



American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet OSHA and Other Safety Fines

Sample Language

ASA Recommends:

"Each party to the Agreement shall be liable for any safety violation fines or penalties imposed upon it, regardless of the cause of the fine or penalty."

What You May See in the Wild:

"Subcontractor shall indemnify, hold harmless and defend the Contractor from any liability or expense, including without limitation, fines and penalties for safety violations that arise out of the Subcontractor's Work."

Impact on the Subcontractor

- The Subcontractor may be liable for fines and penalties, which it did not create and to which its employees were not exposed.
- The Subcontractor's liabilities may increase substantially if it is working for a contractor with an existing poor record of safety.
- A Contractor with no liability for an unsafe work environment has little incentive to coordinate its subcontractors' work to assure such a safe environment.

Negotiating Tips

When the GC Says: "My staff on the job won't be doing the kind of work that can result from OSHA fines. You need to indemnify me for those."

The Sub Should Say: "I'm committed to the safety of my employees and those around them. However, I can't control the entire job site. That's your responsibility."

When the GC Says: "My staff can't see everything all the time. I have to rely on you to make sure the job is safe."

The Sub Should Say: "My company has a great safety record and I have every intention of maintaining that record. But that not's true of others. I can't control the multiplier effect that you or other subcontractors on the project may have because of prior OSHA violations."

Additional Resources:

ASA *Subcontract Addendum (2011)*, ¶ 18. Available to ASA members at www.ASAonline.com.

ConsensusDOCS *Form 750, Standard Agreement Between Constructor and Subcontractor (2012)*, ¶ 3.15.9. Available at www.ConsensusDocs.org; ASA members can get a 20 percent discount by entering ASA100.

Guidelines for a Successful Construction Project (2008), "Project Safety and Health." Available at www.ConstructionGuidelines.org.