



SAFETY OVERSIGHT OF CONTRACTORS

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Overview



- OSHA Multi-employer Worksite Citation Policy
- Tort Liability & DoD Policy
- Progressive safety culture nurtured by maintenance of distinct Navy & contractor safety programs



Part 1



OSHA's MULTI-EMPLOYER CITATION POLICY

Oversight is Needed





OSHA Multi-Employer Citation Policy



- Current Multi-Employer Citation Policy in two steps

Step One

Determine the employer's status

“creating employer”

“controlling employer”

“correcting employer”

“exposing employer”



OSHA Multi-Employer Citation Policy



- Current Multi-Employer Citation Policy in two steps

Step Two

Determine if the employer exercised “reasonable care”



Portrait of one Controlling Employer



Secretary of Labor v. Summit Contractors, Inc. (Occupational Safety & Health Review Commission 2007)

- Summit “could reasonably be expected to prevent or detect and abate the violative condition by reason of its supervisory capacity and control over the worksite.”
- Includes consideration of contract terms



Corrective Action



- ALJ wanted to see that Summit:
 - Inspected All Phase for fall protection requirements
 - Conducted worksite safety meetings or training
 - Enforced compliance “with a graduated system of enforcement”
- This appears to be OSHA’s definition of “reasonable care”



Part 2



ADMIRALTY & TORT LIABILITY



Slip on the pallet, sue the Navy





Part 3



DoD & Navy Policy

Does the Contractor know what to do?





DoD Oversight Policy



- DoD Inst 6055.1 (1998)
 - Two reasons for DoD Components' oversight of contractor operations
 - Where DoD has a statutory authority for oversight (ammunition, nuclear propulsion)



DoD Oversight Policy



- Where it is in DoD's best interest. DoD oversight has historically contributed to lower accident rates among certain contractor employees, on-time delivery of products and services (increased readiness), and ultimate savings to the Government



DoD Oversight Policy



- DoD Inst 6055.1 (1998)
 - Components will ensure procedures are established to evaluate the benefit versus the legal and tort claims and compensation and liability ramifications of acting as the controlling employer for a contract.



SECNAV Policy



- SECNAVINST 5100.10J (2005)
 - Navy OSH Programs only extend to contractor employees for those matters over which the Navy exercises statutory authority
 - In all other matters, the contractor is directly responsible to OSHA



CNO Policy – Pre-OSHA MEWS CPL



- CNO Message (1996)
 - Due to liability and tort claims issues, the Navy generally does not provide safety and health oversight for contractor employees. Based on the long-standing DoD policy, our role in terms of contractor oversight is the protection of Navy personnel and property, and contract compliance. . . .



CNO Policy – Pre-OSHA MEWS CPL



- CNO Message (1996)
 - . . . Contract compliance is the responsibility of the contracting officer's authorized representative. If we happen to observe safety deficiencies with a contractor, they should be identified to the contracting officer's authorized representative for resolution with the contractor.



CNO Policy



- CNO Guide to S&OH Responsibilities in Contract Management (2001)
 - The local OSH office shall not assume a regulatory role
 - Recognizes OSHA's multi-employer policy and states that we need to avoid being a controlling employer except in infrequent circumstances where we knowingly accept this role.



CNO Policy



- OPNAVINST 5100.23G (2005)
 - **Navy 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.



Part 4



CONTRACTUAL TOOLBOX

What if these men fall?





Contracting Officer Must Plan for Safety



- Planning
 - Acquisition planning
 - Contractor Qualifications
 - Specification writing



Get Them When They're Hungry!



- NAVFAC Evaluation of offerors
 - Past performance
 - Facility Accident Investigation Report database
 - Experience Modification Rating
 - OSHA rating
 - Hazard analysis, and plans



EXXON-Mobil “Safety Process”



- Safety Process includes guidance and tools which allow Evaluation Teams to highlight and mitigate safety sensitivities, vulnerabilities, and deficiencies.
- Contractors are expected to utilize similar guidelines when screening and selecting Subcontractors.



EXXON-Mobil “Safety Process”



- Evaluation of Offerors
 - Pre-qualification Questionnaire
 - Culture Assessment
 - Progressive, Emerging, Traditional
- Discussions
 - Opportunities for Improvement Worksheet
 - Resolution Plan
- Source Selection
 - Evaluation incorporating all of the above



Administration – The Safety Tightrope



- Mantra Heard on Navy Facilities
 - We are not OSHA
 - We do not instruct contractors how to do work
 - We do not approve contractor submittals
- How can this mantra promote growth of two progressive safety programs for Naval Maritime Facilities?



Walking the Safety & Liability Tightrope



- Conducted worksite safety meetings or training
 - Pre-briefs vs. training
 - POC's & reps in contract
 - Check-in process
- Inspected All Phase for fall protection requirements
 - Safety walk-through
 - Stop Work
- Enforced compliance “with a graduated system of enforcement”
 - Corrective Action Reports



Walking the Safety & Liability Tightrope



- Provided incentives for progressive safety culture
 - Investigations
 - Incentive fee processes
 - Assessment of performance



Corrective Action



- Corrective Action Reports – Quality Assurance
 - A Verbal
 - B Written by Navy safety to Contractor safety
 - C ESH Director to Contractor on-site manager or company owner
 - D Commanding Officer to company owner
- Applies to shipbuilding, ship maintenance and ship breaking



Corrective Action



- SERMC & CAR Method B: RMC can address safety culture even more easily
 - SDR Safety Deficiency Reports
 - EDR Environmental
 - QDR Quality
 - MDR Management
 - Used in CPARS – contract performance report, gives leverage with some contractors
- Inspect, and leave the contractor with the responsibility



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