

HARRIS COUNTY CONTRACTOR SAFETY RECORD POLICY

SECTION I: FINDINGS

Whereas, more than 5,000 working people are killed on the job every year, and nearly three million suffer a serious injury or illness;

Whereas, a serious injury or workplace fatality takes an enormous emotional and physical toll on workers, their families, and their communities;

Whereas, the total cost of work injuries in 2020 was \$163.9 billion, including, but not limited to, wage and productivity losses of \$44.8 billion, medical expenses of \$34.9 billion, and administrative expenses of \$61.0 billion;

Whereas, the total days lost due to work-related injuries in 2020 was 99,000,000, including 65,000,000 days lost due to injuries that occurred in 2020 and 34,000,000 days lost to injuries that occurred in previous years;

Whereas, safety programs result in higher productivity and employee morale, lower compensation insurance cost, and lower employee turnover;

Whereas, this policy will substantially improve the quality of Harris County construction projects by reducing direct and indirect costs, minimizing employee absences and other time lost as a result of injury, and increase productivity;

Whereas, proactive safety and health programs are an effective way to prevent workplace injuries, illnesses, and deaths, and also reduce the costs of doing business;

Whereas, this policy will result in higher quality work; and

Whereas, Texas Government Code § 2269 authorizes Harris County to take the action outlined in this policy.

SECTION II: PURPOSE

The Harris County Contractor Safety Record Policy (the “Safety Record Policy”) is adopted by Harris County Commissioners Court to ensure that Harris County engages prime contractors and subcontractors that prioritize the health and safety of their workers. The Safety Record Policy is the result of two Harris County Commissioners Court Orders, dated August 27, 2019 and January 25, 2022, requiring a policy recommendation to implement the consideration of Harris County contractor safety records in awarding contracts.

SECTION III: SCOPE, APPLICABILITY, AND EFFECTIVE DATE

This policy applies to all contracts that (1) are procured by Harris County under Chapter 2269 of the Texas Government Code; (2) have a total contract value of at least \$500,000 and, for subcontracts, a contract value of at least \$50,000; (3) are put out for bid after March 1, 2023; **and** (4) are not exempted by this Section.

The following types of contracts are exempt from this policy:

- a) Interlocal Government Agreements;
- b) Cooperative Purchasing Agreements;
- c) Sole Source Contracts;
- d) Emergency Contracts;
- e) Contracts for purchases of goods and services considered to be ancillary to the purchases of goods. A business entity that only supplies goods (bricks, paper, fuel, office supplies, tools, clothing, food, etc.,) and such transportation services as may be incident to delivering those goods to County Property (including the use of common carriers (e.g., truck drivers)) is considered a “Supplier” and Suppliers are not subject to the Safety Record Policy.
- f) Contracts for the sale of County Property or Goods;
- g) Contracts using federal or other funds where application of this policy is prohibited;
- h) Contracts procured under the discretionary exemptions found in Texas Local Government Code § 262.024; or
- i) Services procured under Texas Government Code § 2254 (Professional and Consulting Services).

This policy does not apply to contracts that were put out for bid prior to March 1, 2023, or extensions or renewals of contracts or exercises of options on contracts in place prior to that date.

This policy does not limit, or impact in any way, the County’s ability to consider in the manner it deems appropriate any relevant factor specifically listed in any particular request for bids, proposals, or qualifications.

SECTION IV: DEFINITIONS

- 1. “County” means Harris County, Texas, a political subdivision organized and existing under the laws of the State of Texas.
- 2. “Contractor” or “Prime Contractor” means any individual, firm, or other entity contracted to provide services to the County under a County contract. This definition applies to regional subdivisions of national and international companies.
- 3. “Contractor Employee” means a full-time, part-time, temporary or seasonal employee of the Prime Contractor or any Subcontractor who are Directly Assigned to the Contract.
- 4. “Directly Assigned” means a Contractor Employee who provides services to the County

under a contract between a Contractor and the County, which includes:

- the Contractor Employee is named in the Contractor's contract with the County;
 - the Contractor Employee is named or is uniquely identified in a deliverables document from the Contractor; or
 - any other evidence that reasonably establishes the Contractor Employee's relationship to the Contractor's contract with the County; for example, payroll records.
5. "Goods" means physical items sold to the County by the Contractor, such as bricks paper, fuel, office supplies tools, clothing, food, etc.
 6. "Services" means work or labor performed by Contractor Employees that is subject to Chapter 2269 of the Texas Government Code
 7. "Subcontractor" means any individual, firm or entity engaged by the Contractor (including Subcontractor to Sub-subcontractor regardless of tier) to perform any element of the contract between the County and the Contractor.

SECTION V: CERTIFICATION REQUIREMENTS

The Harris County Commissioners Court desires to avail itself of the benefits of Sections 2269.055 and 2269.056 of the Texas Government Code and consider the offeror's experience and reputation, the quality of the offeror's goods or services, the offeror's safety record, the offeror's proposed personnel, and any other relevant factor specifically listed in the request for bids, proposals, or qualifications by adopting the Safety Record Policy. The County will evaluate Contractors and Subcontractors through the Safety Record Questionnaire that is found within the Safety Record Policy.

The bid/proposal/qualification requirements for each County contract that is impacted by this policy will include a safety record questionnaire. To meet the requirements of the Safety Record Policy, the Contractor **must certify** each of the items on that questionnaire (which is provided below) and submit the certification with its materials to win the work. Subcontractors **must certify** each of the items on their questionnaire (which is also provided below) and submit the certification to the Contractor. The Contractor or Subcontractor is not required to provide supporting documentation to the County unless the County specifically requests it.

The Contractor/Subcontractor will be required to certify the following:

1. The Contractor/Subcontractor has not been listed on OSHA's Severe Violator Enforcement Program (SVEP) Log at any time within the three (3) years preceding the date of this certification;
2. The Contractor/Subcontractor has not been sanctioned with an OSHA Citation and Notification of Penalty classified as one of the following types (if the OSHA Citation is

contested¹, then its classification is based on the Settlement with OSHA or OSHA Final Order) within the three (3) years preceding² the date of this certification: (1)“Serious” with a Gravity³ finding of “High” ; (2)“Willful or Repeated”; (3) “Failure to Abate”; and/or (4) “Posting Requirements” with a Gravity finding of “High”⁴;

3. The Contractor/Subcontractor (i.e., the company itself, not the company’s employees) has not been convicted of a criminal offense within the past ten (10) years in connection with a workplace incident that resulted in serious bodily harm or death;
4. Each of the Contractor/Subcontractor’s employees that will be doing manual work on the project or other work that directly impacts workplace safety is OSHA 10 certified, to be implemented according to the following timeline:
 - For projects awarded under Texas Government Code § 2269 that constitute a “civil works project” as the term is defined in Texas Government Code § 2269.351
 - June 1, 2023 – at least 25% of workers
 - August 1, 2023 – at least 50% of workers
 - November 1, 2023 – at least 75% of workers
 - January 1, 2024 – all workers
 - For all projects awarded under Texas Government Code § 2269 that do not fall within the definition of “civil works project” found in Texas Government Code § 2269.351:
 - June 1, 2023 – at least 50% of workers
 - August 1, 2023 – all workers

5. Each of the Contractor/Subcontractor’s managers who manage at least one employee that

¹ If the OSHA Citation is contested, no sanction under this policy will apply until the matter is resolved; as such, the bidder may truthfully represent that it has never been sanctioned with an OSHA Citation that would otherwise fall within the certification language during the pendency of the contest.

² The Issuance Date of the Citation and Notification of Penalty is the relevant date when calculating the three (3) years preceding.

³ “Gravity” is used in this policy as it is explained in the OSHA Field Operations Manual as well as in the January 13, 2022 U.S. Department of Labor enforcement memorandum for Regional Administrators with the subject “2022 Annual Adjustments to OSHA Civil Penalties.”

⁴ As noted in Section III, this policy does not limit, or impact in any way, the County’s ability to consider in the manner it deems appropriate any relevant factor specifically listed in any request for bids, proposals, or qualifications. Thus, for example, though this policy does not deem as nonresponsive bidders with OSHA violation types that are not listed, or requires certain thresholds with regard to “Serious” or “Posting Requirement” type of violations, the County may still consider any OSHA violation type, Severity finding, or Probability finding in the scoring of bids, proposals, or qualifications as specified in the bid, proposal, or qualification request documents.

will be doing manual work on the project or other work that directly impacts workplace safety, is OSHA 30 certified, to be implemented according to the following timeline:

- For projects awarded under Texas Government Code § 2269 that constitute a “civil works project” as the term is defined in Texas Government Code § 2269.351
 - June 1, 2023 – at least one manager
 - August 1, 2023 – at least 25% of managers
 - November 1, 2023 – at least 50% of managers
 - January 1, 2024 – at least 75% of managers
 - March 1, 2024 – all managers
 - For all projects awarded under Texas Government Code § 2269 that do not fall within the definition of “civil works project” found in Texas Government Code § 2269.351:
 - June 1, 2023 – at least 50% of managers
 - August 1, 2023 – all managers
6. The Contractor/Subcontractor will not require their managers or employees to pay for training associated with their OSHA 10 or OSHA 30 certification;
 7. The Contractor/Subcontractor will compensate its managers and employees at their normal hourly rate for time spent obtaining their OSHA 10 or OSHA 30 certification; and
 8. The Contractor/Subcontractor will provide access to all records, and take whatever steps necessary (e.g., obtain and disclose Gravity findings from OSHA with respect to an OSHA citation, waive any confidentiality (only to the extent necessary to comply with this policy), etc.), to demonstrate compliance with the requirements of this policy.

If the Contractor/Subcontractor fails to certify that it has met the above requirements, the County will deem the company’s bid nonresponsive. This determination will disqualify the Contractor/Subcontractor from only the bid at issue—the entity will not be prohibited from bidding on other County projects.

SECTION VI: ADMINISTRATION

The Harris County Purchasing Department (“Purchasing”) will administer all solicitation instructions, contract clauses, and compliance requirements before the award is made. Once the award is made, the Harris County Department of Economic Equity and Opportunity (“DEEO”) in conjunction with the Harris County Department overseeing the contract at issue will administer all remaining aspects of this program, including setting forth rules, regulations, and additional

guidance to give effect to this policy, including monitoring compliance with this policy and informing County Departments of findings as needed.

SECTION VII: COMPLAINTS

Complaints of noncompliance with this policy should be submitted in writing, via mail or email, to the DEEO at:

Attn: Assistant Director Worker and Community Protections
Harris County Department of Economic Equity and Opportunity
1001 Preston St., Suite 670
Houston, Texas 77002
Compliance@eeo.hctx.net

The written complaint must contain the name of the complainant and a brief description of the alleged noncompliance with this policy. The DEEO will notify the Contractor/Subcontractor that a complaint has been submitted and provide the company an opportunity to respond (with supporting documentation). The DEEO will determine whether the Contractor/Subcontractor is in noncompliance and notify the company and the complainant.

DEEO shall notify the parties involved (including the complainant) of its findings not later than the 60th day after receipt of the complaint. If the noncompliance determination is made, Purchasing (before the award), the DEEO, and/or the County Attorney's Office shall have the authority to pursue any and all remedies as described in Section VIII and the Contractor/Subcontractor shall have the right to appeal set forth in Section IX below.

SECTION VIII: RECORDKEEPING, NON-COMPLIANCE, AND ENFORCEMENT

Contractors (not subcontractors) shall maintain all records, reports, and other documents or items that demonstrate compliance with the requirements of this Policy, including, but not limited to, all documents that demonstrate that subcontractors meet the requirements of this policy. Contractors shall ensure Harris County has access to all records, reports and other documents or items of contractor and/or subcontractors that are maintained to demonstrate compliance with the requirements of this policy.

Harris County may conduct compliance reviews before the award of contracts or whenever it deems it necessary after the award of the contract. If every question on the certification is not marked "True", or a response to a question in the Safety Record Questionnaire is found to be false, the bid will be deemed nonresponsive.

Contractors found to have violated the requirements of this Policy during the term of their contract with the County, shall be subject to:

- A. Remedies set forth in their contract with the County, up to and including withholding payment under the contract or contract termination;
- B. Negative impact on submissions of future County solicitations and possibly denial of award of a contract;

- C. Probation, suspension, or debarment in accordance with applicable County policies;
- D. Damages, including compensating Contractor's Employees the amount(s) found to be owed to these individuals under the County Contract; and/or
- E. The County pursuing all options available under the law.

SECTION IX: APPEAL

A Contractor or Subcontractor may appeal a finding of a violation under this Policy to the following authority:

- Pre-Contract Award: To the DEEO
- Post-Contract Award: To Purchasing

SECTION IX: MISCELLANEOUS

- A. Nothing in this order shall be construed to impair or otherwise affect:
 - a. The authority granted by law to a Harris County Department, or the head thereof; or
 - b. The functions of the County Administrator or the Office of Budget Management relating to budgetary, administrative, or legislative proposals;
- B. This policy shall be implemented consistent with applicable law and subject to the availability of appropriations; and
- C. This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the County, its departments, agencies, or entities, its officers, employees, agents, or any other person.

SAFETY RECORD QUESTIONNAIRE

PART A – SAFETY RECORD QUESTIONNAIRE FOR PRIME CONTRACTOR

(Part A must be submitted by prime contractor with bid)

Pursuant to Harris County’s Safety Record Policy, this certification must be submitted in conjunction with this bid, as the project for which your company is bidding (1) is being procured by Harris County under Chapter 2269 of the Texas Government Code, (2) has a total contract value of at least \$500,000, (3) is being put out for bid on or after March 1, 2023, **and** (4) is not exempted the Safety Record Policy.

Failure to certify as “True” any of the below questions will result in the County designating your company’s bid as nonresponsive. This determination will disqualify your company from only this bid—your company is not prohibited from bidding on other County projects.

CERTIFICATION ONE

The Contractor, or the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such firm, corporation, partnership or institution, ***has not been*** listed on OSHA’s Severe Violator Enforcement Program (SVEP) Log at any time within the three (3) years preceding the date of this certification.

TRUE _____ FALSE _____

CERTIFICATION TWO

The Contractor, or the firm, corporation, partnership, or institution represented by the Contractor, has ***not*** been sanctioned with an OSHA Citation and Notification of Penalty classified as one of the following types (if the OSHA Citation is contested⁵, then its classification is based on the Settlement with OSHA or OSHA Final Order) within the three (3) years preceding⁶ the date of this certification: (1) “Serious” with a Gravity⁷ finding of “High” (2) “Willful or Repeated”; (3) “Failure to Abate”; (4) “Posting Requirements” with a Gravity finding of “High”.

⁵ If the OSHA citation is contested, no sanction will apply until the matter is resolved; as such, the bidder may truthfully represent that it has never been sanctioned with an OSHA citation that would otherwise fall within the certification language during the pendency of the contest.

⁶ The Issuance Date of the Citation and Notification of Penalty is the relevant date when calculating the three (3) years preceding.

⁷ “Gravity” is used in this policy as it is explained in the OSHA Field Operations Manual as well as in the January 13, 2022 U.S. Department of Labor enforcement memorandum for Regional Administrators with the subject “2022 Annual Adjustments to OSHA Civil Penalties.”

TRUE ____ FALSE ____

CERTIFICATION THREE

The Contractor, or the firm, corporation, partnership, or institution represented by the Contractor, (i.e., the company itself, not the company's employees) within the ten (10) years preceding the date of this certification, has ***not*** been convicted of a criminal offense in connection with a workplace incident that resulted in serious bodily injury or death.

TRUE ____ FALSE ____

CERTIFICATION FOUR

[X% of] Contractor employees that will be doing manual work under a contract with the County or other work that directly impacts workplace safety has received the OSHA 10 certification, and [Y% of] managers that manage at least one employee that will be doing manual work on the project or other work that directly impacts workplace safety has received the OSHA 30 certification, by the first day of work on the project (if you are awarded the bid).

TRUE ____ FALSE ____

CERTIFICATION FIVE

Contractor employees are compensated for the cost of their OSHA 10 certification (workers) or OSHA 30 certification (managers) if they received such certification while employed by you. Contractor employees are also compensated at their normal hourly rate for the time workers and managers spend toward those certifications.

TRUE ____ FALSE ____

It is the sole responsibility and obligation of the Contractor to ensure that all Subcontractors performing any part of the work on this project disclose to the Contractor their safety records and meet the County's requirements under the Safety Record Policy. The Contractor may fulfill this obligation by distributing the "Safety Record Questionnaire for Subcontractors" form included in this policy as Part B to all subcontractors and verifying to the County that the forms have been satisfactorily completed (i.e., every response is a "True") and returned to the Contractor. All Safety Record Questionnaires are subject to the County's review upon request.

Prime contractor must maintain subcontractor certifications for every subcontractor it uses to perform work on the project throughout the life of the project. Prime Contractor must also collect

completed questionnaires from all subcontractors at least 30 days prior to the commencement of work and attest that this will be completed.

PRIME CONTRACTOR SAFETY
RECORD CERTIFICATION

Project Title:
Name:
Title:
Business or Entity Name:
Business or Entity Address:
County of Contracting Entity:

THE STATE OF TEXAS
COUNTY OF HARRIS

I, _____, certify that:

1. I am the _____ (position) of _____
("Contracting Entity") and have the authority to execute this Certification on behalf of Contracting Entity.
2. The information provided in this Safety Record Questionnaire is true and correct.
3. I have made no willful misrepresentations nor have I withheld information in my statements and answers to questions in this Safety Record Questionnaire.
4. I acknowledge and understand that the Contracting Entity will be disqualified from participating in this project if the Contracting Entity is unable to confirm as "True" each question in the Safety Record Questionnaire.
5. I will ensure that all subcontractors that will work on this project will have satisfactorily completed and submitted to the Contracting Entity their Safety Record Questionnaires by 30 days before work begins.
6. The Contracting Entity will provide access to all records, and take whatever steps necessary (e.g., obtain and disclose Gravity findings from OSHA with respect to an OSHA citation, waive any confidentiality (only to the extent necessary to comply with this policy), etc.) to substantiate the responses in the Safety Record Questionnaire.
7. I am aware that the information I have provided in this Safety Record Questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may cause my bid to be rejected or the County to pursue any of the remedies found in Section VIII of the Safety Record Policy.

Signature

Date

PART B – SAFETY RECORD QUESTIONNAIRE FOR SUBCONTRACTORS

(Part B must be submitted by all subcontractors and submitted to the Prime Contractor with their bids. Prime Contractor is NOT required to submit this Part B with their bid.)

Pursuant to Harris County's Safety Record Policy, this certification must be submitted in conjunction with this bid to the Prime Contractor, as the project for which the Prime Contractor is bidding (1) is being procured by Harris County under Chapter 2269 of the Texas Government Code, (2) has a total contract value of at least \$500,000 and the subcontract value is at least \$50,000, (3) is being put out for bid on or after March 1, 2023, and (4) is not exempted the Safety Record Policy.

Failure to certify as "True" any of the below questions will result in the Prime Contractor not being able use your services under its contract with the County. This determination will disqualify your company from only this bid—your company is not prohibited from bidding on other County projects.

CERTIFICATION ONE

The Subcontractor, or the firm, corporation, partnership, or institution represented by the Subcontractor, or anyone acting for such firm, corporation, partnership or institution, ***has not been*** listed on OSHA's Severe Violator Enforcement Program (SVEP) Log at any time within the three (3) years preceding the date of this certification.

TRUE ____ FALSE ____

CERTIFICATION TWO

The Subcontractor, or the firm, corporation, partnership, or institution represented by the Subcontractor, has ***not*** been sanctioned with an OSHA Citation and Notification of Penalty classified as one of the following types (if the OSHA Citation is contested⁸, then its classification is based on the Settlement with OSHA or OSHA Final Order) within the three (3) years preceding⁹ the date of this certification: (1) "Serious" with a Gravity¹⁰ finding of "High"; (2) "Willful or Repeated"; (3) "Failure to Abate"; (4) "Posting Requirements" with a Gravity finding of "High".

⁸ If the OSHA citation is contested, no sanction will apply until the matter is resolved; as such, the bidder may truthfully represent that they have never been sanctioned with an OSHA citation that would otherwise fall within the certification language during the pendency of the contest.

⁹ The Issuance Date of the Citation and Notification of Penalty is the relevant date when calculating the three (3) years preceding.

¹⁰ "Gravity" is used in this policy as it is explained in the OSHA Field Operations Manual as well as in the January 13, 2022 U.S. Department of Labor enforcement memorandum for Regional Administrators with the subject "2022 Annual Adjustments to OSHA Civil Penalties."

TRUE ____ FALSE ____

CERTIFICATION THREE

The Subcontractor, or the firm, corporation, partnership, or institution represented by the Subcontractor (i.e., the company itself, not the company's employees), within the ten (10) years preceding the date of this certification, has *not* been convicted of a criminal offense in connection with a workplace incident that resulted in serious bodily injury or death.

TRUE ____ FALSE ____

CERTIFICATION FOUR

[X% of] Subcontractor employees that will be doing manual work under contract between the County and the Prime Contractor or other work that directly impacts workplace safety has received the OSHA 10 certification, and [Y% of] managers that manage at least one employee that will be doing manual work on the project or other work that directly impacts workplace safety has received the OSHA 30 certification, by the first day of work on the project (if you are hired as a subcontractor on the project).

TRUE ____ FALSE ____

CERTIFICATION FIVE

Subcontractor employees are compensated for the cost of their OSHA 10 certification (workers) or OSHA 30 certification (managers) if they received such certification while employed by you. Subcontractor employees are also compensated at their normal hourly rate for the time workers and managers spend toward those certifications.

TRUE ____ FALSE ____

It is the sole responsibility and obligation of the Contractor to ensure that all Subcontractors performing any part of the work on this project disclose to the Contractor their safety records and meet the County's requirements under the Safety Record Policy. The Contractor may fulfill this obligation by distributing the "Safety Record Questionnaire for Subcontractors" form included in this policy as Part B to all subcontractors and verifying to the County that the forms have been satisfactorily completed (i.e., every response is a

“True”) and returned to the Contractor. Subcontractors should submit the Safety Record Questionnaire to the Contractor as soon as they are able to. Contractor shall have until 30 days before the start of work on the project to obtain certifications from its Subcontractors.

All safety records are to be submitted by the prime contractor as instructed on the first page of this Safety Record Questionnaire, and all such records are subject to Harris County’s review upon request.

SUBCONTRACTOR SAFETY RECORD
CERTIFICATION

Project Title:

Name:

Title:

Business or Entity Name:

Business or Entity Address:

County of Contracting Entity:

THE STATE OF TEXAS
COUNTY OF HARRIS

I, _____, certify that:

1. I am the _____ (position) of _____
("Subcontracting Entity") and have the authority to execute this Certification on behalf of Subcontracting Entity.
2. The information provided in this Safety Record Questionnaire is true and correct.
3. I have made no willful misrepresentations nor have I withheld information in my statements and answers to questions in this Safety Record Questionnaire.
4. I acknowledge and understand that the Subcontracting Entity will be disqualified from participating in this project if the Subcontracting Entity is unable to confirm as "True" each question in the Safety Record Questionnaire.
5. I will ensure that the prime contractor on the project will receive this Safety Record Questionnaire by 30 days before work begins.
6. Subcontracting Entity will provide access to all records, and take whatever steps necessary (e.g., obtain and disclose Gravity findings from OSHA with respect to an OSHA citation, waive any confidentiality (only to the extent necessary to comply with this policy), etc.) to demonstrate compliance with the requirements of this policy.
7. I am aware that the information I have provided in this Safety Record Questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may cause my bid to be rejected or the County to pursue any of the remedies found in Section VIII of the Safety Record Policy.

Signature

Date