

**Facility:** Regulatory and Reporting Technical Subgroup

**Best Practice Title:** Lines of Inquiry for Flowdown of Requirements and Subcontractor Implementation of 10 CFR 851

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**Brief Description of Best Practice:** The Regulatory & Enforcement Technical Subgroup has developed lines of inquiry to guide contractors as they evaluate the flow down of requirements to subcontractors and subcontractor implementation of 10 CFR 851.

**Why the best practice was used:** Subcontractors are required to meet the requirements of 10 CFR 851. The lines of inquiry will assist contractors in assuring clear communication of the requirements and evaluating subcontractor implementation.

**What are the benefits of the best practice:** Each site can customize implementation of 10 CFR 851. These lines of inquiry will assist contractors in assuring that the approach selected will result in clear communication of the requirements and adequate oversight of subcontractor implementation.

**What problems/issues were associated with the best practice:** The deliverable was selected for work because a large number of enforcement actions have involved injuries to subcontractor personnel. The best practice is intended to improve subcontractor recognition of and adherence to the requirements of 10 CFR 851.

**How the success of the Best Practice was measured:** The success of the Best Practice has not been measured but reflects the collective experience of Enforcement Coordinators representing a cross-section of the Department of Energy complex.

**Description of process experience using the Best Practice:** Use of the lines of inquiry is consistent with integrated safety management as applied to subcontractors. The lines of inquiry were created based on the collective experience of Enforcement Coordinators representing a cross-section of the Department of Energy complex.

**Lines of Inquiry for Flowdown of Requirements and Subcontractor Implementation of 10CFR851**

1. Flow Down and Oversight of Safety Requirements	Comments
<p>a. Is there a description of how safety requirements flow down to subcontractors (WSH 10 CFR 851) in your site <i>Worker Safety &amp; Health (WSH) Program Plan (WSHPP)</i>? Is the definition of “Contractor” included in your site program documents or procedures or otherwise communicated to all subcontractors?</p>	
<p>b. How is the flow down of safety requirements to subcontractors implemented? Are management responsibilities defined for all involved organizations (procurement, contracts, safety professional, etc.)?</p>	
<p>c. How does your site subcontractor procurement/contract process include a provision for safety requirements? Are safety and health subject-matter-experts (SME’s) included in the contracting process?</p>	
<p>d. Does your site have procedures that describe requirements for oversight of the subcontractor and for flowing down safety requirements to subcontractors at all tiers?</p>	
<p>e. In your site procedures/Job Aids, do safety requirements for subcontractors vary based on the type of contract or work they perform (e.g. vendors, suppliers of commercial items, service, repair, warranty, construction, administrative, etc.)?</p>	
<p>f. At your site, do the subcontractors have contract-or-task-specific safety plans that identify the hazards of the work they perform? Do their contract-or-task-specific safety plans reference the site WSH Plan? Are safety and health SME’s included in review/approval of subcontractor’s procedures?</p>	
<p>g. Does your WSH Program describe how work-related injuries and illnesses of <b>subcontractor</b> workers are recorded and reported. Does your site comply with this reporting criterion for subcontractors?</p>	
2. Training and Communication	
<p>a. Does your site offer training to personnel responsible for subcontractor oversight (Subcontractor Technical Representatives [STR] or Contract Delegated Representative [CDR])?</p>	

Does your site differentiate roles and responsibilities between contract representatives and safety representatives?	
b. Does the STR training include safety oversight, hazard analysis of the work, and potential for safety enforcement?	
c. Does the STR training reference WSH (10 CFR 851) requirements and the flow down to subcontractors?	
d. Does your site provide training for subcontractors themselves, regarding worker safety and WSH requirements?	
e. How does your site communicate unique conditions and hazards? Is this communication implemented and effective?	
<b>3. Assessment and Assurance</b>	
a. How does your site ensure/assess that the subcontractor and their employees are aware of worker rights and responsibilities under WSH?	
b. How does your site ensure/assess that the subcontractor's safety and health program is compliant with the WSH Rule?	
c. Has your site assessed/audited the aspect of safety oversight of subcontractors? If so, were strengths or weaknesses in subcontractor management identified?	
d. Has DOE (Headquarters or Local) assessed the M&O contractor oversight of subcontractors at your site?	
c. Does the subcontractor assess their safety performance and compliance? Are compliance issues documented (trended) in an issues management system?	
d. Is there a process where subcontractor safety performance issues are elevated to upper management if compliance issues are significant or issues remain uncorrected?	
e. Does exception or poor subcontractor safety performance affect the ability of the subcontractor to be selected for future contracts?	
<b>4. Occupational Medical Services</b>	
a. How does your site manage the occupational medicine services for subcontractors?	
<b>5. Office of Enforcement Investigation</b>	

a. Is the liability of an enforcement action understood by your site management and subcontractor management/owners? If so, how is that accomplished?	
b. Has your site had an Office of Enforcement investigation related to an event that involved subcontractors? If so, was the subcontractor prepared to support the investigation?	
c. During an investigation, were weaknesses in subcontractor management identified?	
d. Have any of your site subcontractors received a 10 CFR 851 Notice of Violation? Was a financial remedy assessed to them?	
<b>6. Lessons Learned</b>	
a. Do your subcontractors receive Lessons Learned or Best Practices that are relevant to their work?	

**References**

10 CFR Part 851 – *Worker Safety and Health Program*

DOE Guide 440.1-1B *Worker Safety and Health Program for DOE (Including the NNSA) Federal and Contractor Employees*

Department of Energy Acquisition Regulations (DEAR) DEAR 48 CFR 970.5204-2 Laws, regulations, and DOE Directives

**Worker Safety and Health (WSH) Related Explicit Subcontractor Clauses**

Explicit Subcontractor Requirements
<p><b>Department of Energy Acquisition Regulations (DEAR) 48 CFR 970.5204-2 Laws, Regulations, and DOE Directives.</b></p> <p>(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes.</p> <p>(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to <b>subcontracts</b> at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.</p>

**10 CFR 851.3 Definitions**

*Contractor* means any entity, including affiliated entities, such as a parent corporation, under contract with DOE, **or a subcontractor** at any tier, that has responsibilities for performing work at a DOE site in furtherance of a DOE mission.

**10 CFR 851.5 Enforcement.**

(a) A contractor that is indemnified under section 170d. of the AEA (or any **subcontractor** or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to \$70,000 (currently \$80,000) for each such violation.

**Appendix B to Part 851, General Statement of Enforcement Policy**

**I. Introduction ( in part)**

(a) This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to ensure compliance with its worker safety and health regulations, and, in particular, exercise the civil penalty authority..... The policy set forth herein is applicable to violations of safety and health regulations in this part by DOE contractors, including DOE contractors who are indemnified under the Price-Anderson Act, 42 U.S.C. 2210(d), and their **subcontractors** and suppliers (hereafter collectively referred to as DOE contractors).

**III. Statutory Authority (in part)**

....Section 234C of the AEA makes DOE contractors (and their **subcontractors** and suppliers thereto) covered by the DOE Price-Anderson indemnification system, subject to civil penalties for violations of the worker safety and health requirements promulgated in this part.

**IX. Enforcement Actions**

1. Notice of Violation (in part)

(d) DOE expects its contractors to have the proper management and supervisory systems in place to assure that all activities at covered workplaces, regardless of who performs them, are carried out in compliance with all the worker safety and health requirements. Therefore, contractors are normally held responsible for the acts of their employees and **subcontractor** employees in the conduct of activities at covered workplaces.....

(e) 1. DOE may assess civil penalties of up to \$70,000 per violation per day on contractors (and their **subcontractors** and suppliers) that are indemnified by the Price-Anderson Act,

(e) 3. For the same violation of a worker safety and health requirement in this part, DOE may pursue either civil penalties (for indemnified contractors and their **subcontractors** and suppliers) or a contract fee reduction, but not both. See 10 CFR 851.5(c).

**10 CFR 851.26 Record Keeping and reporting**

(2) Ensure that the work-related injuries and illnesses of its workers and **subcontractor** workers are recorded and reported accurately and consistent with DOE Manual 231.1–1A, Environment, Safety and Health Reporting Manual, September 9, 2004.