

**BEST PRACTICES FOR OPTIMIZING DOD CONTRACTOR SAFETY AND  
OCCUPATIONAL HEALTH PROGRAM PERFORMANCE**

**(Version 1.0)**



**A GUIDE FOR CONTRACTING, LEGAL AND SAFETY AND OCCUPATIONAL  
HEALTH PROFESSIONALS**

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## Preface

Contractor Safety within the Department of Defense (DoD) has become an increasingly important and complex issue. DoD utilizes contractors who are engaged in many different jobs and tasks including high risk operations. Often, contractors work right alongside military and government civilian personnel. Contractor safety and health can have a direct influence on the safety and well-being of installation personnel and the protection of government property. The purpose of this guide is to assist DoD contracting, legal and safety and occupational health professionals in effectively managing contractor safety and occupational health programs to help minimize these risks.

Contractors must comply with applicable Federal, state and local codes and standards, including safety and occupational health requirements. In most cases the enforcement of contractor compliance with Occupational Safety and Health Administration (OSHA) standards is the responsibility of either Federal or State OSHA, however there are three exceptions.

1. Where the DoD has statutory authority for oversight in cases such as the manufacture of ammunition or nuclear propulsion, under Section 4(b)1 of 29 U.S.C.
2. In some cases, the United States, by admiralty law or other law, is responsible for contractor employee injury compensation.
3. DoD oversight occurs when it's determined to be in the best interest of the DoD. DoD oversight has historically contributed to lower mishap rates among construction contractor employees as well as other contractors, on-time delivery of products and services (increased readiness), and ultimate savings to the government.

Since this is a guide, the information is not mandatory; however acquisition personnel, safety professionals and other management officials are encouraged to apply the fundamental concepts to all contracting efforts regardless of the award amount. This guide is intended to provide guidance for integrating safety into the contracting process and should be used in conjunction with related directives, instructions, policy memoranda, or regulations issued to implement mandatory requirements.

Many of the concepts and best practices herein reflect requirements and lessons learned from implementation of OSHA Voluntary Protection Programs (VPP) at DoD installations and commands. DoD Instruction (DoDI) 6055.1 does not apply generally to DoD contractor personnel and contractor operations. Contractors are responsible directly to Federal or State OSHA for the safety and health of contractors' employees. VPP Federal Register Notice of July 24, 2000 states: "Managers must provide visible leadership in implementing the program. This must include ensuring that all workers at the site, including contract workers, are provided equally high quality safety and health protection." The VPP focus on contractor safety is intended to ensure a site does not make its own employees safe by contracting out the hazardous work. Successful DoD implementation of VPP requires finding balance between assuming inappropriate responsibility for the safety of contractor employees and ensuring that contractors implement quality safety programs for their employees and that contractor operations do not place our military and civilian personnel and their dependents at risk. DoD installations have already found that appropriate balance by successfully implementing OSHA's VPP and achieving STAR recognition status.

# Best Practices for Optimizing DoD Contractor Safety and Occupational Health Program Performance

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# **1. CONTRACTOR SAFETY MANAGEMENT PROCESS OVERVIEW**

## **1.1 Introduction**

In accordance with DoDI 6055.1, DoD safety and occupational health (SOH) responsibilities in contractor plants and contractor operations on DoD property are generally limited to helping ensure the safety of government-owned equipment, protection of the production base, protection of government property and on-site DoD personnel from accidental losses, and the protection of the public. Contractors are responsible directly to Federal or State Occupational Safety and Health Administration (OSHA) for the occupational safety and health of their employees and protection of the public at contractor plants and work sites. SOH responsibilities of contractors, contracting officers (COs) and contracting officer representatives (CORs), installation/activity leadership and SOH professionals, as well as, the responsibilities of contract employees and responsibilities at multi-employer work sites are addressed in **Section 2** of this guide.

Clauses outlining contractor SOH requirements and responsibilities must be included in solicitations and contracts as prescribed by the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), and other Agency Federal Acquisition Regulation Supplements. In addition to clauses as required by FAR, DFARS, and Supplements, activities should develop performance work statements and contract instructions and conditions that outline contractor SOH requirements and responsibilities based on a risk assessment of the work to be performed and any activity/command unique requirements. CORs requiring activity, or Defense Contract Management Agency (DCMA), in consultation with installation SOH professionals, should develop additional and necessary clauses to mitigate risk. Note that the only means for imposing SOH performance requirements on a contractor or subcontractor is by incorporating the specific requirement as a contractual requirement (for example, a contract clause, special clause, statement of work, Unified Facilities Guide Specification (UFGS), or contract modification).

Under the Occupational Safety and Health Act of 1970, all employers must comply with OSHA standards and must exercise reasonable diligence to determine whether violations of those standards exist. On multiemployer work sites, more than one employer may be considered responsible for a hazardous condition that violates an OSHA standard.

Contracting officers should consult with SOH professionals to ensure that clauses for safety are included in solicitations and contracts as appropriate and necessary. SOH professionals should assist CORs with monitoring contract SOH compliance.

## **1.2 References**

Applicable references that include requirements, guidance and information dealing with contracts and contractor safety performance are provided in **Appendix A**. This list should not be considered a complete listing of all documents that may apply to DoD contractor SOH practices.

### **1.3 Acronyms and Definitions**

Acronyms used in this guide are identified in **Appendix B**. **Appendix C** provides definitions.

### **1.4 Types of Contracts**

Federal Acquisition Regulation (FAR) Part 16 describes the types of contracts that may be used in acquisitions. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition. **Appendix D** provides a summary of the various types of contracts.

### **1.5 Use of Shall and Should**

Since this is a guide nothing contained herein should be considered mandatory. Typically when shall is used in this document it reflects a direct quote or direct reference to an existing document where the word “shall” is used. The word “should” is used to reflect a recommended practice or suggested method.

### **1.6 Contracting Safety Process**

Figure 1-1 developed by the U.S. Army Contracting Command, depicts the Contracting Safety Process which can be broken down to two major phases; the Pre-Award Phase and the Post-Award Phase. During the pre-award phase acquisition planning and contract formation efforts are undertaken and completed. During the post award phase, a post award conference is convened, contract administration is conducted and post contract evaluation of SOH performance is documented.

During the Pre-Award phase, requirements are developed, solicitations are sought, contractors are selected and contracts are awarded. Key safety related efforts during this phase include consideration of a contractor’s past performance during the contractor selection process, establishment of appropriate safety and health requirements in contract specifications and ensuring the inclusion of applicable safety and health clauses **Sections 3 and 4** of this guide provide recommended best practices for including safety and health in the Contractor Selection and Contract Preparation processes.

During the Post Award Phase contractor orientation is conducted, contracts administered and contract closeout efforts are conducted. Key safety efforts during this phase include contractor orientation and conferences, government receipt and acceptance of contractor prepared safety documents (as specified in the contract) such as Accident Prevention Plan (APP), Activity Hazard Analysis (AHA), Quality Assurance Surveillance Plans (QASP), etc. Contract administration should include routine oversight of contractor operations including safety performance by quality assurance personnel, resolution of hazards associated with contractor operations/workplaces and contract closeout including evaluation of contractor SOH performance and identification of lessons learned. Documentation should be entered into the Contractor Performance Assessment Reporting System ([CPARS](#)). **Sections 5, 6, and 7** of this guide provide recommended best practices for including safety and occupational health in post award contractor orientation and conferences, contract safety administration, and post contract evaluation of safety performance processes.

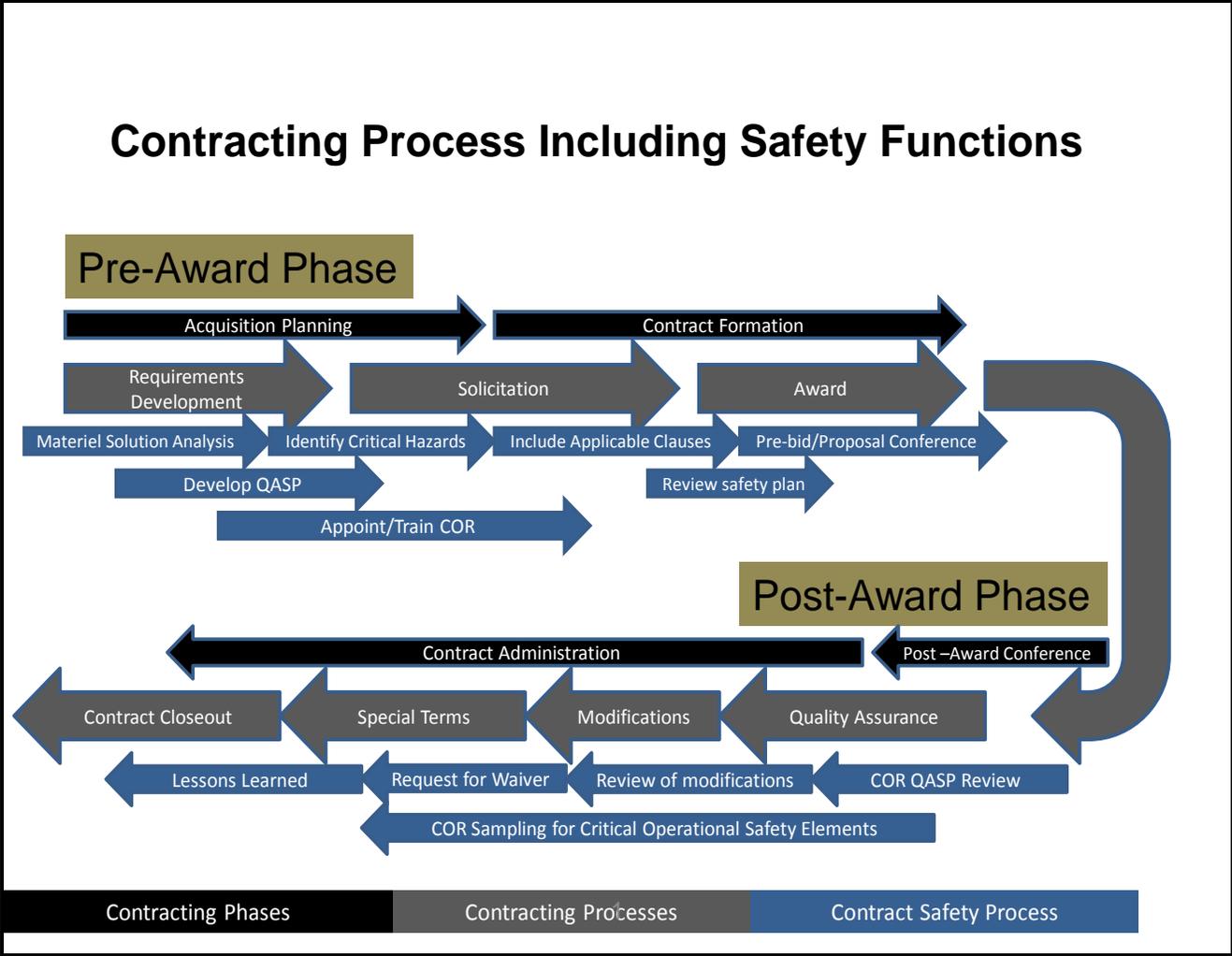


Figure 1. Contracting Process Including Safety Functions

(From: U.S. Army Contracting Command Presentation by Mr. Jerry Waibel)

**1.7 Non-Personal and Personal Service Contracts**

Contracts for services cover a broad range of requirements, including research and development, advisor services, information technology support, medical, and maintenance of equipment and facilities. The [DoD Guidebook for the Acquisition of Services](#), provides acquisition teams with a disciplined, seven step process, for the acquisition of services. A service requirement’s primary purpose is to perform an identifiable task rather than furnish an end item of supply and may be either non-personal or personal on an individual or organizational basis.

**Non-Personal Contracts:** Non-personal service contract means that the personnel rendering the services are not subject; either by the contract’s terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the government and its employees. Non-personal service contracts are authorized in accordance with [FAR 37.102](#),

under general contracting authority, and do not require specific statutory authorization. Non-personal contracts include DoD Electronic Mall (EMALL) and blended environments.

Services Obtained through DoD EMALL: DoD EMALL is a single entry point for DoD and Federal Government customers to find and acquire off-the-shelf items, finished goods and services from the commercial marketplace and government sources via the Web. Through DoD EMALL, buyers can purchase a wide variety of products, from paper and pens to computer parts to vehicular supplies to construction supplies and electrical items. *Certain hazardous material may not be ordered through DoD EMALL.* In addition to products, services are also available including grounds keeping, painting and interior construction and refurbishment. DoD EMALL offers easy and quick online registration. Government Purchase Card holders are able to register and then go right into shopping and ordering.

However, service contract work that involves moderate to high safety hazards/risks should have government oversight. Service contract work that may be inappropriate through DoD EMALL or at a minimum require prior consultation with the installation Safety Office, are described in the following examples:

- Window cleaning at heights above first floor
- Work involving the use of scaffolding
- Housing change of occupancy involving installation of electrical fixtures and circuits
- Any welding and cutting operations
- Any electrical work with the exception of changing light bulbs and equipment that can be unplugged
- Any type of crane and hoisting operations
- Any marine activities to include diving operations
- Any operation above 6 feet that requires the use of fall protection system(s)
- Tree maintenance and removal operations that require the use of aerial lifts or climbing the tree above 6 feet
- Any type of confined space operations
- Radiographic testing or any activity that could generate ionizing radiation
- Exterior painting at heights above first floor
- Any roofing work
- Any demolition work
- Any excavations or other work that requires a dig permit
- Any work that may involve Lead Based Paint or Asbestos Containing Materials
- Any work involving hazardous material use or disposal (to include refrigerants)

Special Considerations for a Blended Workforce: A blended workforce is one in which contractor employees work side-by-side with Federal employees, or as part of a production team performing the same functions that are normally performed by government employees. In these situations it is important to remember that although these employees may look and act like Federal employees, they are not. This means that they should not receive equipment or services from the installation safety office. The contractor is responsible for employee's safety and health and shall comply with OSHA regulations and perform in accordance with an applicable accident prevention program that complies with State and Federal requirements. The contractor should have a safety board posted in a common area that provides points of contact for safety and health

issues as well as Federal posters required by OSHA. Applicable regulations include 29 CFR Part 1910, Occupational Safety and Health Standards, 29 CFR Part 1925, Safety and Health Standards for Federal Service Contracts, and 29 CFR Part 1926 Safety and Health Regulations for Construction. The contractor should assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). The contractor should verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, identifies the document as a certification of hazard assessment.

NAVSEA Undersea Warfare Center, Keyport developed a [Safety Requirements for Contractors and Subcontractors](#) document to ensure the safety of their employees and the public who may be in proximity to renovation, demolition, construction, installation, or maintenance and repair operations conducted by contractors or subcontractors. This document also is intended as a guide for their in-house contractors providing technical and supply support. A copy is made available to prospective bidders/offerors at pre-bid/pre-proposal conferences and is either included with, or referenced in contract documents.

**Personal Service Contract:** A personal service contract (PSC) is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Personal service contracts require specific authorization. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract as indicated in [FAR 37.104](#).

- In a PSC, the contractor is considered to be, and is treated as, an employee of the government. In this type of relationship, a government officer or employee directly supervises and controls the contractor's personnel on a continuing basis.
- Additional factors identified in the FAR to aid in determining if services are personal in nature include:
  - The contractor performs work on site.
  - The government provides principal tools and equipment.
  - The services directly apply to the agency's mission.

The need for the type of service can reasonably be expected to last beyond 1 year. Personal service contracts for health care are authorized by 10 U.S.C. 1091. **Per DFARS 237.104**, this authority may be used to acquire:

- Direct health care services provided in medical treatment facilities;
- Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations);
- Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable

professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

DoDI 6025.5 provides policy, responsibilities, and procedures for implementing the authority for PSCs for health care providers. The existence of an employer-employee relationship created by a PSC can generally result in the treatment of a PSC health care provider similar to a DoD employee for many purposes. (Note: For Navy, enclosure (3) of BUMEDINST 5100.13E provides additional policy guidance for providing occupational health services to PSC workers).

Specific SOH issues that need to be addressed in a PSC, reviewed and approved by legal counsel include the following:

- Mandatory OSHA, DoD, Service and installation/activity SOH training.
- Mishap reporting/recording procedures and medical treatment.
- Personal protective equipment.
- Pre-placement and periodic medical examinations.
- Reporting of unsafe/unhealthful conditions.
- Contractor Hazard/ Risk Analysis and mitigation documents.
- Government notification of known process or other safety hazards presented by installation operations or conditions.
- Consequences of unsafe acts by the PSC employee.

### **1.8 Voluntary Protection Programs (VPP) Requirements for Contractors**

As previously noted, many DoD installations and activities have either achieved OSHA VPP STAR recognition status or are working toward achieving that goal. In addition to ensuring that contractors follow site safety and health rules, VPP participants are expected to encourage their contractors to develop and operate effective safety and health program management systems. [OSHA CSP 03-01-003](#), VPP Policies and Procedures Manual, has specific requirements for oversight of contractors working at VPP sites that include the following:

- Contract workers must be provided with safety and health protection equal in quality to that provided to employees.
- All contractors, whether regularly involved in routine site operations or engaged in temporary projects such as construction or repair, must follow the safety and health rules of the host site.
- VPP participants must have in place a documented oversight and management system covering applicable contractors. This system must:
  - Ensure that safety and health considerations are addressed during the process of selecting contractors and when contractors are onsite.
  - Encourage contractors to develop and operate effective safety and health management systems.
  - Include provisions for timely identification, correction, and tracking of uncontrolled hazards in contractor work areas.
  - Include a provision for removing a contractor or contractor's employees from the site for safety or health violations.

- Injury and Illness Data Requirements
  - Nested contractors (such as contracted maintenance workers) and temporary employees who are supervised by host site management are governed by the site's safety and health management system and are therefore included in the host site's rates.
  - Site management must maintain copies of the Total Case Incidence Rate (TCIR) and recordable nonfatal injuries and illnesses involving Days Away, Restricted Activity, or Job Transfer (DART) rate data for all applicable contractors based on hours worked at the site. (Minimum of 1,000 hrs/qtr-General Industry).
  - Sites must report all applicable contractors' TCIR and DART rate data to OSHA annually.

## 1.9 Rising Legal Issues and Cost Control

The chief legal issue regarding contractor safety is how to accommodate our mission where “total workforce safety” is the new emphasis (see, *e.g.*, SECNAV “Objective 4” for FY 2008 and Beyond). Further, where DoD has an OSHA-approved VPP workplace, DoD must provide evidence of continuous improvement of the total workforce’s “progressive safety culture” to maintain its VPP status.

Another rising issue is Contract requests for price adjustments based on OSHA changes to applicable safety standards is another concern. Further, in a cost contract, do we know how safety compliance costs are being managed? Probably not, unless a contractor safety plan has been provided to DoD from the contractor and we use it to at least spot check the contractor’s safety program.

Because of the legal and safety compliance cost control concerns, lawyers also are needed to advise on the development and application of contract tools from acquisition planning, through source selection and contract administration, to past performance. (Note: This is in addition to the lawyer responsibilities identified in section 2.5 advising specifically on DoD’s duty of care.) For example, see NAVFACINST 5100.11J and U.S. Army Regulation 385-10 which address safety during the acquisition process, including:

- System design, development and production
- Acquisition planning
- Source Selection
- Contractor safety brief
- DoD & contractor safety responsibilities
- Contract clauses
- Past performance

**Note: Key Legal References (in addition to Appendix A) include:**

*Scindia Steam Navigation Co. v. Santos*, U.S. Supreme Court (1981) (on a vessel owner’s duty of care to a contractor, a duty which extends also to the Commander of a military installation)

*Secretary of Labor v. Summit Contractors, Inc.*, OSHRC Docket No. 03-1622 (2007); and, *Solis v. Summit Contractors, Inc.*, No. 07-2191, 8th Cir. (Feb. 26, 2009) (upholding OSHA's Multi-Employer Citation Policy in OSHA Compliance Directive 2-0.124).

Federal Acquisition Regulation, including but not limited to:

- FAR 7.105(b)(19) & 7.103(f) (safety is an integral part of acquisition planning)
- FAR 9.104-1(e) (contractor minimum qualifications include a safety program applicable to the materials to be produced or services to be performed)
- FAR 52.223-3, Hazardous Material Identification and Material Safety Data
- FAR 52.223-7, Notice of Radioactive Materials
- FAR 52.223-11, Ozone Depleting Substances
- FAR 52.223-12, Refrigeration Equipment and Air Conditioners
- FAR 52.223-18, Encouraging Contractor Policies to Ban Text/Messaging While Driving
- FAR 52.236-13, Accident Prevention
- DFARS 252.246-7003, Notification of Potential Safety Issues

Military Service Safety Program Instructions and Regulations which address contractor safety oversight to varying degrees from the viewpoint of mission, and as an authority are not directly binding on the DoD acquisition community; but, where they address contractor safety, these issuances identify what your customers are held responsible and accountable to accomplish via the acquisition process and awarded contract.

### **1.10 Federal Acquisition Regulation (FAR)**

The FAR is the primary regulation used by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

The FAR System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The FAR System consists of the FAR, which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance. The FAR, supplemental agency regulations, tools, and other information are available at the FAR Site: <http://farsite.hill.af.mil/farsite.html>.

A matrix of solicitation provisions and contract clauses that are either required; required when applicable; or optional; by principle type and/or purpose of contract is provided in FAR 52.301.

## **2. SAFETY AND OCCUPATIONAL HEALTH (SOH) RESPONSIBILITIES**

This section identifies **general** SOH responsibilities for contractor personnel, contracting officers, contracting officer representatives, installation leadership and SOH personnel. Determination of site **specific** responsibilities should be made in consultation with the contracting officer and appropriate legal counsel.

### **2.1 Contractor Responsibilities**

The contractor's SOH responsibility is to:

- Ensure the SOH of contractor's employees.
- Ensure compliance with all applicable Federal, state and local codes and standards, including SOH standards, as well as any additional specific requirements invoked by contract. Contractors are responsible directly to OSHA or appropriate state office where OSHA has approved a state plan.
- Protect the public within the contract work area and protect government property.
- Investigate all mishaps (including near miss) and provide report to the COR.

Prime contractors are responsible for ensuring that subcontractors comply with SOH requirements and are informed of known SOH hazards, precautions and procedures.

### **2.2 Contracting Officer (CO)/Contracting Officer's Representative (COR) Responsibilities**

The COs and CORs have SOH responsibilities to:

- Ensure the government planner includes a safety representative on the team of all those who will be responsible for significant aspects of the acquisition, and addresses safety in any written acquisition plan. (See FAR 7.104 & 7.105)
- In a pre-award, determine if the contractor is qualified from a safety perspective. This is done by assessing if the contractor has the necessary organization, experience, operational controls and technical skills, or the ability to obtain them, including, as appropriate, safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors. (See FAR 9.104-1(e)).
- Provide administrative oversight and specifically ensure contractor compliance with SOH provisions identified in the contract and contractor's APP.
- Ensure contractors are informed of any SOH hazards caused by DoD operations or processes in areas where contractors will be working.
- Inform contractors of site-specific rules and regulations such as parking restrictions, work hours, identification (ID) requirements, and radio restrictions.
- When required in the contract, ensure documents such as the contractor's accident prevention plan, activity hazard analysis, etc. are submitted, reviewed and accepted by the government prior to the start of work. (The government "accepts" but does not

“approve” the contractor’s plans and analyses in order to leave the primary responsibility for contractor employee SOH with the contractor.)

Whenever the contracting officer becomes aware of any noncompliance with contract SOH requirements or any condition that poses a serious or imminent danger to the health or safety of the public or government personnel, the contracting officer should:

- Notify the contractor orally.
- Follow-up with written confirmation.
- Request immediate initiation of corrective action.
- Take additional appropriate action if the contractor fails or refuses to take prompt corrective action including issuing an order stopping all or part of the work until satisfactory corrective action has been taken. In cases of continued non-compliance the contracting officer should consider recommending removal of the contractor from the installation and termination of the contract for cause.

Note: FAR 1.602 & FAR 1.604 identify contracting authority and responsibilities for contracting officers and CORs.

Note: A checklist of Contracting Officer responsibilities is included as **Appendix E**.

### **2.3 Installation or Activity Safety and Occupational Health (SOH) Personnel Responsibilities**

The Installation or Activity SOH personnel (including safety office staff such as the safety manager, safety specialists and industrial hygienists) have SOH responsibilities to:

- Serve as a technical advisor and provide professional SOH support to the contracting officer for the protection of DoD military and civilian personnel and property.
- Assist in identifying specific SOH requirements to be included in contracts; participate in pre-performance or pre-construction conferences; participate in review of safety and health issues/concerns with the contracting officer regarding all contractors working on the facility. Review and provide comments to the contracting officer on specific submittals, such as a Site Safety Plan, Accident Prevention Plan, Activity Hazard Analyses, Fire and Flooding Protection Plan, Asbestos Removal Plan, etc.

It is essential that SOH professionals not assume a regulatory role relative to oversight of the contractor safety activities and performance. With the exception of an imminent danger situation, any observed safety deficiencies with a contractor must be identified to the contracting officer or COR for resolution with the contractor.

### **2.4 Installation or Activity Leadership Responsibilities**

The Installation or Activity Leadership have SOH responsibilities to:

- Ensure contractors are informed of any SOH hazards caused by installation operations or processes conducted in their work area. Just as installation employees need to know of any hazards in their workplace, so do contractor employees. That doesn't mean installations will train contractor employees but it does mean they will provide contractor employees with information on any known potential hazards in areas on the installation where contractors will be working. This could include placing posters in the workplace, pre-work meetings, or written notices.
- Ensure contractor tasks are reviewed for timely identification, correction and tracking of uncontrolled hazards.
- Ensure facility coordination and information for contractor's on emergency procedures regarding severe injuries, fire response, chemical spills, severe weather conditions etc. are provided.
- Ensure processes for removing contractors from the installation for continuous or serious violations of safety and health standards are established and implemented.

## 2.5 Legal Counsel Responsibilities

The lawyer's role is to proactively tackle the complicated issues presented by contractor safety oversight on a case-by-case basis, and develop contractual tools with the local acquisition community so, ultimately, contractor safety oversight may be accomplished as an accepted practice with minimal attorney oversight.

The Secretary of Defense grants affirmative authority to oversee the safety of contractor employees when appropriate to support readiness and save costs, and not merely to protect DoD personnel and equipment, in DoD Instruction 6055.1 (1998). The lawyer's primary value to contractor safety oversight is to ensure that an unauthorized and unwanted DoD-employee relationship is not created in violation of Federal procurement and personnel law. In addition, lawyers advise how, under the contract, DoD can discharge its duty of reasonable care for contractor employee acts and omissions. DoD's duty arises under OSHA's Multi-Employer Citation Policy, and in tort and admiralty law, as discussed in Section 2.6.

Lawyers need to work with the acquisition community to identify DoD's duty of care and contractual methods of discharging it for the following three different contractor employee types:

- **Embedded contractors** and "touch labor," where the possibility of an illegal **personal services** contract is the greatest, and DoD is the most cognizant of the safety risks the contractor employee will encounter.
- **Side by Side contractors with different Safety Standards.** Contractor employees with whom government employees and personnel work side-by-side to different safety standards, and the DoD again is in the best position to know how performance of the diverse tasks may affect the workplace safety risk analysis (because DoD scheduled all the work), but the contractor is in the best position to know how to address the safety risks presented by the task it contracted to perform.

- **Separate Space contractors.** Contractor employees who work in a space separate from government employees and personnel, where the contractor can control the safety risks in its own workspace and DoD is no longer in a position of being better informed.

Lawyers, in their advice on how DoD can discharge its duty of care to any the three types of contractor employee, must employ tools in the solicitation or contract while abiding by these precepts:

- DoD may provide contractor safety oversight for purposes of readiness and ultimate savings to DoD even though DoD Service safety programs do not apply to contractors except where specifically incorporated into the contract and where DoD has statutory authority to regulate safety, *i.e.*, explosives and naval reactors. *See* 50 U.S.C. 2406, Deputy Administrator for Naval Reactors (regarding DoN authority over matters of nuclear safety); and, Section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1): "Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies...exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health;" and, DoD's authority over matters of explosives safety in 10 U.S.C. section 172 dates from 1928).
- DoD has no general duty, by way of inspection or supervision, to discover dangerous conditions which exist initially in a workspace or develop within the confines of operations DoD assigned to the contractor.
- But DoD must warn a contractor of a hidden danger of which the DoD knows or should have known.
- And, DoD must act if it knows of an equipment defect or another safety risk, and knows the contractor continues to use the equipment or otherwise impose an unreasonable risk of harm to its employee.
- Also, DoD may have a continuing duty to inspect the workplace and contractor operations based on statute, regulation, contract or custom.

## 2.6 Multi-Employer Worksite Responsibilities

Under Federal/State worker safety and occupational health laws, every employer is charged with providing employees with a safe and healthful workplace. On multi-employer worksites, more than one employer may be considered responsible for a hazardous condition that violates an OSHA standard.

If there is a violation of OSHA standards, OSHA will look first to the employer responsible for creating the violation. However, in instances where multiple employers are sharing a workspace, OSHA multi-employer citation policy may apply ([OSHA CPL 02-00-124](#)).

Additionally, an employer determined to control the worksite and the safety practices of other employers may also be held accountable for those hazards. With the continued increase of functions performed by contractors at DoD shore facilities and onboard vessels, the potential implications are significant. DoD activities must have a clear understanding of who has responsibility, by contract, agreement or practice for the safety and health of all contractor employees. This determination should only be made in consultation with the contracting officer and appropriate legal counsel.

Prime contractors are responsible for ensuring subcontractors comply with SOH requirements. It is imperative that prime contractors take appropriate action to manage subcontractor risks from the outset and ensure that the companies who will provide services pursuant to a contractual agreement are aware of applicable Federal/state safety agency compliance obligations, have employees who are trained and supervisors who are competent, and that demonstrate a commitment to safety and health through appropriate safety and health management programs. Failure to forge a safety partnership prior to initiation of work, and a lack of clear role delineation and legal responsibilities and status can mean disaster for the prime contractor, complicate worker's compensation and insurance claims, and even result in criminal prosecution.

## **2.7 Contractor Employees Responsibilities**

The contractor employees have SOH responsibilities to:

- Comply with applicable SOH requirements.
- Wear prescribed personal protective equipment.
- Report any unsafe or unhealthful conditions/activities.
- Prevent avoidable mishaps and work in a safe manner.
- Report all mishaps (including near miss).

### **3. CONTRACTOR SELECTION**

#### **3.1 Key Elements and Desired Outcomes**

Responsible contractor selection entails including and evaluating SOH criteria in contract acquisition, and requirements documents. These criteria could include key OSHA and industry safety metrics such as Experience Modification Rate's (EMR's), injury rates, and safety management programs. In addition, OSHA citation history should be evaluated as well as safety recognition awards received. Through careful evaluation of these criteria, contractors compatible with the government client's operating safety principles can be identified.

Prospective contractors and subcontractors should have safety programs applicable to materials to be produced or services to be performed. Participation in the OSHA Voluntary Protection Programs (VPP) should be encouraged. Desired Outcomes are an evaluation process that encompasses safety. Participants in the contractor selection process should include acquisition and contracts personnel, project managers, and safety professionals.

#### **3.2 Process**

Guidance provided in this section is intended to improve the contractor selection process by ensuring contractors that practice safety leadership and risk management as an integral part of their day to day operations are selected for contract award. History indicates that strong safety programs also have a positive influence on quality. The safety criteria described below should be considered for inclusion in solicitations to help ensure that only contractors with proven acceptable safety performance are awarded contracts. These criteria are primarily applicable to Request for Proposal (RFPs). They may also form a part of the responsibility determination under an Invitation for Bid (IFB).

#### **3.3 Safety Criteria for Contract Solicitations and Requirements Documents**

This section provides suggested information to be incorporated into applicable contract solicitations and requirements documents. Contracting officers may modify these provisions when warranted by the specific circumstances of individual solicitations but should consult with SOH professionals to ensure adequate provisions relating to safety and health are retained. **Appendix F** provides a sample Basis of Evaluation and Solicitation Submission Requirements.

Safety and Occupational Health Evaluation. In evaluating proposals for contracts, the government should consider the SOH capabilities and past performance of the offerors and their proposed major subcontractors as they relate to the probability of performing the solicitation requirements safely and in conformance to applicable safety and health requirements and regulations. In conducting its evaluation, the government may use information provided by the offeror and information obtained from other sources such as (but not necessarily limited to) the DoD Contractor Performance Assessment and Reporting System ([CPARS](#)), and may elect to consider information from any source it considers current and accurate. The information obtained from offerors or other sources will be used to evaluate the relative qualifications/risks of the offerors, and will not be used to automatically exclude any offeror from selection for this or any future procurement.

Items to be Submitted. Contract Solicitations and Requirements Documents should require offerors to provide demonstration of their safety and health program capabilities and experience. The following are examples of documents that could be used to demonstrate safety and health program capabilities and experience:

- The Total Case Incidence Rate(s) (TCIR) and the Days Away, Restricted, and Transfer Rate(s) (DART) for the offeror and each proposed major subcontractor. These rates shall be provided for each of the three most recently completed calendar years. At the offeror's discretion, submissions may include additional information explaining any circumstances that may have affected the submitted rates and/or their associated three year trends. The following methods shall be used to calculate the TCIR and DART:
  - Both the TCIR and DART are derived from the number of recordable illnesses and injuries, as defined by [29 CFR Part 1904](#) that occurred during each year in question.
  - To calculate the calendar year TCIR, determine the total number of all recordable injuries and illnesses that occurred during the year in question, divide that total by the total number of hours worked by all employees during that year, and multiply the result by 200,000.
  - To calculate the calendar year DART, determine the total number of recordable injuries and illnesses resulting in days away from work, restricted work activity, and/or job transfer that occurred during the year in question, divide that total by the total number of hours worked by all employees during that year, and multiply the result by 200,000. Note that the DART rate is calculated using the number of recordable injuries/illnesses that occurred, and not the number of workdays lost/impacted due to injuries/illnesses. For DART calculation purposes, an injury resulting in two lost workdays is the same as an injury resulting in 10 lost workdays.
- Experience Modification Rate (EMR) or equivalent for overseas/foreign contracts for the past five years. Insurance companies establish an EMR for companies based upon past corporate history. The better the safety record for the company the lower the rate. Each company when initially established begins with a rate of 1.0. As experience is obtained, the carrier either increases the rate above 1.0 for poor performance or lowers the rate below 1.0 for good performance. A good performer pays a reduced insurance rate.
- A description of all Federal, state, or municipal OSHA notices of noncompliance or citations issued to the offeror or any proposed major subcontractor within the last five years. For each notice/citation provide: date of citation; issuing agency; standard cited by the issuing agency; level of violation assigned by the issuing agency (e.g., de minimus, serious, egregious); date(s) and brief description(s) of the event(s) that resulted in issuance of the notice/citation; brief description of actions taken to correct the problem(s)/violation(s) noted by the issuing agency; current status of the notice/citation with the issuing agency (open, closed, contested, etc.); for closed notices/citations, date closed by the issuing agency; for open notices/citations, the offeror's estimated date of closure by the issuing agency.

- A narrative description of the key hazards and SOH compliance requirements perceived by the offeror to be applicable to the work described in the solicitation.
- A narrative description of the SOH capabilities and processes of the offeror and major subcontractors that will detect, prevent, and control hazards, and ensure compliance with applicable SOH requirements, during the performance of the work described in the solicitation. This may include safety and health management systems, planning methods, work area oversight and inspection, hazard reporting and correction systems, use of specialized equipment, involvement of qualified/certified SOH specialists, training of managers, supervisors, and employees, and/or other information deemed pertinent by the offeror.
- Any further evidence the offeror may wish to provide to indicate the capability of the offeror and/or any major subcontractor to successfully manage the SOH aspects of the work described in the solicitation. This may include descriptions of safety and health performance for similar prior work, comments provided by past customers, formal recognition of SOH programs/performance by competent authorities, and/or other information deemed pertinent by the offeror.

### **3.4 Evaluation of Safety Criteria**

Solicitations must also identify how the information provided will be evaluated. Below are suggested methodologies to consider.

- Evaluation Criteria for TCIR and DART Rates. The TCIR and DART rates can be compared to the most recently published Bureau of Labor Statistics (BLS) national average for the Standard Industrial Classification code (SIC) or North American Industrial Classification Systems (NAICS) code for the applicable industry, as identified in the solicitation. Where feasible, consider including these rates as a stand-alone source selection factor or as an element of the past performance evaluation assessment. If the TCIR and DART rates are critical to the mission, consider developing a sub factor under mission capability.
- Evaluation of Experience Modification Rate (EMR) or equivalent for overseas/foreign contracts for the past five years. In general, a prime contractor with a rate of:
  - .7 is considered superior;
  - While one with a rate of .7 to 1.0 is considered acceptable;
  - A company with a rate greater than 1.0 should be considered sub-standard
- Evaluation of OSHA Citation history. Listed Federal and State OSHA citations received for the offeror's firm and its team for the past five years can be verified by referring to the OSHA establishment search to verify issued citations at <http://osha.gov/pls/imis/establishment.html> The search feature provides an explanation of the results of OSHA inspections. Inspections often result in sizable fines for safety deficiencies observed by OSHA compliance officers. Searched data indicates the type of violation. Violations that are listed as serious or willful should be treated with greater weight during the evaluation process.

- Consider safety awards/recognition received from customers or professional organizations during the past three years.

### 3.5 OSHA Voluntary Protection Programs ([VPP](#))

Created in 1982, OSHA's Voluntary Protection Programs recognizes and partners with businesses and worksites that show excellence in safety and occupational health. VPP sites are committed to effective employee protection beyond the requirements of OSHA standards. VPP participants develop and implement systems to effectively identify, evaluate, prevent and control occupational hazards to prevent employee injuries and illnesses. As a result, the average VPP participant has a lost workday incidence rate of at least 50 percent below the average of its industry. DoD has strongly encouraged and supported DoD installations and activities to participate in OSHA VPP and many DoD installations have obtained OSHA's VPP [STAR](#) recognition status.

### 3.6 Contracts not involving Request for Proposals (RFPs) or Invitation for Bids (IFBs)

Consider utilizing a short questionnaire incorporating the following for evaluating and scoring of Contractor Safety Management Systems:

- Company utilizes a documented **safety management system** and periodically reviews both the system and components with senior management. Company has a formal documented **safety training program**.
- Company has a documented set of **safety rules** and policies (e.g., safety manual).
- Company holds **site safety meetings** on a regular basis.
- Company utilizes **hazard identification and control processes** (e.g., Job Hazard Analysis ([JHA](#))) to identify task specific hazards.
- Company management periodically performs **site assessments** (e.g., walkthroughs and inspections) are performed and stewarded with management.
- Company considers Safety performance in selection of subcontractors.
- Company utilizes hazard and near miss **reporting** processes.
- Company's Statistical Performance (Total for 3 years).
  - Total number of fatalities (0 scores 2; >0 scores 0)
  - Days Away, Restricted or Transferred (DART) Rate DART < 3, scores 1; DART > 3, scores 0)
- Company's cultures.
  - Traditional (not caring, no goals associated with safety or mishap prevention),
  - Emerging (caring, industry standards, programs approach),
  - Progressive (safety valued and is way of life, proactive, integrated systems approach)

### 3.7 Determining if Prospective Contractors are Responsible

[FAR Subpart 9.1](#) prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible. In short, having a safety program applicable to the materials to be produced or services to be performed by the prospective contractor and subcontractors is a general standard for contractor qualifications.

FAR 9.104-1(e) states: “Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors. (See [9.104-3](#) (a).)”

#### 4. CONTRACT PREPARATION

##### 4.1 Key Elements and Desired Outcomes

During contract preparation, develop contract packages that use specific customized language to clarify the government’s safety expectations and how contract safety requirements will be enforced. Participants in this process should include legal, contract specialists and SOH professionals. One tool for this is Desired Outcomes. Desired outcomes are bid documents and RFPs that effectively communicate SOH expectations through key contract elements, such as those summarized in the table below. Additional Safety Consideration and detailed discussion for each contract type follows.

Contract Type	Contract Type Subgroup	SOH Key Contract Element/Language Requirement
Construction/Demolition	Fixed Price Construction	<a href="#">52.236-13</a> , “Accident Prevention”
	Demolition, Repair, or Renovation	<a href="#">UFGS 01 35 26</a> “Governmental Safety Requirements”
	Small Construction, Repair, or Maintenance	<a href="#">UFGS 01 45 00.10 20</a> “Quality Control for Minor Construction”
	Preconstruction Conference Clause	<a href="#">52.236-26</a> , “Preconstruction Conference”
High Hazard Work	High hazard work such as roofing, scaffolding, high voltage electrical, confined space, etc.	<a href="#">52.236-13</a> , “Accident Prevention”
Hazardous Materials	NA	<a href="#">52.223-3</a> , “Hazardous Material Identification and Material Safety Data”

Facility Services	NA	QASPs as outlined in FAR Subpart 46.4 <a href="#">Part 1925.1(a)</a> stipulation
	U.S. Air Force Service and Commercial Contracts	<a href="#">AFFARS Clause 5352.223-9001</a>
	U.S. Army Service Contracts	QASP required for all service contracts greater than \$2500
Weight Handling Equipment (Navy Only)	NA	Paragraphs 1.7.2 and 1.7.2.1 of <a href="#">NAVFAC P-307</a>
Contracts covered by the Construction Safety Act	Contracts covered by Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), deal with Federally-funded projects.	A condition of each contract for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

#### 4.2 DoD, U.S. Air Force, U.S. Army, U.S. Navy, and Installation Instructions for Specific clause inclusion

As a general rule, DoD, Service and Installation SOH directives, instructions, and regulations should not be referenced as a requirement for contractors unless the contractor is hired to perform SOH services for DoD employees. Applicable specific sections of these Service instructions may be appropriate but blanket reference for contractors to comply with a Service or Installation safety program regulation/instruction is not. Specific FAR clauses are listed in the following sections by contract type.

### 4.3 Construction/Demolition

For some types of construction/demolition contracts, the FAR requires that specific language be included in the solicitation. These contract types and required clauses are outlined below.

- *Fixed-price Construction Contract:* [FAR 36.513](#) states that: “The contracting officer shall insert the clause at [52.236-13](#), “Accident Prevention”, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount exceeds the simplified acquisition threshold. The clause should be inserted in construction contracts or dismantling, demolition, removal or improvements contracts under the simplified acquisition threshold. If the contract involves work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.”
- *Demolition, Repair or Renovation:* Contracts for demolition, repair or renovation should incorporate Unified Facilities Guide Specification [UFGS 01 35 26](#) “Governmental Safety Requirements”, which covers SOH requirements for the protection of contractor and government personnel, property and resources. This guide specification is intended for use in contracts that specify the FAR clause 52.236-13, and/or its Alternate I, to include contracts for construction, dismantling, renovation and demolition; dredging; environmental restoration (investigation, design, remediation); asbestos abatement or lead hazard control; projects in the continental U.S. and overseas. The requirements of this guide specification supplement U.S. Army Corps of Engineers (USACE) Safety and Health Requirements Manual, EM 385-1-1, and clarify safety concerns for high-risk construction activities.
- *Small Construction Projects and Repair or Maintenance Work:* [UFGS 01 45 00.10 20](#) “Quality Control for Minor Construction”, covers the requirements for quality control for small construction projects and repair or maintenance work. It may also be used for minor elements or small quantities of work in larger projects at the discretion of the government.
- *Preconstruction Conference Clause:* If the contracting officer determines it may be desirable to hold a preconstruction conference, [FAR 36.522](#) states “the contracting officer shall insert a clause substantially the same as the clause at [52.236-26](#), “Preconstruction Conference”, in solicitations and fixed price contracts for construction or for dismantling, demolition or removal of improvements.”

### 4.4 High Hazard Work

The FAR clause 52.236-13, “Accident Prevention”, should be considered for use in contract documents involving high hazard work such as roofing, scaffolding, high voltage electrical, confined space, etc. By adding this requirement, contractors would be required to implement EM-385-1-1, provide an [Accident Prevention Plan](#) and develop an [Activity Hazard Analysis](#) for each phase of work prior to the start of work.

**Note:** For high hazard operations, the requirement for the contractor to utilize the services of a Certified Safety Professional or Certified Industrial Hygienist should also be considered.

## 4.5 Hazardous Materials

FAR Subpart 23.3 states: “Hazardous Material Identification and Material Safety Data, prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives that require the furnishing of data involving hazardous materials.”

FAR 23.303 states:“(a) The contracting officer shall insert the clause at [52.223-3](#), “Hazardous Material Identification and Material Safety Data”, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in [23.301](#).”

## 4.6 Facility Services

DoD activities that write or contract for facility services such as base services, recurring maintenance of real property, operation of government-owned facilities, etc. should consider incorporating [FAR clause 52.236-13](#), “Accident Prevention” as appropriate.

For installations and commands involved in the VPP, **Appendix G-1** of this document provides an example of VPP requirements for service contracts previously used by a U.S. Navy Installation. In addition, **Appendix G-2** provides a sample U.S. Navy announcement addressing installation VPP requirements.

### Quality Assurance Surveillance Plans (QASP) for Service Contracts

QASPs may be helpful for Facility Service contracts. [FAR 37.604](#) states: “Requirements for quality assurance and quality assurance surveillance plans are in FAR Subpart **46.4**. The government may either prepare the quality assurance surveillance plan or require the offerors to submit a proposed quality assurance surveillance plan for the government’s consideration in development of the government’s plan.” For U.S. Navy facility service contracts that are awarded as Base Operating Support (BOS) Contracts, roles and responsibilities for QASPs are provided in **Appendix G-3**.

### Base Operating Support (BOS) Contracts

BOS Contractors must ensure that BOS services and products delivered meet contract requirements. BOS Contractors develop and implement a quality management program to evaluate and document that the performance objectives and standards are achieved in accordance with the BOS Contract Statement of Work specifications and Indefinite Delivery-Indefinite Quantity (IDIQ) task orders above and beyond BOS Contract firm fixed price portions. The BOS Contractor must also provide a Quality Assurance Management Plan that incorporates both Quality Control and Quality Assurance (QC/QA) elements. BOS Contractor quality management responsibilities include:

- Periodic monitoring of IDIQ work tasks to provide required workplace SOH and QC/QA inspections (e.g., internal processes, materials, employee skills and equipment);
- A process for investigation and correction action when needed; and
- A process for responding to government complaints and communicating actions taken.

Service Contracts may also be subject to the Service Contract Act of 1965. FAR 52.222-41 states:

- Para (a) *Definitions*. As used in this clause—  
“Contractor,” when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”  
“Service employee” means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.
- Para (b) *Applicability*. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by [41 U.S.C. 356](#), as interpreted in Subpart C of 29 CFR Part 4.
- Para (h) *Safe and sanitary working conditions*. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under Title 29 CFR Part 1925.

Title [29 Code of Federal Regulations \(CFR\) Part 1925](#) provides Safety and Health Standards for Federal Service Contracts,

- [Part 1925.1\(a\)](#) states: “The McNamara-O’Hara Service Contract Act of 1965 (79 Stat. 1034, 41 U.S.C. 351, et seq.) requires that every contract entered into by the United States or the District of Columbia in excess of \$2,500 (except as provided in section 7 of the Act), the principal purpose of which is to furnish services in the United States through the use of service employees, must contain, among other provisions, a stipulation that “no part of the services covered by this Act will be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services.” This Part 1925 expresses certain minimum safety and health standards which will be applied in the administration and enforcement of the Act to determine whether services covered by the Act are being, or have been, performed in compliance with its safety and health requirements.”

#### **4.7 U.S. Air Force Service and Commercial Contracts**

The contracting officer shall use the [AFFARS Clause 5352.223-9001](#) in all service contracts for applicable contracts and in all commercial contracts where the clause is consistent with customary commercial practices. For contracts where it is determined the clause is not consistent with commercial practices, the contracting officer shall work with the multi-functional team to ensure adequate health and safety requirements are identified in the Performance Work Statement (PWS). The contractor shall:

- Comply with the specific health and safety requirements identified in this PWS, as well as OSHA;
- Comply with the health and safety rules of the government installation that concern related activities not directly addressed in this PWS;
- Take all reasonable steps and precautions to prevent accidents and preserve the health and safety of contractor and government personnel performing or in any way coming in contact with the performance of this requirement;
- Take additional immediate precautions identified by the commanding officer for health and safety purposes.

The commanding officer may, by written order, direct Air Force Occupational Safety and Health (AFOSH) standards and/or health safety standards as may be required in the performance of the resulting contract and any adjustments resulting from such direction will be in accordance with [FAR Clause 52.212-4\(c\)](#), Contract Terms and Conditions – Commercial Items.

Violations of these health and safety rules and requirements are to be promptly corrected as directed by the commanding officer. Failure to correct the violation(s) will be grounds for termination of the contract in accordance with [FAR Clause 52.212-4\(m\)](#), Contract Terms and Conditions – Commercial Items.

For service, supply, and research and development (R&D) contracts involving limited scope such as mowing, park attendant, rest room cleaning, etc. the contracting officer may permit the contractor to submit an abbreviated accident prevention plan (APP). [Appendix A of EM 385-1-1](#), para 11, provides an abbreviated APP for limited scope service, supply, and R&D contracts. This abbreviated APP must address all 16 items or state why a specific item is not applicable. (Note: If other areas of the EM 385-1-1 are pertinent to the contract, the contractor must assure these areas are addressed as well.).

#### **4.8 U.S. Army Service Contracts**

Office of the Assistant Secretary of the Army Memo of February 9, 2007 requires the contracting officer to appoint trained Contracting Officer Representatives (CORs) prior to contract performance begins and ensure that a Government Quality Assurance Surveillance Plan (QASP) is prepared and implemented in service contracts greater than \$2500.

A sample QASP is provided in **Appendix G-4**. Government QASPs help to ensure the government receives the acceptable quality level of services and that systematic quality assurance methods are used during contract administration. The level of surveillance described

in the plan should be commensurate with the dollar value, risk, complexity and criticality of the acquisition. SOH professionals should:

- Participate in the preparation of QASPs to identify and incorporate any applicable specific safety requirements and performance metrics.
- Ensure that CORs are provided any appropriate safety training specific to the services contract they will be providing surveillance.

#### **4.9 Weight Handling Equipment (WHE)**

For U.S. Navy (**only**) weight handling equipment, the requirements of paragraphs 1.7.2 and 1.7.2.1 of [NAVFAC P-307](#) for contractor cranes (and multi-purpose machines, material handling equipment, construction equipment used to lift loads suspended by rigging gear) are required to be incorporated into contracts and complied with for operation, maintenance, certification and accident reporting including where the use of WHE is generally incidental to construction contracts, ship repair contracts, maintenance and other service contracts, deliveries of supplies and equipment, etc.

#### **4.10 Contracts covered by the Construction Safety Act**

Contracts covered by Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), deal with Federally-funded projects. This section requires as a condition of each contract for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

#### **4.11 Additional Safety Considerations in Contract Solicitations and Requirements Documents**

**Appendix G-5** provides suggested language for contracting officers that should be incorporated into appropriate contract solicitations and requirements documents. (Note: Appropriate is intended to mean contracts of longer duration, work involving greater hazards, etc.). For short term contracts involving lower risk of hazards, one or more of the following requirements should be considered.

- All contractors are responsible for complying with applicable Federal or State OSHA standards. If compliance with specific installation safety and health requirements is essential or desired then the specific requirement should be incorporated into the contract and not referred to.
- The contractor shall establish a system to identify, correct and document unsafe conditions and acts related to their contract work.
- The contractor shall establish a system to report unsafe or hazardous conditions caused by elements out of their control (for example, public or DoD personnel adjacent process or work activity and so forth) to the contracting officer or COR.

- The contractor shall establish a system to investigate and report all mishaps, injuries and illnesses occurring on the project. The contractor shall immediately notify the contracting officer of any work related accident/occurrence that involves, or appears that it may involve, fatality, total or partial permanent disability of any employee, inpatient hospitalization of any employee, or property damage over \$2,000, regardless of whether such matters involve government or private personnel/property.
- The contractor shall develop a written site-specific plan for implementing OSHA standards and any contract SOH requirements and submit the plan to the contracting officer for acceptance prior to start of work. Safety and health plans should include:
  - An **activity hazard analysis** of the significant hazards to life, limb, and property inherent in the specific contract work performance and a plan for controlling these hazards.
  - Designation of the **contractor quality control qualified personnel** primarily responsible for safety and health at the project site. **Appendix G-6** provides suggested safety qualifications for contractor site personnel.
  - A description of how the contractor **quality control safety duties** will be performed on the project. At a minimum, these duties will consist of:
    - A **pre-work review** of appropriate activity hazard analysis, to be reviewed with each worker.
    - Regular **safety training** for the workforce.
    - Frequent and **regular checks for compliance** with contract safety requirements by contractor and subcontractor workforce.
    - **Daily records** providing factual evidence of quality control activities for safety performance and state the following: items/areas checked the results, and any instructions or corrective actions.
    - Specific elements of an **audit program** by the prime contractor should include onsite inspection of subcontractors, method of determining mishap rates, and traceability of hazards.

**Note:** SOH issues should be considered during all phases of a facility’s life cycle (planning, design, construction, operations and maintenance, renovation, and final disposal). During development of contract solicitations, project teams should engage in work process analysis and hazard recognition to develop solutions that provide safe environments and have no undue physical stressors, while meeting other project requirements. Included in the [Whole Building Design Guide](#) (WBDG) are best practices and recommendations to consider for ensuring occupant SOH such as: providing designs that eliminate hazards; preventing occupational illnesses; preventing falls from heights; ensuring electrical safety; providing ergonomic workplaces; etc.

#### **4.12 Safety of Facilities for OCONUS Military Operations**

[DFARS 246.270](#) establishes policies and procedures intended to ensure the safety and habitability of facilities, infrastructure, and equipment acquired for use by DoD military and civilian personnel during military operations performed outside the United States, Guam, Puerto Rico, and the Virgin Islands.

DFARS 246.270-2 requires that contracts (including task and delivery orders) for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings acquired for use by DoD military or civilian personnel, shall require a pre-occupancy safety and habitability inspection. In addition, to minimize safety and health risks, each contract covered by this policy shall require the contractor's compliance with the Unified Facilities Criteria ([UFC](#)) [1-200-01](#) for:

- Fire protection
- Structural integrity
- Electrical systems
- Plumbing
- Water treatment
- Waste disposal
- Telecommunications networks.

Existing host nation facilities constructed to standards equivalent to or more stringent than UFC 1-200-01 are acceptable upon a written determination of the acceptability of the standards by the Discipline Working Group.

Inspections to ensure compliance with UFC 1-200-01 standards shall be conducted in accordance with the inspection clause of the contract.

The DFARS clause at 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, must be used in solicitations and contracts for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

## **5. POST AWARD SAFETY ORIENTATION AND CONFERENCES**

### **5.1 Key Elements and Desired Outcomes**

Key elements for post award safety orientation and conferences are to assure that all work done in the prior steps culminates effectively at this point. Contractors must be made aware of any specific site/installation safety hazards, policies and procedures applicable to them. The goal for this phase is for contract workers to embrace the “safety culture” of site/project and thoroughly comprehend any specific safety requirements. The process should assure that the right people from the installation as well as the contractor participate in post award conferences and pre-work meetings. Desired outcomes include knowledge, understanding, and commitment to safety requirements by contract workers and accountability on site.

### **5.2 Contractor Orientation**

FAR 42.500 prescribes policies and procedures for the post award orientation of contractors and subcontractors that may be conducted through a conference, letter or other form of written communication. Post award orientation aids both government and contractor personnel to:

- Achieve a clear and mutual understanding of all contract requirements, and
- Identify and resolve potential problems. However, it is not a substitute for the contractor’s full understanding the work requirements at the time offers are submitted, nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.

Installation or Activity leadership and employee involvement comes into play when introducing contractors to the installation workplace. Just as installation employees need to know of any hazards in their workplace, so do contractor employees. That doesn’t mean leadership should train contractor employees but it does mean contractors should be provided with information on any potential hazards in the area they will be working. Installations often do a good job in providing contractors with material safety data sheets (MSDSs) or industrial hygiene surveys but sometimes fall short in providing them with emergency procedures for fire, injury, evacuation, etc. VPP Star sites often provide a handout to visitors, contractors and vendors when they arrive at the badging office or security gate.

[EM 385-1-1 para.01.B.03](#) states that “Indoctrination and training should be based upon the existing safety and health program of the contractor or government agency, as applicable, and shall include but not be limited to:

- Requirements and responsibilities for accident prevention and the maintenance of safe and healthful work environments;
- General safety and health policies and procedures and pertinent provisions of this manual;
- Employee and supervisor responsibilities for reporting all accidents;
- Provisions for medical facilities and emergency response and procedures for obtaining medical treatment or emergency assistance;
- Procedures for reporting and correcting unsafe conditions or practices;

- Job hazards and the means to control/eliminate those hazards, including applicable Position Hazard Analysis and/or Activity Hazard Analysis (PHAs and/or AHAs);
- Specific training as required by this manual, EM 385 1-1.

VPP sites or installations must ensure that contractors working at their sites are made aware of the following:

- The specific hazards of the worksite they may encounter.
- How to recognize hazardous conditions and signs/symptoms of workplace-related illnesses and injuries and reporting procedures.
- Hazard controls and safe work procedures including methods for establishing electrically safe working conditions.
- Emergency procedures.
- Installation safety and health goals/objectives and the policies and procedures that indicate how to accomplish them.
- VPP (Contractor employees must be able to demonstrate an understanding of and be able to describe the fundamental principles of VPP including their rights under the OSH Act.)
- Hazard controls,

### **5.3 Pre Work Meeting**

Prior to beginning on a contract, the contractor shall meet with representatives of the contracting officer and installation safety officer/office to discuss and develop a mutual understanding about the administration of the overall safety program.

The meeting should be attended by the contracting officer and/or COR and the contractor's authorized representative and should, to the extent possible, include the following:

- Contractor project superintendents
- Supervisors
- Quality control
- Safety
- Subcontractors
- Contracting officer's QA representatives/safety
- Other personnel involved in contractor oversight or interaction
- Outside organizations that may interact with or be affected by the contractor's work such as fire/emergency personnel, security, and adjacent facility/process managers.

### **5.4 Safety and Health Plan**

Contracting officers should ensure that the provisions outlined in **Appendix G-5** are incorporated into all appropriate contract solicitations and requirements documents. When required by contract, the contractor shall submit a safety and health plan for the work to be performed not less than 15 days prior to commencement of physical on-site work at the government installation/facility. The government will review the contractor's proposed safety

and health plan, and the contractor shall promptly resolve any comments arising from government review. Qualified SOH personnel should be invited by the contracting officer to participate in the government review of the contractor's proposed safety and health plan. Upon the contracting officer's determination that the government's comments (if any) have been satisfactorily resolved, the government will accept the safety and health plan in writing, and the accepted safety and health plan will be considered part of the contract. Unless accepted in writing by the contracting officer, the contractor shall not commence physical on-site work at the government installation/facility.

## **6. CONTRACT SAFETY ADMINISTRATION**

### **6.1 Key Elements and Desired Outcomes**

Key elements for contract safety administration are to ensure that audits are directed at injury prevention and contract compliance rather than “policing”. Monthly self-assessments by the contractor should be incorporated as part of the payment process with scoring mechanisms driving continuous improvement and avoidance of common errors. An effective contractor safety deficiency tracking system with corrective actions should be established. For higher risk tasks, pre-task safety planning (i.e. Activity Hazard Analysis (AHA)) should be required and appropriate controls established. All mishaps (including near miss) should be required to be investigated by the contractor and reported to the government. Desired outcomes include reduction of unsafe acts, conditions and injuries.

### **6.2 Hazard Analyses**

Hazard analyses are used to identify and analyze hazards and develop hazard control measures. Hazard analyses are a basic safety and occupational health risk management tool and should be required in contract solicitations and requirements documents. A hazard analysis should:

- Be performed by the contractor for all major definable phases of work.
- Identify all hazards associated with the work progress through the phase and describe how those hazards will be controlled.
- Be performed by someone knowledgeable of the phase of the work such as the foreman or seasoned journeyman skilled labor.
- Be reviewed and signed off by a competent person (when required by OSHA) or a SOH professional.
- Be the basis for preoperational briefings by supervisors to workers so that everyone understands the hazards involved and necessary controls.
- Be a regular subject during periodic safety meetings.

Contractor required AHAs are addressed in EM 385-1-1, paragraph 01.A.13 for each work activity involving a type of work presenting hazards not experienced in previous project operations or where a new work crew or subcontractor is to perform the work. *Competent and Qualified Personnel* are to be specifically identified. Sample [AHA forms](#) (fillable pdf format) are available on the USACE HQ Safety and Occupational Health web site.

### **6.3 Routine Contract Safety Surveillance**

Frequent and regular internal job site inspections conducted by the contractor should include a focus on identifying and removing hazards. Whenever possible the inspection should serve as the basis for identifying where hazards have developed or are likely to develop. These inspections should result in the elimination of hazards or if that is not possible to determine the best means of mitigating the hazard through work procedures, personal protective equipment (PPE), or other safety equipment. Workers should be observed to determine if they are using

required safety equipment and that the safety equipment meets OSHA standards. Additional training should be provided to the workers as required to eliminate deficiencies found during the site inspections.

Inspection results should be documented and these reports should be required to be retained by the contractor and available for review by the government as required.

During site visits by the government, the contractor's compliance with the safety plan, regulatory safety requirements, and accepted practices should be observed. Safety violations should be documented and provided to the contracting officer for transmittal to the contractor who will be required to take corrective action. Depending upon the severity of the findings, follow-up inspections to determine that specific deficiencies have been corrected may be required.

Regular quality assurance inspections by the COR should include review of the findings to verify that they have been corrected, or are progressing on schedule. If it is determined that the contractor is not delivering the level of safety that is required by the contract, the contracting officer will take necessary actions to improve contractor performance. Contracting officer actions include use of all disincentives normally used for nonperformance in other contract areas should be considered for unresolved safety program deficiencies.

#### **6.4 Mishap Investigation and Reporting**

Contract solicitations and requirements documents should require the contractor to immediately notify the contracting officer of any work related mishap that involves, or appears that it may involve a fatality, total or partial permanent disability of any employee, inpatient hospitalization of any employee, or property damage over \$2,000, regardless of whether such matters involve government or private personnel/property.

- The contractor should also notify the contracting officer of any illness or injury that is, or appears that it may be, an OSHA recordable illness/injury as defined by 29 CFR 1904 as soon as reasonably possible, but not later than on the first business day following the day on which the illness/injury occurred, regardless of whether such matters involve government or non-government personnel.
- The contracting officer should notify the contracting element safety office of reported contractor mishaps normally within 24 hours of occurrence.
- Contracting element safety offices should provide reports of contractor mishaps to their Service Safety Center via their chain of command. (in the Army only the Corps of Engineers and the Army Contracting Command have contracting officers so all mishaps are reported through them),
- Contractors should be required to investigate all mishaps, illnesses, and injuries, report the results of such investigations, and cooperate with any government investigation of such matters, as requested by the contracting officer.

#### **6.5 Inspections by Federal or State OSHA Officials**

Per DoDI 6055.1, (E5.1.2. of Enclosure 5), DoD contractors operating from DoD or privately owned facilities, located on or off DoD installations, are "employers" as defined in Section 651

et seq. of title 29, United States Code (1985 & Supplement), and are subject to enforcement authority by Federal and State safety and health officials as stated in the following:

- Federal and State OSHA officials must be granted access to DoD contractor workplaces on DoD installations without delay and at reasonable times,
- Section 651 et seq. of title 29, United States Code does not authorize the Secretary of Labor to assert authority over working conditions for which another Federal Agency or any State agency acting under 42 U.S.C. exercises statutory authority to prescribe or enforce standards or regulations affecting OSH.
- Pursuant to 33 U.S.C. 941, when contractor work is performed aboard vessels in dry-docks or afloat within Federal maritime jurisdiction, Federal OSHA standards apply and inspections and investigations shall be performed by Federal OSHA officials.

DoD contractors have the following responsibilities following inspections by Federal or State OSHA officials:

- Immediately notify the contracting officer of any Federal or State OSHA inspection of contractor or subcontractor workplaces or operations at the DoD installation/facility, and provide the contracting officer an opportunity to accompany the contractor during the inspection. OSHA inspections shall not be delayed due to non-availability of the contracting officer.
- Responding to any citations issued by Federal or State OSHA officials for violations of applicable standards. (E5.1.3. of Enclosure 5)
- Referring full information regarding citations issued to DoD contractors for violations of Federal or State OSHA standards involving DoD-furnished equipment, facilities, or other property to the responsible contracting officer for appropriate action. (E5.1.4. of Enclosure 5)
- Providing the contracting officer with a copy of any citations/reports issued by the inspector and any corrective action responses to the citation(s)/report(s).

Additional guidance and procedures may be found in DoDI 6055.1, Enclosure 5.

## **6.6 Host Nation Inspections of OCONUS Contracts**

Host nation (HN) officials must be granted access to DoD contractor workplaces on DoD installations without delay and at reasonable times. DoD contractors have the responsibility of responding to any citations issued by HN officials for violations of applicable standards. Full information regarding citations issued to DoD contractors for violations of HN requirements involving government-furnished equipment, facilities, or other property should be referred to all appropriate personnel, to include the contracting officer or COR, for appropriate action.

## **6.7 Other Records and Reports**

In addition to any other records and reports required by the contract, the contractor shall maintain records of all illnesses and injuries experienced by contractor and subcontractor employees in the

course of performing work at a government installation/facility under the contract. At a minimum this includes maintaining an up-to-date OSHA Form 300 or equivalent log in accordance with 29 CFR Part 1904. The contractor shall also maintain records of all on-duty paid hours worked at a government installation/facility by employees of the contractor and each subcontractor. The contractor should provide a monthly report to the contracting officer including a copy of the updated OSHA Form 300 or equivalent log and the total hours worked at the government installation/facility by contractor and subcontractor employees. This monthly report should only include injuries, illnesses, and work hours for work under the contract that is performed at the government installation/facility. Illnesses, injuries and work hours occurring at other locations must not be included. Where the contract requires work at more than one government installation/facility, the monthly report should be broken down by location as requested by the contracting officer and be submitted to the contracting officer not later than the 15th of each month. Each report shall be updated to reflect total illnesses, injuries, and work hours for the current calendar year to date, through the end of the preceding month.

## **6.8 Hazard Identification and Correction**

In addition to any other requirements of the contract, when requested by the contracting officer the contractor shall investigate any safety and health matter connected with the performance of work under the contract. Matters for which investigations may be requested include, but are not limited to, significant failures to control hazardous conditions, significant compliance failures, significant unfavorable mishap or compliance trends, etc. When an investigation is requested, the contractor shall complete the investigation and provide a report of investigation findings, actions planned/taken resolve the problem and/or improve future performance, and target/actual dates for action completion. Reports should be provided to the contracting officer within 15 days of the request to investigate, except when an extension is granted in writing by the contracting officer.

## **6.9 Imminent Danger**

Government personnel must avoid taking actions which would put them, or appear to put them, in direct control of a worksite owned or controlled solely by a contractor. Except in cases of imminent danger, any observed contractor violations of SOH standards, noncompliance with the safety plan; regulatory safety requirements; and accepted practices; must be reported to the contracting officer or COR for resolution with the contractor. However, in imminent danger situations, necessary corrective action should be taken immediately to eliminate the danger or hazard and then the appropriate personnel should be notified.

## **6.10 Contractor Noncompliance**

Violations of contract health and safety rules and requirements must be promptly corrected as directed by the contracting officer. Failure to correct the violation(s) can be grounds for termination of the contract in accordance with FAR Clause 52.212-4(m), Contract Terms and Conditions – Commercial Items.”

Construction and architect-engineer contracts and other contracts that include the FAR Clause 52.236-13:

- Para (d) requires; “Whenever the contracting officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or government personnel, the contracting officer shall notify the contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the contractor or the contractor’s representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.”
- Para (e) requires; “The contractor shall insert this clause, including this paragraph (e) with appropriate changes in the designation of the parties, in subcontracts.”

Failure to correct the violation(s) will be grounds for termination of the contract in accordance with FAR Clause 52.212-4(m), Contract Terms and Conditions – Commercial Items.”

## 7. POST CONTRACT EVALUATION OF SAFETY PERFORMANCE

### 7.1 Key Elements and Objectives

Key elements for post contract evaluation of safety performance are to ensure that evaluations of contractor performance also include an accurate assessment of the contractor's safety performance and that the process identifies poor performers and rewards contributors through awards and recognition.

Documentation of contractor and grantee performance information is required by Federal Regulations. Primary objectives are to support Best Value selection decisions, provide awards to proven performers (FAR 15 & 36), provide up-to-date documentation of contractor's ability to meet requirements (FAR42), motivate improved performance and facilitate government contractor communication. Desired outcomes include improved future contractor performance and improved DoD contracting process.

### 7.2 Contractor Performance Assessment Reporting System (CPARS)

DoD contracting officers should ensure that appropriate information concerning safety and health aspects of contractor performance is documented, retained, and available for consideration in future contractor selection decisions. The DoD Contractor Performance Assessment Reporting System (CPARS) can be used for this purpose where appropriate. The requiring activity must complete a CPAR for all contracts meeting the reporting thresholds cited in Table 1 of the [CPARS Policy Guide](#). The Assessing Official (AO) may elect to complete CPARS below the thresholds in Table 1. Frequency and types of CPARS reports including interim, annual interim and final are discussed in detail in the CPARS Policy Guide.

Web-enabled applications hosted on the CPARS web site used to document contractor performance information that is required by Federal Regulations include:

- **Architect-Engineer Contract Administration Support Systems ([ACASS](#)):** Used to document contractor performance on Architect-Engineer Contracts.
- **Construction Contractor Appraisal Support System ([CCASS](#)):** Used to document contractor performance on Construction contracts.
- **Contractor Performance Assessment Reporting System ([CPARS](#)):** Used to document contractor performance on systems and non-systems contracts including Services, Information Technology, Operations Support, Systems, Ship Repair & Overhaul.
- **Federal Awardee Performance and Integrity Information System ([FAPIIS](#)):** Used to collect contractor and grantee performance information including Terminations for Cause or Default, Defective Cost and Pricing Data, Determinations of Non-Responsibility, Terminations for Material Failure to Comply (grants) and Recipient Not Qualified Determinations (grants).

CPARS has connectivity with the Federal Past Performance Information Retrieval System (PPIRS). PPIRS is the system used to collect and retrieve performance assessment reports from

Federal agencies for use in source selection determinations. Completed CPARS report cards are transferred to PPIRS and are available for source selection purposes. Source selection officials should visit the [PPIRS](#) website for additional information.

### 7.3 Certificate of Service

A *Certificate of Service* at <https://www.cpars.csd.disa.mil/cparsfiles/pdfs/cosformat.pdf> is provided as a SAMPLE only incorporating narrative monthly reporting on performance and acceptance of services (for DD250 purposes). The sample certificate should be tailored as appropriate. **NOTE:** The Certificate of Service is issued to accomplish the following:

- Satisfy Federal requirements to maintain documentation of contractor performance compared to contract requirements.
- To satisfy Quality Assurance Evaluator contractor performance reporting requirements.
- Provide a monthly assessment of contract performance which can be compiled as necessary to satisfy Award Fee Board, when applicable, and Past Performance Information Program reporting requirements

Below are excerpts from Section I of the Certificate which provides a “Rating of each Evaluation Area and Significant Items Related to Performance”:

- “Quality of Product or Service. Assess the contractor’s conformance to contract requirements, specifications and standards of good workmanship (e.g., specified technical, professional, environmental, or **safety and health standards**). List and assess any sub-elements to indicate different efforts where appropriate. For example: Are reports/data accurate? Does the service provided meet the specifications of the contract? Does the contractor’s work measure up to commonly accepted technical or professional standards? Assess the degree of government direction required to solve problems that arise during performance.”
- “For contractor performance rating purposes, the following rating criteria will be used “Exceptional”, “Very Good”, “Satisfactory”, “Marginal”, or “Unsatisfactory”. Definitions are provided below. A SOW reference and examples of performance must be included for any evaluation area rated other than satisfactory. This information simplifies the verification process for reviewers and when necessary, hastens corrective action by the contractor. When determining ratings take into consideration all sources of contract performance indicators, e.g., Inspector General reports, results of contractor self inspections, **safety inspections**, MQAE Audit reports, DCMA Property Audits, etc. This section may also include comments regarding contract performance issues beyond the control of the contractor, comments regarding progress, and other performance related comments.”
- **Exceptional.** Performance meets contractual requirements and exceeds many to the government’s benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor were highly effective.

- **Very Good.** Performance meets contractual requirements and exceeds some to the government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor were effective.
- **Satisfactory.** Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.
- **Marginal.** Performance does not meet some contractual requirements. The contractual performance of the evaluation area being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.
- **Unsatisfactory.** Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the evaluation area being assessed contains serious problem(s) for which the contractor's corrective actions appear or were ineffective.

#### **7.4 Frequently Asked Questions**

**Appendix H** provides answers to a number of frequently asked questions.

#### **7.5 Case Studies**

**Appendix I & J** provide case studies that illustrate poor contractor safety performance and how application of the principles in this guide can improve safety performance, save lives, money and avoid negative press.

## Appendix A: Applicable References

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8. [DoD Instruction 6050.05](http://www.dtic.mil/whs/directives/corres/pdf/605005p.pdf), “DoD Hazard Communication (HAZCOM) Program”, August 15, 2006, Certified Current as of May 15, 2011  
<http://www.dtic.mil/whs/directives/corres/pdf/605005p.pdf>
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## Appendix B: Acronyms

<b>Activity Hazard Analysis</b>	<b>AHA</b>
<b>Accident Prevention Plan</b>	<b>APP</b>
<b>Architect-Engineer Contract Administration Support Systems</b>	<b>ACASS</b>
<b>Army Federal Acquisition Regulation Supplement</b>	<b>AFARS</b>
<b>Air Force Federal Acquisition Regulation Supplement</b>	<b>AFFARS</b>
<b>Air Force Occupational Safety and Health</b>	<b>AFOSH</b>
<b>Assessing Official</b>	<b>AO</b>
<b>Base Operating Support</b>	<b>BOS</b>
<b>Bureau of Labor Statistics</b>	<b>BLS</b>
<b>Code of Federal Regulation</b>	<b>CFR</b>
<b>Construction Contractor Appraisal Support System</b>	<b>CCASS</b>
<b>Contracting Officer</b>	<b>CO</b>
<b>Contracting Officer Representative</b>	<b>COR</b>
<b>Contractor Performance Assessment Reporting System</b>	<b>CPARS</b>
<b>Days Away, Restricted, and/or Transfer Case Incident Rate</b>	<b>DART</b>
<b>Defense Contract Management Agency</b>	<b>DCMA</b>
<b>Department of Defense</b>	<b>DoD</b>
<b>Department of Defense Instruction</b>	<b>DoDI</b>
<b>Department of Defense Federal Acquisition Regulation Supplement</b>	<b>DFARS</b>
<b>Experience Modification Rate</b>	<b>EMR</b>
<b>Federal Acquisition Regulation</b>	<b>FAR</b>
<b>Federal Awardee Performance &amp; Integrity Information System</b>	<b>FAPIIS</b>

<b>Health Care Provider</b>	<b>HCP</b>
<b>Host Nation</b>	<b>HN</b>
<b>Invitation for Bid</b>	<b>IFB</b>
<b>Job Hazard Analysis</b>	<b>JHA</b>
<b>Material Safety Data Sheet</b>	<b>MSDS</b>
<b>Navy Marine Corps Acquisition Regulation Supplement</b>	<b>NMCARS</b>
<b>North American Industrial Classification Systems</b>	<b>NAICS</b>
<b>Occupational Safety and Health Administration</b>	<b>OSHA</b>
<b>Past Performance Information Retrieval System</b>	<b>PPIRS</b>
<b>Performance Work Statement</b>	<b>PWS</b>
<b>Personal Protective Equipment</b>	<b>PPE</b>
<b>Personal Service Contract</b>	<b>PSC</b>
<b>Position Hazard Analysis</b>	<b>PHA</b>
<b>Quality Assurance Surveillance Plan</b>	<b>QASP</b>
<b>Request for Proposal</b>	<b>RFP</b>
<b>Safety and Occupational Health</b>	<b>SOH</b>
<b>Standard Industrial Classification</b>	<b>SIC</b>
<b>Total Case Incidence Rate</b>	<b>TCIR</b>
<b>United States Army Corps of Engineers</b>	<b>USACE</b>
<b>Unified Facilities Guide Specifications</b>	<b>UFGS</b>
<b>Voluntary Protection Programs</b>	<b>VPP</b>
<b>Weight Handling Equipment</b>	<b>WHE</b>
<b>Whole Building Design Guide</b>	<b>WBDG</b>

## Appendix C: Definitions

**Army Federal Acquisition Regulation Supplement (AFARS)**- The Army Federal Acquisition Regulation Supplement implements and supplements the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and the DFARS Procedures, Guidance and Information (PGI) to establish uniform policies for Army acquisition. It does not restrict the exercise of good business judgment or stifle innovation.

**Air Force Federal Acquisition Regulation Supplement (AFFARS)** -The Air Force Federal Acquisition Regulation Supplement establishes uniform policies and procedures for the Air Force implementing and supplementing the Federal Acquisition Regulation (FAR), the Department of Defense FAR Supplement (DFARS), and other Department of Defense publications concerning contracting.

**Assessing Official (AO)**-Assessing Official may be a Program Manager (PM), or the equivalent individual responsible for program, project, or task/job/delivery order execution. It may also mean the Performance Evaluator, Quality Assurance Evaluator, Requirements Indicator, or Contracting Officer's Representative (COR). AOs have responsibility for completing quality CPARs in a timely manner.

**Contracting Officer (CO)**-Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. COs may bind the government only to the extent of the authority delegated to them. COs shall receive from the appointing authority (see [1.603-1](#)) clear instructions in writing regarding the limits of their authority.

**Contracting Officer Representative (COR)**-Individuals designated and authorized in writing by the Contracting Officer to perform specific technical or administrative functions. They serve as on-site technical managers assessing contractor performance against contract performance standards. Personnel in this area have many titles, such as quality assurance personnel (QAP), quality assurance evaluators (QAE), Quality Assurance Specialist (QAS), Functional Area Evaluators (FAEs) (A&AS) and Contracting Officer Technical Representative (COTR).

**Contractor Employee**-An employee of a contractor performing work at a contractor workplace under a DoD contract. Note: For purposes of this guide, normally applies only to a contractor whose employees worked at least 1,000 hours at the site in any calendar quarter within the last 12 months and is NOT directly supervised by DoD.

**Contractor Workplace**-Any place on a DoD installation, located within the United States, its territories, or possessions, where work currently is being, recently has been, or is scheduled to be performed by contractor employees under a DoD contract, including a reasonable access route to and from the workplace. The term contractor workplace does not include any area structure, machine, apparatus, device, equipment, or material therein, with which a contractor employee is not required or reasonably expected to have contact nor does it include any working condition for which OSHA jurisdiction has been preempted under section 4(b)(1) of the [OSH Act](#).

**Controlling employer**-An employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice. Descriptions and examples of different kinds of controlling employers are given in [CPL \(OSHA Compliance Directive\) 02-00-124 \(1999\)](#). The controlling employer is responsible, by contract or through actual practice, for safety and health conditions on the worksite; this may be the employer who has the authority for ensuring that the hazardous condition is corrected. OSHA Field Inspection Reference Manual (FIRM) para. 6.

**Correcting employer**-An employer who is engaged in a common undertaking, on the same worksite, as the exposing employer and is responsible for correcting a hazard. This usually occurs where an employer is given the responsibility of installing and/or maintaining particular safety/health equipment or devices.

**Creating employer**-An employer that caused the hazardous condition that violates an OSH Standard. You are citable if you created a hazardous condition even if none of the employees exposed to the hazard do work for you.

**Days Away, Restricted, and or Transfer Case Incident Rate (DART)**-The number of recordable injuries and illness cases per 100 full-time employees resulting in days away from work, restricted work activity, and/or job transfer that a site has experienced in a given time frame.

**Department of Defense Federal Acquisition Regulation Supplement (DFARS)**-DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense. The DFARS contains (i) Requirements of law; (ii) DoD-wide policies; (iii) Delegations of FAR authorities; (iv) Deviations from FAR requirements; and (v) Policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors.

**DoD Contractor**-A non-Federal employer engaged in performance of a DoD contract, whether as prime contractor or subcontractor.

**Exposing employer**-An employer whose own employees are exposed to the hazard. This employer is citable if it knew of the hazard, or made no reasonable steps to discover the hazard to its employee. You may not have the authority to correct a hazard, but you are citable if you did not ask the creating or controlling employer to correct or if you did not inform your employees of the hazard.

**Federal Acquisition Regulation (FAR)**-The Federal Acquisition Regulation is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies of the United States government. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR.

**Health Care Provider (HCP)**-Health services personnel who participate in clinical patient care. That does not include personnel whose duties are primarily administrative, clerical, or personnel who provide maintenance or security services.

**Imminent Danger**-Conditions or practices in any workplace or operational area that pose a danger that reasonably could be expected to cause death or permanent total disability, significant mission degradation, system loss, or major property damages before such danger could be eliminated through normal procedures.

**Multi-employer Worksite**-OSHA's multi-employer citation policy is published in ([OSHA Instruction CPL 2.103](#)). On multi-employer worksites more than one employer may be citable for a hazardous condition that violates an OSHA standard. OSHA uses a two-step process in determining whether more than one employer is to be cited. The first step is to determine whether the employer is a creating, exposing, correcting, or controlling employer. If an employer falls into one of these categories, it has obligations with respect to OSHA requirements. Step Two is to determine if the employer's actions were sufficient to meet those obligations. The extent of the actions required of employers varies based on which category applies. Note that the extent of the measures that a controlling employer must take to satisfy its duty to exercise reasonable care to prevent and detect violations is less than what is required of an employer with respect to protecting its own employees.

**Navy Marine Corps Acquisition Regulation Supplement ([NMCARS](#))**-Establishes uniform Department of the Navy (DON) policies and procedures implementing and supplementing the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS).

**Near Miss**-Any near miss involving an industrial work process where activities avoid a fatality or catastrophic loss merely by chance.

**Occupational Safety and Health Administration ([OSHA](#))**-the Occupational Safety and Health Administration is an agency of the United States Department of Labor.

**Offer**-means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (simplified acquisition) are "quotations," not offers. ([FAR Subpart 2.1](#))

**Offeror**- means offeror or bidder.

**Personal Services Contract (PSC)**- A contract that, by its expressed terms or as administered, makes the contractor personnel appear, in effect, to be government employees.

**Personal Service Contractor**-A personal service contractor is a non-government employee whose work is subject to relatively continuous supervision and control of a government officer or employee.

**Performance Work Statement (PWS)**-A performance-based description of the user's technical, functional, and performance requirements. It addresses the quality of work in terms of desired outcome and accurately reflects the actual Government requirement, including performance standards. It sometimes is referred to as a statement of work or SOW.

**Quality Assurance Surveillance Plan (QASP)**-A plan for measuring contractor performance to ensure that the U.S. Government receives the quality of services called for under the contract and pays only for the acceptable level of services received.

**Total Case Incidence Rate (TCIR)**-Total number of recordable injuries and illness cases per 100 full-time employees that a site has experienced in a given time frame.

**Unified Facilities Guide Specifications (UFGS)**-UFGS are a joint effort of U.S. Army Corps of Engineers, Naval Facilities Engineering Command, U.S. Air Force Civil Engineer Support Agency, U.S. Air Force Center for Engineering and the Environment and the National Aeronautics and Space Administration. UFGS are for use in specifying construction for the military services.

**Voluntary Protection Programs (VPP)**-The VPP promotes effective worksite-based safety and health. In the VPP, management, labor, and OSHA establish cooperative relationships at workplaces that have implemented a comprehensive safety and health management system. Approval into VPP is OSHA's official recognition of the outstanding efforts of employers and employees who have achieved exemplary occupational safety and health.

**Whole Building Design Guide (WBDG)**- The WBDG is a web-based portal providing government and industry practitioners with one-stop access to up-to-date information on a wide range of building-related guidance, criteria and technology from a 'whole buildings' perspective. Currently organized into three major categories—Design Guidance, Project Management and Operations & Maintenance—at the heart of the WBDG are Resource Pages, reductive summaries on particular topics.

## Appendix D: FAR Part 16—Types of Contracts

COST RISK AND CONTRACT TYPE						
<b>Cost Risk</b>	<b>HIGH</b>		<b>LOW</b>			
<b>Requirements Definition</b>	<b>Poorly-defined</b>		<b>Well-defined</b>			
<b>Production Stages</b>	Concept Studies & Basic Research	Exploratory Development	Text/ Demonstration	Full-scale Development	Full Production	Follow-on Production
<b>Contract Types</b>	Varied types of cost-reimbursement contracts	CPFF	CPIF or FPIF	CPIF, FPIF, or FFP	FFP, FPIF, or FPEPA	FFP, FPIF, or FPEPA

<b>When...</b>	<b>Select a...</b>
The offeror can accurately estimate cost.	<b>Firm-Fixed-Price Contract</b>
Economic conditions that will likely affect cost significantly are outside of the offeror's control, but otherwise the offeror can accurately estimate cost.	<b>Firm-Price Economic Price Adjustment Contract</b>
There are substantial cost uncertainties, but it should be possible to reasonably estimate maximum cost and effective contractor management should be able to assure that final costs will not exceed the estimated maximum cost.	<b>Firm-Price- Incentive Firm Contract</b>
The cost uncertainties are so great that any fixed-price contract would force the contractor to accept an unreasonable risk, but you can negotiate reasonable targets and formulas for sharing costs.	<b>Cost-Plus-Incentive-Fee Contract</b>
The contract level of effort is uncertain and it is NOT feasible or effective to negotiate an adjustment formula but the likelihood of meeting objectives can be enhanced by a	<b>Cost-Plus-Award-Fee Contract</b>

clear subjective fee plan.	
Cost uncertainty is so great that establishment of predetermined targets and incentive sharing arrangements could result in a final fee out of line with the actual work.	<b>Cost-Plus-Fixed-Fee Contract</b>
<b>Fixed Price FAR Subpart 16.2</b>	
<b>Firm Fixed-price</b>	A Firm Fixed-Price contract has a price that does not change based on costs of performance. It puts the least cost risk on the government. This contract type is most commonly used for acquisitions under the SAT and is required for commercial item buys.
<b>Fixed-price with Economic Price Adjustment</b>	This contract operates like a firm fixed-price contract except that certain prices may be adjusted based on economic conditions. You must keep in mind that the adjustments must be based on specific indexes or terms set forth in advance. Also, note that increases are limited. After the maximum increase, the contractor is responsible for any further increase. Decreases, however, are not limited.
<b>Fixed-price Incentive (Firm Target or Successive Target)</b>	This contract type attempts to shift some of the risk of cost overruns to the contractor and provide incentives to the contractor for saving costs. A target price, cost and profit are established. A share ratio is agreed upon to share in the savings or overrun as appropriate. Then a formula is utilized to apply the ratio based on actual costs. Incentives can also be based on performance parameters as well as costs, but cost must be an incentive. There are two types of Fixed-Price Incentive (FPI) contracts, Fixed-Price Incentive, Firm Target (FPIF), and Fixed-Price Incentive, Successive Targets (FPIS), with FPIS being used when there is greater cost risk.
<b>Fixed-price Award Fee</b>	The Fixed-price Award Fee contract is considered an incentive contract. Award fees are based on subjective evaluation criteria, while incentives are based on objective evaluation criteria.

<p><b>Fixed-price Prospective Price Redetermination</b></p>	<p>This type of contract is intended for use when the immediate future is predictable, but the distant future is very unpredictable. The parties can agree to set a fixed-price for a set period of time, and then renegotiate the price for additional performance later when more information is available. This is only used if one of the types of fixed-price contracts previously mentioned will not fit your contracting situation.</p>
<p><b>Fixed Ceiling Price with Retroactive Price Redetermination</b></p>	<p>In this type of contract, the parties agree that they will establish a ceiling price that cannot be exceeded, and that the actual price cannot be determined before performance is completed. This type like the one above is for very specific situations. There are restrictive limitations to prevent its misuse.</p>
<p><b>Firm Fixed-price Level-of-Effort Term</b></p>	<p>With a level of effort contract, the exact product or service cannot be determined. The government wants the contractor to provide experts to work on a project for a set number of hours. The contractor is paid a fixed-price for the effort that is provided by its employees. It requires special approval if it is to be used above the level of the SAT.</p>
<p><b>Cost Reimbursement Contracts FAR Subpart 16.3</b></p>	
<p><b>Cost</b></p>	<p>A cost reimbursement contract does not have fees. For example, the government may contract with universities or other organizations that are non-profit. Many of these organizations cannot accept a fee.</p>
<p><b>Cost-sharing</b></p>	<p>The cost-sharing contract is when the government and the contractor share in the costs. The government reimburses the contractor for only a portion of the costs expended and the contractor receives no fee. Sometimes, especially in research and development, there are commercial applications that benefit the contractor doing the work. In such cases, contractors are willing to assist in paying for the work because of the benefits they receive.</p>
<p><b>Cost-plus-incentive-fee</b></p>	<p>This contract operates similarly to the Fixed-price Incentive contracts. Incentives can be for cost or performance. There is a share ratio so that the contractor and government share in cost savings and in cost overruns. The incentive fee is paid</p>

<b>Cost-plus-award-fee</b>	This is a contract type that allows the government to provide incentives to the contractor based on performance evaluated using subjective performance criteria. The contractor is reimbursed for allowable costs, and may receive a fixed fee of up to 3%. Note: the 3% limitation is a DoD limitation, not a FAR limitation on base fee. The government award fee board evaluates the contractor's performance at scheduled intervals. The government awards additional fees from an award fee pool.
<b>Cost-plus-fixed-fee</b>	The cost-plus-fixed-fee contract is the most common type of cost reimbursement contract. Like all the other contracts, the contractor is reimbursed allowable costs. In addition, the contractor is paid a fixed fee. The fee is for a fixed dollar amount, not a percentage. In fact, it is not permissible to award a contract that pays costs plus percentage of costs.
<b>Special Type Contracts FAR Subpart 16.6</b>	
<b>Time and Materials</b>	This contract type is for special situations when two conditions exist. First, the types of labor can be identified but not the actual time required. Second, materials are necessary to perform the contract, but the exact extent cannot be estimated before the work is to begin. Because we cannot identify the exact costs or price ahead of time, there are specific restrictions that apply to this type of contract.
<b>Labor Hours</b>	A labor hour contract is very similar to a Time and Materials contract. The only difference is that in order to perform the contract, only labor, no materials, is required. The restrictions are the same as those for a Time and Materials contract.
<b>Letter Contracts</b>	A letter contract is a preliminary contract. It is in writing and may not contain all necessary provisions. The FAR, however, requires that the letter contract include all FAR contract clauses for the type of definitive contract contemplated. The provisions are determined later when the letter contract is definitized. The letter contract must contain a not-to-exceed ceiling amount at time of award. This type of contract is often used in contingency situations or to ameliorate disasters

## Appendix E: Contracting Officer Responsibility Checklist

	Contracting Officer Checklist
<b>Contractor Selection Phase</b>	<ul style="list-style-type: none"> <li>• Consider the SOH capabilities and past performance of the offerors and their proposed major subcontractors as they relate to the probability of performing the solicitation requirements safely and in conformance to applicable safety and health requirements and regulations</li> </ul>
<b>Contract Preparation</b>	<ul style="list-style-type: none"> <li>• Develop contract packages that use specific customized language to clarify the Government’s safety expectations and how contract safety requirements will be enforced.</li> </ul>
<b>Post Award Safety Orientation and Conferences</b>	<ul style="list-style-type: none"> <li>• Assure that the right people from the installation as well as the contractor participate in post award conferences and pre-work meetings</li> </ul>
<b>Contract and Safety Administration</b>	<ul style="list-style-type: none"> <li>• Ensure that audits are regularly conducted and directed at injury prevention and contract compliance</li> <li>• Require immediate notification of any work related mishap that involves, or appears that it may involve a fatality, total or partial permanent disability of any employee, inpatient hospitalization of any employee, or property damage over \$2,000</li> <li>• Participate, as appropriate, in Federal or State OSHA inspections of contractor or subcontractor workplaces or operations at the DoD installation/facility</li> </ul>
<b>Post Contract Evaluation of Safety Performance</b>	<ul style="list-style-type: none"> <li>• Ensure that evaluations of contractor performance include an accurate assessment of the contractor’s safety performance and that the process identifies poor performers and rewards contributors through awards and recognition</li> </ul>

**Appendix F: Basis of Evaluation and the Solicitation Submission Requirements (sample)**

**Paragraph III. Evaluation, C. Evaluation Factors for Award, 3. Basis of Evaluation and Submittal Requirements for Each Factor, (b) Factor 2 Past Performance:**

Basis of Evaluation (add as a subfactor): The Offeror's and any Joint Venture partner's past performance on safety will be evaluated based upon its safety record, trends in safety performance and its commitment to safety. Although there is no privity of contract with subcontractors, if required, the government may evaluate the safety history of the offeror's team subcontractors. The government's evaluation of safety may also include data from other sources, such as, CCASS, OSHA/BLS databases, customers/clients, Enterprise Safety Applications Management System (ESAMS), safety awards, or other related databases.

Solicitation Submission Requirement (add as a subfactor): The Offeror, any Joint Venture partner and/or team subcontractor shall submit the following, which may or may not be related to the projects submitted for evaluation under Past Performance. In addition, the offeror may submit safety awards received. If the offeror's safety record is less than satisfactory and/or includes a death or serious bodily injury, the offeror shall address in detail the facts and circumstances that lead to the mishap and shall describe the corrective actions taken and procedures that are in place to prevent repeat occurrences. Include Federal and State OSHA violations for the last five years with an explanation of issued citations from: <http://www.osha.gov/cgi-bin/est/est1>.

a. Provide a copy of experience modification worksheet which should indicate the Experience Modification Rate (EMR) for the last five years obtainable from the firm's insurance agent reflective of actual versus anticipated losses; if none available or if EMR does not apply to the offeror's place of doing business, please indicate that in your proposal with an explanation and provide either the information required in subparagraphs b., c., or d. below.

b. Provide information on OSHA Days Away Restricted Duty or Transfer (DART) rate for the last five years. This rate as defined by OSHA and the Bureau of Labor and Statistics (BLS) includes mishaps which result in an employee's inability to return to work the next day, returns to work under restricted duty, or is transferred to another position as a result of the mishap. The rate may be obtained from the contractor's insurance carrier or calculated using the industry standard calculation as follows. The offeror may also include any justification for upward or downward trends and may explain any extenuating circumstance that would have affected the results.

$$\text{DART RATE} = \frac{(200,000 \times A)}{B}$$

Where A = the number of Days Away, Restricted duty, or Transfer (DART) cases and B = total number of hours worked during each calendar year.

The standard has been met when the proposal has demonstrated at least a satisfactory trend in safety performance. The following are benchmarks for the elements of safety; however, the evaluation will take into consideration the offeror's explanations of extenuating circumstances affecting results of the computations and trends.

Federal, State, and Municipal OSHA Citations:

The standard has been met when the proposal demonstrates minimal citations for the offeror. Violations that are serious should be treated with greater weight.

Experience Modification Rating:

Excellent	Less than .7
Good	From .7 to less than .8
Satisfactory	From .8 to less than .9
Marginal	From .9 to 1.0
Poor	Greater than 1.0

OSHA Days Away, Restricted Duty, or Transfer (DART) Rate:

Excellent	Less than 1
Good	From 1 to less than 2
Satisfactory	From 2 to less than 3
Marginal	From 3 to 4
Poor	Greater than 4

**NOTE TO ACO TEAM:** The Basis of Evaluation and the Solicitation Submission Requirements above should be included in the SSP and the RFP as a sub factor under Past Performance. It can be designated as a stand-alone technical evaluation factor on high risk projects, such as, towers, high voltage electrical, tank entry, etc. If safety will be evaluated as a stand-alone technical evaluation factor, please change the paragraph entitled, “Basis of Evaluation” to read as follows to avoid confusion with a past performance evaluation that can be evaluated as “no rating.”

“The Offeror’s and any Joint Venture partner’s commitment to safety will be evaluated based upon its safety record and its trends in safety performance. Although there is no privity of contract with subcontractors, if required, the government may evaluate a team subcontractor’s commitment to and trends in safety performance. The government’s evaluation of safety may also include data from other sources, such as, CCASS, OSHA/BLS databases, customers/clients, Facility Accident and Incident Reporting (FAIR) program, safety awards, other related databases, etc.”

## **Appendix G-1: VPP Requirements for Service Contracts (sample)**

### **1. SAFETY AND QUALITY ASSURANCE/CONTROL REQUIREMENTS:**

**1.1 Safety.** The Contractor shall emphasize to all employees that intentional disregard for Contractor or Government safety requirements could be used as grounds for termination of employment. This shall include Contractor supervisors who condone such actions. If the Contractor fails or refuses to promptly comply with all safety requirements, the Contracting Officer may issue a stop order for all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be granted an extension of time nor claim excess costs or damages due to any stop order.

**1.1.1 Safety Inspections.** The Contractor shall conduct monthly safety inspections of all Contractor occupied facilities and spaces. The Contractor shall notify the Command Safety/Environmental Program Manager via the Contracting Officer's Representative (COR) prior to inspections to provide the opportunity for a Command representative to accompany the Contractor. Documentation of the inspection results and corrective actions required/taken to resolve any deficiencies identified shall be forwarded to the Command Safety/Environmental Program Manager via the COR. The Contractor shall take immediate corrective action depending on the severity of the deficiency or it presents immediate bodily harm.

**1.1.2 Safety and Occupational Health Committee.** The Contractor shall conduct monthly safety and occupational health committee meetings to provide Contractor management insight into safety and occupational health problems to insure the continuing development of Contractor's safety and occupational health program. A copy of committee minutes shall be forwarded to the Command Safety/Environmental Program Manager via the COR within five (5) business days after the meeting.

**1.1.3 Accident/mishap Investigation and Reporting.** The Contractor shall immediately notify the (INSERT SITE NAME HERE) Safety/Environmental Program Manager and the COR of all accidents/mishaps which result in a lost-time injury or damage to Government or private property. The Contractor shall complete an incident report and submit it to the Safety/Environmental Program Manager via the COR within twenty-four (24) hours. When the Safety/Environmental Program Manager determines from the incident report that an investigation is warranted, the Contractor shall conduct an investigation and provide to the Safety/Environmental Program Manager via the COR within ten (10) days a report which includes the facts surrounding the accident, statements from witnesses, findings regarding causative factors, corrective actions taken, and recommendations. Serious incidents may require a formal investigation to be performed by a Government agency. Accidents involving CESE and MHE shall also be reported on applicable Standard Forms (SF) 91, 94, and 95.

**1.1.4 Mishap Statistics.** The Contractor shall maintain statistics of all employee mishaps, occurring during the performance of the contract, which results in injury, death and/or damage to Government or private property. The statistics shall be categorized by type of mishap and shall identify property losses and Contractor worker days lost. These statistics shall be submitted annually to the (INSERT SITE NAME HERE) Safety/Environmental Program Manager via the COR.

**1.1.5 Electrical Equipment Safety.** The Contractor shall ensure all electrical and electronic equipment use and maintenance is per the 29 CFR, the National Electrical Code, local building codes, and instructions.

**1.1.6 Radiation Safety.** The Contractor shall ensure that all work performed involving any radiation source is conducted in compliance with 10 CFR, 29 CFR, and State and local radiation safety regulations. Appropriate response equipment and materials shall be readily accessible in those areas where radioactive materials are handled. The (insert specific name of location here – example: Biomedical Parts Area and Bay 4 (Both in Building 565)) are the only areas available for radioactive equipment testing at (INSERT SITE NAME HERE). Training shall be provided for those employees in the work areas that are expected to provide emergency response. Upon request, copies of all radiation dosimetry reports on Contractor employees shall be submitted to the Command Safety/Environmental Program Manager via the COR.

**1.1.7 Occupational Health.** The Contractor shall develop, promulgate and enforce a written safety and occupational health plan. The plan shall identify protocols and procedures to ensure a safe and healthful workplace. A copy of the plan shall be submitted to the COR 15 calendar days after contract award.

**1.1.8 Regulatory Compliance-Safety.** The Contractor shall ensure that all work is performed in full compliance with all Federal, State and local occupational safety and health regulations. This includes, but is not limited to, workplace safety, development of protocols and procedures, inspections, medical surveillance, and maintenance of compliance records. The Contractor shall notify the COR immediately upon shutdown of any operation due to non-compliance with any safety regulations.

**1.1.9 Safety and Occupational Health Training.** The Contractor shall develop and maintain a safety and occupational health-training program designed to enhance safety awareness of mishap causes and prevention methods and also occupational health protocol. The Contractor shall determine training requirements, develop curricula, conduct classes and maintain training records. The Contractor shall submit all training curricula and tests or other means used to determine training effectiveness to the Government via the COR for approval. (INSERT SITE NAME HERE) will have the right to add or delete any additional training requirements, based on change in regulations and or change in mission. (INSERT SITE NAME HERE) will also have the right to include Government personnel in any of the training classes, if it is to the advantage of the Command to do so. The Contractor shall maintain training records for the term of the contract. A copy of the records for all Safety and Occupational Health training classes shall be provided to the Command Safety/Environmental Program Manager via the COR upon request. As a minimum, safety training shall be conducted on the following topics:

- (a) Management safety
- (b) Supervisor safety
- (c) Non-supervisor safety
- (d) New employee safety orientation
- (e) Radiation safety
- (f) Hazard Communication
- (g) Hazardous materials handling
- (h) Personal Protective Equipment (PPE)
- (i) Fire prevention

- (j) Vehicle operator (crane, fork lift, heavy/mobile equipment)
- (k) First Aid
- (l) Workers compensation

**1.1.10 Personal Protective Equipment (PPE).** The Contractor personnel shall utilize the proper PPE where appropriate including head, eye, hand, foot, respiratory, and hearing protection. All required PPE shall be maintained serviceable and worn properly when required. The Contractor safety plan shall clearly identify the work areas requiring PPE and the type of PPE required. Unserviceable PPE shall be removed from service and properly disposed. The PPE utilized shall comply with all applicable American National Safety Institute ([ANSI](#)) and OSHA standards. Training of employees on the proper use of PPE shall be an integral part of the Contractor Safety and Occupational Health Training Program.

**1.1.11 Confined Space Work.** The Contractor shall ensure that, where applicable, all confined space work is performed in full compliance with 29 CFR confined space work requirements. Written procedures for such work shall be developed, maintained, and made available by the Contractor for review by the Government.

**1.2 Hazardous Materials/Waste.** The Contractor shall be responsible for the receipt, handling, storage, and transportation of material designated as hazardous as required and shall comply with local, state and Federal regulations. The Contractor shall submit a formal Operating Procedure for management and control of Hazardous Material to the COR. Contractor's hazardous material (HAZMAT) and hazardous waste (HAZWASTE) inspection records shall be available for review by the Government at any time. The Government will designate the hazardous material storage, HAZWASTE accumulation, and satellite accumulation areas in the master plan. The Government will be considered as the generator of HAZWASTE. The Contractor shall prepare all off-site shipments and arrange for movement of outgoing material/equipment for both waste and excess as applicable. The Contractor shall affix appropriate placards onto containers and vehicles per 49 CFR 172, Subpart F.

**1.2.1 Personnel Assignment to Handling Hazardous Material.** The Contractor shall assign certified supervisory personnel to monitor all unloading and receiving of hazardous material shipments, to assure compliance with 49 CFR and to take appropriate action when necessary. The Contractor shall ensure that Contractor personnel handling hazardous materials and hazardous waste are trained and certified per 29 CFR, 40 CFR, and 49 CFR requirements. The Contractor shall keep hazardous and non-hazardous waste streams segregated. The Contractor shall establish and maintain an Authorized Use List (AUL) for each hazardous material. A copy of the AUL shall be provided to the Command Safety/Environmental Program Manager via the COR when requested. In addition, a copy of the Material Safety Data Sheet (MSDS) for each hazardous material must be provided to the Command Safety/Environmental Program Manager via the COR.

**1.2.2 Accidents / Spills.** For accidents/spills involving the transportation of HAZMAT, the Contractor shall prepare Form DOT F5800.1 per the DOT regulations and DOT "Guide for Preparing Hazardous Materials Incident Reports" and submit it to the COR for submission to the (INSERT SITE NAME HERE) Command Safety / Environmental Program Manager no later than the close of business the next day. The Contractor shall be responsible for cargo compatibility and problems in the application or interpretation of the hazardous materials regulations or directives.

**1.2.3 Hazardous Waste and Excess Hazardous Material.** As required, the Contractor shall receive, store and dispose of material designated as hazardous waste or excess hazardous material per local, state and Federal regulations, and the Hazardous Waste Management Plans of the host activity where the facilities are located. As required, the Contractor shall ensure that Hazardous Waste generation; handling, storage and disposal are in compliance with all Federal, State and local regulations. All hazardous waste generators and handlers shall have the required training per 29 CFR, 40 CFR, and 49 CFR. Upon receipt of request, the Contractor shall provide copies of training records to the Command Safety/Environmental Program Manager via the COR. The Contractor shall store hazardous material indoors as much as possible to prevent container/product deterioration

**1.2.4 Documents.** The Contractor shall forward all waste issue release/receipt documents (DD1348-IA) to the Command Safety/Environmental Program Manager via the COR for processing within ten (10) days from the accumulation start date or receipt of waste (whichever is later) and shall include either a manufacturer's Material Safety Data Sheet (MSDS) or a DoD Hazardous Material Information System MSDS Serial Number. The Contractor shall provide an annual report on reduction of hazardous material in use, including all cost savings, to Command Safety/Environmental Program Manager via the COR at the beginning of each contract year.

**1.2.5 Hazard Communication.** The Contractor shall ensure all personnel handling, packing, storing, transporting, or using hazardous materials are provided training, per 29 CFR and 49 CFR, on the characteristics of the materials and proper safety precautions as detailed on the Material Safety Data Sheets (MSDS). Contractor shall ensure personnel are fully familiar with the MSDS for material handled and have unrestricted access to the MSDS at all times. MSDS shall be maintained in all areas for chemicals used or stored in the work area. The MSDS shall be indexed so that any specific one is readily accessible. A master copy of all MSDS shall be maintained in the Contractor Safety Office and submitted to the Command Safety/Environmental Program Manager via the COR upon receipt of Government request. These master copies shall, be updated whenever a new product requiring an MSDS has been approved and purchased. The Contractor shall prepare and submit to the Contracting Officer via the COR thirty (30) days after contract award a Hazard Communication Plan to comply with provisions of [29 CFR 1910.1200](#).

**1.2.6 Hazard Reporting and Abatement.** The Contractor shall develop a program whereby personnel can report a hazardous situation to the Contractor safety representative with impunity/confidentiality. Timely abatement of confirmed hazards is required. Files shall be maintained of reported hazards and the abatement method. These files shall be made available to the Command Safety/Environmental Manager.

**1.3 Control of Hazardous Energy (Lockout/Tag-out).** The Contractor shall establish a program and utilize procedures according to [29 CFR 1910.147](#) and [1910.147 App A](#) for affixing appropriate lockout devices or tag-out devices to energy isolating devices, and to otherwise disable machines or equipment to prevent unexpected energizing, start up, or release of stored energy in order to prevent injury to employees.

**1.4 Quality Control and Assurance.** The Government will ensure through two mechanisms that the quality of services under this contract is maintained. The Contractor shall establish a comprehensive Quality Control Program to ensure that their performance achieves compliance with the requirements of the contract. The Government will establish a Quality Assurance Program to inspect Contractor performance and Quality Control Program compliance.

## **Appendix G-2: Navy Contract Announcement Addressing Installation VPP Requirements (sample)**

### **1.1 Voluntary Protection Programs (VPP)**

**1.1.1** In (month, year), (Installation Name) was nominated to participate in the DoD Voluntary Protection Programs (VPP) Center of Excellence (CX) Implementation Initiative of the Defense Safety Oversight Council (DSOC). The VPP was established by the Occupational Safety and Health Administration (OSHA) in 1982 to recognize and promote effective worksite-based safety and health management systems. (Installation Name) through the utilization of VPP, desires to be a model of safety and health excellence. VPP's emphasis on trust and cooperation between OSHA, the employer, employees, employees' representatives, and contractors complements the Agency's enforcement activity but does not take its place. All parties, including Contractors, are to work together to identify and resolve any safety and health problems that may arise, yet obtain Contracting Officer approval of any changes that would impact the terms of the contract. (Installation Name) as the VPP participant develops and implements systems to effectively identify, evaluate, prevent, and control occupational hazards so that injuries and illnesses to employees and contractors are prevented. Contractor and subcontractor personnel are subject to occupational safety and health oversight. This oversight will be accomplished by (Installation Name) personnel and Contracting Officers. Contractors, subcontractors, and their employees, while in performance of a contractual action on-site within the geographical boundaries of (Installation Name), shall be subject to the requirements of the (Installation Name), "Safety Manual" regardless of the type or duration of the contract. Chapter \_\_ of the (Installation Name), "Safety Manual", entitled "Contractor Safety" is provided as an attachment. Appendix \_\_, of the chapter \_\_ entitled "Contractor Safety Requirements When Performing Work at the (Installation Name)" shall be signed by the Contractor prior to commencement of services on-site at (Installation Name). The Contractor shall maintain one signed copy for future reference in educating its personnel and subcontractors. A second signed copy shall be provided to the Contracting Officer to be maintained in the contract file. If an occupational safety or health related injury or illness occurs during the performance or as a result of this contractual action, the Contractor shall notify the Contracting Officer Representative (COR) as soon as practicable, who will notify the Safety Office and the Contracting Officer.

**1.1.2** In support of VPP and in compliance with Chapter \_\_ of the Safety Manual, entitled "Contractor Safety," all Contractors performing on-site at (Installation Name) shall comply with the following:

**1.1.2.1** Public Law 91-596 (and Amendments), also known as the Occupational Safety and Health Act of 1970, establishes that all employers, including Contractors, are responsible, as far as possible, for providing every employee a safe and healthful working environment. All employers, including Contractors, shall conform to the standards as issued by OSHA. Contractors are responsible for complying with safety requirements specified in the contract as well as all Federal, State, and local safety and security regulations. Non-compliance may be cause for the removal of a Contractor or any Contractor employee from the activity and such non-compliance may form the basis for contractual action, up to and including termination for default.

**1.1.2.2** Contractor personnel shall participate in basic safety awareness and hazard identification training offered by the government activity at the work area they are supporting. Contractors

performing on-site shall attend area weekly safety meetings and annual safety stand-downs, as determined by the COR.

**1.1.3** The best Safety and Health Programs involve every level of the organization, instilling a safety culture that reduces accidents for workers and improves the bottom line for managers.

When Safety and Health are part of the organization and a way of life, everyone wins. (Installation Name) is committed to safety excellence. The Contractor shall familiarize itself with the (Installation Name), "Safety Manual," Appendix \_\_ entitled "OSHA Voluntary Protection Programs (VPP) Fundamentals Training for Contractors".

**1.1.4** Contractor providing support on-site at any (Installation Name) site may be required to have its on-site Contractor personnel participate in training covering rules, practices, procedures, equipment and systems, as needed, based on the type of support being provided. This training may include, but is not limited to: Operation Security training (OPSEC); Personally Identifiable Information training; DoD Information Assurance Awareness training; Information Technology Security; Voluntary Protection Programs (VPP) training; and Personnel Security training.

**1.1.5** This training will be provided at no cost by the (Installation Name) site and will take place on-site during normal contract working hours without any additional compensation for the Contractor. This training does not relieve the Contractor of its responsibility to train its employees in such areas as environment, health, safety, security, sexual harassment, ethics, etc. to ensure compliance with all Federal, state, and local laws and DoD regulations.

Source: SOLICITATION NO. N00024-11-R-3483 (Included in "Training" Section)

### **Appendix G-3: U.S. Navy Base Operating Support (BOS) Contracts**

For U.S. Navy facility service contracts that are awarded as Base Operating Support (BOS) Contracts, roles and responsibilities for Quality Assurance Surveillance Plans (QASP) are provided as follows:

**Naval Facilities Engineering Command (NAVFAC)** provides facility services. BOS Contracts are supported by a NAVFAC Facilities Management Division, Public Works Department (PWD). Process assessment review and assist visit frequencies are periodically scheduled and conducted by NAVFAC to ensure the PWD is performing to required standards.

**PWD** provides Performance Assessment Representative Personnel to support the Facilities Support Contract Manager (FSCM)/Performance Assessment Specialist (PAS) for BOS Contracts. It is the responsibility of the PWD to assess current manning levels in conjunction with current and anticipated workload requirements based on: (a) anticipated increase in Performance Assessment Representative time requirements for assessments; (b) availability of Facilities Management Division (FMD) civilian and military personnel to assume additional responsibilities as Performance Assessment Representatives; (c) hiring additional civilian Performance Assessment Representatives; and (d) establishing a shifting schedule to provide for performance reviews across all BOS Contract annexes.

**BOSC Contractor** ensures that BOS Contract services and products delivered meet contract requirements. BOS Contractor develops and implements a quality management program to evaluate and document that the performance objectives and standards are achieved in accordance with BOS Contract Statement of Work specifications and Indefinite Delivery-Indefinite Quantity (IDIQ) task orders above and beyond BOS Contract firm fixed price portions. The BOS Contractor also provides a Quality Management Plan that incorporates both Quality Control and Quality Assurance (QC/QA) elements. BOS Contractor quality management responsibilities include: (a) periodic monitoring of IDIQ work tasks to provide required workplace safety and QC/QA inspections (e.g., internal processes, materials, employee skills and equipment); (b) a process for investigation and correction action when needed; and (c) a process for responding to government complaints and communicating actions taken.

**Facility Safety Manager** provides safety support for facility operations management as a core process and mission function of the facility safety program. Oversight and responsibility for safety support of facility operations are coordinated by the Facility Safety Manager in accordance with BOS Contracting Officer. Facility Safety Managers perform site audits of BOS Contract operations to determine contractor management compliance with QC/QA plans for safety oversight specified in the contract award and approved by the facility Commanding Officer. Periodic and unannounced audits of IDIQ task order and BOS Contract firm-fixed-price service operations are conducted by the Facility Safety Manager on behalf of the facility Commanding Officer. Audit findings are provided to the BOS Contracting Officer for corrective action. The degree of safety coordination and oversight of facility operations by the Facility Safety Manager is based upon the risk to government personnel/property. The primary responsibility for safety oversight of contractor operations

and compliance with the Commanding Officer-approved quality management plans remains with the BOS Contracting Officer.

Note: Contact Commander Navy Installations Command (CNIC) and NAVFAC for additional information

## Appendix G-4: Sample Quality Assurance Surveillance Plan (QASP)

### CONTENTS

#### 1. References

#### 2. Definitions

#### 3. General Information

##### 1. References

a. Secretary of the U.S. Army Memorandum dated 09 Feb 2007 entitled, "Contract Administration and Surveillance for Service Contracts"

b. FAR 46.103, 46.401 and 37.604.

##### 2. Definitions:

Quality Assurance Surveillance Plan (QASP): A QASP is a government surveillance plan used to define what the government will do to ensure that contractor performance is executed in accordance with contract requirements and performance standards. Its purpose is to ensure that the government receives the quality of services called for in the contract and only pays for the acceptable level of services received. The QASP serves to identify and correct poor performance, ensure delivery of quality services and reduce the risk of paying the contractor more than the value of the service performed. It also establishes a structured approach to performing inspections and surveillance by establishing the frequency and types of government inspections and focuses on results such as quality, quantity and timeliness.

##### 3. General Information:

a. Quality Control Plan versus Quality Assurance Surveillance Plan: The Contractor, and not the government, is responsible for management and quality control actions necessary to meet the quality standards set forth by the contract and any follow-on task orders. The Contractor develops and submits its Quality Control Plan (QCP) for government approval in compliance with its DD 1423 contract deliverable. Once accepted, the Contractor then uses its QCP to guide and document the implementation of the required management and quality control actions necessary to achieve the specified results. The QASP on the other hand, is put in place to provide government *surveillance* oversight of the Contractor's quality control efforts to *assure* that they are timely, effective and are delivering the results specified in the contract or task order. The QASP is not a part of the contract nor is it intended to duplicate the Contractor's QCP.

b. Requirement: When purchasing services greater than \$2,500 (including commercial and non-commercial) Contracting Officers shall ensure a government QASP is prepared prior to contract award. The level of surveillance and detailed information described in the plan should be

commensurate with the dollar value, risk, and criticality of the acquisition. The QASP shall contain meaningful information regarding specific performance requirements and the corresponding surveillance methods. Further, surveillance documentation should demonstrate that contract monitoring is being conducted systematically and consistently with the QASP. The plan shall be updated throughout contract performance when changes to the Performance Work Statement (PWS) and other contract requirements impact contract surveillance.

c. The technical office responsible for the requirement is responsible for preparing the QASP. It may also be prepared by the COR, as a formally designated duty. If desired, the Contracting Officer may require offerors to submit a proposed QASP with their proposals that Government Acquisition team can take under advisement in developing the final Government QASP prior to award. The development of the QASP should involve all pertinent members of the Government Acquisition team.

d. FAR 46.401 advises the plan should be prepared in conjunction with the preparation of the PWS and specify all work requiring surveillance and the method of surveillance. The QASP correlates directly with the PWS and other procurement package input (PPI) since it is intended to measure performance against contract requirements and standards. Consequently, coordinating and writing the PWS and a draft QASP simultaneously is an effective and efficient practice. Preparing a draft QASP simultaneously reflects the government's surveillance approach relative to the initially perceived programmatic risk. At that point, it is written at a general rather than specific level because the risks will not be completely identified. Prior to the start of contractor performance, Contracting Officers should ensure the responsible technical office finalizes the draft QASP to reflect the risks that the SSEB or Acquisition team has identified as being associated with the successful proposal. A copy of the "finalized" QASP (whether initiated as a draft or not), and any subsequent updates implemented during the course of contract performance should be included in the official contract file, COR file and/or other applicable monitoring/inspection personnel including the assigned DCMA office, as applicable.

e. QASP content, at a minimum, shall:

- (1) Address the Contractor's responsibility to carry out its quality control obligations.
- (2) Identify the responsible government parties and their respective roles in implementing the QASP, such as quality assurance representatives and/or specialists, technical inspectors, CORs, DCMA/DCAA personnel, Contracting Officers and others.
- (3) Identify the contract objective/desired outcome(s): What do we want to accomplish under the contract?
- (4) Break out and identify the performance work statement (PWS) requirements/activities/tasks and other contract requirements that must be performed in order to arrive at the contract objective/desired outcome(s).
- (5) Establish Performance Standards/thresholds: Identify the desired/target performance in terms of quality, timeliness and/or quantity for each task. These should be measurable/quantifiable, realistically attainable, unambiguous and a valid indicator of the desired performance. This could be couched in terms of a rate or other measurable standard as appropriate. Typically performance standards will address the following questions - What? How well? How Many? and When?).

- (6) Establish Acceptable Quality Levels (AQLs) for the Performance Standards: For each task, identify the task acceptable quality/performance level: How much deviation from the performance standard/threshold will be allowed under the contract, if any?
- (7) Establish Surveillance Methods and Assessments: For each task identify the task surveillance method and assessment. What method will be used for the task to determine that the desired results have been achieved; how frequently will it be done; and by whom? Various methods or combinations thereof can be used including customer feedback, 100% inspection, periodic inspections, random unscheduled monitoring, and the use of existing management information systems that are verifiable. Selected surveillance methods should not unduly interfere with the contractor's operations.
- (8) Identify performance incentive tools, both positive and negative, that will be included in the acquisition for motivating contractor performance. In addition to the more obvious monetary motivational tools such as Award fee provisions, other considerations such as reduced contract surveillance and/or reporting when consistent, exceptional contractor performance has been demonstrated, positive/negative performance assessments under Contractor Performance Assessment Reports (CPARs) impacting the potential for future contract awards, and/or the likelihood of exercising/awarding additional performance periods under options or award terms can serve to incentivize contractor performance.
- (9) Define the quality assurance reporting process, including the process that will be followed when a surveillance inspection reveals unsatisfactory performance.
- (10) Identify the types of performance evaluation documents that will be generated (when and by whom) and how/where will they be maintained?
- (11) Address who will be responsible for reviewing and updating the QASP after contract award to reflect changes to the PWS and other contract terms and how frequently it will be reviewed for changes.

## **Appendix G-5: Information to be included in Contract Specifications**

Contracting officers should ensure that the following provisions are incorporated into all appropriate contract solicitations and requirements documents. When modifications are deemed necessary, safety and health professionals should be consulted to ensure adequate provisions relating to safety and health are retained.

- **General Safety and Health Responsibilities and Accountability.** The contractor bears sole responsibility for compliance at all times with Federal, state, and municipal safety and health laws, regulations, and standards that apply to the work performed under this contract, including the Occupational Safety and Health Act. The contractor shall take all reasonable steps and precautions to maintain compliance with applicable regulations/requirements, prevent accidents, and preserve the health and safety of contractor and government personnel performing or in any way coming in contact with the performance of the work required by this contract. The contractor shall also take additional immediate actions/precautions as requested by the contracting officer when the contracting officer determines that such measures are necessary for safety and health purposes. Contractor/subcontractor supervisors shall monitor worksites and operations daily to ensure safe working conditions and continuing compliance. Hazardous or noncompliant conditions identified by the contracting officer shall be promptly corrected, and corrective action(s) taken shall be reported in writing to the contracting officer within 5 days of the contracting officer's notification to the contractor. In cases of serious and/or recurring hazards/noncompliance, the contracting officer may stop the work in question pending correction of the hazardous/noncompliant condition, and/or order the removal of the involved contractor/subcontractor employees from the government installation/facility. In such cases, the contractor will not be granted a cost adjustment nor an extension of time due to the work stoppage or employee removal action. Failure of the contractor to effectively resolve serious and/or recurring hazards or noncompliance may result in termination of the contract.
- **Safety and Health Plan.** Not less than 15 days prior to commencement of physical on-site work at the government installation/facility, the contractor shall submit a Safety and Health Plan for the work to be performed. The government will review the contractor's proposed Safety and Health Plan, and the contractor shall promptly resolve any comments arising from government review. When requested by the contracting officer, DoD qualified safety and health personnel may participate in the government review of the contractor's proposed Safety and Health Plan. Upon the contracting officer's determination that the government's comments (if any) have been satisfactorily resolved, the government shall approve the Safety and Health Plan in writing, and the approved Safety and Health Plan will be considered part of this contract. Unless approved in writing by the contracting officer, the contractor shall not commence physical on-site work at the government installation/facility prior to approval of the Safety and Health Plan. At a minimum, the Safety and Health Plan must include:

- Safety and Health Points of Contact. Provide names and contact information for key contractor personnel, and alternates, who may be contacted 24 hours a day concerning safety and health matters or emergencies.
- Application of Safety and Health Capabilities and Processes. Describe in detail how the contractor and all major subcontractors will manage and perform the safety and health aspects of the work accomplished under this contract, including how the contractor and subcontractor(s) will apply the processes, equipment, training, specialized resources, etc., that were described in the contractor’s “safety and health capabilities and processes” narrative submitted in response to the solicitation for this contract.
- Workplace Safety and Health Inspections. Describe how the contractor will accomplish frequent safety and health inspections of contractor and subcontractor work sites, material, and equipment to ensure conformance to the contractor’s Safety and Health Plan and the requirements of this contract. Inspection frequency shall be at least monthly, or as described in the contractor’s “safety and health capabilities and processes” narrative submitted in response to the solicitation for this contract, whichever is more frequent. Identify the personnel who will perform these inspections, and describe their qualifications. Inspections shall be documented in writing and made available to the contracting officer upon request. Inspection documentation shall include the name of the inspector, date of inspection, and all identified safety and health problems and deficiencies. Follow-up inspections to ensure correction of any identified deficiencies must also be conducted and documented in inspection reports.
- Safety and Health Deficiency Tracking System. Describe the contractor’s Safety and Health Deficiency Tracking System that lists and monitors the status of safety and health deficiencies, regardless of how identified, including hazards/deficiencies identified via the Workplace Safety and Health Inspection Program (see above) and by contractor/subcontractor employees. At a minimum, the System shall provide the following information: date deficiency identified, person who identified the deficiency, description of deficiency, description of planned/actual corrective action, person responsible for correcting deficiency, projected resolution date, actual resolution date, date the person who identified the deficiency was notified of deficiency resolution. Records of deficiencies and actions taken shall be provided to the contracting officer upon request.
- Safety and Health Training Program. Describe how the contractor will implement and operate a Safety and Health Training Program encompassing all contractor and

subcontractor employees who will work on-site at the government installation/facility. All affected employees shall be trained in accordance with the Safety and Health Training Program prior to performing work on-site at the government installation/facility, except where an alternative training schedule is approved in writing by the contracting officer. The training program shall include the following, at a minimum:

- Written procedures and schedules for training of affected employees in the following:
  - Employee rights under the Occupational Safety and Health Act.
  - Hazardous conditions that may be encountered during the performance of work at the government installation/facility, how to recognize hazardous conditions, and the signs and symptoms of workplace related illnesses and injuries.
  - The hazard control methods, safe work methods, and personal protective equipment that will be applied to prevent work related illnesses and injuries, including the proper use and limitations of personal protective equipment.
  - Procedures to be followed in the event of a fire/emergency or fire/emergency drill, while employees are working on-site at the government installation/facility, including procedures for obtaining medical treatment/assistance when needed.
  - Responsibilities and procedures for reporting of hazardous conditions and work related accidents, illnesses, and injuries.
  - Applicable safety and health rules of the government installation/facility that must be followed by contractor employees. (NOTE: Obtain information on applicable Safety and Health rules of the government installation/facility from the contracting officer)
  - For contracts involving work at a government installation/facility that is participating in the OSHA Voluntary Protection Programs (VPP), training will also include notification to affected employees of the site's participation in VPP, and VPP fundamentals.
  - Other safety and health training as deemed necessary/appropriate by the contractor.
- The methods and resources the contractor will apply to complete the above training in a timely and satisfactory manner, including information such as descriptions of training locations/facilities, training materials to be used, sources of training and training materials, instructor qualifications, communication of training to employees who cannot communicate effectively in English, refresher training, etc., as applicable.

- Documentation of the training provided, including date(s) of training, name(s) of employees trained, training topic, instructor (if applicable), and means used to verify that the training was understood. This documentation shall be retained for the duration of the contract, and shall be made available to the contracting officer upon request.
  
- Reporting and Investigation of Mishaps, Injuries, and Illnesses. The contractor shall immediately notify the contracting officer of any work related mishaps that involves, or appears that it may involve, fatality, total or partial permanent disability of any employee, inpatient hospitalization of any employee, or property damage over \$1,000, regardless of whether such matters involve government or private personnel/property. The contractor shall also notify the contracting officer of any illness or injury that is, or appears that it may be, an OSHA recordable illness/injury as defined by 29 CFR 1904 as soon as reasonably possible, but not later than on the first business day following the day on which the illness/injury occurred, regardless of whether such matters involve government or non-government personnel. The contractor shall investigate all mishaps, illnesses, and injuries, report the results of such investigations, and cooperate with any government investigation of such matters, as requested by the contracting officer.
  
- Inspections by Regulatory Agencies. The contractor shall immediately notify the contracting officer of any OSHA or other regulatory agency inspection of contractor or subcontractor workplaces or operations at the government installation/facility, and provide the contracting officer an opportunity to accompany the contractor during the inspection. Regulatory agency inspections shall not be delayed due to non-availability of the contracting officer. The contractor shall provide the contracting officer with a copy of any citations/reports issued by the inspector, and any corrective action responses to the citation(s)/report(s).
  
- Other Records and Reports. In addition to any other records and reports required by this contract, the contractor shall maintain records of all illnesses and injuries experienced by contractor and subcontractor employees in the course performing work at the government installation/facility under this contract. At a minimum this shall include maintaining an up-to-date OSHA Form 300 or equivalent log in accordance with 29 CFR 1904. The contractor shall also maintain records of all on-duty paid hours worked at the government installation/facility by employees of the contractor and each subcontractor. The contractor shall provide a monthly report to the contracting officer including a copy of the updated OSHA Form 300 or equivalent log and the total hours worked at the government installation/facility by contractor and subcontractor employees. This monthly report shall only include injuries, illnesses, and work hours for work under this contract that is performed at the government installation/facility specified by this contract. Illnesses, injuries and work hours occurring at other locations shall not be

included. Where the contract requires work at more than one government installation/facility, the monthly report shall be broken down by location as requested by the contracting officer. This monthly report shall be submitted to the contracting officer not later than the 15th of each month, and each report shall be updated to reflect total illnesses, injuries, and work hours for the current calendar year to date, through the end of the preceding month. The report due by the 15<sup>th</sup> of January shall provide data totals for the entire preceding calendar year.

- Investigation and Resolution of Safety and Health Matters. In addition to any other requirements of this contract, when requested by the contracting officer the contractor shall investigate any safety and health matter connected with the performance of work under this contract. Matters for which investigations may be requested include, but are not limited to, significant failures to control hazardous conditions, significant compliance failures, significant unfavorable mishap or compliance trends, etc. When investigation is requested, the contractor shall complete the investigation and provide a report of investigation findings, actions planned/taken resolve the problem and/or improve future performance, and target/actual dates for action completion. This report shall be provided to the contracting officer within 15 days of the request to investigate, except when an extension is granted in writing by the contracting officer.

## Appendix G-6: Suggested Safety Qualifications for Contractor Site Personnel

**Contractor Site Safety and Health Officer (SSHO).** SSHO is a contractor employee whose primary duty and responsibility is to prepare and enforce the contractor's safety program. The SSHO should have fulfilled the following pre-requisite training and experiences before being assigned as the SSHO:

- For contracts \$100,000/year or less – The SSHO should have satisfactory experience in preparing and enforcing the contractor's safety program on contracts of similar size and complexity in the past, and have completed a [10-hour General Industry OSHA class](#) taught by an authorized instructor or equivalent within the last three years. The SSHO may be the same person as the project manager but shall have fulfilled the pre-requisite qualification and experience.
- For contracts greater than \$100,000/year but less than \$2M/year – The SSHO should have completed 3 years of satisfactory experience in preparing and enforcing the contractor's safety program on contracts of similar size and complexity in the past, and shall have completed a [30-hour General Industry OSHA class](#) or equivalent within the last three years.
- Depending on the size and safety risk associated with prospective contract, the SSHO may be the same person as the project manager for low safety risk contracts; however, the pre-requisite qualification and experience for the SSHO position remains. For contracts with high safety risks, the SSHO should not be the same person as the project manager.
- For contracts greater than \$2M/year or for contracts of high safety risk –The SSHO should have completed 5 years of satisfactory experience in preparing and enforcing the contractor's safety program on contracts of similar size and complexity in the past, and have completed 30-hour OSHA safety class or equivalent within the last five years and an average of at least 24 hours of safety training per year for the past five years. The SSHO shall not be the same person as the project manager.

**Employee Requirements.** The contractor must provide experienced, qualified, and capable personnel to perform the work in covered by the contract. Many OSHA standards explicitly require the employer to train employees in the safety and health aspects of their jobs. Other OSHA standards make it the employer's responsibility to limit certain job assignments to employees who are "certified," "competent," or "qualified"—meaning that they have had special previous training, in or out of the workplace. The term "designated" personnel means selected or assigned by the employer as being qualified to perform specific duties. [OSHA 2254](#) provides Training Requirements in OSHA Standards and Training Guidelines. A baseline to consider would be to require all contractor personnel to have completed the OSHA 10-hour safety course, or equivalent.

## Appendix H: Frequently Asked Questions

### **1. If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee?**

29 CFR Part 1904.31(b) (3) states: If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

### **2. If I obtain employees from a temporary help service, employee leasing service, or personnel supply service, do I have to record an injury or illness occurring to one of those employees?**

29 CFR Part 1904.31(b) (2) states: You must record these injuries and illnesses if you supervise these employees on a day-to-day basis.

### **3. Should contracting officers consider providing government-furnished occupational health support to contractor personnel?**

There are at least three risks that must be considered when the government contemplates providing physical examinations to contractor personnel:

- (a) The government-provided examination could be used in litigation to establish that the government exercised oversight for contractor personnel. If government oversight is established, the government would assume legal responsibility for the health and safety of the contractor personnel. Such a determination would unnecessarily subject the government to legal liability for on-the-job injuries under the Federal Tort Claims Act (FTCA).
- (b) The government may incur liability under the Privacy Act based on ambiguities over creation and ownership (including improper disclosure) of resulting medical records (Health Insurance Portability and Accountability Act (HIPAA), [P.L. 104-191](#)).
- (c) The government may subject itself to liability for malpractice under the FTCA based on the performance of the exam. For example, contractor personnel receiving laser eye exams could allege the government physician failed to diagnose a condition unrelated to laser exposure, including, but not limited to, glaucoma, unrelated eye damage, or cancer. Any such allegation of malpractice, whether or not successful, would require costly efforts to defend against even unsupported allegations.

**Based on these potential liabilities, medical examinations should not be provided to contractor personnel.**

Source: U.S. Air Force Guide for the Government-Contractor Relationship, October 2006

### **4. Are contractors required to notify the government prior to bringing cranes on site?**

It depends on what's in the contract. If compliance with EM 385-1-1 is including in the contract, Section 16.D.03 requires the "Contractor shall provide the Government Designated

Authority (GDA) 24-hours notice in advance of any crane or hoisting equipment entering the site (prior to inspection/tests) so that observation of the contractor's inspection process and spot checks may be conducted.”

While it does not really require advance notification, if UFGS 01 35 26 is included in the contract, Section 1.12.4 [Certificate of Compliance](#) requires: “**(NOTE: Include this requirement in all U.S. Navy projects; this is an option for U.S. Army projects.)** Provide a Certificate of Compliance for each crane entering an activity under this contract. State within the certificate that the crane and rigging gear meet applicable OSHA regulations (with the Contractor citing which OSHA regulations are applicable, e.g., cranes used in construction, demolition, or maintenance comply with 29 CFR 1926 and USACE EM 385-1-1 Section 16 and Appendix I. Certify on the Certificate of Compliance that the crane operator(s) is qualified and trained in the operation of the crane to be used.[ For cranes at DoD activities in foreign countries, certify that the crane and rigging gear conform to the appropriate host country safety standards.] Also certify that all of its crane operators working on the DoD activity have been trained in the proper use of all safety devices (e.g., anti-two block devices). Post certifications on the crane.”

## **5. What are the rules for Personal Services Contracts?**

Specific requirements for Personal Services Contracts are provided in [FAR 37.104](#). A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract as indicated in FAR 37.104.

However, per [DFARS 237.104](#) authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. In addition Personal services contracts for health care are authorized by 10 U.S.C. 1091.

## **6. What requirements should be cited in contracts involving Asbestos?**

UFGS 02 82 16.00 20, Engineering Control of Asbestos Containing Materials, covers the requirements for safety procedures and requirements for the demolition, removal, encapsulation, and disposal of asbestos containing materials (ACM) and should be incorporated into applicable contracts.

## **7. Why aren't all Contractors required to comply with EM 385-1-1?**

Mandatory compliance with EM 385-1-1 is only required by the FAR for certain types of contracts. FAR 36 prescribes policies and procedures peculiar to contracting for construction and architect-engineer services. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

Per FAR 36.513(a) the contracting officer shall insert the clause at [52.236-13](#), Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting

officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold

FAR 52.236-13(c) states: “If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.”

## **8. Are there contract requirements that cover the safety of facilities and equipment acquired for military operations performed outside the US?**

[DFARS 246.270](#) establishes policies and procedures intended to ensure the safety and habitability of facilities, infrastructure, and equipment acquired for use by DoD military and civilian personnel during military operations performed outside the United States, Guam, Puerto Rico, and the Virgin Islands.

DFARS 246.270-2 requires that contracts (including task and delivery orders) for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings acquired for use by DoD military or civilian personnel, shall require a pre-occupancy safety and habitability inspection. In addition to minimize safety and health risks, each contract covered by this policy shall require the contractor’s compliance with the Unified Facilities Criteria (UFC) 1-200-01.

## **9. For contracts on military installations that are OSHA Voluntary Protection Programs (VPP) STAR sites or are in the process of obtaining STAR status, what are the additional requirements for contractors and where can I find additional information?**

OSHA CSP 03-01-003, *VPP Policies/Procedures Manual*, provides specific requirements applicable for contractors. Specifically, all contractors must follow the safety and health rules of the host and all contractor employees must be made aware of:

- The hazards of worksite
- How to recognize hazardous conditions and signs/symptoms of workplace-related illnesses and injuries
- Hazard controls and safe work procedures
- Emergency procedures
- Site safety and health goals/objectives and the policies and procedures that indicate how to accomplish them
- VPP (“have the VPP explained to them”)
- Their rights under the OSH Act

OSHA CSP 03-01-003, also requires for applicable contractors that TCIR/DART data is maintained for worked performed at the site and that the site has a documented oversight and management system that:

- Ensure safety and health considerations are addressed during contractor selection and performance of work
- Encourage contractors to have effective safety and health management systems.
- Provides for timely identification, correction, and tracking of hazards
- Includes provision to remove for safety or health violations.

- Must be able to demonstrate an understanding of VPP fundamentals
- Requirements specific to nested contractors include contractor injuries in host's injury/illness rates

For installations and commands involved in the VPP, Appendix D-1 provides an example of VPP SOH requirements for Service Contracts previously used by a U.S. Navy Installation. In addition, Appendix D-2 provides a sample U.S. Navy Announcement addressing Installation VPP Requirements.

### **10. What are the most important things contracts personnel can do to improve contractor safety performance?**

Responsibilities of Contracting Officers and Contract Officer Representatives are outlined in Section 2 of this guide. However one of the most important things they can do is to consult with safety and occupational health professionals to ensure that clauses for safety are included in solicitations and contracts as appropriate and necessary. Develop performance work statements and contract instructions and conditions that outline contractor safety requirements and responsibilities based on a risk assessment of the work to be performed and activity/command unique requirements.

Note that the only means for imposing safety and occupational health requirements on a contractor or subcontractor is by incorporating the requirement as a contractual requirement (for example, a contract clause, special clause, statement of work, guide specification, or contract modification).

### **11. What is "controlling employer" and under what types of contracts is DoD the controlling employer?**

A controlling employer is an employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice. Descriptions and examples of different kinds of controlling employers are given in [CPL \(OSHA Compliance Directive\) 02-00-124 \(1999\)](#). The controlling employer is responsible, by contract or through actual practice, for safety and health conditions on the worksite; this may be the employer who has the authority for ensuring that the hazardous condition is corrected.

### **12. For contractors who work "side by side" in DoD medical facilities, is DoD the controlling employer or do medical contracts fall under different regulations?**

It depends on if the contractors are hired under a Personal Services Contract or a Non-Personal Services contract. Typically medical contract workers working side by side with DoD employees are hired under a Personal Services Contract. A personal service is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. The government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract as indicated in FAR 37.104. In

a personal services contract, the contractor is considered to be, and is treated as, an employee of the government. In this type of relationship, a government officer or employee directly supervises and controls the contractor's personnel on a continuing basis. Personal service contracts require specific authorization.

In situations where DoD obtains non-personal Health Care Services, FAR Subpart 37.4 applies. Agencies may enter into non-personal health care services contracts with physicians, dentists and other health care providers under authority of 10 U.S.C. 2304 and 41 U.S.C. 253. Each contract shall:

- State that the contract is a non-personal health care services contract, as defined in **37.101**, under which the contractor is an independent contractor;
- State that the government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g., professional judgments, diagnosis for specific medical treatment).

### **13. Can the government provide training to contractors?**

The government may provide training to contractor personnel only if the contract requires it or it does not create a conflict or give the appearance that the government is favoring a specific contractor(s). If the government considers these issues and determines that allowing contractor personnel to attend government training is appropriate, then the issue becomes one of fiscal law.

If the government has statutory authority to expend funds on training for non-government personnel, then it is a permitted activity. In most instances, there is no clear statutory authority. In those cases, the government must determine if training is a necessary expense under the relevant program appropriation [[31 USC 1301\(a\)](#)]. This involves weighing the cost associated with training non-government personnel against the benefit gained by the government in support of the appropriation that will incur the expense. Obviously, as the costs associated with the training increase, so must the connection between the costs and the benefits gained by the government.

If it is determined that training is required, whether on a voluntary or mandatory basis, it should be included in the contract. A program manager should not authorize training for contractor personnel without coordination and approval by the contracting officer.

### **14. What can be done to recognize and reward contractors or contractor personnel?**

The ability to provide awards to military and civilian employees is authorized by statute and the discretionary authority of the organizational commander [10 USC Chapter 857](#) & [5 USC Subpart C Chapter 45, subpart I](#). No such statutory authority covers contractor personnel. The regulations that authorize awards to government employees do not apply to contractor personnel. [DoD Manual 1400.25](#), Subchapter 451.15 specifically indicates that it is DoD policy to **not** recognize private citizens or private entities that have a commercial or profit making relationship with the Department, unless the contribution is substantially beyond that specified or implied in the terms of the contract establishing the relationship, or the recognition is in the public interest. Even in such an extreme situation, recognition is honorary only. If individual contractor personnel have performed exceptionally well or made a contribution that significantly exceeds

the terms of the contract, the government may acknowledge that contribution by a letter to the individual's company. This "letter of appreciation" must be coordinated with the contracting officer who will send it to the contractor.

The contracting officer must ensure, prior to coordination, that:

- The letter of appreciation does not conflict with any Contract Performance Assessment Reports ([CPAR](#)) information and the recognition cited does not exceed the scope of the contract.
- The letter has been reviewed by the local ethics official to ensure the language does not improperly imply endorsement of the contractor.

The government constantly monitors and records a contractor's demonstrated record of contract compliance in supplying products and services that meet users' needs. Ultimately, good performance is rewarded by either explicit financial incentives (such as an award fee) or indirectly by way of positive CPAR, which may result in future business. Future business may also come by the extension of the present contract through exercise of an option.

Source: U.S. Air Force Guide for the Government-Contractor Relationship, October 2006

### **15. What are the most important things DoD attorneys can do to help foster improved contractor safety performance?**

As early as 1998, DoD directed the purpose of contractor safety oversight is more than mere protection of DoD equipment and personnel: contractor safety oversight is justified by both military readiness, achieved through on-time delivery of products and services, and the ultimate savings to the government, which DoD historically has enjoyed as the result of lower accident rates in the contractor's, and the total military installation's workplace. Clearly, lawyers have a primary role in helping contracting officers and DoD activities understand who has responsibility, either by contract or duty of care, for the safety and health of contractor employees. With the continued increase of functions performed by contractors at military installations and onboard vessels, and the support by the Federal Courts of OSHA's Multi-Employer Citation Policy, the potential implications are significant if the acquisition community proceeds without first "Consulting Your Attorney (CYA)." Responsibilities of Legal Counsel are outlined in section 2 of this guide.

## Appendix I: Cell Phone Tower Case Study

### References:

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3. Built for a Simpler Era, OSHA Struggles When Tower Climbers Die, Frontline, May 24, 2012 <http://www.pbs.org/wgbh/pages/frontline/social-issues/cell-tower-deaths/built-for-a-simpler-era-osa-struggles-when-tower-climbers-die/>
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5. Interim Inspection Procedures during Communication Tower Construction Activities, OSHA Instruction CPL 02-01-036  
[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_id=2770&p\\_table=DIRECTIVES](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=2770&p_table=DIRECTIVES)

### Introduction:

The case study described below is an example taken from a Public Broadcasting System (PBS) program that is provided to illustrate poor contractor safety performance and how application of the principles in this guide can improve safety performance, save lives, money and avoid negative press.

### Background:

Until the 1990s, most tower work involved radio and television towers, which can be more than 1,000 feet high. Some phone companies employed staff climbers to work on microwave towers used for long-distance calling. With the proliferation of cell phones, the pace and volume of tower work spiked and there are now more than 280,000 sites nationwide, up from 5,000 in 1990. The surge of cell work forever altered tower climbing. The roughly 10,000 workers who build and maintain the nation's TV, radio and cell towers, aren't typically hired directly by the corporations that rely on their labor. They're subcontractors, sometimes separated by a daisy chain of other contractors from the companies that ultimately pay for tower projects.

Since 2003, an analysis of OSHA records show tower climbing has had a death rate roughly 10 times that of construction. Almost 100 climbers have been killed on the job, 50 of them on cell sites. The work attracts risk-takers and rebels. Of the 33 tower fatalities for which autopsy records were available, 10 showed climbers had drugs or alcohol in their systems.

The same factors show up again and again in agency investigations of worker deaths. In two dozen cases inspectors found that workers on sites where fatalities occurred had received inadequate training. Climbers typically earn \$10 or \$11 an hour, yet some subcontracting companies demand they pay for their own safety gear. OSHA records show faulty or misused equipment was identified in almost one-third of the tower-related deaths since 2003. Carriers sometimes power down cell sites when climbers are on them, so subcontractors often work overnight, when fewer customers will notice disruptions. An OSHA investigation found a climber fell to his death just before midnight in September 2008, on a job where the crew wore headlamps and raced to meet an accelerated timetable.

Time pressure often leads to free-climbing, in which workers don't connect their safety harnesses to the tower. This allows them to move up, down and around more quickly, but leaves them without fall protection. In more than half of the tower fatalities, workers were free-climbing, even though safety regulations strictly prohibit it. Industry pressure can cause people to take such shortcuts. In a 2004 fall, OSHA found that supervisors had "completely disregarded" safety regulations to save "Time, Work, Money," an investigation report said.

In November 2003, a 35 year old worker was hired by a subcontractor to help build a 350-foot cell tower in a cornfield near Fremont, Neb. The job needed to be done by midnight on Thanksgiving, just seven days away. The project ran into a series of problems. The crane operator, deciding it was too windy to work, took his crane and left. The worker found replacement equipment, but it was in Texas, more than 15 hours away. Setting out to retrieve it, he and another tower hand drove nonstop, taking turns behind the wheel.

When they arrived back at the site two days later, there was a phone company truck near the tower. The worker assumed the carrier wanted to make sure the job was on time. He was mistaken – the driver was just a technician – but instead of returning to their motel to sleep, they immediately went to work. When the worker had climbed 240 feet to add a section to the tower, his co-worker pulled the wrong lever on equipment hoisting a huge piece of steel. The equipment broke away from the tower and fell to the ground – with the worker attached. His safety harness broke his fall momentarily then snapped. According to court records, he suffered massive internal injuries. He sued three companies involved with the project, and received a settlement from the subcontractor that hired his firm. His case against the phone company was dismissed, however. In court documents, the carrier argued that its final project deadline was actually a month later and hadn't compelled the climbers to take undue risks. The carrier also said it wasn't responsible for the workers, who, as a subcontractor, were "three entities removed from any relationship with the cell company.

Cell carriers have several reasons for why tower work is outsourced: Building and maintaining towers, though crucial to cell service, isn't part of their core business. Contractors have greater expertise with construction. It's more economical to hire workers where and when needed, given the up-and-down volume of work. It makes good business sense for them to contract it out. Industry insiders say handling tower work this way also insulates companies atop the contracting chain from legal and regulatory consequences when there are accidents.

OSHA has the authority to cite carriers only if it can prove they had direct control over work or knew of safety violations. To sanction companies for safety violations involving subcontractors,

OSHA must meet the requirements of the [multi-employer citation policy](#). The policy, which dates to OSHA's early days, was created with construction and manufacturing in mind for industries with centralized work sites where supervisors for the companies that own and operate the sites are more likely to be present. The tower industry doesn't function this way. Work is done on thousands of cell sites in remote locations all over the country for short periods of time. Carriers sometimes don't own towers, leasing space for their antennas instead, and typically don't have employees on site.

Even though some carriers set prices and timetables for tower jobs and many of their technical specifications, down to how to color code coaxial cables, their supervisors typically stay off-site and do not manage jobs directly. Labor experts have said the oversight system provides an incentive for them not to know too much about what's happening on work sites. Information that there are unsafe practices can make them responsible for fixing those unsafe practices.

The multi-employer policy allows OSHA to cite companies that contract out work if they supervise a work site and can correct safety violations or require others to do so. However, in many industries, the lead employer has transferred that function and responsibility to subordinate organizations. And those subordinate organizations are often operating in a much more competitive environment making it harder to achieve excellence in health and safety.

#### **Issues:**

1. Since 2003, an analysis of OSHA records show tower climbing has had a death rate roughly 10 times that of construction.
2. Extreme rapid increases in services for customers resulted in dramatic workload increases and shortened completion schedules. Time pressure can lead to unsafe work practices such as free-climbing, in which workers don't connect their safety harnesses to the tower.
3. Tower climbing is now performed by subcontractors at least several layers removed from the cell phone companies which results in limited control and can insulate companies atop the contracting chain from legal and regulatory consequences when there are accidents.
4. Under the OSHA Multi-employer worksite policy, an employer must first be determined to be a creating, exposing, correcting, or controlling employer to be cited for any unsafe conditions or practices. In the case of tower climbing, cell phone companies have not been determined to fall into one of these categories.
5. Sites are remote and work typically is completed within several days resulting in limited oversight of work procedures and compliance.
6. With multiple layers of subcontractors involved there tends to be less qualified and trained personnel performing the work due to the reduced wage scale.

#### **What changes are needed on a National level?**

The current system creates incentives for people to operate in the dark instead of creating incentives for people to assume their role in those activities. Public policies should actually make it more clear to the public who the work is being done for, and in that way increase the

incentive for the lead company to take a much more active role in the health and safety practices at the worksite. It's a matter of creating a culture up and down the set of organizations that will ultimately result in safe and responsible job site practices.

**Questions:**

1. Name at least 5 issues that reduce safety performance in this situation?
2. How could contracts be written to improve safety performance?
3. How could the contract selection process be changed to improve safety performance?

**Answers are provided on the following pages**

## Answers:

### Question 1. Name at least 5 issues that reduce safety performance in this situation?

a. Unsafe work practices; b. Remote worksites; c. Short duration work; d. Night work; e. Completion schedule pressure; f. Rapid growth of the industry and corresponding work; g. Emphasis on not interrupting customer service; h. Limited oversight by Management & Regulatory Agencies; i. Reduced pay scale, j. Less qualified personnel; k. Inadequate training/experience/personal protective equipment; l. Subcontracting out high hazard work m. Lack of safety professionals in the industry.

### Question 2. How could contracts be written to improve safety performance?

a. As required by EM 385-1-1, Para 01.A.18, require the Prime Contractor to be responsible for ensuring subcontractor compliance with the safety and occupational health requirements.

b. As required by EM 385-1-1 15 Sep 08, Para 01.D.05, require the Prime Contractor to maintain records of all exposure and accident experience incidental to the work (this includes exposure and accident experience of the Prime Contractor and subcontractors and, at a minimum, these records shall include exposure work hours and a log of occupational injuries and illnesses.

c. As required in Unified Facilities Guide Specification UFGS Section 01 35 26 Governmental Safety Requirements, Para 1.7, consider the Prime Contractor to be the "controlling authority" for all work site safety and health of the subcontractors. Contractors are responsible for informing their subcontractors of applicable safety provisions.

d. As required in Unified Facilities Guide Specification UFGS Section 01 35 26 Governmental Safety Requirements Para 1.8, require all activities listed on the project schedule to have an AHA developed. The AHAs will be developed by the contractor, supplier or subcontractor and be provided to the prime contractor for submittal to the Contracting Officer.

e. Consider using the FAR clause 52.236-13, "Accident Prevention", in contract documents involving high hazard work such as working aloft, roofing, scaffolding, high voltage electrical, confined space, etc. By adding this requirement, contractors would be required to implement EM-385-1-1, provide an [Accident Prevention Plan](#) and develop an [Activity Hazard Analysis](#) for each phase of work prior to the start of work.

### Question 3. How could the contract selection process be changed to improve safety performance?

Prospective contractors and subcontractors should have safety programs applicable to the services to be performed. In evaluating proposals for contracts, consider the safety and occupational health (SOH) capabilities and past performance of the offerors and their proposed major subcontractors as they relate to the probability of performing the work safely and in conformance to applicable safety and health requirements. Contract Solicitations and Requirements Documents should require offerors to demonstrate their safety and health program capabilities and experience. The following examples could be used to demonstrate safety and health program capabilities and experience:

- a. Total Case Incidence Rate(s) (TCIR) and the Days Away, Restricted, and Transfer (DART) Rate, Experience Modification Rate (EMR) Rate(s) for the offeror and each proposed major subcontractor.
- b. A description of all Federal, state, or municipal OSHA notices of noncompliance or citations issued to the offeror or any proposed major subcontractor within the last five years.
- c. A narrative description of the key hazards and SOH compliance requirements perceived by the offeror to be applicable to the work described in the solicitation.
- d. A narrative description of the SOH capabilities and processes of the offeror and major subcontractors that will detect, prevent, and control hazards, and ensure compliance with applicable SOH requirements, during the performance of the work described in the solicitation.

**Note:** Section 3.4 of the Guide provides suggested methodologies to evaluate these criteria.

### **DoD Requirements and Practices for Subcontractors:**

Within DoD, subcontractors are in many instances treated the same as prime contractors. Example excerpts from Service Instructions/Guides detailing safety and occupational health requirements for subcontracts include the following:

#### **1. EM 385-1-1 15 Sep 08**

**Para 01.A.18.** The Prime Contractor is responsible for ensuring subcontractor compliance with the safety and occupational health requirements contained in this manual.

**Para 01.D.05.** In addition to any other applicable requirements within this section on contract operations, the Prime Contractor shall:

- a. Maintain records of all exposure and accident experience incidental to the work (this includes exposure and accident experience of the Prime Contractor and subcontractors and, at a minimum, these records shall include exposure work hours and a log of occupational injuries and illnesses).

#### **2. AF 91-202**

**Para 1.5.14.15.** Ensure commanders and functional managers work with the base contracting office and the installation safety staffs to ensure all contracts require contractors and subcontractors (e.g., contract aircraft maintenance and grounds maintenance) to provide a mishap prevention plan (as applicable) and to promptly report pertinent facts regarding mishaps that occur on Air Force installations IAW AFI 91-204 and to cooperate in any Air Force safety investigation.

#### **3. Air Force Contracting Voluntary Protection Program Support Guide May 2009**

**Para 2.4.** VPP is applicable to contractors whose employees work more than 1,000 hours per quarter on an Air Force installation. Applicable contractors are required to flow down VPP requirements to all subcontractors who qualify as applicable contractors under their contract.

**Para 3.2.** Contracting officers should work with the multi-functional team to ensure that services and construction requirements documents for applicable contractors include the safety and health requirements in the SAF/IE memorandum, Voluntary Protection Program Implementation and Contracting Activities, dtd Apr 06, 2009. If the procurement package does not address VPP, the multi-functional team should engage the installation safety office for guidance on meeting VPP requirements. It is recommended that contracting offices using customer handbooks revise the handbook to inform customers of the need to address VPP requirements in accordance with the SAF/IE memorandum, Voluntary Protection Program Implementation and Contracting Activities, dtd 6 Apr 09, prior to submitting requirements documents to the contracting activity. Generally, requirements documents for new services or construction or a follow-on acquisition will include:

**Para 3.2.6.** A requirement for the contractor to establish the VPP PWS requirements for all subcontractors who qualify as applicable contracts under the resulting contract.

#### **4. AR 385–10 • 23 August 2007**

**Para 4–2. Policy f.** In addition to clauses as required by FAR, DFARS, and EFARS, activities will develop performance work statements and contract instructions and conditions that outline contractor safety requirements and responsibilities based on a risk assessment of the work to be performed and activity/command unique requirements. Contracting officer representatives (CORs), requiring activity, or Defense Contract Management Agency, in consultation with local safety and occupational health SMEs, will develop additional and necessary clauses to mitigate risk. Note that the only means for imposing safety and occupational health requirements on a contractor or subcontractor is by incorporating the requirement as a contractual requirement (for example, a contract clause, special clause, statement of work, guide specification, or contract modification).

#### **5. Unified Facilities Guide Specification UFGS Section 01 35 26 Governmental Safety Requirements**

##### **Para 1.7 Accident Prevention Plan (APP)**

The Government considers the Prime Contractor to be the "controlling authority" for all work site safety and health of the subcontractors. Contractors are responsible for informing their subcontractors of the safety provisions....”

##### **Para 1.8 Activity Hazard Analysis (AHA)**

The AHA list will be reviewed periodically (at least monthly) at the Contractor supervisory safety meeting and updated as necessary when procedures, scheduling, or hazards change.

Develop the activity hazard analyses using the project schedule as the basis for the activities performed. Any activities listed on the project schedule will require an AHA. The AHAs will be developed by the contractor, supplier or subcontractor and provided to the prime contractor for submittal to the Contracting Officer.

## **Appendix J: Case Study-Legal Issues with Government Acceptance of Substandard Facilities**

### **References:**

1. [FAR 52.246-12](#), "Inspection of Construction"
2. [FAR 52.236-13](#), "Accident Prevention"
3. [Associated Press July 16, 2012](#)

### **Introduction:**

The case study described below involves a U.S. soldier who was electrocuted in his barracks shower at an Army base in Iraq. The soldier died when an improperly grounded water pump electrified his shower water.

### **Background:**

According to a July 16, 2012 Associated Press report, U.S. District Judge Nora Barry Fischer ruled that a Houston-based military contractor couldn't be held liable for the death because military commanders, not the contractor, made the decisions on where to house soldiers and whether buildings with substandard electrical systems were suitable or not. Attorneys say they'll appeal to the 3rd U.S. Circuit Court of Appeals.

### **Issues:**

The U.S. District Judge ruled that a DoD contractor couldn't be held liable for the death of a soldier who was electrocuted in his barracks shower in Iraq because military commanders -- not the contractor -- made the decisions on where to house soldiers and whether buildings with substandard electrical systems were suitable or not. All parties agree that the soldier died in 2008 when an improperly grounded water pump electrified his shower water. In the case, the Army made a suitability determination about the housing which may have been an inherently governmental decision. This could also occur within the Continental United States (CONUS) as easily as Outside the Continental United States (OCONUS) in housing or any other contractual context. Furthermore, DoD can place itself in a similar position via negligence, or contractual actions as well as with an inherently governmental decision.

Typically, a military Service as the land, vessel or airplane owner (technically the Service "holds" land), does not have a duty to inspect a work space handed over to a contractor during construction, alteration or repairs. However, if the base Commander, or others within DoD, know or should have known of a safety risk, even in a contractor controlled space, DoD then has a duty of care in tort (personal injury law) to both DoD and contractor employees and personnel.

Building on the two tort hooks of "knowledge" and "control," the following four contractual actions may give rise to a DoD duty of care which needs to be discharged:

**1. Inspection Clause.** DoD has a contractual duty to inspect contractor deliverables before acceptance set forth specifically by FAR clause (e.g., FAR 52.246-12), although this is sometimes caveated by a contractor QA/QC plan. Note that latent defects and gross mistakes are exceptions to the finality of acceptance, but are unusual; perhaps because the burden is on DoD to show, e.g., DoD could not have discovered the defect with ordinary care during inspection.

**2. Accident Prevention Clause.** The Contracting Officer has an affirmative duty to inform the contractor of risks it becomes aware of under the Accident Prevention FAR clause, and DoD may be liable for injuries and damages if the Contracting Officer fails to do so (see FAR 52.236-13).

**3. Performance vs. Design Work Statement.** DoD also assumes risk to the extent it directs the contractor to use a specific design or solution, rather than provide a "performance" work statement. This contractual limitation on the contractor's flexibility to provide a safe deliverable is called the "Government contractor defense."

**4. Contractor Submissions & Contract Deliverables.** Finally, DoD assumes the risk inherent in any contractor plan, specification or submission it "approves" instead of "accepting it for Government purposes only." Further, if DoD required deliverables which it is not staffed to review and use, then it may be on notice of a safety risk embedded in the contractor submission, and have concomitant duty of care to discharge, without even knowing it.

Note: The contractor indeed may escape liability if DoD does not discharge or avoid these duties of care which arise either in tort or contract. DoD should be aware of when it has stepped into a duty of care, and not assume a contractor can be held liable unless DoD has discharged this duty.

### **Questions:**

1. What standards should be included in contracts to help ensure the safety of facilities for OCONUS Military Operations?
2. What are 3 steps Contracting Officers could take to avoid stepping into a duty of care?

**Answers are provided on the following page**

## Answers:

### **Question 1. What standards should be included in contracts to help ensure the safety of facilities for OCONUS Military Operations?**

- a. Section 4.12 of this guide discusses safety of facilities for OCONUS Military Operations. [DFARS 246.270](#) establishes policies and procedures intended to ensure the safety and habitability of facilities, infrastructure, and equipment acquired for use by DoD military and civilian personnel during military operations performed outside the United States.
- b. DFARS 246.270-2 requires that contracts for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment configured for occupancy by DoD military or civilian personnel shall require a pre-occupancy safety and habitability inspection. In addition, to minimize safety and health risks, each contract covered by this policy shall require the contractor's compliance with the Unified Facilities Criteria ([UFC](#)) 1-200-01 for fire protection, structural integrity, electrical systems, etc. Inspections to ensure compliance with UFC 1-200-01 standards shall be conducted in accordance with the inspection clause of the contract.
- c. The DFARS clause at 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, must be used in solicitations and contracts for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

### **Question 2. What are 3 steps Contracting Officers could take to avoid stepping into a duty of care?**

- a. Contracting Officers should verify that:
  1. Boilerplate contracts avoid unnecessary approvals;
  2. Contracting Officer Representatives, Contracting Officer Technical Representatives, Officers in Charge of Construction, etc., are trained to administer contracts with this recent decision and the four contractual risk shifting situations listed above in mind;
  3. During acquisition planning, the Contracting Officer should determine whether the Command is staffed to inspect contract deliverables specifically to identify safety issues, or if instead the military construction project data on DoD Form DD 1391 should include funds for a second contractor just to advise the Contracting Officer on safety aspects of acceptance.