

Contractor Perspectives On Gold Shovel Standard by Eben Wyman

Gas distribution construction work is booming as local distribution companies (LDCs) continue to aggressively replace old cast iron and unprotected steel piping with superior polyethylene pipe. Transmission pipeline operators continue to build the necessary infrastructure to move this critical energy across the country. Telecom and broadband carriers deploy contemporary broadband infrastructure to unserved and underserved parts of the county. The bulk of most underground utility construction work is done by contractors, who keep safety and damage prevention front and center in all of their operations and construction activities.

Damage prevention is a responsibility shared by several stakeholders, but fundamental relationships between facility operators and the contractors who work for them is paramount. Unfortunately, a new industry program threatens these effective partnerships by shifting the focus of “shared responsibility” to a punitive approach of monitoring and scoring contractors based on number of hits, without ensuring normalization of data and consideration of many important factors.

Once an internal program overseen by a large natural gas distribution utility, the Gold Shovel Standard (GSS) evolved into a standalone entity in March of this year. While being pitched as a certification and monitoring program intended to “dramatically reduce damages from excavation to buried asset networks” through increased cooperation among operators, locators and excavators, many in the excavation construction community believe GSS will only create a new layer of training, reporting and information-sharing requirements for excavation contractors.

While leaders of GSS have taken a few initial steps to make the standard more viable, many important questions remain unanswered and key parts of the program remain incomplete.

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Background

In its initial promotional material, GSS stated that “Call 811 Campaign effectiveness has leveled off and is producing fewer and fewer reductions in dig-ins by professional excavators,” and that “[e]xcavation companies know what to do, yet continue to be a leading cause of damage to buried gas, electric, telecom, sewer and water systems, despite good to very good Call-811 and locate systems, and established excavation procedures that prevent dig-ins when followed.”

As one might expect, this language doesn't sit well with many in the professional excavation community, and several national groups have banded together as the GSS program is now being solicited to a range of underground utility operators across the country.

Under the GSS structure, facility operators join as “members” and the contractors who work for them are enrolled as “participants.” Participants agree to:

- Submit their training and testing material for approval and certification by GSS, train and retrain all employees annually, and preserve training records.
- Report all damages to any facility within three business days.
- Require GSS certification to all subcontractors working for them.

Currently, the GSS program includes some 20-30 facility operator members and several hundred contractors (“participants”) who have had their training, testing and procedures relating to damage preven-

tion approved and certified by GSS. Members are able to view data about GSS participants and are encouraged to use this information for hiring and awarding business. GSS contractors receive an “Excavation Incident Calculated Occurrence (EICO) score” over time based solely on number of hits. Because data is currently being collected by GSS without a confirmed process about how EICO scores will be established and/or how they will impact the contractors that are submitting the data, players in the underground utility construction sector are increasingly voicing their concerns about the GSS program as currently written.

Contractors speak out

Organizations like the Distribution Contractors Association (DCA), many of whose members have been forced to participate in GSS as a condition of performing work for certain gas utilities, have communicated a range of concerns they have with the program, and other groups are following suit. In fact, a meeting was held in Washington, D.C., on Oct. 19 where dozens of contractor representatives from DCA, the Power and Communication Contractors Association, the American Pipeline Contractors Association, the Associated General Contractors of America, and the National Utility Contractors Association met with the GSS administrator in what turned out to be a blunt and sometimes tense discussion of the GSS program. Subsequently, these organizations developed a collective list of concerns

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and issues for consideration by GSS leaders, along with a “blueprint” of suggested initial improvements to the program.

Some of the remaining and critical concerns shared by many in the excavation community include:

- **Ambiguity of EICO scoring process:** There is a serious lack of information about the reasoning or logic behind the GSS EICO score, despite the fact that a contractor's score has the potential to impact future business with a range of facility operators. The EICO score is based entirely on number of facility hits without consideration of number of employees and/or workers that work for the contractor, number of projects performed by the contractor, location of work, or other important factors. A process to normalize this data has yet to be established.
- **Lack of consideration of root cause:** Thorough investigation and determination of root cause is needed following most underground facility damages. Root cause is not only overlooked but almost entirely neglected in the current GSS process. In situations where excavation damage is the result of an unmarked or mis-marked facility, the root cause is not considered, yet the contractor's EICO score would be negatively impacted.

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- **“Review Committee”:** GSS contends that contractors are allowed to dispute a facility hit when submitting information about an incident if they followed their certified policies and procedures, and a “review committee” made up primarily of practicing excavators will determine if all certified procedures were followed. However, there is currently no information about who will serve on this committee, their certifications, length of term, etc. Additionally, because this data is submitted exclusively by contractors, many believe GSS is not prepared for the overwhelming number of disputed hits coming its way.
- **Certification of subcontractors:** Facility hits by subcontractors can unfairly impact the EICO score of general contractors. Subcontractors regularly perform work in multiple locations where the general contractor is not present. It is unrealistic for them to be responsible for factors surrounding EICO scores of subcontractors.
- **Exempt facilities:** The GSS describes “benefits” to gas and electric utilities, pipelines, telecom, water/sewer, excavators and even municipalities, when many of the operators of these facilities (especially municipalities) are often exempt from state one-call requirements. How are contractors expected to be responsible for stakeholders who do not par-

ticipate in the damage prevention process?

It’s important to point out that the GSS administrator has been very accessible and has willingly spoken to any and all contractors willing to talk to him. He should be commended for that. However, the “improvements” agreed to by GSS authorities to date are very limited. To be fair, they have agreed to slow “phase 2” of the program (establishing and distributing EICO scores) and provided a temporary “opt-out” provision so that contractors don’t have to report data to GSS until several important questions are addressed.

Program administrators have also cleaned up some of the inflammatory language on the GSS website regarding contractors and agreed to set up meetings next year with contractors around the country. Additionally, GSS has committed to establish a committee on locators, which will be a positive development if GSS operators actively participate. After all, operators hold the responsibility to provide accurate and timely locating of their facilities, whether performed by contract or “in-house” personnel.

While reporting to GSS has been temporarily made optional, the program still requires that the information is maintained internally for future submission to GSS. Requirements to ensure GSS certification of subcontractors have been partially alleviated but not fully eliminated. Therefore, while excavators have ex-

pressed appreciation for these steps, nothing substantial has changed within the program to achieve the “buy-in” by excavation contractors GSS leaders claim they need.

The end of “shared responsibility”?

The bottom line: Excavation contractors work tirelessly to perform superior work while providing a safe and effective work environment. Damage prevention is, and always has been, a big part of that. While the goal of increased safety is fundamental, many contractors currently “participating” in the GSS program believe in a more collaborative approach, such as developing and promoting best practices and shared responsibility in damage prevention as advocated by the Common Ground Alliance (CGA). As currently written, the GSS will hurt only contractors who work in good faith to prevent damages to underground facilities.

There is a range of unintended consequences to consider as well. State and even federal government entities will likely take the short-sighted approach of mandating GSS requirements in new or adjusted regulations. In the end, the increased paperwork and repetitive reporting requirements will unnecessarily result in a higher cost of doing business for both contractors and operators. In its current form, concerns have been raised that GSS reporting requirements could interfere with attorney-client privilege following

certain disputed hits.

The fundamental responsibilities of damage prevention are generally agreed to. All facility operators need to participate in the one-call process. Accurate and timely locating of facilities needs to be provided, and all excavators need to call 811 before they dig and ensure critical practices such as potholing are followed. With these concepts in mind, many contractors have effective relationships with their customers where both parties discuss the circumstances surrounding facility damages, including financial compensation, depending on root cause and other factors. The one-sided approach of GSS will make these proactive relationships difficult to maintain and will likely encourage unnecessary litigation.

Although the GSS is being sold as a “voluntary” program, many excavators believe this will lead to a “black-list” of contractors who experience several facility hits without regard to root cause or other important factors. In fact, several operators have already indicated that they will not award work to non-GSS contractors. Excavation contractors widely support shared responsibility in damage prevention and the many best practices encouraged by the CGA. In its current form, the GSS undermines the spirit of cooperation upon which the CGA was established 16 years ago, and many hope GSS leaders will re-evaluate the need for this program and return to a cooperative approach to damage prevention.