

OHS Performance Criteria In Contracting and Procurement

WHITE PAPER

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AIHA believes that consideration of OH&S performance history in the awarding of contracts not only help ensure a healthful and safe working environment, but it is also a necessary prerequisite to promote overall efficiency in the conduct of work.

The American Industrial Hygiene Association is the largest association of occupational environmental health professionals in the United States. Its members are dedicated to improving the occupational health and safety of working people and communities in the United States and abroad. This White Paper presents and supports the belief that suppliers who have a good history of providing a healthful and safe work environment should be given positive consideration in the selection and awarding of future contracts. Conversely, contractors who have a record of poor health and safety performance should be given negative consideration in the awarding of contracts.

In promoting health and safety in the workplace, Occupational Health and Safety (OHS) professionals seek various methods to influence decision makers to invest in the anticipation, recognition, evaluation, and control of workplace hazards. OSHA standards are slow to be adopted, inspections come infrequently, and penalties are relatively minor. The OHS professional may have additional leverage with full cost accounting of civil liability, workers' compensation costs, and production and quality losses produced by OHS underperformance, but it is clear that contract specifications provide a powerful, available, yet underused leverage method.

There are at least three components of the contract specification and supplier management issue that should be of concern to all companies: [1] specifications that must be addressed in order for a company to be eligible to bid on a contract, [2] selection criteria to be considered in awarding the contract, and [3] specifications created to define performance deliverables and pay items within the contract. Significant leverage may be afforded OHS professionals when they include OHS performance measures in some or all of these components of contract specifications.

One approach to this issue may be through the bidding process. Often, the nature of the "lowest bid" process creates disincentives for H&S performance even if OHS specifications are included in the contract. Poor OHS performance does not affect the probability of being awarded the next bid since it, too, will be awarded based strictly on the lowest bid. Owners and the public often fail to recognize that the lowest bid does not typically reflect the total cost of a project. For the public sector or self-insured members of the private sector, the total cost of a contract may even include medical costs, disability costs, lost tax income, and public assistance for injured workers and their families.

When considering the awarding of contracts, AIHA believes that there are several factors that should be considered positive when evaluating prospective contractors:

1. A formal written health and safety program

A formalized health and safety program is fundamental in the control of workplace hazards. Although there is talk of regulatory movement toward requiring employers to have a formal program, currently there is no requirement. Hence, only the more responsible employers that consider H&S of paramount importance have formalized programs. These programs typically include many the following elements:

a) Management Commitment and Employee Involvement

These elements are considered absolutely critical in establishing a sound OHS program. Management must establish the policy and goals for the program and provide the resources; employees must be involved in the program, and must also personally commit to it. Some checkpoints of this program element follow:

- A managerial commitment to worker health and safety protection
- Top management's personal involvement
- Health and safety concerns integrated into the overall planning cycle
- Health and safety protection managed in the same way as productivity and quality are managed
- A written health and safety program that addresses all the elements in this checklist appropriate for the size of the site or employer and your industry
- A results-oriented health and safety policy
- Clearly assigned health and safety responsibilities with documentation of accountability from top management to line supervisors
- Adequate authority given to carry out assigned responsibilities
- Necessary resources to meet responsibilities
- Quality protection for all contract employees equal to that provided for your own employees
- Employee involvement in activities that have a major effect on the health and safety program
- Annual health and safety program evaluations with written narrative reports, recommendations for program changes, action plans, and verification procedures

(b) Worksite Analysis

In any successful program, there must be a process, which identifies those hazards that exist for the given process (es), and for defined tasks within batch processes or construction. Only if hazards are properly recognized can effective controls be implemented to reduce or eliminate the potential for occupational illness or injury.

Programs with an effective worksite analysis element will contain many of the following:

- A method such as comprehensive safety and industrial hygiene surveys to identify existing or potential hazards in the workplace
- A pre-use analysis procedure for new processes, materials, or equipment to determine potential hazards
- Routine industrial hygiene monitoring of toxic substances and noise
- Monthly self-inspections (weekly for construction) with written documentation and hazard correction tracking
- Routine hazard analysis procedures such as JHAs, JSAs, BJAs, PHAs that result in improved work practices and/or training for employees
- A written hazard reporting system enabling employees to pass on their observations or concerns to management without fear of reprisal
- Accident investigations with written documentation
- Method of documenting all identified hazards until they are controlled or eliminated
- Clear extension of worksite analysis responsibilities to all subcontractors and service providers, and mechanisms to collect performance data on multi-employer sites
- Analysis of trends in injury/illness experience and in hazards found, to identify patterns of problems and to implement program adjustments

(c) Hazard Prevention and Control

As hazards are identified, a critical program element is the implementation of programs to prevent or control the hazards. Control strategies consist largely of engineering, administrative, or personal protection or some combination as needed. Also, control strategies are often customized to fit the operation or process controlled. The following are checkpoints to gauge effective hazard prevention and control programs:

- Access to certified health and safety professionals
- Engineering and administrative controls adequate for the hazards at the worksite
- Written health and safety rules and practices that are understood and followed by all employees
- An effective dispute resolution process that promptly responds to perceived imminent danger situations
- Contractual requirements and written mechanisms for communication of hazards and necessary control measures between employers on site
- Written rules for use and maintenance of personal protective equipment
- Written plans to cover emergency situations
- Hazard correction tracking procedure
- Onsite or nearby medical and emergency services
- First aid and CPR-trained personnel available onsite during all shifts
- Use of occupational health professionals in hazard analysis as appropriate
- Documented ongoing monitoring and maintenance of workplace equipment

(d) OHS Training

All employees, including supervisors and managers must be properly trained according to their role in the OHS program. This is a most critical element in ensuring program success. Training can be accomplished through formal or informal methods as needed, however the minimum content requirement should be defined (such as an OSHA 10-hr course for all employees supplemented with site specific information). Good training programs should include the following:

Manager, supervisor, and employee training on site specific hazards with emphases on health and safety responsibilities and procedures

- Training in the use and maintenance of control measures such as personal protective equipment
- Emergency preparedness drills, including annual evacuations
- Documentation of all training received, including assessment procedures

(e) Program Review

Finally, a good OHS program should include a process that requires regular assessment of itself. This can be accomplished through using various types of program reviews and audits; some can be performed using internal resources, while others can be performed using external sources. In any case, there must be a process of regular review to ensure that the program is meeting its purpose and objectives.

2. An Experience Modification Ratio (EMR) less than 1.0

Every state in the U.S. requires all but the smallest companies to have some form of coverage for occupational injuries and some illnesses that occur. Many companies are self-insured and self-administered for their workers' compensation claims, while others elect to have an insurance carrier manage their system. In a few states, the state itself is the sole source of workers' compensation coverage. In cases where an insurance carrier or state fund manages the company's workers' compensation liabilities, a premium is charged to the company based on the company's claim experience relative to the experience of other employers assigned to the same risk pool. If the company has an illness and injury claims record consistent with the average of its risk pool, or if it were a new company without significant experience, the insurance premium would be that of one time the industry average. If the claim experience were twice that of the industry average, the Experience Modification Ratio (EMR) would be 2.0.

Thus for large employers that have existed for three or more years, a good gauge of a company's overall health and safety program would be an EMR of 0.95 or less. For small employers, previous experience of the firm's principals should be considered

3. Injury and illness statistics less than industry average

In the U.S., companies of significant size and a sample of small employers are required to report annually their injury and illness statistics through the Bureau of Labor Statistics (BLS), based on OSHA 200 logs. The BLS compiles the data in such a way to facilitate comparisons with the industry segment (standard industrial classification [SIC] or North American Industrial Classification System [NAICS]) in which a company resides.

Companies whose illness and injury experience are consistently less than its respective industry average have more effective OHS programs and can be considered a good risk when awarding contracts. In fact, direct comparisons of illness and injury rates can be made in determining overall OHS program effectiveness. Careful consideration should be given in defining performance metrics to avoid simply discouraging injury reporting, and to avoid under-reporting from subcontractors, very small employers, and temporary agencies. Possible approaches include using multiple metrics (incident reporting, absenteeism or sick time, and non-scheduled employee turnover, etc.) and some form of verification.

4. Participation in voluntary health and safety programs

There are several voluntary health and safety programs available to companies that wish to ensure continuous program improvement and effectiveness. One of the most well known and respected is the OSHA Voluntary Protection Program (VPP). The OSHA VPP is a partnership between OSHA, the company, and its employee representatives to go beyond compliance in an effort to institutionalize continuous process improvement with respect to OHS. Only the companies with outstanding OHS programs are OSHA VPP-certified. Companies with this designation should be considered among the best risks relative to OHS performance when considering contracting to them for services. Participation in OSHA Cooperative programs should not be considered equivalent to VPP, as they are extremely variable, but based on the specific criteria for participation these should be generally viewed as positive.

5. Management Systems and Effective Contracting Structures

Complex or pyramidal subcontracting structures may make it difficult or impossible to effectively assess management of health and safety performance on a project site or within a facility. Self-employment, temporary agencies, multi-tier contracting may facilitate shifting of responsibility for health and safety to parties who are the most economically vulnerable

and who may be incapable of adequate performance. Some level of overall project coordination of safety and centralized responsibility should be a key factor in evaluating safety programs with respect to probable implementation in the field. Health and safety requirements and performance evaluation should be extended to all levels of the procurement tree, which may commonly require pre-listing and restrictions on changing subcontractors without client/owner review. In addition, adequate resources shall be applied to these structures and responsibilities.

6. Client evaluation of health and safety performance on previous contracts

While such assessments are by their nature subjective, they allow incorporation of complex factors that may be important in assessing the probability of future health and safety program success. Such assessments may range from comprehensive performance audits to a simple assessment for contracts having a health and safety program that is exemplary, adequate or inadequate. Reviewing past performance, particularly on similar projects, can be a strong indicator of future performance.

Conversely, negative consideration should be given in the awarding of contracts for those prospective contractors with a poor health and safety performance track record, or no record due to lack of experience. Several criteria can be considered in this regard.

1. OSHA Citations

Even responsible companies receive OSHA citations from time to time. However, when considering such performance in the contracting process, the frequency and gravity of such violations should be considered. AIHA feels that contractors and contractor principals who have experienced citations in excess of “serious” (i.e., willful) within the previous five years should not be considered when awarding contracts.

2. Civil/criminal penalties

As with OSHA citations, civil and criminal penalties are strong indicators of a company’s overall commitment to health and safety and even in general, quality and productivity issues. If these penalties have been imposed on a company or its officers in the previous five years, AIHA has reservations concerning the ability of the company to perform work safely, and recommends that if these penalties have been levied, a company should be considered high risk with respect to health and safety and these factors should be weighted accordingly when considering the awarding of contracts.

3. Unfavorable Experience Modification Rating, illness and injury rates, problematic health and safety management systems or unfavorable assessments of health and safety performance on previous contracts.

Those companies who have unfavorable EMR’s and illness and injury rates should be considered high risk with respect to health and safety and these factors should be weighted accordingly when considering the awarding of contracts. This should consider company size, since very small employers may have poor EMRs as a result of a single serious incident. Proposed health and safety management systems should have adequate resources, realistic incentives, and sound reporting structures that demonstrate an understanding of implementing EHS programs in the field.

In summary, AIHA believes that consideration of OH&S performance history in the awarding of contracts not only helps ensure a healthful and safe working environment, but will also promote overall efficiency in the conduct of work. We believe that application of the principles described herein will not only help ensure that awarded work will be performed in a healthful and safe manner, but also in a quality and efficient way.

We believe that these principles should also flow down to second, third, and subsequent tiered subcontractors, temporary employment agencies, and the self-employed to allow effective management of this important effort.

Finally, AIHA believes that the best method of ensuring a healthful and safe working environment begins in the procurement process. By utilizing a process that helps select an organization with demonstrated commitment and success in OHS program, illnesses, injuries, and overall costs are reduced.