



ACCESSING SAFETY KNOWLEDGE (ASK) SHEET: THE OSHA MULTI-EMPLOYER POLICY

OSHA, the Occupational Safety and Health Administration, has the authority to visit jobsites to ensure that employers are “providing a safe and healthful site free from recognized hazards.” When they believe these conditions are not being met OSHA has the authority to charge and, if not effectively countered, fine employers. Subcontractors working on a General Contractor’s jobsite must conform to both the GC’s safety requirements as well as those stipulated by OSHA. One of the reasons the GC contractually forces the sub to conform to the GC’s standards is called the Multi-employer policy.

The courts have ruled that OSHA can issue a citation to four categories of employer:

1. The employer that created the violation (“the creating employer”);
2. Any employer whose employees were exposed to the violation (the “exposing employer”);
3. Any employer responsible for correcting the violation on the jobsite (the “correcting employer”); and
4. Any employer responsible for controlling the work on the jobsite (the “controlling employer”).

What does this mean to you, the roofing or flooring sub?

1. It means if your guys are at risk from a known safety hazard (remember the part about “free from recognized hazards”?) whether you created the hazard or not, that you are subject to a citation.
2. It means the GC, as “controlling contractor”, whether they created the hazard or had their workers at risk, is equally subject to citation.
3. It means if you are working on another contractor’s scaffold on a GC’s site and the scaffold is incorrect, all three of you can be cited.

This plays out in a couple of ways. The first is that the GC, who has so much exposure, will consequently expect their subs to know and follow OSHA regulations. It also means that you, the sub, will be expected to be OSHA compliant EVEN IF THE GC HAS NOT SPECIFICALLY WARNED YOU OF THE HAZARD OR CONDITION.

Although this policy has been enforced differently in the Federal court jurisdictions, in the Southern District of Texas it has been accepted by the courts as precedent law. And it means that subs must provide the training, equipment and direction to their men to work safe or suffer all the consequences. What consequences?

- Possibility of employee injury or death.
- Possibility of contractual violation, being removed from the job, having your bond used to pay a replacement contractor.
- Possibility of loss of reputation and inability to bid future jobs.

This Multi-Employer Citation doctrine is the wedge that allows the GC to regulate safety performance from all its contractors and to expect OSHA’s standard. It also levels the playing field among all contractors on the job. Don’t see it as a barrier to job completion but as a tool to keep everyone on the jobsite equally safe. Although money talks and a low price talks loudest, when the cost of federal fines along with increased oversight by OSHA is added to the cost, for the GC even your lowest price will never be low enough.