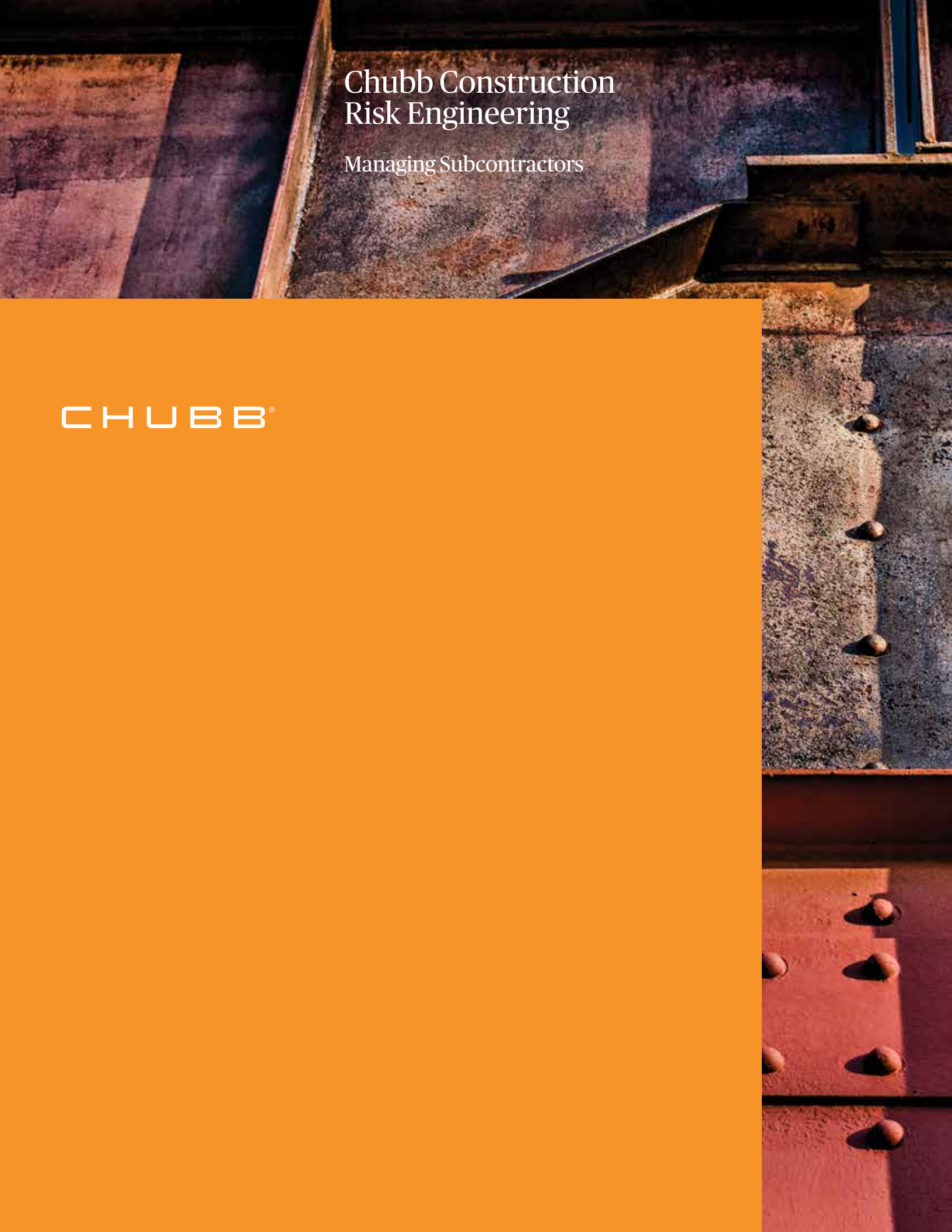

Chubb Construction Risk Engineering

Managing Subcontractors

CHUBB®

Managing Subcontractors

Overview
Safety Programs and Policies

Most specialty contractors work as subcontractors to a general contractor and/or construction manager. The Bureau of Labor Statistics (BLS) reported that fatal injuries among construction specialty trades workers in 2023 was 656. That is 61% of all Construction related fatalities in 2023.

Most contracts state that subcontractors are required to comply with all mandated safety requirements including but not limited to Occupational Safety and Health Administration (OSHA) 1926 standards and state that the subcontractor must comply with the safety programs and policies set forth by the general contractor (GC). Once on the project, however, GCs often rely on the subcontractor to implement and enforce their own safety.

The GC needs to determine what programs and policies are part of the subcontractor's safety culture.

Does the subcontractor:

- Employ a full time safety director?
- Develop and implement job specific safety programs?
- Engage in safety pre-job planning activities for each task they undertake?
- Provide new employee orientation on all new projects?
- Perform drug and alcohol testing for all their employees?
- Provide and require ongoing safety training for their field and office management personnel?

Subcontractor Safety Requirements

Safety expectations must be clearly identified and communicated both orally and in writing to all subcontractors performing work on your projects. There should be no surprises or excuses that bidders were unaware of the extent or scope of safety requirements, or that compliance with OSHA would suffice. Subcontract agreements should contain stand-alone sections that address/outline safety requirements and expectations of your subcontractors. This will ensure that every subcontractor bidding your work is well aware of the safety requirements they will be expected to adhere to and allows every contractor bidding the job to bid on a level playing field.

Subcontractor safety requirements should include as a minimum the following:

- Pre-Job Planning
- Employee Safety Orientation
- 100 percent Fall Management at heights 6 feet and greater for all trades
- Substance Abuse testing (pre-employment, random, for cause and post accident)
- Designated safety representative assigned to project
- Accountability and enforcement
- Safety meetings with employees, including daily briefings each morning before the start of work
- Performing and documenting self safety audits
- A return-to-work program
- Policy and procedure for performing accident investigation and root cause analysis
- Compliance with all safety requirements set forth in the general contractor's safety program

Industry Best Practices

- A written progressive discipline program for subs not performing as expected is in place.
- Subs removed from project when written warnings or non performance go unheeded.
- Specific safety requirement section outlining subcontractors safety expectations are written into each subcontractor agreement/contract.
- Subcontractor employees required to attend contractor project orientation program.
- Subcontractors required to submit Job Specific Safety Task Analysis (JSSTA) prior to start of work. JSSTA should outline scope of work for each operation to be performed by subcontractor, equipment that will be utilized to perform work, identification of exposures associated with each operation and controls that will be implemented and enforced to eliminate and/or control exposure. Subcontractor can not begin work until JSSTA has been submitted and reviewed with the General Contractors (GC)/Construction Manager (CM) field management team.
- Subcontractor required to submit name of safety representative and competent person as required by federal safety standards.

Scenario

- Safety pre-qualification of subcontractors enables the general contractor to consider safety performance along with bid price during the selection process. If the selection process has narrowed the choice to two subcontractors, and subcontractor A is $50,000 less than subcontractor B, should A be selected based solely on the lower price? Or would it make sense to evaluate both company's safety record and performance?
- What if subcontractor A's OSHA recordable or loss time rate is 50 percent higher than the national average and twice as high as

subcontractor B? What if subcontractor A has been cited for numerous OSHA citations within the past three years including citations for a willful violation and subcontractor B has no citations within the past years?

- Subcontractor A has submitted a lower bid, but has a safety history that demonstrates a tendency toward running an unsafe project. This could result in accidents that have a negative impact on the general contractor and may result in the GC being pulled into a third party claim or having an incident that impacts the schedule and brings negative publicity that affect future opportunities.
- The selection of a subcontractor based solely on the lower bid of $50,000 may end up costing the general contractor substantially more in accidents and related expenses than selecting subcontractor B with the more pro-active safety culture.

Potential Impacts of Subcontractors
Evaluating potential subcontractor's safety performance and history is a critical component that needs to be part of the risk management process. The work is not done, however, once the selection process is completed, rather the work has just begun.

Accidents that occur resulting from subcontractor activity can result in potential third party claims against the general contractor. In states such as New York, labor law states that the GC has a duty to supply a safe work place that cannot be delegated. In this case, a subcontractor's employee injured on the job site cannot sue his/her employer since they are covered by workers compensation, but they do have the ability to sue the GC. Accidents resulting from the actions of a subcontractor become general liability claims, which can become quite costly resulting in an economic hardship to the GC.

Subcontract Pre-Qualification

Incident Rates and Citations
Prequalification of subcontractors is a common practice used by many of the top pharma- ceutical firms and chemical plants on their capital improvement and expansion projects as part of the OSHA Process Safety Standard. Many firms will perform projects under an owner controlled insurance program. Firms assume the insurance risk for these projects rather than the construction firm. Accidents resulting from activities on these projects become the responsibility of the owner and their insurance firm once the cost of the accident exceeds the predetermined deductible amount. As a result of having "skin in the game," these owners take safety seriously and demand that the GCs, as well as each of their subcontractors, have excellent safety records and demonstrate strong safety cultures throughout their organization. Those contractors that do not exhibit these qualities and have less than desirable safety records are often excluded from participating on their projects.

When soliciting bids for upcoming projects, GCs should consider requiring that a subcontractor present a completed safety prequalification form along with their bid price. This prequalification form should request the following information at a minimum:

- The OSHA recordable accident and loss work time rate for the past three years
- This rate compared to the national average for their classification

This will give the general contractor a better understanding of the subcontractor's safety performance in relation to others. If a subcontractor's recordable and loss time rates exceed the industry average, questions should be raised regarding their safety performance.

The safety prequalification should also require the subcontractor to identify all OSHA citations and the classification of those citations -- willful, serious or other -- that firm has received within the past three years. Contractors with willful citations (meaning a citation for actions that they knew to be dangerous but willfully disregarded) should also be red flagged. A GC needs to question and understand the circumstances surrounding a willful incident and determine if there is a common practice of taking short cuts in the area of safety. If the contractor has numerous OSHA citations in the serious and other category, questions must be asked surrounding that subcontractors' commitment to and understanding of safety.

Experience Modification Rate (EMR)
Another essential part of safety prequalification is a review of subcontractor's experience modification rate (EMR) for the past three years. An EMR of 1.0 is called a unity mod, an EMR below 1.0 is called a "credit mod," and an EMR over 1.0 is a "debit mod." It is becoming common practice on many large owner control insurance programs that contractors must have an EMR of 1.0 or lower to work on a project.

When evaluating a contractor's EMR, keep in mind that it is based on a three-year rolling period and excludes the past year (since those numbers have not fully matured). A contractor with an EMR that exceeds 1.0 may be an incomplete representation. A contractor who has demonstrated a commitment to improving its safety performance and has made strides in enhancing the safety culture within their organization will not necessarily see a marked improvement in their EMR because they are still carrying

the losses for the prior years. It can take a contractor two or more years to begin to see a reduction in the EMR resulting from the new safety initiatives that they introduced.

With this said, evaluating a subcontractor's EMR is a valuable indicator in the safety prequalification process.

EMR	Type of EMR
=1.0	"unity mod"
<1.0	"credit mod"
>1.0	"debt mod"

Other Subcontractor Controls

Pre-Job Planning
Pre-job planning may be the most important tool of any safety program. This allows for a pro- active rather than reactive approach towards safety to take place. It requires the subcontractor to demonstrate they have planned their work in advance, identified the exposures and have given sufficient consideration as to how to control the exposures.

Subcontractors should be required to submit a Job Safety Task Analysis (JSTA) to the contractor prior to the start of their work. Once the subcontractor submits the JSTA, a meeting should be held between the GC/CM and the subcontractor where the subcontractor reviews the plan and is provided feedback. The JSTA should outline the scope of work involved with the subcontractors activities, equipment that will be utilized to facilitate the work (e.g. scaffolding, cranes), identification of potential exposures associated with their work to both workers and the general public, identification of controls that will be implemented and enforced to eliminate and/or control these exposures, and identification of necessary safety equipment required to perform work.

Once the JSTA has been reviewed and approved, the subcontractor should be required to review the JSTA with each member of their crew prior to the start of work. The subcontractor should be required to submit the signature of each employee that attended the JSTA review to document that workers received pre planning instructions.

Risk Transfer Contract Wording
Insurance companies insuring GCs have been working diligently with risk managers to ensure proper risk transfer language is drafted into the contracts that general contractors exercise with their subcontractors. This form of agreement is known as "hold harmless" or indemnity agreement. In such an agreement, one party promises to reimburse the other against claims or suits brought by a third party.

Properly written hold harmless and indemnity agreements will afford the GC the right to collect from the subcontractor's action. From a risk control prospective, this is a reactive rather than pro-active measure. The question that should be addressed is, "Why did the actions of the subcontractor that resulted in a claim occur in the first place?" "Where was the break down in safety that resulted in the accident and did it occur because the subcontractor's lack of attention or detail to safety?"

Subcontractor QA/QC
Avoiding construction defect claims can best be accomplished by assuring subcontractors have an effective quality control program. To minimize construction defect issues, controls that can be implemented to identify areas at risk for defects include:

- Administering a program to assure material quality
- Assuring workers are qualified to perform the work
- Verification of quality through inspection
- Documenting the quality program and its results
- Quality incentives

A quality control program must be suited to the characteristics of the organization, considering its size, complexity, activities, culture, exposures to liability, and potential for damage resulting from climate and soil conditions. Contractors cannot rely on code enforcement officials to ensure quality. Like any other aspect of the business, an effective quality program must enjoy the support of senior management. In addition, the program should address key issues including the selection of materials, quality of workmanship, verification through inspection, and documentation.

Designated Safety Representative
A GC/CM should expect that subcontractors assign a qualified and experienced manager to coordinate and oversee their work. The success of your project including completing the work on time and according to plans and specifications is incumbent on quality labor and supervision. Should less be expected from a safety stand point?

Each subcontractor should assign to the project an individual with the training, knowledge and authority to implement and enforce safety compliance. The subcontractor must provide the name and qualifications of that individual, and the CG/CM must be satisfied with that selection.

Economics may not allow each subcontractor to assign a full time dedicated safety representative to the

project. In such cases, an individual should be assigned who, in addition to other duties, is responsible for the implementation and enforcement of project safety requirements.

Once subcontractor's employees reach or exceed 25 to 50, it would be prudent for the GC/CM to require that the subcontractor assign a full time dedicated safety representative to the project.

Contractor's Field Management Responsibility
The contractor's project superintendent/project manager (S/PM) is ultimately responsible for the overall progress and performance of the project. These individuals are empowered with the challenging task of completing the project on time and on budget. This is accomplished by functions including but not limited to value engineering, project scheduling, and coordinating and monitoring the project activities and progress. Most of these activities require working closely with and directing the work of subcontractors.

The S/PM must also monitor and be responsible for the safety performance of the project. Every subcontractor must be responsible to ensure that they are implementing and enforcing the safety requirements set forth on the project and that their employees are in compliance with these requirements. This does not relieve the contractor's S/PM, however, of overall responsibility to ensure that each subcontractor on their project is in compliance with the safety requirements and culture set forth on the project.

Superintendents/Project Managers walk the project throughout the course of the work day, observing the work in progress, and planning up coming activities. S/PMs should walk the project regularly, observing the work in progress making sure that safety activities are taking place. This could include:

- Safety cables missing along the edge of shaft openings
- A worker on a scaffold that is not fully planked or missing guard rails
- Workers inside an excavation greater than five feet deep with no shoring in place or
- A worker exposed to a fall greater then six feet with no fall protection in place

Do not assume these exposures are the actions of a subcontractor and do not affect your employees. And don't wait for someone else to address the issue. Either stop the operation immediately and require that corrective action be taken or contact the supervisor of the subcontractor whose employees are involved.

Make sure every subcontractor who works on your project understands from the first day that they walk onto the site that deviations from stated safety requirements will not be tolerated, and that they will be held accountable for failure to comply.

Employee Orientation
Workers can't be faulted for working in an unsafe manner if they have not been trained or instructed in safety. Safety is not all common sense: there is technical information that needs to be conveyed to workers to ensure they understand what is expected. Subcontractor's employees should be required to attend new employee orientation, ideally conducted by the GC/CM to ensure that workers receive uniform safety orientation.

Once completed, a hard hat sticker with a corresponding ID number should be issued and affixed to each worker's hardhat and a record maintained of the ID number and employee name to document that orientation has been completed.

Fall Management for Trades

As the GC/CM, your company should implement and enforce a 100 percent fall management program. Your fall management program should require that all trades and activities working at heights of six feet and greater must implement fall management controls.

Subcontractors must comply with the requirements of your fall management program. There should be no exceptions to this rule. Subcontractors whose operations subject their employees to fall exposures in excess of six feet should be required to submit a fall management plan.

This plan should outline the operations/activities where a fall exposure of six feet or greater will be encountered and shall identify and discuss the controls that will be implemented and enforced to eliminate and/or control these exposures.

Substance Abuse Testing
Pro-active construction companies have implemented substance abuse testing programs. Often many of these companies limit that testing to their own employees.

Your subcontractors must be held to the same standards as your employees. Every subcontractor working on your projects should be required to comply with your substance abuse testing program. Testing should include pre-employment, random and post accident testing.

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