DISCUSSION

CONSTRUCTION CONTRACTOR SAFETY
SHOULD WE DEVELOP SYSTEM-WIDE GUIDELINES OR BEST PRACTICES?
Basic Question: What are University (especially with regard to EH&S and Facilities) safety responsibilities in construction work performed by external contractors? Do we need to define best practices or a guidance document of some kind?
I. CONTEXT

1) Campus Responsibilities
   - OSHA multiemployer worksite regulation
   - Maintain the risk firewall
   - Ethical considerations

2) Construction Contracts - Bigger is better
   - Major Capital
   - Job Order Contract
   - Service Orders - mom and pop

3) What are campuses doing now?
   - How Campus Projects are done
   - Many tools/procedures are being used for safety
   - Status Table: implemented procedures at campuses
   - Lack of consistency

II. SHOULD WE ESTABLISH GUIDELINES OR BEST PRACTICES?

   - Ideal criteria for guidelines
   - Question: do we have consensus, given this context, that we (CSU) are now doing construction contractor safety adequately?
   - Remain silent option
Citable employer? Any of the following:

- The employer whose employees were exposed to the hazard
- The employer who actually created the hazard
- The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite; i.e., the employer who had the authority for ensuring that the hazardous condition is corrected (the controlling employer). – maybe us
- The employer who had the responsibility for actually correcting the hazard. – maybe us

So, under certain circumstances, CSU may be cited for a third party contractor employee exposed to a hazard.
Multi-employer worksite regulation

Defenses: We must meet all five of these defenses to avoid citation:

- Employer did not create the hazard – ok
- Employer did not have the responsibility or authority to correct or remove the hazard – maybe us
- Employer did not have the ability to correct or remove the hazard - uh oh
- Employer can demonstrate that the creating, controlling and correcting employer(s) were specifically notified or were aware of the hazards to which their employees were exposed. - yikes
- Employer took appropriate feasible steps to protect his/her employees from the hazard, and where necessary informed them how to avoid the hazard. This might include removing employer’s employees from the job site. - ok

Bottom Line:

In smaller projects wherein campus project managers use campus employees and external contractors at a worksite it will be difficult to avoid being a citable employer and also difficult to document/demonstrate all 5 defenses.
Multi-employer worksite regulation

What should we do? Don’t be citable and create conditions so the five defenses remain intact.

Produce a written agreement including:

- Hazard notification – of known hazards prior to work
- Assign all safety responsibility (specifically including identification and correction of hazards) to them
- Empower them to be the “controlling employer” of safety and health conditions of the worksite
- Require them to tell us if they become aware of a hazard they can’t correct

Do the following:

- Reasonably prequalify them for the ability to perform the work safely
- Provide them hazard notification before and during work – hazards of which we are reasonably aware
- Stop IDLH work
- Do not create hazards
- Correct any hazards we possibly can (theirs or ours)
- If their work can be isolated from ours do so, do not control and stay hands-off of their work and work-site conditions.
NEGLIGENCE

- Negligence is a broad cause of legal action. It applies whenever a person owes other individuals a reasonable duty of care and that person breaches that duty of care and causes injury to an individual.

- A traditional and well-established common law principle is that statutes and regulation can readily be used to establish duties and standards of care.

- The “state of the art,” meaning the good practices of similar entities, can also be used to establish duties and standards of care.
NEGLIGENCE

So each person’s duty is to do what a reasonable person would do, consistent with those standards of care, given their job and the circumstances.

- What should we do to avoid negligence?

- It is relatively easy to determine your duty when the standard of care is clear (e.g. regulations plus a crystal clear contract plus a consistent “hands off” policy). It gets very hard to determine your duty if the standard of care is unclear (e.g. no clear written agreement and the “state of the art” or good practices are poorly defined and inconsistent).
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MAJOR CAPITAL PROJECTS

Capital projects (several models) have risk/safety structure built-in to construction documents

- Safety prequalification X-Mod, LTIR, RIR. Bidders screened quantitatively
- Indemnification – risk transfer to contractor
- Insurance - high limits, all exposures, additional insured risk transfer
  - Owner Controlled Insurance Program option (strong safety structure)
- Hazard disclosure by CSU
- Waste Management provisions
- Division O: Optional submittal requirements
  - IIPP submittal
  - Contractor must read and sign hazard notification
  - Accident Reporting
  - Environmental reporting
- Safety and Health Procedures; some is optional
- General assignment of safety responsibilities to contractor to observe all regulation
- Require safety person on-site (> $10M job?)
- Fire-life safety
- Emergency procedures
- General and specific safety requirements for particular work
- Environmental Requirements; stormwater, hazardous materials, air, water, noise.
- Very clear scope of work
JOB ORDER CONTRACTS (JOC)

- Provide planning and construction flexibility and simplicity for smaller projects
- Individual job limit $634,000
- Annual limit $3M
- Contract awarded annually without guarantee or provision of work
- General scope of potential work is pre-written and priced

- JOC contract General Safety Conditions are similar but:
  - JOC no safety prequalification required
  - OCIP not an option?
  - Division O submittals and Safety and Health options not usually included

So, generally, default mode excludes some safety provisions, and scope of work is less precise.
These may encompass “construction type” activities utilized, sometimes extensively, by campus project managers for internal smaller projects.

- Service Orders have riders attached:
  - Rider A is the scope of work
  - Rider B is General Provisions; specific for either “maintenance” or “service.”
    - “Service” is for planning, architect, engineering type activities.
    - “Maintenance” can include carpentry, electrical, plumbing, glazing, work on machinery, roofs, i.e., high risk activities.

- The extensive General Conditions for construction safety are optional
- Insurance and indemnification are required
- Safety and accident prevention section is three sentences; a general statement to obey regulation and leaves CSU with option of asking for more safety.
- Does not specify that contractor is fully responsible for safety
- Some environmental conditions specified
- Installation of asbestos or lead prohibited
- Air, water, noise – general requirement to obey regulations
SERVICE ORDERS

- No safety prequalification
- No well-defined safety requirements
- Safety responsibilities are not clearly delegated between CSU and contractor
- No CSU hazard disclosure
- Scope of work is not specific
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WHAT ARE WE DOING NOW?

Campus Projects may utilize:

- JOC
- Service Orders
- CSU employees

- Often these employers work on same project
- Worksite control may be shared
- Written document may lack safety structure (e.g. scope, delegation of responsibility, hazard notification, prequalification)
- Who is responsible for safety may be unclear
- No safety concern communication process?
<table>
<thead>
<tr>
<th>Major Cap. Projects</th>
<th>EBay</th>
<th>CI</th>
<th>Fresno</th>
<th>CSUN</th>
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<td>Contract – prequalification based on x-mod</td>
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<td>Contract – Safety notifications and disclosures</td>
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<td>Contract – submittals; safety, stormwater, etc</td>
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<td>Contract – can require an on-site individual be named for safety responsibilities (&lt;$10M)</td>
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<td>Signed-off hazard notification/safety handbook</td>
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<td>Contract - comprehensive Contract Safety Supplement (CSUN)</td>
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CSU Safety Review For CSU employee work?

EH&S/Facilities

CSU Inspector of record look at safety issues re our staff

**EH&S “accept” contractor IIPP if adequate or object if grossly incomplete**

**EH&S go to Pre-con meeting**

**EH&S go to Job Start meeting**

**EH&S go to on-going proj mgmt. meetings**
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<td>For CSU employee work – EH&amp;S or Project Manager</td>
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<td><strong>Internal Projects – w/ service orders</strong></td>
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<td>These are multi-employer construction projects that are planned and managed by campus Facilities staff. Employers may be JOC, service order contractors, or the University.</td>
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<td>Decide clearly who is responsible; CSU vs contractor safety responsibilities - then notify.</td>
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<td>CSU Project Managers have assigned safety oversight responsibility</td>
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<td>EH&amp;S have cooperative safety oversight responsibility</td>
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<td>Project hazard identification and mitigation at planning stage (use a standardized project safety/envtl checklist?) EH&amp;S or Project Mgr.</td>
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<td>Provide hazard notifications and disclosures (if not done by contract docs) to external entities (use a standard form?).</td>
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<td>EH&amp;S/PM safety input in on-going project management meetings</td>
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<td>Use Job-site “Project Board” post Scope, JSAs, Safety inspection checklist, Post safety program if significant hazard in the project</td>
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<td>During Project – watch for hazards and correct (for external contractor too if we control worksite)</td>
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<td>During Project – stop contractor IDLH work</td>
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<td>Prequalification for ability to perform work safely</td>
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<td>Require IIPP or safety plan submittal</td>
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<td>Clearly define who controls worksite conditions and assign responsibility for safety appropriately</td>
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CRITERIA FOR GUIDELINES

- Reasonable
- Increase safety or
- Increase the liability firewall
- Sustainable (resources and motivations)
- Consistent system-wide
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