

COR[®] as a condition of contract

How construction project owners can do their due diligence while helping to improve jobsite health and safety.

Can construction project owners be held responsible for health and safety incidents that happen on their constructors' watch? From a purely legal standpoint, it may be months or possibly years before the dust settles and a consensus is achieved.

From a practical perspective, however, buyers of construction may wish to avoid this potential liability by proactively ensuring they have taken every reasonable precaution when hiring a contractor to perform the work. One option for buyers/project owners is to require that any construction company wishing to bid on a contract have a functional occupational health and safety management system (OHSMS) based on a recognized standard such as COR[®].

If a workplace incident occurs, those accused have the opportunity to show that they did everything reasonable to prevent the incident from occurring. Norm Keith, Partner, Employment and Labour Law, at KPMG Law LLP, recently outlined for IHSA a number of key steps for owners to take to prove their due diligence. They should:

- Have a rigorous pre-qualification procedure to ensure the constructors they hire are fully competent when it comes to managing workplace safety. This could include requiring COR[®] certification as a condition of contract.
- Develop a comprehensive OHSMS of their own—and have it legally reviewed and approved.
- Ensure ongoing engagement, supervision, and assessment of the work and safety performance of the constructor and its sub-trades.
- Respond immediately when they become aware of any health and safety non-compliance at the project.
- Enforce accountability under the OHSMS (e.g., by disciplining anyone found to be in violation of safe work practices, or terminating the contract of a non-compliant constructor).

The foundation of these steps is a functioning OHSMS that identifies, assesses, and controls hazards, monitors work practices and remedies unsafe behaviours, and documents all health and safety initiatives and actions to ensure accountability.

"It's not an offence under the *Occupational Health and Safety Act* to not have a health and safety management system," Keith says. "But your management system is the means by which you achieve compliance and successfully pass the due-diligence defence."

The importance of accreditation

Developing an OHSMS based on a recognized standard such as COR[®] is an effective way for a company to improve its health and safety compliance. Once an OHSMS is in place, it should be audited and certified by an accredited certification body. This provides multiple layers of oversight and ensures that the audit itself has been performed to a high standard.

According to William O'Neill, Director, Business Management, Accreditation Services at the Standards Council of Canada, using an accredited standard has many benefits:

- It provides a recognized framework for the management of health and safety risks.
- It shows employees and external stakeholders that an organization is committed to occupational health, safety, and well-being—which can positively impact a firm's reputation, morale, and worker retention.
- It requires compliance with occupational health and safety regulations and promotes proactive risk management.
- It strengthens organizational resilience against safety threats and crises.
- It promotes continuous improvement of health and safety performance through the Plan-Do-Check-Act model.

It's just good business sense

The City of Vaughan is among the growing number of public sector construction buyers to begin requiring COR[®] as a condition of contract. Asad Chughtai and Jack Graziosi were involved in adopting and implementing the city's requirement—and outlined that process at a forum for buyers of construction services, hosted by IHSA in spring 2024.

"As a municipality, a lot of the work that we do is 'out there' in people's neighbourhoods," Graziosi says, pointing out the heightened risk involved with construction projects that are carried out near roads, homes, businesses, community centres, and other public spaces.

"If we claim to believe in service excellence, there aren't many better ways to demonstrate that than by showing the city is committed to health and safety—and this is what we're going to require of those people who we hire to come and work in your neighbourhood."

Vaughan began requiring COR[®] in early 2020, initially for projects valued at more than \$25 million. The requirement was then phased in over time for lower-budgeted contracts. As of September 2023, any firm bidding on construction work valued at \$500,000 or more must have a certified OHSMS.

That staggered approach provided contractors with sufficient time to include any necessary elements into their health and safety plans. But Graziosi notes that with more than 700 Ontario companies now COR[®]-certified, plus 1,800 more registered in the program, buyers who adopt an OHSMS requirement may no longer need to take a multi-year approach. At least in the Greater Toronto Area, a critical mass of businesses have certified occupational health and safety management systems.

Graziosi and Chughtai are now using what they've learned to improve construction procurement for the Town of Whitchurch-Stouffville. In 2023, Graziosi became the town's Commissioner of Engineering and Public Works; Chughtai joined him as Manager of Procurement Services.

No matter the specifics of a buyer's OHSMS requirement, Chughtai says that communication and collaboration is key. "The contractors, consultants, and service providers that we work with are our partners, so getting their feedback is important to achieve success."



Learn more with IHSA



ACCESS a comprehensive set of resources to help you understand COR[®] and the value of occupational health and safety management systems: ihsa.ca/cor



READ about the health and safety improvements the Toronto Transit Commission (TTC) documented in the years after it adopted a COR[®] requirement: ihsa.ca/ttc-cor