


Collaborative Bachelor's Degree Program of Fire Protection and Safety  
Engineering Technology between Southwest Jiaotong University and  
Oklahoma State University, U.S.A.



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## FPST 3013 Safety Management

Contractor Safety & Multi-Employer  
Worksites

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## WHAT TYPES OF JOBS WOULD YOU CONTRACT OUT?

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## Why So Many Contractors?



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- 70% of organizations contract more than 5% of the workforce
- 45% of organizations struggle to attract qualified craft labor
- 15.5 million in U.S are self-employed
  - 60 million by 2020 (BLS)

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## Temp vs Contractor



- Temp
  - Hired by a 3rd party to perform a task or fill a role
  - Supervised by Company
  - Responsible for training
  - If injured, goes on OSHA log
  - WC paid by 3rd party
- Contractor
  - Hired as a company
  - To do a job or a project
  - Self-supervised
  - Provide own training, PPE
  - Has own OSHA log, WC policy
- Sub-contractor

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## Problems with Contractors



- Financial and production pressures
  - Shortcuts and unsafe behavior
- Lax training and supervision
- Broken information
- Unclear work responsibilities
- Insufficient safety standards
- Relaxed enforcement
- Which contractor is typically awarded the bid?
  - Low bid = low quality (unsafe)



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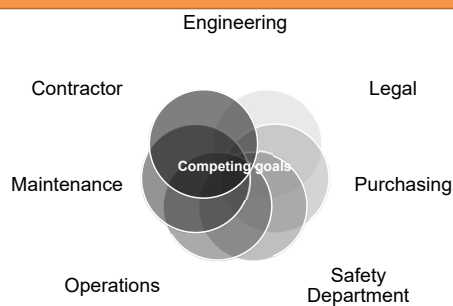
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## Who Influences Contractor Safety?



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### What Data Should Be Used To Pre-qualify Contractors?



- OSHA Recordkeeping?
  - TRIR, DART
- **WC EMR?**

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### Contractor Pre-Qualification



- TRIR, DART vs NAICS code benchmark
- Inclusion of records, 300 logs
  - Provide copies. Any issues with this?
  - No way to prove accuracy
- EMR
  - Rating of less than 1.0 has better loss record than similar companies doing the same type of work
  - Can't hide the money
- Insurance Verification
- Continuous improvement plans
- Internal Scale (ABCDF, 1-10, STARS)
- Use of 3<sup>rd</sup> party verification
  - ISNET, PEC Premier, ComplyWorks, etc.

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### T's and C's



- "All Work shall be done in accordance with, all laws, ordinances, building codes, rules and regulations applying to the Work, including, but not limited to, the Americans with Disabilities Act, environmental regulations and the Occupational Safety and Health Act of 1970."

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## Selection Criteria



- Three sources
  - Policies, procedures and practices
    - Have them provided for your review
    - Tangible
    - Review only what is applicable to the job scope
  - Incident Rates
    - Cautiously

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## Contractor Selection



- Best practice is to influence the safety performance of outside contractors by having:
  - Strong management
    - Tight control over contractors schedules, responsibilities, etc.
  - Effective task coordination
    - Foster teamwork and cooperation among all employees
  - Strong emphasis on safety
    - Daily top-down communications
  - Strong supervisors
    - Show all workers respect
  - A safety work environment
    - Set the example

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## Best Practices in Contractor Safety



Prequalification

Pre-Job task &  
Risk  
Assessment

Training &  
Orientation

Monitoring the  
Job

Post Job  
Evaluation

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## Helpful Tips



- Do your reviews prior to them coming on site and ideally before the bid is awarded.
- Once onsite, treat them the same as your employees. Hold them accountable to do, what they say they are going to do.

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## Pre-Job Task and Risk Assessment



- Risk Rating of work to be performed
  - Using a risk matrix
  - Higher risk – further action

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### Contractor Training and Orientation

Onsite safety orientation

- Emergency plan
- Basic safety rules
- HazCom

Specialized Training

- **LOTO**
- Confined Space
- Hot Work
- Fall Protection

Certifications

- HAZWOPR
- Heavy Equipment
- Cranes
- Forklifts

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### Monitoring the Job

  
PRE-TASK SAFETY  
PLAN

  
SAFETY  
OBSERVATIONS

  
PERFORMANCE  
REVIEWS

  
FIELD VERIFICATIONS

  
PASS/FAIL GRADE

  
MOBILE CONTRACTOR  
AUDIT APP FOR SMART  
PHONE

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### Post Job Evaluation

 Safety performance assessment

 Complaint logs

 Reviews workers' compensation claims

 Measures if work was performed effectively

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## The Campbell Institute



- Backed by the NSC
- Campbell Institute helps organizations of all sizes and industries achieve and sustain well-integrated EHS management systems.

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### Best Practices

- > Use of third-party prequalifying companies
- > Assessment of contractor safety statistics (EMR, TRIR, DART, fatality rate, etc.)
- > Internal scale or checklist to assign grades to contractors during prequalification
- > Risk rating for work to be performed by contractor
- > Placing general contractors in charge of subcontractor safety and holding them to owner standards
- > Verification of contractor certifications and permits; on-site safety orientations
- > Periodic, scheduled assessments during contract term



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## The Future of Contractor Safety



- Pre-qualification rigor Leading vs lagging indicators
- Risk Assessment
- International implications
- Non-routine activities
- Contractor Safety Culture
- Interdependence with host Company

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## Brainstorm



- How many contractors typically work on one site?
- Who is liable if someone is hurt?
- Who is cited if a standard is violated?

<https://www.propublica.org/article/osha-struggles-with-tower-climbing-deaths>

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## Multiple Employer Worksites

[OSHA Citation Policy CPL 2-0.124](#)

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## Melerine v. Avondale Shipyards Inc., 659 F.2d 706 (5th Cir. 1981),



- Since this 1981 ruling in it has been law that protection under the OSH Act extends only to an employer's own employees.
- Under this interpretation of the OSH Act, an employer who does not expose its own employees to hazard may not be cited for the safety violation.
- This view, of course, is squarely at odds with the secretary of labor's "controlling employer" doctrine and OSHA's multiemployer citation policy" (1999), which seemingly allows OSHA to cite a controlling employer regardless of who the exposed employees work for.

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### Secretary of Labor v. Hensel Phelps Construction Co., Docket No. 15-1638 (June 1, 2017)



- Occupation Safety and Health Review Commission held that OSHA was barred from citing a general construction contractor under the Occupational Safety and Health Act of 1970 for an alleged safety violations to which the general contractor's own employees were not exposed.
- The alleged violation took place on a construction site in Austin, Texas. The employees who were exposed to the alleged safety hazard worked for a subcontractor.
- OSHA believed, however, that it should cite the general construction contractor because of its arguably controlling employer status.
- The general construction contractor contested the safety citation by pointing out, among other things, that it did not employ the exposed workers and thus, could not be found liable for the cited violation under Avondale Shipyards.
- The court found in favor of the Construction Contractor, the OSHRC refused to overturn the case.

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### Multi-Employer Worksite Policy



Employers have a **statutory duty** to comply with OSHA standards and to exercise reasonable diligence to determine whether violations of those standards exist.



On multi-employer worksites (in all industry sectors) **more than one employer may be citable** for a hazardous condition that violates an OSHA standard.

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### OSHA Multi-Employer Citation Policy (CPL 2-0.124)



- Two-step process to determine
  - STEP ONE – Determine whether the employer is a **Creating, Exposing, Correcting, or Controlling** employer.
  - STEP TWO – Determine whether the **employer's actions were sufficient** to meet the obligations based on which category that applies

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## Two-Step Process



What category of employer?

- Creating
- Exposing
- Correcting
- Controlling
  - (Multiple roles possible)

Did employer meet obligations for that category?

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## Creating Employer



- The employer that caused a hazardous condition that violates an OSHA standard
- An employer **must not create a violative conditions** and is citable even if only employees exposed are of other employers



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## Example 1



XYZ Mfg operates a factory and contracts with Company S to service machinery.

XYZ Mfg fails to cover drums of chemicals despite Co. S's repeated requests to do so.

This results in airborne levels of a chemical that exceed the Permissible Exposure Limit.

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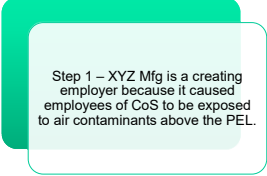




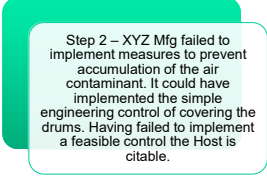
### Example 1



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Step 1 – XYZ Mfg is a creating employer because it caused employees of CoS to be exposed to air contaminants above the PEL.



Step 2 – XYZ Mfg failed to implement measures to prevent accumulation of the air contaminant. It could have implemented the simple engineering control of covering the drums. Having failed to implement a feasible control the Host is citable.

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### Example 2




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ABC Construction Co hoists materials onto upper level floor damaging perimeter guardrail.



Neither ABC employees or other employees of other employers are exposed to the hazard.



ABC takes effective steps to keep all employees away from the unprotected edge and informs the controlling employer of the problem.



ABC lacks the authority to fix the guardrails.

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### Example 2




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Step 1 – ABC is a creating employer because it caused a hazardous condition by damaging the guardrail.



Step 2 – While ABC lacked authority to fix the guardrails it took immediate and effective steps to keep all employees away from the hazard and notified controlling employer.



ABC is not citable since it took effective measures to prevent exposure to the fall.

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## Exposing Employer




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"An employer whose own employees are exposed to a hazard."

Even if they did not create the hazard.



If not the creating employer, citable if:

Knew hazard, or would have with reasonable diligence **and** Failed to take steps to protect employees.

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## Exposing Employer



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If the exposing employer has the authority to correct the hazard it must do so.



If exposing employer does not have authority to correct hazard, must:

Ask creating or controlling employer to correct  
Inform employees of hazard  
Take reasonable alternative protective measures



Imminent danger? Remove employees!

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## Example 3




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Example – SubContractor S is responsible for inspecting and cleaning a work area in Plant P around a large permanent hole each day.



There are no guardrails and fall protection used even though it is feasible to do so.



Sub S has no authority to install guardrails.



They asked Plant P to do so but were refused.

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### Example 3







Step 1 – Sub S is an exposing employer



Step 2 – While Sub S has no authority to install guardrails, it is required to comply with OSHA rules to the extent feasible, ie. steps to protect employees and ask employer that controls the hazard (Employer P) to correct it.



Although Sub S asked for guardrails to be installed, and it was not corrected, Sub S is responsible to take reasonable alternative measures such as using personal fall protection.



Sub S can be cited

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### Example 4







Unprotected rebar on either side of an access ramp presents an impalement hazard.



Sub E, does not have authority to cover the rebar.



Several times Sub E asked the general contractor, Employer GC, to cover the rebar.



In the mean time, Sub E instructed its employees to use a different access route that avoided the rebar and required them to keep as far away as possible.

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### Example 4






Step 1 – Since Sub E employees were still exposed to some unprotected rebar, Sub E is an exposing employer.



Step 2 – Sub E made a good faith effort to get the general contractor to correct the hazard and took feasible measures within its control to protect its employees.



Sub E is not citable for the rebar.

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### Correcting Employer






Employer engaged in a common undertaking, on the same worksite, as the exposing employer and is responsible for correcting a hazard



Usually occurs where an employer is given responsibility of installing and/or maintaining particular safety/health equipment or devices



Must exercise reasonable care in preventing and discovering violations and must meet its obligations of correcting the hazard

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### Example 5







Employer C is hired to erect and maintain guardrails throughout a large 15 story project.



C inspects all areas each day in the morning and afternoon along with the area where material is delivered to the perimeter.



Other subcontractors are required to report damaged/missing guardrails to the C.



Employer C corrects them when found or reported.

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### Example 5







On the project, a few instances of damaged guardrails have occurred.




After the afternoon inspection of Floor 6, workers accidentally damage a guardrail in one area.



No one tells C of the damage and C has not seen it.



OSHA shows up the next day prior to the morning inspection of Floor 6.



None of C's own employees are exposed to the hazard but other EEs are exposed.

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### Example 5



Step 1 – C is a correcting employer since it is responsible for erecting and maintaining fall protection equipment

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Step 2 – The steps C implemented to discover and correct damaged guardrails were reasonable in light of the amount of activity and size of the project.

It exercised reasonable care in preventing and discovering violations.	It is <u>not citable</u> for the damaged guardrails since it could not have reasonably known of the violation
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### Controlling Employer



Employer who has general supervisory authority over the worksite including the power to correct safety and health violations itself or require other to correct them.

Typically established by contract

A controlling employer must exercise reasonable care to prevent and detect violations on the site

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### Evaluating Reasonable Care



- In evaluating whether reasonable care was exercised in preventing and discovering violations, consider if they:
  - Conducted periodic inspections of appropriate frequency.
  - Implemented an effective system for promptly correcting hazards
  - Enforced compliance with an effective, graduated system of enforcement and follow-up inspections

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### Multiple Roles



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May be an exposing employer  
in combination with other roles



May be a correcting employer  
if authorized to correct hazard

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### OSHA Regulations with Rules for Multiple Employers



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Specific rules in:

- Hazard communication 1910.1200
- Lockout/tagout 1910.147
- Permit-required confined spaces 1910.146
- Process safety management 1910.119

Multi-employer citation policy  
applicable to all hazards

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The textbook section on Customer  
(Third-Party) Incident Prevention is  
not included

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