



The Hidden Risks of Subcontracting in Construction

A Safety, Compliance, and Performance Perspective

DEVELOPED BY  **J. J. Keller**
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WITH  **AMERICAN SOCIETY
OF PROFESSIONAL
ESTIMATORS**

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Since we began as a family-owned company in 1953, our purpose at J. J. Keller & Associates, Inc. has been to protect people and the businesses they run. Today, serving 500,000+ companies across North America, our associates are making a larger impact than ever. Construction, transportation, utility, healthcare, education and industrial organizations of all sizes rely on our expert insights to create safe work environments and simplify complex government regulations. They trust our industry-leading advisors and comprehensive portfolio of solutions – consulting, managed services, cloud-based and AI-powered platforms, training, labor law posters, PPE, and safety and compliance products – to safeguard workers, reduce risk and build operational confidence.



ABOUT THE AMERICAN SOCIETY OF PROFESSIONAL ESTIMATORS (ASPE)

Since its founding in 1956, the American Society of Professional Estimators (ASPE) has been dedicated to advancing the estimating profession through education, certification, fellowship, and professional development. As the construction industry's recognized authority in professional estimating, ASPE equips estimators at every career stage with the knowledge, resources, and credentials needed to succeed in an increasingly complex marketplace. Through its Estimating Academy, industry standards, professional networking opportunities, and nationally recognized certification programs, including the Certified Professional Estimator (CPE) designation, ASPE helps strengthen the credibility, competency, and professionalism of estimators across the construction industry.

TABLE OF CONTENTS

Foreword	3
Introduction	4
Risk Landscape	7
Root Causes	10
Standards and Enforcement Context	11
Mitigation Framework	11
Multi-Employer Safety Program	13
Risk Mitigation	15
Case Illustrations	16
Implementation Roadmap	17
Conclusion	18

FOREWORD

Subcontracting is essential to construction. It helps projects move forward, taps specialized expertise, and manages cost and capacity. But unmanaged subcontractor risk can create serious safety and compliance exposure. This added risk can be difficult to see and control, especially on complex jobsites where work may be distributed across multiple tiers of contractors.

J. J. Keller & Associates, Inc. and the American Society of Professional Estimators (ASPE) present this whitepaper because both organizations are committed to safe worksites. This guidance brings together J. J. Keller's safety and compliance expertise with ASPE's expertise in construction, risk assessment and connections to the construction professionals who help shape project scope, cost, risk and decision making.

In this whitepaper, we encourage you to look beyond the immediate advantages of subcontracting to more fully understand and control the associated risk exposures. Those exposures are not theoretical. OSHA's multi-employer citation policy can hold controlling employers accountable for hazards created by subcontractors, even when their own employees are not directly exposed.

In short, a safer project outcome begins long before work starts in the field. It begins with how subcontractors are evaluated, how expectations are written into their contracts, how schedules and resources are planned, and how accountability is carried through daily operations.

Our hope is this practical resource helps in sound planning, **so risk doesn't turn into harm.** By strengthening subcontractor selection, clarifying responsibilities, improving documentation, and building more consistent oversight, organizations can move from risk to proactive operational control and safer worksites.

Sincerely,

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INTRODUCTION

Subcontracting is integral to modern construction, enabling specialization, speed, and cost control. Yet the model of using subcontractors also introduces distinct safety, compliance, quality, financial, and reputational risks. This is especially true for multi-employer jobsites, where responsibility can be spread out and hazards can propagate across tiers of contractors.

OSHA's multi-employer citation doctrine, broad regulatory requirements under 29 CFR Part 1926, and evolving industry data all point to increased liability for general/controlling employers when subcontractors fall short. Recent research suggests that injury risk increases as work is subcontracted further down the resource chain, with lower-tier firms disproportionately bearing hazards, and sometimes, amplifying them.

This white paper blends authoritative standards, current data, and best practices to:



1 Clarify the risk landscape



2 Identify root causes



3 Offer a practical, evidence-based mitigation framework spanning:

- Pre-qualification
- Contract controls
- Training
- Technology
- Insurance/surety instruments, and
- Governance

Why Subcontracting Raises the Stakes

Construction remains among the most hazardous industries in the United States and abroad. The stakes that are at risk include compliance, injuries, insurance costs, and more. In 2022, construction workers accounted for roughly 20% of all U.S. work-related fatalities while representing under 8% of employment—with fatal injury rates 2.5 times the all-industry average. Falls and other OSHA “Focus Four” hazards dominate this loss profile.

In the U.S. in 2017, of all the work allocated by owners to general, specialty, or civil contractors, more than one-third was reallocated to subcontractors (U.S. Bureau of the Census, 2017).

Multi-employer sites are the norm in the construction industry. Most private-sector projects rely on layers of subcontractors, while some one- and two-person small firms subcontract every facet of manual labor, often with little oversight.

**INJURY RISK
INCREASES**

**as work is
subcontracted
further down the
resource chain.**



More recently, according to the Construction Financial Management Association (CFMA) 2024 Construction Financial Benchmarker survey, 45.5% of responding construction companies identify as subcontractors, defined as firms that perform 50% or more of their construction work for another contractor. This indicates a significant share of total construction activity relies on subcontracted labor.

Although the report does not specify the exact percentage of construction work performed by subcontractors, the available data indicates that nearly half of construction firms function primarily as subcontractors. This demonstrates that subcontracting is a foundational delivery method within the industry.

General contractors depend heavily on subcontractors for specialized trades such as electrical, HVAC, concrete, framing, and finishing. In many commercial and industrial projects, subcontractors complete the majority of the hands-on work, even when a general contractor oversees the overall project. These conditions create complex accountability pathways and heighten the impact of subcontractor performance—good or bad—on project outcomes and employer liability.

OSHA’s Multi-Employer Citation Policy (CPL 02-00-124) enables citations not only to the employer whose workers were exposed, but also to creating, correcting, and controlling employers.



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EXPERT INSIGHT:

These conditions create complex accountability pathways and heighten the impact of subcontractor performance—good or bad—on project outcomes and employer liability.

CONTROLLING	CREATING	EXPOSING	CORRECTING
An employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them. Control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice.	The employer that caused a hazardous condition that violates an OSHA standard.	An employer whose own employees are exposed to the hazard.	An employer who is responsible for correcting a hazard. This usually occurs where an employer is given the responsibility of installing and/or maintaining particular safety/health equipment or devices.

In practice, this means “prime contractors” or site/construction managers may be cited even when hazards are created by subcontractors and no prime employees are directly exposed or affected.

At the same time, recent empirical work by the CPWR (Center for Construction Research and Training) indicates that injury rates rise with each successive tier down the subcontracting line (from upper-tier to mid- and lower-tier contractors), suggesting systemic offloading of high-risk scopes to lower tiers. The insurance industry refers to this as a risk transference strategy, while the lower tier subcontractor does not realize their increased risk. A contributing risk factor to increased injury rates progressing down the food chain is that the lower-tier subs have less cash flowing across their books, leaving them challenged to invest in necessary but non-revenue-generating costs, such as safety.





RISK LANDSCAPE: Where Subcontracting Creates Exposure

The “risk landscape” refers to the full spectrum of safety, operational, financial, legal, and relationship-based risks that arise when work is performed by contractors who are not part of the primary or host organization.

Safety Risk (Injury and Fatality)

Key safety exposures linked to subcontracting commonly show up in the following patterns and indicators:



TIER EFFECTS

Establishment-level analysis (≈18,000 firms) shows higher injury rates for mid and lower-tier subcontractors versus upper tier contractors or “off chain” self performers, implying that subcontracted tasks can concentrate higher hazard exposure.



FOCUS FOUR PREVALENCE

Falls, struck by, electrocution, and caught in/between incidents continue to account for most construction fatalities, reinforcing the need for rigorous controls on project scopes frequently subcontracted (e.g., roofing, concrete, electrical).



SMALL FIRM VULNERABILITY

Nonfatal injury rates are markedly higher in small firms (e.g., 11–49 employees) than in very large firms, a profile common among specialty subcontractors.



COMPLIANCE OVERLAY

On multi-employer sites, controlling employers must take reasonable steps to prevent and force the correction of subcontractor non-compliance or violations. Failure can draw citations even without direct exposure of prime employees.

Regulatory and Documentation Risk

The following factors illustrate how documentation and regulatory gaps among subcontractors can quickly become project-wide compliance risk:



STANDARDS BREADTH

29 CFR Part 1926 governs safety across dozens of construction topics (fall protection, scaffolds, cranes, confined spaces, excavations, electrical, etc.); subcontractors who lack robust training and documentation can create systemic non-compliance. Additional regulatory requirements may be applicable under state plans.



IMPLEMENTATION

“In writing” does not equate to being implemented or “in practice.” The controlling contractor is responsible for ensuring the rules and standards are followed by all stakeholders and subcontractors.



TRAINING DUTY

Employers must instruct each employee in hazard recognition and applicable regulations (29 CFR 1926.21). Subcontracted workers who are inadequately trained elevate risk for all multi-employers involved.



RECORDKEEPING COMPLEXITY

Multi-employer projects complicate injury/illness records (29 CFR 1904). Firms must maintain accurate OSHA 300/301/300A logs, manage multi establishment rules, and meet severe incident reporting timelines—errors invite enforcement and reputational harm.



Quality and Schedule Risk

When subcontractor execution of the work varies, the impacts typically appear in the following quality and schedule failure modes:



VARIABILITY

Lack of uniformity in workmanship, supervision, and QA/QC practices across subcontractors can cause rework, delay, and cascading risk to downstream trades. Industry risk managers report upticks in subcontractor distress/default—particularly in electrical, plumbing, and concrete—correlating with project disruptions.



RESOURCE AVAILABILITY

Subcontractors may overextend crews across multiple projects, causing staffing shortages, fatigue, and rushed work.

Financial Risk (Cost Overruns, Defaults)

Financial exposure often follows predictable triggers. The following are common drivers of cost growth and subcontractor default:



DEFAULT TREND

Seventy percent (70%) of respondents in the 2024 AGC/FMI survey observed increased subcontractor distress/defaults; nearly half experienced cancellations or delays linked to defaults.



RISK TRANSFER OPTIONS

Surety bonds provide third party performance/payment guarantees; Subcontractor Default Insurance (SDI) offers broader first-party protection for primes but requires disciplined prequalification and carries deductibles/co pays.



Reputational and Client Risk

Beyond direct losses, the following outcomes can erode client confidence and damage a contractor's market position. Multi-employer incidents, citations, or defaults—especially those publicized in fatality maps/data bulletins—can undermine client trust and competitive positioning in bids (including ISO 45001 sensitive procurements).

ROOT CAUSES: Why Subcontractor Risk Materializes

Subcontractor-related incidents and losses are rarely random; they typically stem from a consistent set of upstream decisions and control breakdowns. The top five root causes below highlight the most common ways risk is introduced during selection, contracting, and day-to-day oversight.

1

WEAK PREQUALIFICATION:

Insufficient review of financial capacity, backlog, EMR trends, injury statistics over a 5-year period, OSHA history, safety planning & training, and crew competency before award.

2

LOWEST BID BIAS:

Over-reliance on price without adequate scrutiny of risk profile, geographic stretch, and specialized project demands.

3

FRAGMENTED OR MISSING SAFETY GOVERNANCE:

Ambiguous role definitions on multi-employer sites; inadequate owner/GC oversight aligned to creating, exposing, correcting, and controlling employer responsibilities; inadequate or missing site safety compliance inspections.

4

TRAINING AND DOCUMENTATION GAPS:

Failure to meet 29 CFR 1926 training requirements and maintain accurate records across establishments and tiers.

5

CONTRACT WEAKNESSES:

Vague safety/compliance clauses, limited audit rights, unclear corrective action mechanisms, and lack of enforceable stop work authority. (Industry guidance repeatedly calls for stronger terms.)



Multi-employer incidents, citations, or defaults—especially those publicized in fatality maps/data bulletins—can undermine client trust and competitive positioning in bids



STANDARDS and ENFORCEMENT CONTEXT

Construction employers operate within a layered standards environment where legal requirements, enforcement policies, and voluntary consensus frameworks overlap. In practice, this means subcontractor oversight must align not only with OSHA's construction standards, but also with how OSHA assigns responsibility on multi-employer worksites and with client- or contract-driven expectations, such as ANSI/ASSP guidance and ISO-based management systems. This adds layers of complexity for employers trying to identify applicable requirements, identify who owns them, and verify compliance across multiple tiers. Applicable standards include:

-  **OSHA 29 CFR Part 1926:** Comprehensive construction safety regulations spanning general safety, fall protection, scaffolds, electrical, cranes, excavations, confined spaces, and more.
-  **OSHA Multi-employer Citation Policy:** Clarifies citation pathways for creating, exposing, correcting, and controlling employers on shared worksites.
-  **ANSI/ASSP A10 Series:** Voluntary consensus standards that detail safety requirements across construction operations (e.g., A10.1 pre-task planning; A10.33 multi-employer safety program requirements). These are widely used to operationalize safety beyond minimum compliance.
-  **ISO 45001:2018:** International OH&S management system standard with explicit clauses on procurement/outourced processes and contractor oversight increasingly relevant to public bids and large clients.

MITIGATION FRAMEWORK

Subcontractor Prequalification (Gatekeeping)

Paid-for platforms, such as ISNetworld and Avetta, collect and review health, safety, quality, insurance, training, cybersecurity, and sustainability information for contractors and suppliers. These types of platforms can be costly for small- and middle-sized entities. The alternative is step-by-step hands-on prequalification.



Due diligence in conducting targeted, pre-award evaluations to confirm key elements is critical for early identification of issues and avoiding rework, incidents, delays, or defaults on the project. Key elements to verify before the formal award and execution include:

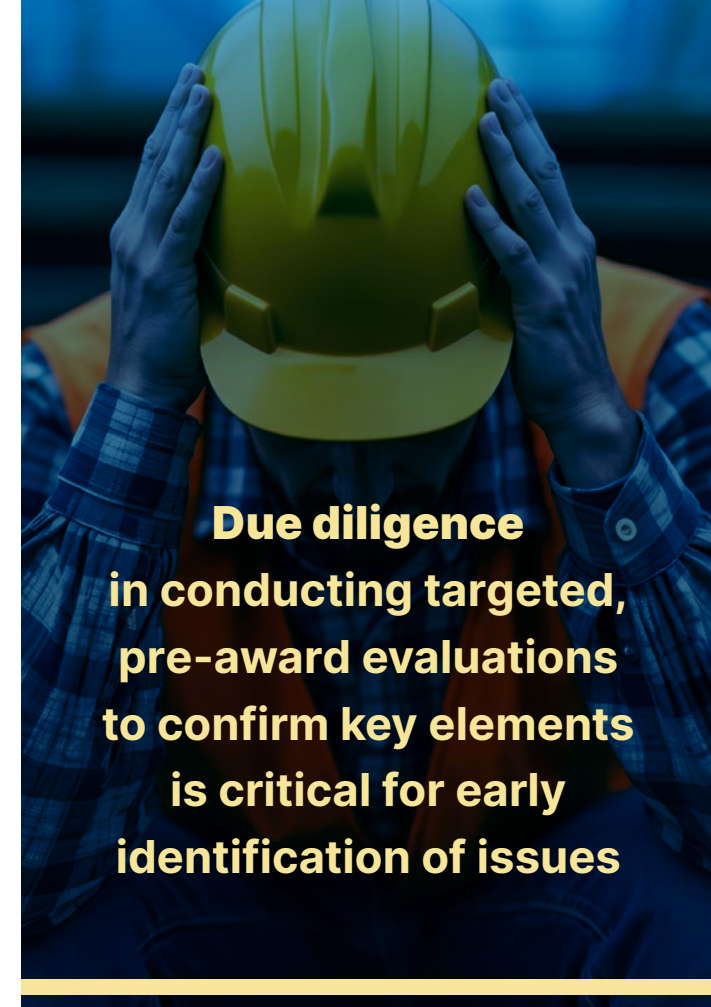
-  **CAPACITY AND BACKLOG:** Current projects, workforce size, supervision depth, and equipment readiness; avoid geographic overstretch and unfamiliar market segments.
-  **FINANCIALS:** Audited statements, working capital, liquidity ratios, WIP schedules, over/under billings; surety capacity and indemnity arrangements; insurance lines, minimums, aggregates, and additional insured.
-  **SAFETY PERFORMANCE:** Experience Modification Rate (EMR or MOD rate) trending (5 years), OSHA/EPA citations history, training matrices, documentation of completed training for required topics, safety program maturity aligned with 29 CFR 1926 and ANSI A10.33, and confirmation of a site specific orientation process.
-  **REFERENCES AND REPUTATION:** Terminations, claims/litigation history, and previous project references.

Why does this matter? In this framework, robust prequalification is the front end control that prevents high risk subcontractors from being awarded critical work—and it is a prerequisite for SDI, where the GC retains more risk but gains greater control over how default claims are managed.

Contractual Controls (Make Safety & Compliance Enforceable)

To make safety and compliance enforceable, the contract should embed clauses that clearly spell out the standards the subcontractor must follow, required proof, and GC/controlling contractor directives when expectations aren't met (audit, require fixes, or stop work).

-  **ADOPT STANDARDS:** Enforce compliance with 29 CFR Part 1926 and incorporate relevant ANSI/ASSP A10 elements (e.g., A10.1 pre-task planning, A10.33 multi-employer program).
-  **DEFINE ROLES:** Align with OSHA multi-employer roles; specify GC's right to audit, direct correction, and issue stop work orders where hazards arise.
-  **MANDATE TRAINING AND ORIENTATION:** Require proof of training per 1926.21 and task specific subparts; enforce site specific orientations and competency verification.



**Due diligence
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 **ENSURE DOCUMENTATION AND REPORTING:** Require timely incident reporting, OSHA log support, and electronic records availability across establishments under 1904.30.

 **ESTABLISH SAFETY INCENTIVES AND PENALTIES:** Set corrective action timelines, implement back charges, and enforce removal for repeat non-compliance.

Training, Competence, and Orientation (Build Capability, Not Just Compliance)

To ensure requirements are executed in the field, employers should train subcontractors on applicable hazards, orient them to the jobsite, and verify task competency—starting with the steps below:

 **BASELINE:** Ensure subcontracted employees receive training in hazard recognition and applicable standards (1926.21), including confined spaces, excavation, scaffolds, fall protection, cranes, electrical, sanitation, and HAZCOM per relevant subparts).

 **SITE-SPECIFIC:** Conduct onboarding training that covers unique hazards, sequencing, shared controls, and emergency procedures (A10.1/A10.26).

 **COMPETENCE VERIFICATION:** Check licenses/certs and maintain training matrices that are aligned with OSHA and ISO 45001 competency requirements.

MULTI-EMPLOYER SAFETY PROGRAM (Governance Model)

OSHA's multi-employer worksite standard does not align with contractual obligations or standard construction models. As a result, a contract clause assigning safety responsibilities may not prevent OSHA from citing the controlling contractor (or other parties) based on who created, controlled, corrected, or exposed workers to a hazard. This mismatch makes a formal, sitewide governance program essential to ensure roles, authority, verification, and corrective action are clearly defined and applied in actual practice, not just on paper. OSHA's multi-employer categories are:



CONTROLLING CONTRACTOR

Definition:

An employer with general supervisory authority over the worksite. This includes the power either to directly correct hazards or direct others to do so (e.g., general contractors).

Obligation:

Must exercise reasonable care to prevent and detect violations throughout the site. Their duty covers all known hazards, though less stringent than their internal hazard protections.

CREATING CONTRACTOR

Definition:

The employer whose actions or omissions cause a hazardous condition that violates an OSHA standard, even if their own employees are not exposed to it.

Obligation:

Must not create violative conditions. Citable regardless of who actually encounters the hazard.

EXPOSING CONTRACTOR

Definition:

An employer whose own employees are exposed to a hazard, regardless of who created it.

Obligation:

- ▲ If they created the hazard → treated as the creating employer.
- ▲ If someone else created it → must:
 - Correct it (if authorized), or
 - Ask the creating/controlling employer to correct it,
 - Inform employees, and
 - Implement protective measures or remove workers from the hazard zone. Citable if negligent in awareness or action.

CORRECTING CONTRACTOR

Definition:

The employer responsible for installing or maintaining safety/engineering controls or otherwise correcting hazards.

Obligation:

Abate or otherwise mitigate the hazards.





RISK MITIGATION

Risk mitigation on a multi-employer site requires a cross tier program that defines who is in charge and how hazards will be planned for, checked, documented, and corrected across all contractors. The elements below describe the core practices that support risk mitigation.



Day-to-day Operation

- **Designated authority:** A single individual with overall authority for safety coordination, as emphasized in A10.33.
- **Pre-task planning:** Require JHAs/STEPS aligned to A10.1 before high risk tasks (roof edges, trenching, lifts) are submitted and reviewed for approval prior to the work being performed.
- **Coordination meetings:** Hold pre job and daily coordination meetings to review overlapping work, controls, safety & health issues, and communication plans (consistent with OSHA guidance on multi-employer sites).



Technology & Data (Visibility, Verification, Velocity)

- **Digital compliance tracking:** Centralize training records, certifications, inspections, and incident data to support OSHA documentation, recordkeeping and audits.
- **Worksite safety, health, and sanitation observations, inspections, and audits:** Conduct daily compliance inspections documenting observations of environmental and behavioral hazards or non-compliances. Identify ownership of each by contractor and provide a mitigation timeline with associated penalties for non-compliance.
- **Specialty consultants:** Hire and use consultants to fill gaps in knowledge, conduct training, develop safety programs, and/or conduct routine job site inspections.
- **Fatality/Injury dashboards:** Leverage CPWR dashboards and bulletins to focus prevention on high frequency hazards and demographics. Consider using OSHA Fatal Facts as toolbox talks.



Financial Instruments (Plan for Performance Failure)

- **Surety bonds:** Three party guarantees (performance/payment) with deep case law; often required on public work (Miller Act). Useful for owner protection but can be slower in claims.
- **SDI programs:** Two party insurance offering broader coverage (direct/indirect costs) and faster claims to the GC; demands robust prequalification and carries deductibles/co-pays.
- **Selection guidance:** Consider project scale, subcontract volume, claims control needs, and speed of recovery when choosing bonds vs. SDI.



CASE ILLUSTRATIONS

The following scenarios illustrate how subcontractor risk can materialize into injuries, citations, and costs on real projects—and how the mitigation framework above can be applied to prevent, detect, and correct issues before they escalate.

Scenario A: Electrical subcontractor on a multi-employer site



A mid chain electrical subcontractor with inadequate fall protection training (1926 Subpart M) leaves floor openings unprotected. A worker from another trade is injured by exposure. OSHA cites both the **creating employer** (electrical subcontractor) and the **controlling employer** (GC) under the multi-employer policy due to insufficient oversight.



The situation is preventable by using prequalification checks (EMR, OSHA history), enforced contract clauses, A10.1 pre-task planning, and routine inspections and audits.

Scenario B: Concrete subcontractor default



A concrete sub overextends geographically, faces labor shortages, and defaults mid pour, causing critical path delays. An SDI insured GC triggers a claim to recover indirect costs (schedule recovery, re-procurement), enabled by strong prequalification and documentation.



Alternative: A subcontract secured by a performance bond provides enhanced protection to the owner, though it can result in a slower resolution process.



IMPLEMENTATION ROADMAP

Days 0–30: Assess and Align

- ▲ **Gap assessment:** Map current processes against OSHA 29 CFR 1926, ANSI A10.33, and ISO 45001 clauses for contractor oversight; identify high-risk trades and sites.
- ▲ **Policy update:** Draft multi-employer safety program policy (roles, audits, stop work authority; pre-task planning standard per ANSI A10.1).



Days 31–60: Build Controls

- ▲ **Create documentation strategy:** Collect required documentation and set reminders for renewals, re-certifications, and expiration of documents.
- ▲ **Prequalification:** Implement standardized questionnaires (capacity, financials, EMR, OSHA history, references), backed by finance/surety review.
- ▲ **Contract language:** Update master subcontracts with explicit training, monthly metric reporting, documentation, audit rights, and corrective action clauses referencing 29 CFR 1926 and A10 standards.



Days 61–90: Operate and Verify

- ▲ **Orientation & competence:** Roll out site-specific orientations; verify certifications and competence.
- ▲ **Audit cycle:** Establish weekly audits (A10.39) and monthly performance reviews; log findings to support OSHA recordkeeping accuracy across establishments (1904.30).
- ▲ **Risk transfer decision:** For large programs, evaluate SDI vs. bonds; confirm claims processes and internal readiness.





CONCLUSION

Using subcontractors is both essential and risky. Data shows that hazards and injuries tend to increase down the chain, while OSHA's multi-employer policy can hold primary/ host and controlling employers accountable even when their own employees aren't exposed. A disciplined program built on prequalification, rigorous contract controls, effective training, multi-employer governance, consistent worksite inspections, and smart risk transfer (bonds/SDI) is not optional, it's strategic. Aligning to OSHA 29 CFR 1926, ANSI/ASSP A10, and ISO 45001 transforms compliance into operational control that reduces injuries, defaults, and total cost of risk.



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With over 23 years of experience developing, implementing and managing construction, industrial, and utility Safety, Health, & Risk programs on both national and international levels, as well as hazard and risk identification and mitigation, Laura provides best practice guidance and practical solutions to enhance compliance.

**A disciplined
program
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