

NCO 4 Guide for VHA DIRECTIVE 2011-036

VHA Directive 2011-036 SAFETY AND HEALTH DURING CONSTRUCTION, effective September 22, 2011, http://vaww1.va.gov/vhapublications/ViewPublication.asp?pub_ID=2448 applies to all construction activities performed at VHA owned or leased facilities regardless of whether performed by VHA or contractor staff. This guide addresses Section 4.n.(7) in which Contracting Officers are to evaluate and consider past safety records of bidders/offerors prior to award. The requirement is a pass/fail; therefore, it is not required to be a technical evaluation factor in RFPs unless it is critical to the acquisition.

1. SOLICITATION INFORMATION

- a. All solicitations must contain the following verbiage under “**INFORMATION TO BIDDERS/OFFERORS**” section of the solicitation:

Safety or Environmental Violations and Experience Modification Rate

“All Bidders/Offerors shall submit the following information pertaining to their past Safety and Environmental record. The information shall contain, at a minimum, a certification that the bidder/offeror has no more than three (3) serious, or one (1) repeat or one (1) willful OSHA or any EPA violation(s) in the past three years.

All Bidders/Offerors shall submit information regarding their current Experience Modification Rate (EMR) equal to or less than 1.0. This information shall be obtained from the bidder's/offeror's insurance company and be furnished on the insurance carrier's letterhead.

Self insured contractors or other contractors that cannot provide their EMR rating on insurance letterhead must obtain a rating from the National Council on Compensation Insurance, Inc. (NCCI) by completing/submitting form ERM-6 and providing the rating on letterhead from NCCI. Note: Self insured contractors or other contractors that cannot provide EMR rating on insurance letterhead from the states or territories of CA, DE, MI, NJ, ND, OH, PA, WA, WY, and PR shall obtain their EMR rating from their state run worker's compensation insurance rating bureau.

A *Determination of Responsibility* will be accomplished for the apparent awardee prior to processing the award. The above information, along with other information obtained from Government systems, such as the OSHA and EPA online inspection history databases will be used to make the *Determination of Responsibility*. Failure to affirm being within the guidelines above or submit this information will result in a determination of “Non-Responsibility” for the bidder/offeror. NOTE: Any information received by the Government that would cause for a negative *Determination of Responsibility* will make the bidder/offeror ineligible for award.

This requirement is applicable to all subcontracting tiers, and prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. “

- b. It is recommended that Contracting Officers brief this requirement in Pre-Solicitation Site visits and Post-Award, Pre-Construction meetings.

2. PRE-AWARD CONTRACTOR RESPONSIBILITY

STEP 1 - Contracting Officers shall verify safety violations of not more than three (3) serious, or one (1) repeat or one (1) willful Safety violation(s) in the past three years by verifying on the OSHA website <http://osha.gov/pls/imis/establishment.html> . At the website, follow these steps (see screen below)

- a. Type in the name of the apparent awardee under "Establishment" and verify the name and address match. This site is sensitive to Name format, so partial names may be necessary to obtain sufficient data. i.e. "ABC" rather than "ABC Inc" or "ABC Incorporated" or "ABC Co."
- b. Select "CLOSED" radio button under "Case Status" (OPEN cases may be reversed).
- c. Change year under "Start Date" to 3 year from the current date (i.e. change Dec 1, 2006 to Dec 1, 2008) to obtain violations in last 3 years.
- d. Select Submit and print out results for supporting documentation for Contractor Responsibility.

After selecting "Submit" the following screen on the next page will appear.

- e. After submitting, results will show in format below: (sample "ABC PAINT")

Establishment Search Results Page - Windows Internet Explorer

http://osha.gov/plis/establishment.search?p_logger=1&establishment=ABC+PAINT&State=all&officetype=all&Office

UNITED STATES DEPARTMENT OF LABOR

OSHA QuickTakes Newsletter RSS Feeds Print This Page Text Size

Occupational Safety & Health Administration We Can Help

Home Workers Regulations Enforcement Data & Statistics Training Publications Newsroom Small Business OSHA

Establishment	Date Range	Office	State
ABC PAINT	12/01/2006 to 12/01/2011	all	all

Please note that inspections which are known to be incomplete will have the identifying Activity Nr shown in *italic*. Information for these open cases is especially dynamic, e.g., violations may be added or deleted.

Sort By: [Date](#) | [Name](#) | [Office](#) | [State](#) | [Return to Search](#)

Get Detail Select All Reset Results 1 - 1 of 1 By Date

	Activity	Opened	RID	St	Type	Sc	SIC	NAICS	Vio	Establishment Name
<input type="checkbox"/>	1 125537068	03/17/2010	0950614	CA	Complaint	No Insp/Process Inactive	1721	238320		Abc Paint Company

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f. Verify the search is for all Offices and all States and there are no violations.

g. Additional information can be obtained by selecting the "Get Detail" (SAMPLE BELOW)

h. Verify there are no Violations. If there are more than 3 serious, or 1 repeat, or 1 willful violation, the CO will determine the apparent awardee not responsible.

Inspection Detail - Windows Internet Explorer

http://osha.gov/plis/establishment/inspection_detail/125537068

Occupational Safety & Health Administration We Can Help

Home Workers Regulations Enforcement Data & Statistics Training Publications Newsroom Small Business OSHA

Inspection: 125537068 - Abc Paint Company

Inspection Information: Office: Ca Oakland

Nr: 125537068 Report ID: 0950614 Open Date: 03/17/2010

Abc Paint Company
2514 Hagerthur Blvd
Oakland, CA 94609 Urban Statute Revision

SIC: 1721 / Painting and Paper Hanging
NAICS: 238320 / Printing and Mail-Carrying Contractors

Inspection Type: Complaint
Subject: No Insp/Process Inactive
Ownership: Private
Safety/Health: Health
Advanced Notice: 0
Close Conference: 03/22/2010
Close Case: 04/05/2010

Optional Information: Type ID Value
H 16 LEAD

Related Activity: Type ID Safety Health
Complaint 0950614 Yes

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STEP 2 – Per consultation with Environmental policy writers of VHA Directive 2011-036 SAFETY AND HEALTH DURING CONSTRUCTION, Contracting Officers will rely on Excluded Parties List System (EPLS) for environmental (EPA) violations. If further research is desired, the CO may check the EPA website http://www.epa-echo.gov/echo/compliance_report_icis.html.

STEP 3 - Contracting Officers review bidder's/offeror's documentation of the EMR from their insurance carrier on official letterhead to determine contractor responsibility. This is a pass/fail requirement, so if the EMR is less than or equal to 1.0 the CO will determine the bidder/offeror responsible for this element.

3. DOCUMENTATION

In order for the CO to make a determination that the bidder/offeror is responsible IAW with VHA Directive 2011-036, the contractor must pass all three steps. Ensure documents are uploaded to eCMS attached to the Contractor Responsibility Determination (see SOP Responsibility Determination Attachment 1).

4. POST AWARD - SUBCONTRACTOR SAFETY AND ENVIRONMENTAL VIOLATIONS & EMR

This directive is applicable to prime contractors and all subcontracting tiers. IAW FAR 9.104-4 *Subcontractor Responsibility Matters*, prospective contractors are responsible for determining the responsibility of their prospective subcontractors. After award, prime contractors are responsible for ensuring subcontractors have no more than three (3) serious, one (1) repeat or one (1) willful OSHA or any EPA violation(s) in the past three years and EMR equal to or less than 1.0. COs are not responsible for verifying subcontractors, but may if there is a safety or environmental concern.

**OPTIONAL SAMPLE FORM FOR BIDDER/OFFEROR TO
COMPLETE & SUBMIT WITH BID/PROPOSAL
(FROM CFM WEBSITE)**

Pre-Award Contractor Evaluation Form

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

Contact: _____

1. Utilizing your OSHA 300 Forms, please complete the following information:

Category	2008	2009	2010	2011
Number of man hours (jobsite and office).				
Number of cases involving days away from work, restricted activity, or both (Column H and I of OSHA 300).				
Days away, restricted, or transferred rate (# of days away, restricted, or transferred cases x 200,000/# of man hours) (DART Rate).				
Number of serious, willful, or repeat violations from OSHA within the last 3 years. Please attach explanation for any violations. (Four serious, one repeat, or one willful disqualifies the contractor.)				

Please attach copies of the following documents: OSHA 300 and 300a Forms. These forms can be accessed through the OSHA publications search page:

<http://www.osha.gov/pls/publications/publication.html>.

2. Provide your six-digit North American Industrial Classification System (NAICS) Code for this acquisition: _____

3. Who administers your company's Safety and Health Program?

4. Company's Insurance Experience Modification Rate (EMR) for the past 3 years (an EMR of greater than 1.0 disqualifies the contractor): _____