



LOCAL BUSINESS ENTERPRISE ADVISORY COMMITTEE

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TO: Members of the Board of Supervisors
Government Oversight Committee

FR: Miguel Galarza, Chair
Local Business Enterprise Advisory Committee

RE: Contractor Safety Performance Evaluation

Contractors, Construction Project Owners and Managers typically use the Experience Modification Rate, X-Mod, EMR or Experience Modification Factor as a tool to measure the effectiveness of another contractor's safety program. They use it to pre-qualify contractors who may act as subcontractors to the owner, manager or primary or general contractor. They use it as an eligibility benchmark of safety. Often relying on it as a single qualifier to the effectiveness of any individual contractor's safety record. It is common to find in construction bid situations an Experience Modification Rate (EMR) pre-qualification requirement of 1.00 or less, in place, in order to bid on a project.

Most experienced Risk Managers highly discount the use of the Experience Modification Rate or EMR when evaluating the safety focus or culture of a employer for the following reasons:


1. Purpose of the Experience Modification Rate: The EMR was designed only as a premium modifier, not as an indicator of how safe a business performs its operations. The primary purpose of experience rating is to determine a more accurate premium for a given workers' compensation policy by modifying the base premium.
2. EMR Experience Period: The Experience Period, usually three years, does not take into account the most recent year of claim activity. A contractor with a 0.90 EMR may have had a series of significant claims over the past year, or maybe just a frequency of small claims, but enough to cause their EMR to exceed 1.00. Qualifying for a contract today and using the EMR, which is developed from a three-year period starting two years ago, does not give an accurate reflection as to the effectiveness of a current safety program.
3. Open Claim Reserves: Claim reserves established by the insurance company carry over from year to year. This is the amount the insurance company thinks they will have to ultimately pay for the claim.
4. Subrogation Effect: Large workers' compensation claims may be drawn out over many years and subrogation on workers' compensation claims, when successful, may not occur for many years past the EMR experience period, usually three years, causing any reductions to reserves or credits due to subrogation to not be reflected in the current EMR.

5. Non-Specific Work Claims: Claims may occur that do not reflect work or safety conditions. For example, automobile accidents where the injured employee was not at fault creates a potential subrogation effect, but the initial claim will impact the EMR. Additionally, claims involving injuries that are cumulative in nature that result from the employees' lifetime of work in physically strenuous industries, but who may have only worked for their most recent employer for a matter of days or weeks are not identified or discounted within the EMR formula.
6. Formula Calculation Changes: Rate making authorities are constantly modifying EMR formulas to better represent changing economic conditions. A change in the way the formula is applied or a change in the formula factors may have a negative impact on an EMR without any cause or input from the employer.
7. Payroll Reductions: One of the factors in determining Expected Losses is payroll. When a contractor has reduced payroll, for whatever reason, there will be a likewise increase in their EMR. Essentially, the Experience Modification Rating formula includes too many unrelated claim variables for it to be used as an accurate construction safety indicator. There are better, more responsive indicators that should be used to determine the effectiveness of a construction safety program (e.g. job site accident rates, historical project accident/incident rates, contractor safety program documentation and safety training review, etc.).

For all the above-mentioned the use of only using a company's EMR rated to determine the safety culture of small LBE contractor is not only unwise, but as I believe could be used by larger prime contractors to selectively and with the City's consent, discriminate against our small LBE contractor.

The LBE community is ready, willing and able to provide input, and work in a collaborative spirit with the various city stakeholders in crafting a city safety evaluation process that ensure workers are protected and the City has a system to evaluate contractor, rewarding contractors that believe in a corporate safety culture, and conversely hold contractor accountable for failing to adhere to industry safety protocol.

Respectfully,


Miguel Galarza
Chair LBE Advisory Committee.

San Francisco Public Works Contractor Safety Procedures and Practices



October 17, 2018

Construction Contractor Safety

Public Works – Current Activity

- More than 200 active construction contracts
- \$1.8 billion (\$9 million per contract average)
- Project types:
 - fire stations, police stations, health centers, ZSFGH, Moscone Center, Masonic Streetscape, Polk Streetscape, Second Street Improvements, Various Locations Paving and Sewer, Various Locations Curb Ramps



Consideration of Safety During Contractor Procurement

- Procurement governed by Chapter 6 of the San Francisco Administrative Code, as well as state and federal law
- Cannot exclude licensed, bonded and insured contractors from consideration
 - Very limited exceptions
 - Technical experience requirements
 - Contractor debarment
- Alternative delivery methods (e.g., best value, CM/GC, design-build)
 - Safety is a selection criteria
- Firm fixed price "low-bid" (most Public Works contracts)
 - Lowest responsive and responsible bidder awarded contract
 - Contractor must be determined responsible
 - Safety is a factor in responsibility
 - Bar is high to reject a bidder based on responsibility, and requires due process



Contractor Safety During Construction

- "Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall be solely responsible for any and all fines, penalties or damages, which result from contractor's failure to comply with applicable health and safety laws and regulations during performance of the work." -- Public Works Construction Contract General Conditions Article 12
- By Public Works contract, Contractor must comply with Cal OSHA
 - Cal OSHA protects **workers**
 - Cal OSHA does not address safety of the **public** and/or **property damage**
- By Public Works contract, contractor must comply with all state and federal safety standards (e.g., 811 Call Before You Dig, safe and accessible path of travel, traffic control during construction, hazardous materials handling)



Contractor Safety During Construction – City Oversight Role

- By Public Works contract, contractor must comply with additional requirements
 - Designate a qualified Project Safety Representative
 - Prepare and submit Project Specific Safety Plan and Code of Safe Practices
 - Conduct and document daily safety inspections by Project Safety Representative
 - Report and investigate all incidents
 - Identify causes and take corrective actions and submit Corrective Action Report before continuing work in the area of an incident
 - Provide all records and allow Public Works participation when requested



Contractor Safety During Construction – City Oversight Role, Con't.

- Public Works provides initial and regular safety training for Public Works oversight staff including inspectors, resident engineers, construction managers
 - plus weekly on site training with GSA, email tips, OSHA articles, CM Safety tips
- As part of regular CM oversight, staff include compliance with safety-related contract requirements
- Public Works document all incidents that occur on projects
- When risk and severity warrant, staff pause contractor work until cause identified and corrective action implemented
- Public Works staff watch for and address negative trends by work type, project, contractor
- Public Works staff exercises "stop work" authority



The Future

- Culture of continuous learning and improvement
- Improvement to specs, procedures, training
- Continue to share lessons learned and best practices with sister agencies
- Continuing to use alternative delivery methods (best value, CM/GC, design-build)
- Construction project delivery review
- Monitor trends with contractors
- Citywide safety committee
- Continue alignment with PUC specifications



www.sfpublicworks.org



Capital Programs & Construction

Contractor Safety Evaluation and Assessment

October 17, 2018

Contractor Safety

Two-part plan to improve current practices:

- Contractor safety history and performance evaluation
- Contractor safety plan tailored to contractor's safety history and identified project risks



Contractor Safety Evaluation

SFMTA reviewed other public agencies' evaluation criteria:

- Caltrans
- Public Works
- SFPUC
- Port
- Airport

These agencies have limited their evaluation of contractor safety history to projects in which bidders are prequalified, such as Design-Build, Guaranteed Maximum Price, Best Value projects, and prequalified bidder pools.



Industry Evaluation Criteria

Evaluation criteria used in the construction industry:

- Experience Modification Rating (EMR)
- OSHA violations for willful, serious, serious and willful, or repeat violations of OSHA regulations

SFMTA Contractor Safety Evaluation Proposal

On several recent and upcoming projects exceeding \$1M contract value, the SFMTA has/will require the winning bidder to meet the following contractor safety criteria:

- Experience Modification Rating (EMR) of 1.0 or less
- Not more than three OSHA violations for willful, serious, serious and willful, or repeat violations of OSHA regulations in the past five years (five violations in past five years allowed for large contractors)



Contractor Safety Enforcement and Compliance

Current Required Contractor Safety Practices:

- Contractor safety representative responsible for safety plan implementation and monitoring
- Safety trainings for contractor personnel
- Weekly safety inspections and Job Hazard Analysis (JHA)
- Submit a Site Specific Work Plan (SSWP) for SFMTA review and approval



Contractor Safety Enforcement and Compliance

Additional requirements under consideration:

- Review contractor's annual Cal-OSHA Form 300A reports of injuries and illnesses for past three years to identify patterns of safety issues.
- Require contractor to address in its Site Specific Work Plan issues the SFMTA has identified in its review of the contractor's Form 300A and evaluation of project risks.
- Perform site inspections to confirm contractor's compliance with the project SSWP.



Services of the San Francisco Public Utilities Commission

SAN FRANCISCO PUBLIC UTILITIES COMMISSION (SFPUC)

CONSTRUCTION SAFETY

October 17, 2018

Ryan Cayabyab, Construction Manager, Construction Management Bureau, Infrastructure



Agenda

1. Pre-Qualification Overview
2. Best Practices
3. Program Results
4. Looking Forward
5. Questions



Pre-Qualification Overview

The Pre-qualification Application Questionnaire

To pre-qualify, Contractors must fully complete the Candidate Contact Information form:

Organization, History and Organizational Performance: Company organization information, company licenses, and related history.

Essential Requirements for Qualification: Questions regarding history of safety practices, OSHA incidents, and financial and professional responsibility.

References Questionnaire: Past experience is verified.

Technical Requirements for Qualification: For each category contractors interested in bidding must meet minimum technical qualification requirements.



Pre-Qualification Overview

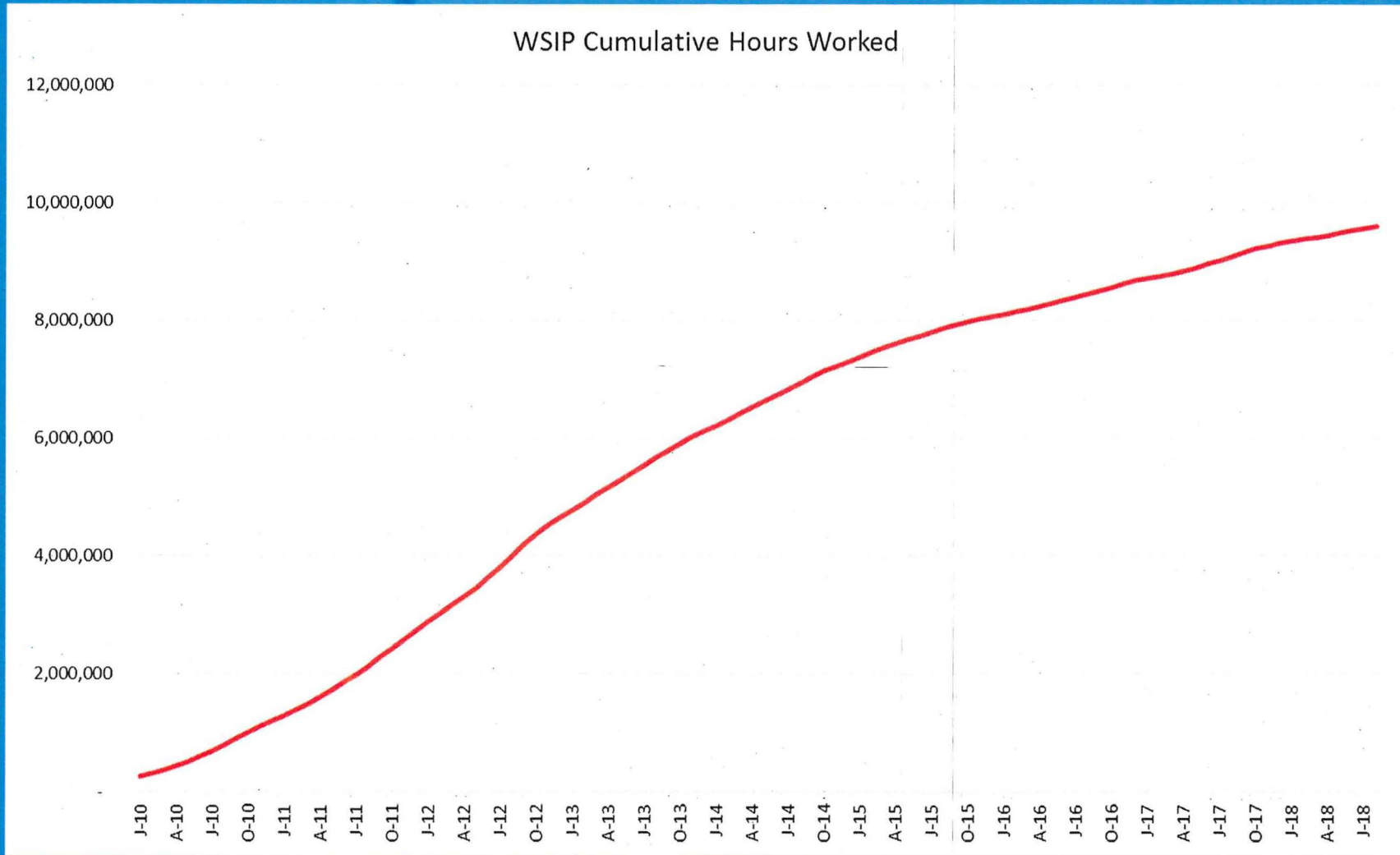
- **WASTEWATER PROJECTS**
 - Sewer Pipelines
 - Wastewater Treatment Facilities
 - Wastewater Pump Stations
- **LOCAL WATER PROJECTS**
 - Local Water Pipelines (<48 inches)
 - Local Water Reservoirs
 - Local Water Pump Stations and Tanks
- **REGIONAL WATER PROJECTS**
 - Water Tunnels – Conventional
 - Large Diameter Pressure Pipelines (<48 inches)
 - Regional Structural Upgrades/ Retrofits
 - Regional Water Treatment Plants
 - Regional Valve Lots
 - Habitat Development Projects
 - Water Well Drilling
 - Regional Water Tunnels (Tunnel Bore Machine Method)
- **SOLAR PHOTOVOLTAIC PROJECTS**

Best Practices

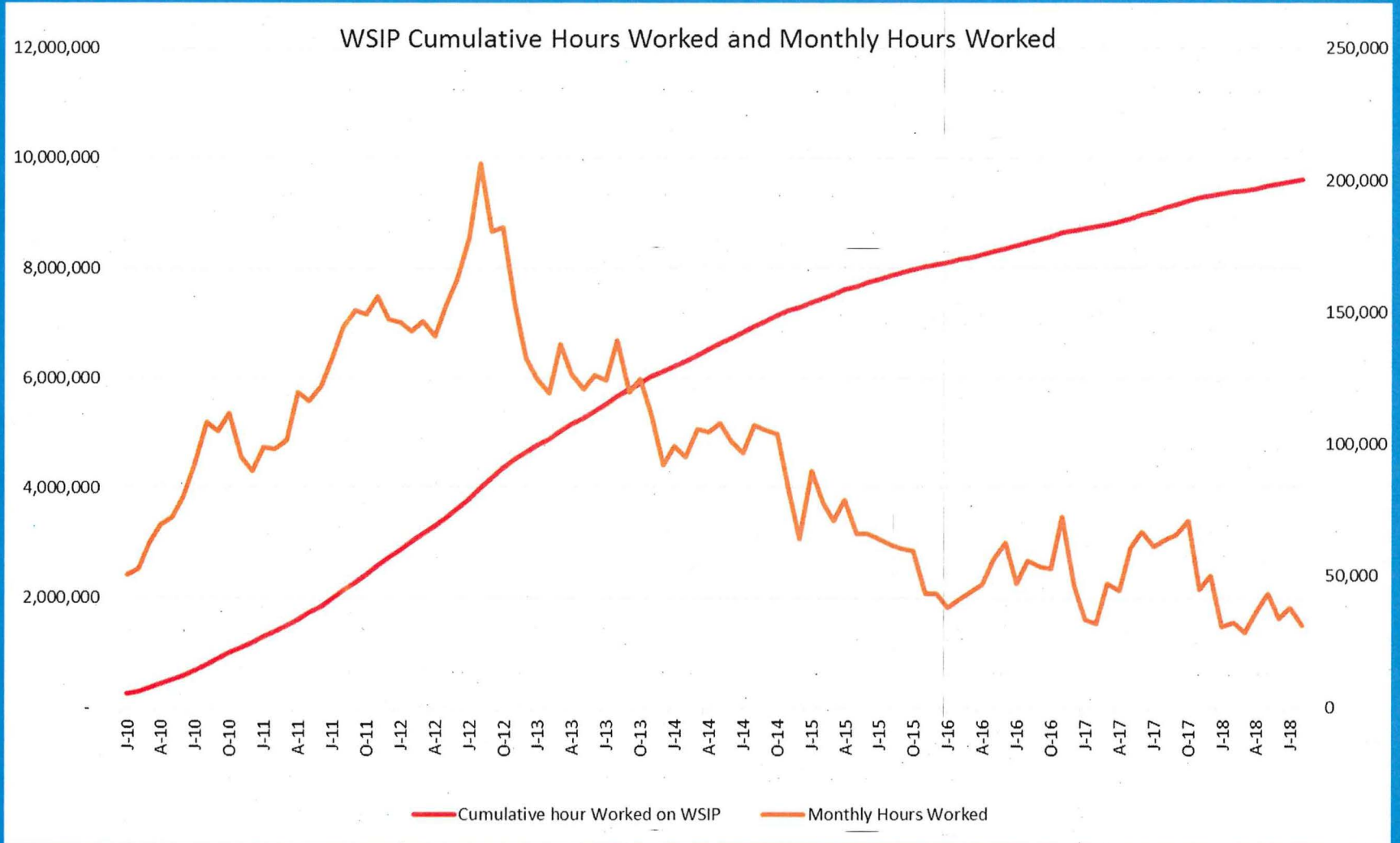
In 2007, as part of the \$4.8 billion Water System Improvement Program (WSIP), the SFPUC implemented our safety approach on over 40 contracts which require:

- Health and safety plans
- Job hazard analysis
- Health and safety managers onsite at all times

Program Results

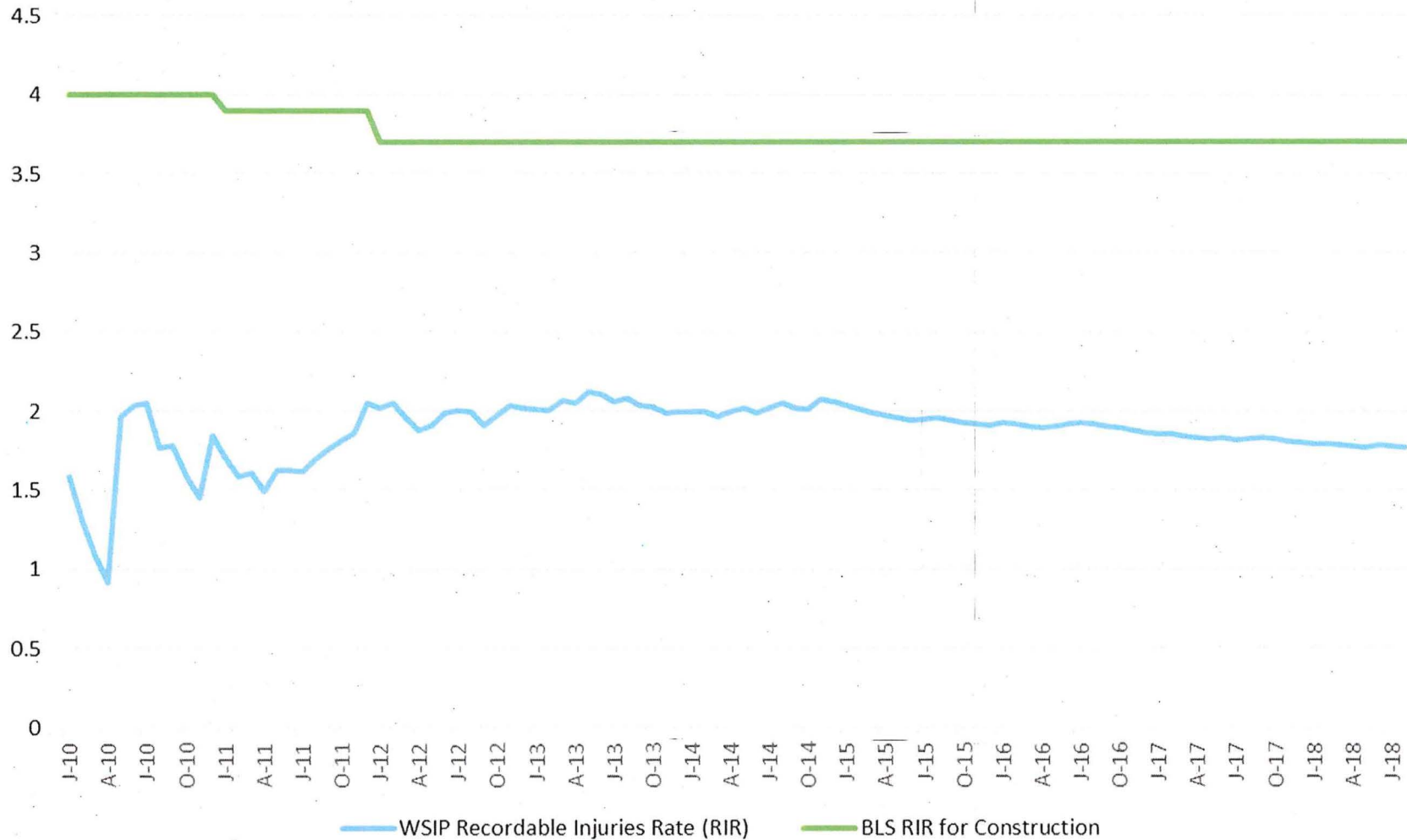


Program Results

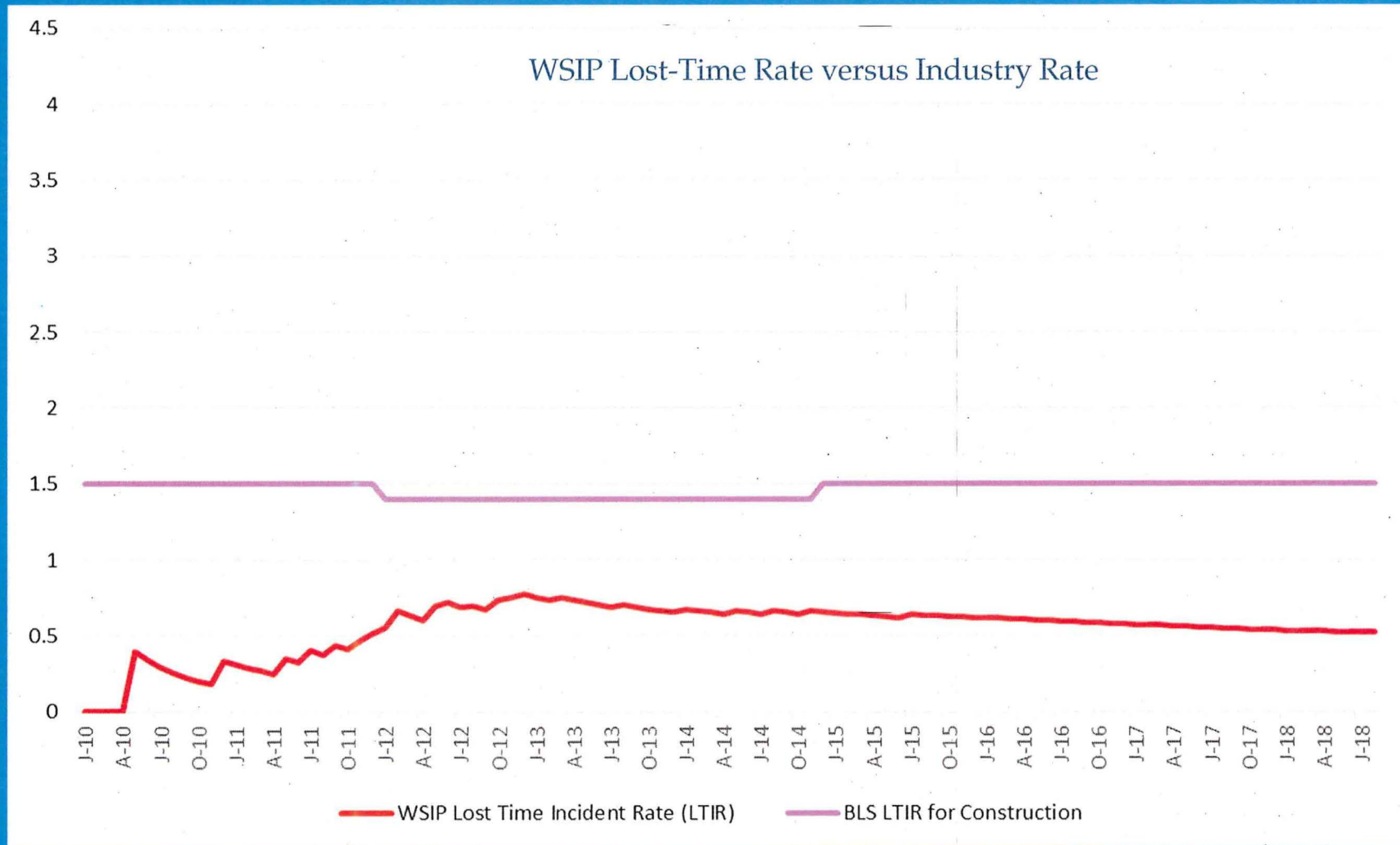




Program Results- WSIP Injury Rate versus Industry Rate



Program Results- WSIP Lost-Time Rate versus Industry Rate





Looking Forward

- Updating Prequalification Questionnaire and Safety Questions
- Technology Integration and Data Systems
- Carrying the Same Safety Approach for Sewer System Improvement Program and Hetchy Capital Improvement Projects (SSIP and HCIP)
- Citywide Safety Committee Working with Department of Public Works



San Francisco
**Water
Power
Sewer**

Questions

Any questions?