

## CFR 851 Video Conference Presentation

- I. Introduction
  - A. Missouri Valley is a small general, mechanical and electrical construction company home based in Amarillo and is a small business contractor as defined by the Small Business Administration guidelines.
  - B. Missouri Valley is primarily an industrial contractor working mostly in the industrial plants in and around the Texas Panhandle and nearby states. We also work in the commercial market but do not compete in the residential segment.
  - C. We self perform much of the work ourselves and thereby regularly employ 8 different crafts. We do however subcontract specialty work as needed; some projects have included as many as 12 small specialty subcontractors.
  - D. MVI has worked at the Pantex plant for over 20 years and during this time has performed work for The Corps of Engineers, Mason & Hanger, BWXT Pantex, Department of Energy and Sandia Labs. In the last 5 years, only 1 project has been over \$3 million, 9 projects have been between \$3 million and \$1 million and over 50 projects have been for less than \$1 million, most of those under 1/2 million.
  - E. MVI has employed a full time dedicated safety supervisor for over 12 years. His duties include developing extensive safety programs to comply with OSHA 1910 and 1926 requirements, employee training, and monitoring of the safety programs to insure compliance with these safety regulations for our own satisfaction and to satisfy our industrial clients who demand a higher degree of compliance than may be expected in other markets.
  - F. The overall result of these efforts is that MVI's safety record has only 1 lost time accident in the last 9 years with over 2,000,000 man-hours worked. We have not had an OSHA recordable accident in the last 5 years at almost 1,000,000 man-hours.

- II. MVI opposes the enactment of the “General Fit for Duty” Occupational Medicine provision included in CFR 851. There are six key points to explain this position.
- A. First is the logistical problem of this program not any medical problem.
- i. No other clients currently require general “fit for duty” testing, therefore they are not willing to share in the costs and effort expended for initial development and the ongoing maintenance of this cumbersome program. This means the substantial cost of this program would have to be born by Pantex either thru direct reimbursement or by allocating the cost to individual projects. An example of how this cost would have impacted one project that was completed in 2006 that will be providing at the end of the presentation.
- ii. The construction workforce is mobile, meaning workers may leave work without notice, often going out of town or state and not returning. Therefore, exit exams cannot or will not be performed as required. They may also work for multiple employers at the Pantex plant throughout the year. How would recordkeeping be handled in this situation?
- iii. Construction companies work for multiple clients, how will monitoring be maintained when the employee is not working at Pantex. How would these costs be reimbursed?
- iv. Development and initial startup of this program is estimated to take from 6 months to 1 year. If it was decided today to enact this requirement all current construction projects could be required to stop work until a program is in place and qualified. This would cause substantial delays in the construction delivery of our current projects and possibly impact the Pantex plant’s mission.

- B. Second, there is not currently a commercial medical practice in the greater Texas panhandle area that will perform the “fit for duty” examination and certify the employees. MVI currently uses a medical provider for first aid, pre-exposure testing for known hazards and DOT required testing. This provider has indicated that a medical review officer would need to be hired with experience in Occupational Medicine testing to be able to perform this work. However, they would require a substantial guarantee of business in this arena before they would pursue this adding this capability locally. MVI is not able to offer this guarantee. Is Pantex plant in a position to offer this guarantee?
- C. Third, there are no standards which currently control “general fit for duty” examinations. Thus the medical provider is being asked to certify fitness to a subjective requirement. Furthermore we do not understand how this standard would conflict with the provisions of the ADA standard which requires employers to make accommodations for special needs employees.
- D. Fourth, there are at least 5 contracting entities on-site at the Pantex plant who have in the past year subcontracted work. These include BWXT Pantex, Department of Energy, Corps of Engineers, NORESO and Sandia Labs. Would all of these on-site entities have to enforce this standard equally? Would a Subcontractor’s OcMed program that is qualified by one of these entities be acceptable to all of the entities or would we be required to develop multiple programs tweaked for each of these entities to meet a slightly different interpretation they each may have of the standard?
- E. Fifth, how will record keeping of the medical records generated by this standard be done? Would these medical records all be kept at a central repository at the Pantex Plant? If this were done, how would this compromise HIPPA privacy requirements? Considering the previous issue of multiple on-site contractors, would each of these entities have access to these medical records or would each entity maintain separate parallel databases with redundant information and monitoring?

F. Finally, no known contractors or subcontractors in this region currently have occupational medicine programs. We estimate initial development of an OcMed Program to cost \$80,000 for the general contractors, \$40,000 for the major subcontractors, (i.e. electrical and mechanical subs) and then \$20,000 for the small specialty subcontractors. This cost is prohibitive for most of us, especially the specialty subcontractors. If subcontractors are unwilling or unable to develop an OcMed program it could mean they would not work at Pantex and RFPs might receive fewer or no offers. The construction support needed by BWXT Pantex to accomplish the site's mission would not be available.

III. 10 CFR 851 "Fit for Duty" cost impact.

A. The Tester Design Facility was completed by MVI in 2006 for BWXT Pantex. The final invoiced cost was \$2,645,800.

B. If general "fit for duty" testing were added to that project it would be saddled with approximately \$320,000 in program initial development cost alone. This calculation is based upon:\

- 50% of the General Contractor's cost adding \$40,000.
- 50% of the Electrical Subcontractor's cost adding \$20,000.
- 50% of the Mechanical Subcontractor's cost adding \$20,000.
- And 100% of the 12 small specialty subcontractor's cost of \$20,000 each adding add \$240,000.

C. The variable cost, including entrance exam, exit exam and yearly testing monitoring, assuming minimal testing and no special consideration for things such as heavy metal exposure, asbestos, etc would equal \$270,900. This cost was developed by the actual number of men that were on the jobsite over the actual period of construction.

D. **BOTTOM LINE, AN ADDITIONAL \$590,900 OF COST WOULD BE ADDED TO THIS PROJECT. THIS WOULD EQUATE TO A 22% COST INCREASE**

E. Stated in another way, this was a 14,000 SF building. The cost to provide “fit for duty” medical testing would add \$42.21 per SF to the cost of the building.

#### IV. Summary

- A. MVI does not object to monitoring known health hazards for the select few who have exposure as required by OSHA standards 1910 and 1926.
- B. We strongly object to monitoring everyone forever and all the administrative work and liability that would be created by the Occupational Medicine provision included in 10 CFR 851 “fit for duty” standard.
- C. This standard would not provide a safer work environment for employees. It only adds administrative burden and unnecessary cost to each of the future projects performed under this standard.
- D. This testing is a waste of taxpayer monies and will in the long run cause Pantex plant to be unable to acquire qualified construction contractors and specialty subcontractors and thereby damage their ability to successfully achieve their mission.

#### V. Close