



## UNDERSTANDING THE NEW SAFETY LANGUAGE

*Why your company should gear up on compliance to stay ahead of the curve*

BY JOHN J. MEOLA

“**V**etting” is a word we hear often. This term can be instructive as it applies to your business, such as when you are heading into a mandatory, pre-bid meeting. Basically, the client wants to know exactly who the people are who are bidding on a job. Conversely, if you aspire to be at the top of the bidders list in the request for proposal (RFP) screening, then your safety program should have neon around it. It is just one way to demonstrate due diligence when selecting your business partners. The lenders will appreciate the effort. The vetting process of your safety program is not complicated, but it can be laborious. The concept of “corporate governance,” which is relatively new to United States business, is the operative term driving the increasing emphasis on safety in practically all new RFPs. This is because large clients want their projects built with no adverse baggage, such as accidents or environmental issues, like a fuel spill or an uncontrolled hydraulic leak. And the RFP safety language is only becoming more prescriptive. Gone are the old days when the line item simply asks, “Do you have a safety program?” Present-day RFP language typically contains several pages of questions or requirements

addressing the minutiae of your operations. Be prepared to step up and affirmatively answer questions. Your company’s resume should reflect its achievements. The days are gone of just being able to say, “We have been in business for over 40 years,” and let that speak for itself. You need to have proof of your longevity. The following is a brief summary of some of the main elements you should be prepared to address.

- Show evidence of leadership and commitment to safety, such as in a policy statement and on your company website. Be sensitive to what will show up on a Google search of your company name.
- Show a written safety manual with all the bells and whistles.
  - Be ready to produce an electronic table of contents, and possibly share the entire manual when asked.
  - Having your safety data sheets (SDS) in a binder is now a requirement.
- Written procedures should be current for specific, high-risk activity, such as foundation and deep-trench excavation, steel erection and heavy lifting.
- You should be conversant with well-structured job hazard

analyses (or activity hazard analyses for any USG-related jobs)

- You will invariably be asked to produce your workers' compensation insurance experience modification factors (EMF) or MOD for the last 3 years. This helps illustrate your historical claim track record for project owners.
- These should be accompanied by the last 3 years of OSHA records; 300 and 300A forms.
- You should have trained and credentialed staff in whatever specialty discipline you claim. Practically every industry has some form of skills credentialing process. Call your trade association if you are not familiar with it already.
- Make a big deal of your employee safety committee. This heading used to be an asterisk in a lot of programs. Now, it is one of the top five safety program drivers. Show evidence of committee activity, such as conducting regular jobsite inspections and the authority to stop unsafe work, with follow-up communications.
- Have proof that you hold regular safety meetings, and you routinely extend invitations to site management and other trades. Most large projects will hold mandatory, weekly progress and safety meetings, at which you will need to have a representative. That's fine, but you should also be holding your own company meeting, however brief it may be.
- Institute OSHA 10- and 30-hour or other safety training. Put pictures of the credentials in the bid package to avoid the client having to ask for it.
- Highlight your competent safety person certifications for specific high risk activity, such as fall protection, confined space and staging and scaffolding.
- Have a credentialed safety director on staff and trained field supervision and managers. Include your quality assurance (QA) or quality control (QC) representative on the safety committee.
- Make plans for regular safety communications and publications, such as newsletters, training announcements and new personal protective equipment (PPE). These all qualify as evidence of your commitment.
- Show evidence of inclusion and diversity, such as, "We offer courses to our non-English speaking employees in ESL; we promote from within; and we are Equal Employment Opportunity Commission (EEOC) compliant."
- Take a picture of your emergency spill kit and post it in your safety manual. Describe the precautions you take to prevent fuel, hydraulic oil and more from dripping or spilling on the site.

To validate this obsession over safety, look no further than OSHA, which has recently goosed its compliance accountability process with a massive, upward revision in the violation fine structure. When coupled with OSHA's "Multi-Employer Worksite" policy, safety noncompliance can become downright costly. Thus, general contractors (GCs) and owners conclude it is not worth the headache of making excuses

over who is to blame. Contract language will aim for true safety accountability up front. If you were or are them, you would probably do the same thing. For a bit of clarity, the policy categorizes the entities on a project into four groups:

- A "creating" employer is the person who created the hazard, whether unwittingly or not. For example, whichever trade took the barricade down and left the fall hazard unprotected created the hazard.
- The "exposing" employer allowed its employees to be exposed to the hazard. This could be you, if your people were working anywhere near a fall hazard.
- The "correcting" employer is responsible for correcting the hazard. For example, this happens when everyone on the job feigns ignorance and the GC has to hire someone to abate the hazard or do it themselves.
- The "controlling" employer has authority to manage the exposing, creating or correcting employer. This is usually the GC or the owner's representative.

Does this sound complicated? It is. But this is the formula that OSHA will use when they try to parcel out blame for whatever hazards they find during an inspection or after an accident. Either way, it is not going to be pretty, nor will it end well. Using this simple exercise, we can envision the panic among owners and GCs over having to stand accused of safety violations not of their making. As an alternative to vetting contractors one by one, a cottage industry of third-party practitioners has arisen, to enable GCs and owners to keep their hands off and sanitize the process. These companies include ISNetworkworld (isnetworkworld.com), Browz (browz.com/en/) and PIC/S (picscheme.org). These are essentially screening agencies, hired by the owners, to vet the details and the substance of your safety and insurance programs. The more specialized the industry, the greater the likelihood of finding a specialty clearinghouse.

Ask yourself, do you plan on being in this business 5 years from now? If so, you should be looking at the future and planning your development with this in mind, because these issues are not going away anytime soon. The client base is increasingly being driven by forces that have less to do with safety compliance, and more to do with owners and bankers sleeping soundly at night and not listening to activist shareholders or distraught family members. The smart move is to gear up and lean forward to stay ahead of this curve. **CBO**

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