



SCREENING FOR SAFETY

**ASSESSING A CONTRACTOR'S
SAFETY PERFORMANCE**

By Ashley Johnson, associate editor

When an employer hires a contractor for a construction project, the employer expects quality work, on schedule and at a competitive price. The contractor's safety performance plays a key role in meeting that objective – unsafe behavior can result in worker injuries, project delays and lawsuits.

One way to help avoid choosing an unsafe contractor is to consider safety during the prequalification process. Prequalification involves assessing contractors in certain areas, such as experience, to make sure they meet basic criteria to bid on the project.

The process helps screen out unqualified candidates before the selection round. Plenty of criteria options exist, such as the experience modification rate or injury and illness rates, but which ones accurately convey the contractor's capability to safely perform the job?



Michael Wood, Oregon OSHA administrator, cautions against simply giving contractors a pass/fail grade based on one number. "I think one of the things that folks consistently struggle with is that they try to do safety and health as a 'yes/no' checklist element – that either you have it or you don't – and the reality is that effective workplace safety and health is a relative issue," he said.

Using the experience rating

One measure frequently considered during prequalification is the experience rating, also known as the experience modification rate, or mod factor. The EMR reflects the contractor's workers' compensation loss history compared to other employers in the same industry. A rating of 1.0 represents the industry average. A rating above 1.0 indicates the contractor's losses are higher than average, which could mean an increase in the contractor's workers' comp insurance premium. When choosing contractors, employers typically require an EMR below 1.0.

EMR has become the standard for determining a contractor's safety record because people can easily look at it and make their decision based on whether it falls above or below 1.0, according to Bill Stricker, vice president of professional development and advisory councils at the Carolinas AGC in Charlotte, NC. CAGC is a chapter of the trade association Associated General Contractors of America.

In most states, EMRs are calculated by the Boca Raton, FL-based National Council on Compensation Insurance. NCCI recently adjusted the rate formula but said

the changes are not expected to have a major impact on employers' ratings.

However, Stricker said some contractors are concerned that changing the formula may cause their mod rate to increase and that people awarding contracts will not understand what happened. "They will simply see that a company's mod rate went from 1.1 to 1.5 or vice versa and will not understand why the change took place," he said.

That point aside, Stricker described EMRs as not perfect but a "good measure" of a company's overall safety record over a period of time.

Feature at a Glance

Safety prequalification helps employers identify contractors that meet basic safety requirements. However, experts say commonly used measures such as the experience modification rate and OSHA injury rates may not tell the whole story.

Key points

- Recent changes to EMR calculations are not expected to have a major impact on individual ratings.
- Looking at multiple years of OSHA data can help identify a pattern of non-compliance or injuries; however, experts say the numbers may be inaccurate due to underreporting.
- Public construction contracts often must go to the "lowest responsible bidder," which may not be the safest contractor.



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Wood also supports using EMRs. "One of the reasons I like using the experience factor as one element is it takes into account the typical risk within that industry as well as the employer's particular experience," he said.

Although he hesitated to set an absolute bar for automatic disqualification, Wood said an EMR greater than 1.25 or 1.5 should raise a red flag. When evaluating EMRs, he said, owners may want to consider the nature of the work and the risks involved. Wood used roofing as an example. All types of roofers may be in the same classification, but installing a steep-pitch roof is more dangerous than working on a flat one, so an owner might be more tolerant of a higher EMR among steep-roof contractors, he said.

Value and limitations of OSHA data

OSHA information, including injury and illness data and citations, also comes into play during prequalification. Wood said willful and repeat violations should require an explanation

from the contractor. He recommended reviewing at least three to five years of OSHA records.

In addition to looking at injury rates, employers should ask to see the contractor's OSHA 300 log, Stricker said. The log can show whether the contractor has a pattern of problems or a single incident that spiked the injury rate, he added.

"If you have a poor driving record and you're getting tickets every two years, then obviously that's showing a pattern, and the same thing with OSHA logs and OSHA citations," Stricker said. "That's going to show up, and if that's your pattern, then obviously owners are going to take that into consideration – and they should – in awarding contracts."

Peter Philips, labor economist and professor at the University of Utah in Salt Lake City, offered a word of caution about injury and illness figures. The reporting process is infused with bias, Philips said, because injuries affect workers' comp rates and eligibility for bidding on projects – providing an incentive to underreport.



Protecting contract workers in all industries

OF THE 4,609 workplace fatalities in 2011, 492 were contract workers, according to preliminary figures from the Bureau of Labor Statistics.

Advocacy groups say these temporary workers, commonly used in construction, farming and warehousing, are especially vulnerable to injuries because they typically perform risky work. Additionally, contract workers may lack formal education and English-language proficiency, and may not be given adequate safety education and training, according to a January report from the Washington-based advocacy group Center for Progressive Reform. CPR called on OSHA to take action to protect temporary workers, including requiring all employers to provide a minimum level of safety training and conducting enforcement "sweeps" in industries known to use a large amount of these workers.

In the opinion of Michael Wright, head of the Pittsburgh-based United Steelworkers' Health, Safety and Environment Department, the organization that hires a contractor is ultimately responsible for ensuring a safe jobsite. However, he stressed that it does not let the contractor off the hook for protecting its employees.

Under OSHA's Multi-Employer Citation Policy, more than one employer (i.e., the owner and subcontractors) may be cited for violations of OSHA standards.

One issue Wright sees is that employers fail to extend safety rules to contractors. He referenced a steel company where employees were supposed to use non-sparking tools around flammable gases, but the same rule was not applied to contractors.

"We see examples every day where contractors are not as well-protected as the regular workforce," Wright said.

Either before the final selection is made or after a contractor is selected, the company hiring the contractor should require a job safety analysis, Wright said, and find out what type of safety personnel and personal protective equipment the contractor intends to use.

Noting that injuries could lead to civil lawsuits, Wright said it is in the contracting company's best interest to provide a safe environment for every person onsite – from regular employees to contractors to deliverymen.

"They can't avoid liability by saying this is all in the hands of the contractor," he added. "If they're the ones that create the hazard, they're the ones that are going to be held accountable."

Photos from top: Huntstock; Natural Resources Conservation Service; MSA

Michael Wright, head of the Health, Safety and Environment Department for the United Steelworkers in Pittsburgh, agreed, saying injuries and illness rates are “much too easy to play games with.” Wright said employers may fail to report injuries on OSHA logs, punish workers who report injuries or reward workers for going so long without an injury. In the latter case, he said employees may hide injuries because they do not want co-workers to lose out on the reward. “Programs like that don’t cut injuries, they just cut injury reporting,” Wright added.

In his opinion, the company hiring a contractor should take a close look at the contractor’s safety program. Doing so does not have to be burdensome. As Wright put it, “If they care about the work that they’re paying for, they will evaluate the contractor’s ability to do the work. They just have to add to that the contractor’s ability to do that work safely.”

Measuring present capability

Although EMRs, injury data and enforcement records may be useful, Philips points out that those factors measure past performance. What employers really want to know, he said, is how safely the contractor can perform the specific task at hand. Philips said it may help to ask if the contractor has a safety plan and a safety officer who conducts inspections. However, he added, “One problem is that these are proxies for capabilities; they’re not actual measures of capabilities.”

Philips said it is easier to tie past performance to present capabilities when the structure of the subcontracting relationship is what he describes as “simple” – the owner and contractor have worked together before and not many subcontractors are working on the project.

In his opinion, contractors providing quality training programs is one of the most important components of prequalification, and it needs to go beyond narrow safety training. He used the example of an ironworker erecting structural steel to build a skyscraper. If the worker chooses a bolt that cannot sustain the weight of the girder it has to carry, the bolt is going to shear. That is more of a construction issue than a safety issue – the worker may not have learned about bolt specifications in safety training. Yet safety implications exist as well. If the bolt breaks, workers who tied off correctly are nonetheless going to be dangling from a partially collapsed structure.

“So the worker needs to understand the production process as well as the safety process and be able to marry those two,” Philips said.

Awarding public contracts

Many construction contracts involve public projects. However, advocacy group Public Citizen claims that states often do not require contractors to meet safety criteria or put too much emphasis on lagging indicators such as EMRs and fatality numbers.



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In a series of reports, the Washington, D.C.-based group examined construction fatality costs in Washington state, Maryland and California. More reports are expected, but of those three states, only California addressed safety in its prequalification system, and Public Citizen was not satisfied with the state’s criteria.

“I think the problem is that states and industry just rely on OSHA’s guidance and they don’t really step up and attempt to change the culture around safety and health in construction,” said Keith Wrightson, worker safety and health advocate for Public Citizen’s Congress Watch division and author of the reports.

He said states should be taking a more “progressive approach” by considering factors such as whether the contractor conducts job safety meetings, provides personal protective equipment and ensures workers receive extensive training.

Even if safety is considered during prequalification, state and local statutes often require the government to choose the “lowest responsible bidder,” which Philips said could work against safety interests. To produce a low bid, the contractor may cut back on safety or in another area.

Woods highlighted a related issue: The private sector has more flexibility to incorporate safety into the final selection process and make a decision that is not based on price alone. Conversely, some state statutes are written so that safety comes up only during prequalification – the contractor must meet the basic requirements, but safety is not considered in the final bid selection.

“That pushes against handling it in what I think is the best way, which is a relative evaluation,” Wood said. “I think it is more worthwhile to try to come up with some sort of system that provides a sliding scale. So rather than treating safety and health as a threshold qualification, it is best treated as an element in the decision, so that people who have ‘very good’ programs get an edge over people who have just ‘good’ programs.”