



ACCESSING SAFETY KNOWLEDGE (ASK) SHEET: *HOW TO HANDLE AN UNSAFE JOBSITE*

You are a subcontractor to the Idontcare Builders, Inc. and notice another subcontractor (Idontcareeither, dba ICE) performing their portion of the project in, what you perceive as an unsafe manner. The act may or may not affect you or any of your employees directly, so why should you care about ICE's safety standards and whether or not they comply with OSHA and ICE's site safety plan? To some it seems easy to understand why you should want ICE to comply with OSHA and the GC's safety requirements, but to others, well, not too clear. Below are a few of those reasons:

1. You care about the safety of others;
2. You have LEGAL obligations. OSHA requires that you provide safe working conditions for your employees, no matter who caused the hazardous condition. You could be liable for monetary damages if you fail to take all reasonable precautions to protect any workers or property at the project site;
2. When others around you are working unsafely, it affects the morale of workers who are following the rules;
3. A subcontractor that is working unsafely may be creating a hazard for everyone on the job, which could affect production as well as the safety of everyone on-site (such as obstructing safe access to work areas, cluttering them with excessive trash, removing fall protection, creating electrical hazards, causing work to be performed out-of-sequence, etc.);
4. You care that ICE's safety record may reflect on your company if they cause an OSHA reportable accident ,or worse, a death;
5. You may have learned that if ICE were to have a major accident, or a significant hazard brought to the attention of government authorities or media, the job could be shut-down until OSHA, the media, and everyone's' insurance company investigators and lawyers have poked-around the site, followed in many cases by requests for interviews, review of documents and even subpoenas to testify in depositions, hearings or trial. This, of course costs your company time and money, including stand-by labor charges, storage costs for materials that have been ordered but not shipped, extended equipment rental, and increased risk of materials lost to theft, vandalism or exposure to the elements.

Guidance from OSHA regulations is limited, and OSHA's directives are not always consistent with each other, or with practical realities. There is a brief reference to joint efforts by G.C.s and Subcontractor in 29 CFR §1926.16. OSHA recommends that you report unsafe acts to the local office. However, under 29 CFR §1926.20, which prohibits all contractors (on federally funded projects) from requiring any worker to work in unsanitary, hazardous or dangerous conditions, and under OSHA's "Multi-Employer" Directive, the resulting OSHA inspection could cause you to find your own company cited as an "exposing", "creating", "controlling" or "correcting" employer, unless you are prepared to demonstrate the extensive precautions that you have taken in response to the other contractor's conduct.

Suggestions:

1. Try to work out the safety issue with the other subcontractor, politely and with specific details;
2. Try to work the issue out in a safety conference with the other subcontractor(s) and the GC's safety official, which could be the designated on-site safety representative, superintendent, or GC corporate safety director, politely and with specific details, and should be entered into the minutes of the weekly project meeting;
3. After reviewing your agreement with the GC and having a full understanding of that agreement, if there is one, you should follow the "Notice" Section of your agreement by sending a formal letter to the GC's project manager, forman/superintendent outlining your concerns, with specific details. You may need to copy the owner of the project.
4. If necessary, send final notice of intent to leave the project or stop work, due to the unsafe working condition brought on by the subcontractor and lack of control by the GC. Copy the owner, bonding company and your insurance company.

You shouldn't have to go past step #1, but if you do, step #2 will start the written documentation putting GCs on notice of their potential liability. Issues of liability will be covered more thoroughly in the February 2013 ASK Sheet "Rights and Responsibilities on an Unsafe Jobsite."

As a subcontractor with no contractual rights against other subcontractors, and no control over the GCs, it is often difficult, requiring seemingly continuous efforts to influence G.C.s or other Subcontractors to follow safe work practices. However, with a well-planned, well-meaning efforts, ASA members can demonstrate that safety of our crews is our greatest concern, bringing safety to the forefront of attention for the Owners, G.C.s and other Subcontractors on jobsites where we work.

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