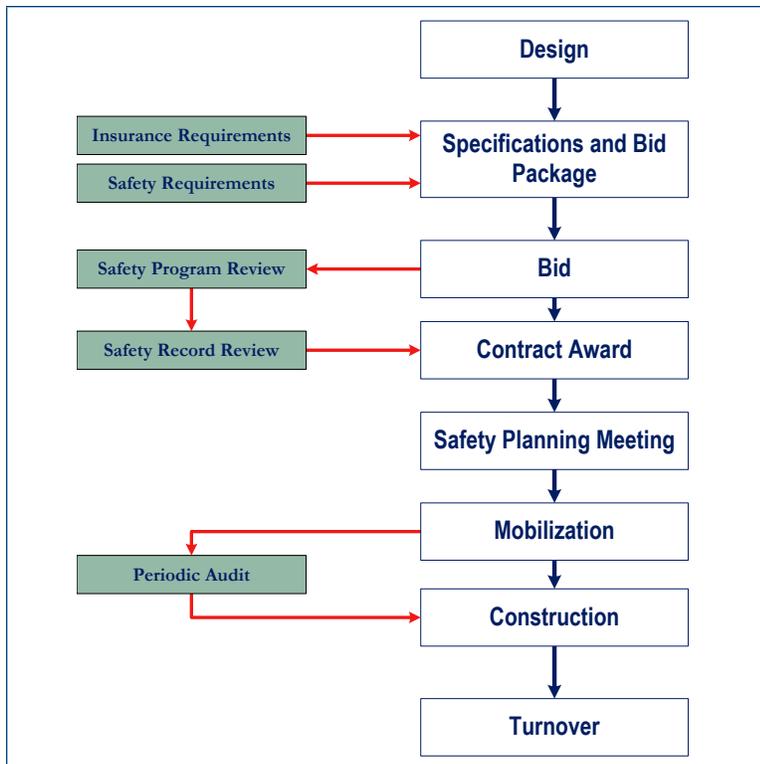


## Contracting Work Performed on Company Premises: A Guide for Owners



**FIGURE 1**

When contracting work is conducted on company premises, both the owner and the contractor must be aware of the unfamiliar conditions where their employees will be working. The contractor's work may expose company employees to unusual hazards, while the company's operations can present problems for the contractor's employees.

An injured employee typically collects workers compensation (WC) benefits from his or her employer, however under certain circumstances, the employee may be entitled to bring a claim against others who may have contributed to the accident.

In one such case, a contractor's employee made a claim against a plant after inhaling sulfuric acid fumes from a tank with an allegedly defective valve. Although eligible for WC benefits, the employee chose to make an additional general liability claim against the plant, and was successful in collecting an amount much larger than would have been received under WC. Similarly, a company employee injured in the contractor's work area may be able to make a claim against the contractor. Either situation will clearly have an adverse affect on construction costs.

### Protecting Your Interests

Owners can take two positive steps to protect themselves from employee injuries or property damage stemming from contractors working on plant premises:

1. Make sure that the contract is written to properly protect your interests in terms of accident costs, and
2. Adopt and actively enforce all necessary loss prevention procedures governing both your own personnel and the contractor's employees.

### The Contract

It is important that your legal counsel approve any contract into which your company enters. Each contract should be scrutinized for three factors:

1. Types of insurance and minimum limits of coverages

2. That you, the owner, are named as an additional insured on the contractor's general liability policy
3. Appropriateness of a hold harmless clause

Insert insurance requirements in the bid document and contract for specific contractor's coverages, including workers compensation, comprehensive general liability and automobile liability. The limits for each of these coverages (i.e., the aggregate amounts payable in case of loss) should be based on your company's requirements. One rule of thumb is that a contractor's limits in both underlying and excess policies should be at least equal to the owners. However, a contractor may not reasonably be able to provide such limits. In general, it is considered appropriate to require at least \$1,000,000 in coverage. Your risk manager or legal counsel should decide the required limits. You may also want to seek advice from your insurance account representative.

In addition, the owner should be named as an additional insured on the contractor's policy. As part of the contract, require that the contractor's insurance carrier specifically list you as an "additional named insured" on the contractor's policy, and that they send you a certificate of insurance that verifies that fact before any work begins. However, a certificate of insurance only means that a policy exists; you should also see an additional named insured endorsement to be certain that you have protection as a named insured through the contractor's policy.

Contractors at all levels should conform to your insurance requirements, including subcontractors hired to do portions of the work. To ensure that your interests are properly protected, have your legal counsel make a careful study of all contractual clauses dealing with liability.

Finally, you may want to evaluate the pros and cons of a hold harmless clause (an agreement by which one party agrees to hold the other harmless in the event of personal injury or property damage). Your risk manager and legal counsel should be involved in this decision. Hold harmless agreements have limitations, as they are a risk-transfer mechanism rather than a means of prevention.

If you decide to include a hold harmless clause and the contractor agrees, the contractor is required to hold you harmless and to defend and indemnify you for any and all claims for injuries and damage, including death, that may arise out of the work, except that which arises from your "sole negligence." However, many states do not allow defense and indemnification to be passed along via contract for sole negligence, and some states allow it only if the contract is specific. Make sure that any subcontractor agrees in the same manner regarding hold harmless agreements.

It is imperative that you have competent legal counsel guide you on the specifics of binding contractual language for the states in which you work.

### Loss Prevention

A well-developed and managed accident prevention program is key in preventing losses. Owners should require the contractor to institute such a program and assign responsibility for the program to a competent individual. Hold a planning session with the contractor well in advance of the job's start date. Consider the following topics for discussion:

- **Outline the Work Area:** Define the physical work areas where the contractor's workers are allowed, including equipment and materials delivery routes, parking, storage areas and sanitary facilities.
- **Establish Permit Systems:** Develop the permit system for potentially hazardous operations, including hot work. Notify the contractor of any known hazardous waste and establish procedures in case any unexpected hazards are found.
- **Equipment Loaning:** Loaning equipment to the contractor is generally not desirable from a liability standpoint. However, there may be occasions when it is expedient for the contractor to borrow plant equipment. Refer questions about equipment loaning to your legal counsel to study the liability aspects and develop a suitable contract.
- **Exchange of Safety Information:** Owners and contractors should each provide the other with a set of safety policies and procedures. The owner should expect that the contractor comply with laws and regulations, such as

the Occupational Health and Safety Act and Environmental Protection Agency requirements. Be aware that §29CFR1926 requirements may differ from the general industry regulations (§29CFR1910) that you enforce. In turn, the contractor should expect plant employees to observe all precautions required by the contractor's work.

- **Utilities:** Reach a clear understanding about how utilities will be provided to the contractor. Establish controls for all the manufacturing operations continuing in the construction area. Consider lockout/tagout procedures for all electric power, gas, oil, steam and piped process material. Provide the contractor with the locations for all underground utilities.
- **Fire Hazards:** Clearly define responsibilities for fire control, giving particular attention to “hot work” such as welding. Review all procedures that apply to firefighting and alarmed equipment, especially sprinkler protection and fire watches. Make necessary changes based on the construction activity.
- **Life Safety:** Prohibit the contractor from blocking emergency exits without advance written notification to your security department. When an exit is closed, require the contractor to establish an alternate exit for your employees.
- **Security:** Provide the contractor's employees with identification badges or other security devices, and have the plant security force check them in and out of company premises. The contractor will also want to take measures to prevent intentional or accidental damage to contracting operations by plant workers. If possible, locate the contractor's entrance at a remote distance from active plant operations.
- **Medical and first aid treatment:** Make sure that medical and first aid facilities are available to the contractor's employees while on the jobsite. Depending on the legal and financial aspects of the particular situation, it may be appropriate to make plant medical facilities available to the contractor's employees or require that the contracting company provide for its own medical needs.
- **Jobsite hazards:** Let the contractors know beforehand of any special hazards that may arise from your operations. Examples may include flammable material, dusts, chemicals

and electrical or mechanical hazards. Review warning signals and evacuation plans carefully. Provide information on any materials that require special precautions in use or handling. Have copies of Material Safety Data Sheets (MSDS) available and provide, or require the contractor to provide, the contractor's employees with whatever safety training is given to plant employees.

### **What Your Employees Should Know**

Be sure all employees who need to be on or near the jobsite are aware of the hazards and precautions. The contractor's construction superintendent or safety director is probably the person most qualified to offer this instruction.

### **What the Contractor's Employees Should Know**

Have your safety director or other knowledgeable company representative instruct the contractor's employees regarding hazards arising from company operations and the precautions they should take. Specific requirements will be determined by job conditions.

### **Periodic Audits**

Every program requires follow-up to ensure that it accomplishes its objectives. The owner should designate a responsible employee to keep abreast of whether the job is proceeding safely and according to agreement. The individual may gain such knowledge through one or more audits each day, or by some other means, depending on the nature and size of the job and the contractual agreement. Keep in mind that special hazards may require review by specialists in areas such as industrial hygiene, occupational medicine or pollution control.

### **Accident Reporting**

Report all accidents, regardless of how minor they may seem. When a serious injury occurs, notify your insurance carrier immediately.

### **Contractor's Employee Accidents**

- Provide necessary emergency services.
- Require the general contractor to conduct an accident investigation.
- Assist the general contractor's investigation as appropriate.
- Contact your Claims office immediately.
- Obtain a copy of the accident investigation report.

- Take action to prevent accident recurrence.

#### **Owner's Employee Accidents in the Construction Area**

- Provide necessary emergency services.
- Gather the facts quickly.
- Get the names of as many witnesses as possible.
- Inspect the accident scene carefully.
- Take photographs or video of the unaltered scene.
- Complete accident report and send copy to your insurance carrier's Claim office.
- If original report of injury indicates no lost time but the employee loses time at a later date, contact the Claims office the day the employee starts to lose time.
- Contact the Claims office the day the employee returns to work.
- If the accident involves a contractor's operation, be sure to include this information.
- Take action to prevent accident recurrence.

#### **Summary**

When you contract for construction work at your facility, you may find it helpful to follow this sequence of activities. The chart on page one describes milestones for owner/contractor safety agreements.

- Write all necessary clauses regarding insurance and accident prevention into the bid and contract specifications. Be sure that the contractor understands the scope of the specifications and designates a responsible person to coordinate safety on the jobsite.

- Evaluate each contractor's safety program and performance when considering bids.
- Hold a safety planning meeting with your own employees and the contractor's employees before the job starts. Reach a mutual understanding regarding the job safety requirements and who will be responsible for them. Provide the contractor with any necessary MSDS.
- Make sure that the contractor holds a similar employee meeting (with your manager or safety director present) to explain hazards arising from your operations. Verify that all Hazardous Communications training is completed.
- Conduct a safety meeting to review the agreed upon plans and procedures with your key personnel who may be affected by the project.
- When the job starts, and for its duration, make sure your employees and the contractor's employees comply with planned loss prevention.
- Apply control principles to safety as well as cost, schedule and quality.
- Report all accidents and promptly and document existing conditions at the time of accident.

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The illustrations, instructions and principles contained in the material are general in scope and, to the best of our knowledge, current at the time of publication. No attempt has been made to interpret any referenced codes, standards or regulations.

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