	A town or rural municipality hires a firm to replace the sidewalk leading to the front door of their offices.
A home builder hires a draftsman to design houses they will build for resale.	A home builder hires a draftsman to design their new offices.
An oil and gas company hires a consultant to supervise the construction of their oil well.	An oil and gas company hires a consultant to review and make recommendations on their safety practices at the construction site.

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