

Contractor Management and Vetting- From Multiple Perspectives

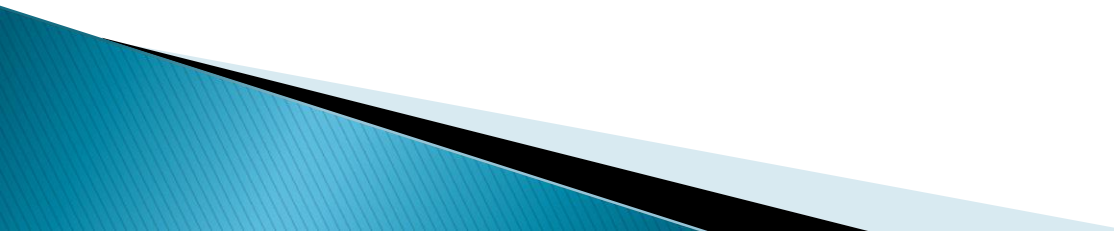


Panel Members


- ▶ Cody Vinyard, OG&E
- ▶ David Bates, Consultant
- ▶ Chris England, Veriforce
- ▶ Jody Reinhart, Trinity Consultants




What is Contractor Management?

- ▶ When companies/hiring clients hire contractors or subcontractors, they must practice contractor management in order to keep projects running smoothly.
 - ▶ This begins by identifying the project owner's needs and choosing quality contractors accordingly.
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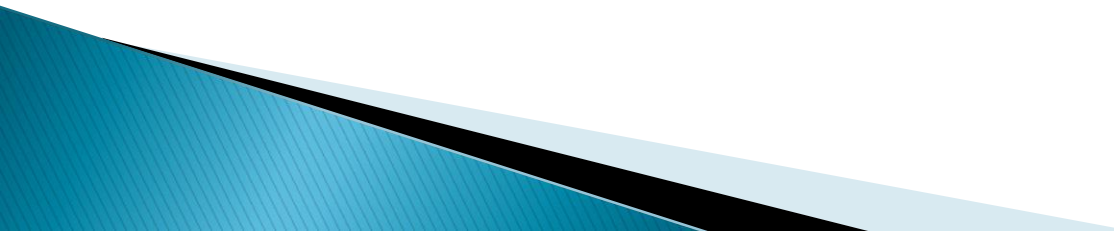
What is Contractor Management?

- ▶ Once contractors or subcontractors are hired, it is their duty to fill them in on expectations and employer policies.
 - ▶ This establishes communication and ensures everyone is on the same page.
 - ▶ With practicing good contractor management, this debrief will be structured the same way for every project to ensure all information is addressed.
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What is Contractor Management?

- ▶ Contracting and subcontracting refers to the practice of bringing in an outside company or individual to perform specific parts of a contract or project.
 - ▶ In most cases, a company/hiring client contracts another business to perform a task that cannot be handled internally.
 - ▶ In the construction business, a prime contractor typically organizes several subcontractors that specialize in specific trades
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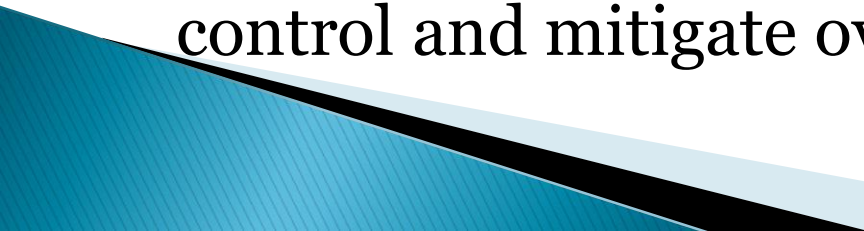
What is a Prime Contractor or Hiring Client?

- ▶ The prime contractor/hiring client is responsible for the completion of a project, under contract with the owner of the job.
 - ▶ The obligation of the prime contractor/hiring client is to complete a project and can hire multiple contractors or subcontractors to do the same.
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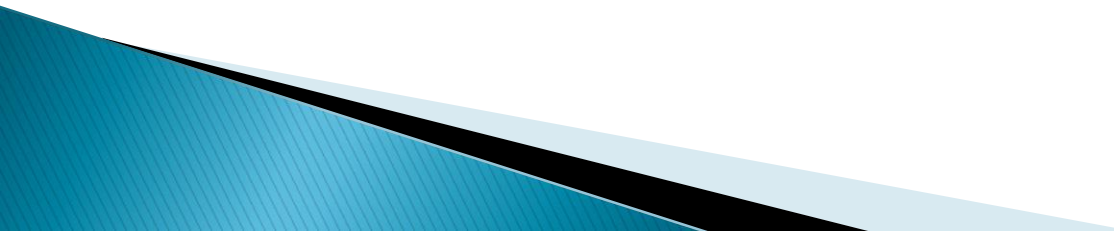
What is a Subcontractor?

- ▶ Subcontracting refers to the practice of bringing in an outside company or individual to perform specific parts of a contract or project.
 - ▶ In most cases, a company subcontracts another business to perform a task that cannot be handled internally.
 - ▶ In the construction business, a prime contractor typically organizes several subcontractors that specialize in specific trades.
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Why Subcontract?

- ▶ There are several reasons why subcontracting is carried out.
 - ▶ Subcontracting is very useful in situations where the range of required capabilities for a project is too diverse to be carried out by a single prime contractor.
 - ▶ In such cases, subcontracting parts of the project that do not form the prime contractor's core competencies may assist in keeping costs under control and mitigate overall project risk.
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Why Subcontract?

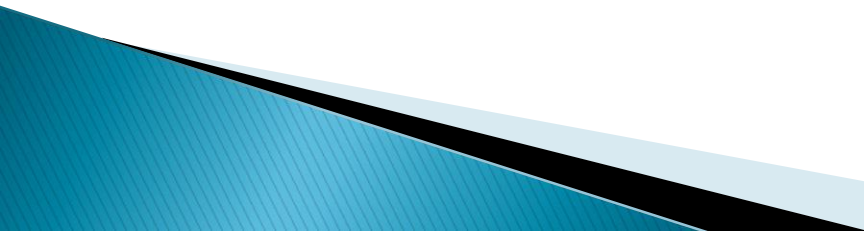
- ▶ Finally, it is less expensive for a prime contractor to hire the services of a subcontracting firm or freelancer than it is to hire an employee since the prime contractor is not responsible for paying workers' compensation benefits, vehicle and commercial general liability insurance, health insurance, full-time salaries, and Social Security taxes for independent contractors or subcontractors.
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Vetting Contractors

- ▶ Credentials and Work History
 - This is more of a preliminary qualification (prequal) than anything.
 - The company/hiring client should request a report on the contractor's or subcontractor's licenses, history, management, expertise, and references.

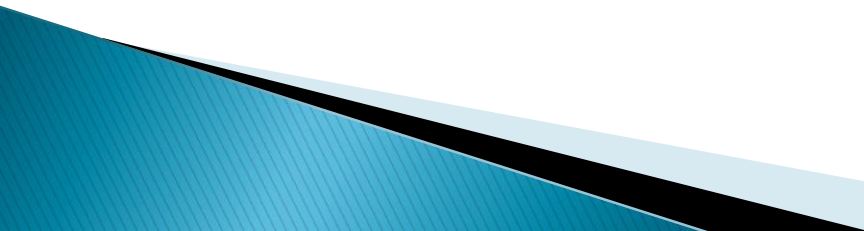
Vetting Contractors

▶ Credentials and Work History (cont.)

- The hiring client might also check public records for things such as lawsuits, complaints, and bankruptcies.
 - Much like hiring a new employee, the hiring client must first determine if they are even qualified to do the job before the hiring client determines if they are the right fit.
 - Once the hiring client knows that then they can move on to other qualifications.
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Vetting Contractors

▶ Safety History and Policy

- ▶ You do not want to work with anyone who doesn't make safety a priority.
 - ▶ Check OSHA records and time and losses due to accidents.
 - ▶ Also, be sure to look at their safety protocols and find out who is responsible for monitoring and prioritizing safety.
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Vetting Contractors


- ▶ Safety History and Policy
 - Without having a clear understanding of a contractor's safety history and policies, the hiring client runs the risk of exposing themselves to liabilities.
 - If an inspector or auditor finds that the contractor is not following safety practices and shuts down the job site, the entire project will pay for it.

Vetting Contractors

- ▶ Environmental Programs and History
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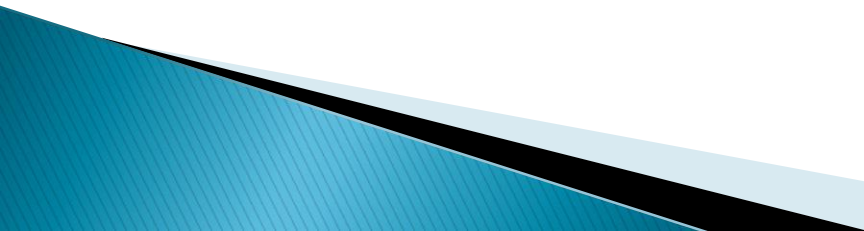
Vetting Contractors

▶ Environmental Questions (cont'd)

1. Is your company required to have any Federal, State, or Local Environmental licenses or permit to perform service(s) for example, NORM, asbestos, DOT, lead, explosives, radioactive products, etc.)?
 2. If you answered yes to question 1, list types of environmental licenses/permits and state/provinces of issue for those that your company has in place.
 3. Has your company reported any spills or releases in sufficient quantity to require notification to the National Response Center (NRS) or state agency?
 4. Has your company received any environmental charges and/or fines within the last three years?
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Vetting Contractors

▶ Environmental Question (cont'd)

5. If your company answered YES to the previous question, please provide details of Administrative Fines, Convictions.
 6. Does your company have an Environmental Management policy?
 7. Does your company have a written environmental program?
 8. Does your company have a spill response procedure?
 9. Does your company's pre-job planning process include environmental concerns? (Waste, Release, Permit Violations)
 10. Is your company ISO 14001 certified?
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Vetting Contractors

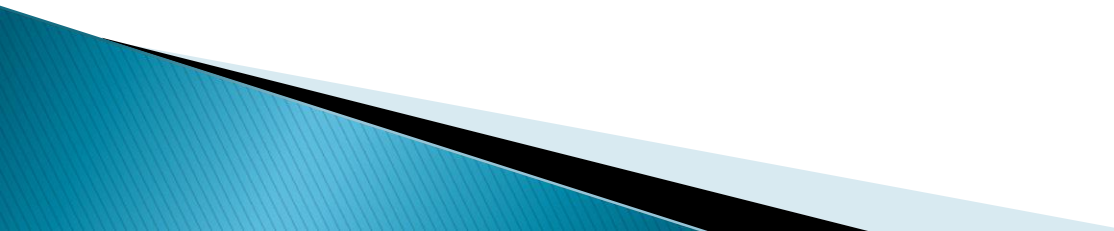
▶ Workforce and Equipment

- ▶ Vetting questions will let the hiring client know if they have the needed equipment and experienced personnel to complete the job.
- ▶ Younger and older workers are statistically more likely to be injured on the job and newer workers are more likely to lack the right tools and equipment to properly do the tasks the hiring client has for them.

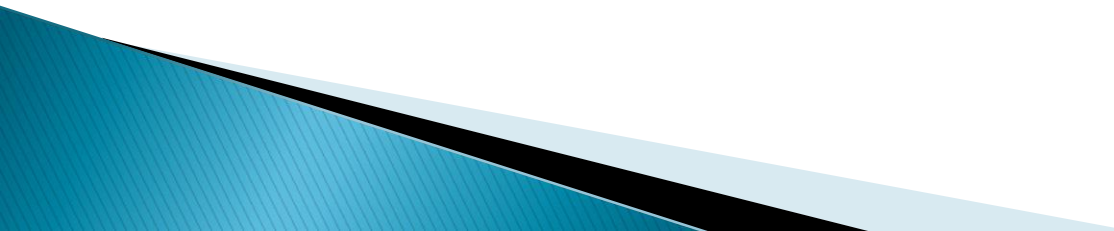
Vetting Contractors

- ▶ Workforce and Equipment (cont.)
 - By having a clear understanding of a contractor's workforce and equipment, the hiring client will have a better understanding of whether or not the contractor can handle the project.

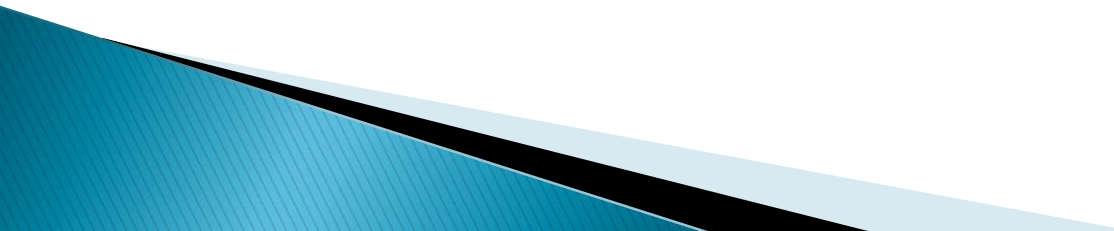
Vetting Contractors

- ▶ Bonding and Insurance
 - Every contractor or subcontractor is required to have insurance, and in many states, they are also required to have bonding.
 - If the hiring client company is required to have bonding, the contractor or subcontractor should also be bonded.
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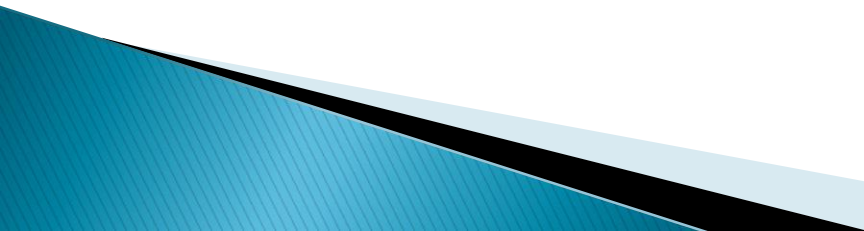
Vetting Contractors

- ▶ Written Contract
 - If the potential contractor has passed all the other qualifications listed above, the final step is to write up an agreement.
 - The hiring client must protect their investment.
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Advantages of Pre-Vetting Small Contractors

- ▶ Hiring contractor has a list of subcontractors or contractors available for prompt projects
 - ▶ Small contractors or subcontractors are on a list ready for work already pre-vetted
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Annual Reviews in the Vetting Process

- ▶ 3rd Party Vetting processes for annual reviews
 - ▶ Random contractor EHS assessments conducted
 - ▶ Annual questionnaires are completed by the contractor to update safety performance, OSHA logs are submitted
 - ▶ TRIR, DART, EMR are submitted for previous year every March. Checked against BLS averages for their NAICS code
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Environmental, Social and Governance (ESG)

- ▶ A comprehensive contractor vetting program can include ESG readiness when needed
 - Anti-bribery
 - Anti-child, etc.
 - Carbon capturing
- ▶ Typical questions to expect from an ESG vetting questionnaire

ESG: Overview

Lens through which capital markets evaluate **non-financial sustainability** risk of organizations they invest in.

Environmental

- General environmental
- Water usage
- Energy usage
- Waste management & recycling
- GHG emissions & carbon footprint

Social

- Diversity
- Pay equity
- Human rights
- Commitment to the community & volunteerism
- Workplace health & safety
- Employee training & development

Governance

- Board capability
- Business ethics
- Data privacy
- Information security
- Business continuity
- Purchasing & finance
- Quality management

ESG: Environmental

Impacts on, and by, the natural world

What are the most important issues?

- **Climate Change**
- **Energy Consumption**
- **Carbon Emission Reduction**
- **Water Pollution And Water Scarcity**
- **Air Pollution**
- **Habitat Loss**
- **92% Of Carbon Footprint in Supply Chain**

What are the most important criteria?

- **Publishes a carbon or sustainability report**
- **Limits harmful pollutants and chemicals**
- **Decrease environmental footprint**

ESG: Social

Humans and our interdependencies

What are the most important issues?

- Employees health and safety
- Customer success
- DEI
- Training and development
- Community relations
- Human Rights: employees and supply chain, child and forced labor

What are the most important criteria?

- Ethical supply chains
- Avoids questionable workplace safety or employ child labor
- Supports DEI rights and recognition
- Sexual harassment and violence policies
- Impact on local communities
- Safety Management System

ESG: Governance

Rules of Running a Business

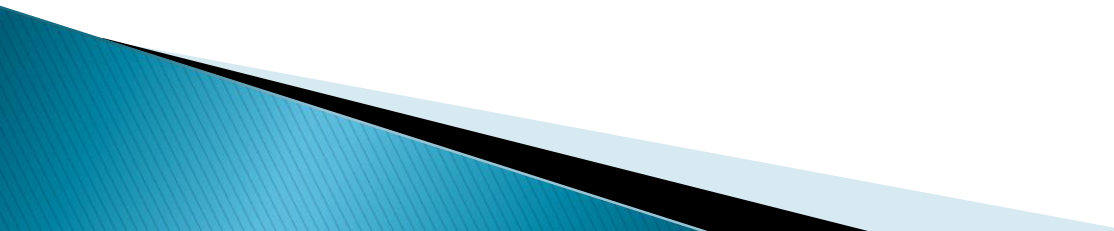
What are the most important issues?

- Board Makeup, Competence
- Executive Compensation
- Data Privacy and Security
- Ethics and Corruption
- AML
- Business Continuity

What are the most important criteria?

- Diversity on Board of Directors
- Privacy Protection
- Business Continuity
- Disaster Recovery Plans
- Policies Related to Ethics

Effects of Significant Injuries/Fatalities (SIF's) on Contractor Vetting

- ▶ A discussion/examples of what happens when a subcontractor has a significant event at a jobsite
 - ▶ How does it effect ability for future work
 - ▶ How does OSHA citations following the event effect future work
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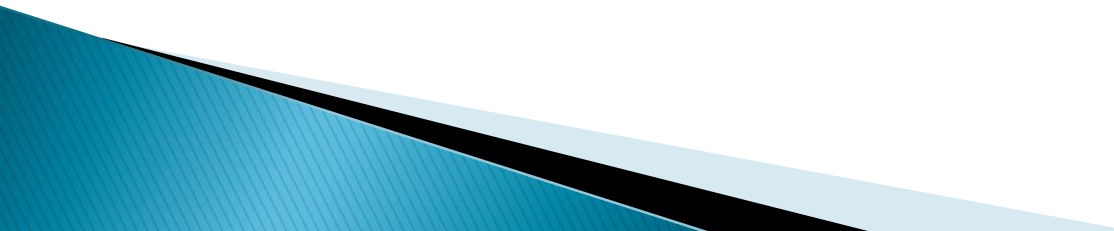
Vetting Contractors – an OSHA Perspective

- ▶ OSHA's Multi-Employer Worksite Policy applies to jobsites where more than one employer is working
- ▶ Requires employers controlling multi-employer worksites to ensure contractors comply with OSHA S&H regulations
- ▶ Non-compliance can result in hidden costs
- ▶ Some costs are obvious following an accident, but others come later and may not be realized immediately (Think of an Iceberg above and below the water)
- ▶ It pays to perform a robust vetting of subcontractors

EMPLOYMENT/WORK RELATIONSHIP

- ▶ Employee or Independent Contractor
 - ▶ Analysis of Darden Factors
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Darden Factors

- ▶ Analysis is performed through an “economic realities” test
 - ▶ Includes financial and perception of employment relationship
 - ▶ Majority of weight in analysis is placed on who is exercising control over the day-to-day activity of the workers
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CPL 02-00-124; OSHA's Multi-Employer Citation Policy

The screenshot shows a Microsoft Internet Explorer browser window displaying the OSHA website. The address bar shows the URL: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=2024. The page header includes the U.S. Department of Labor Occupational Safety & Health Administration logo and the website address www.osha.gov. Below the header, the page title is "Directives" and the main heading is "CPL 02-00-124 - CPL 2-0.124 - Multi-Employer Citation Policy." A "Table of Contents" link is visible. A list of metadata is provided:

- **Record Type:** Instruction
- **Directive Number:** CPL 02-00-124
- **Old Directive Number:** CPL 2-0.124
- **Title:** Multi-Employer Citation Policy.
- **Information Date:** 12/10/1999

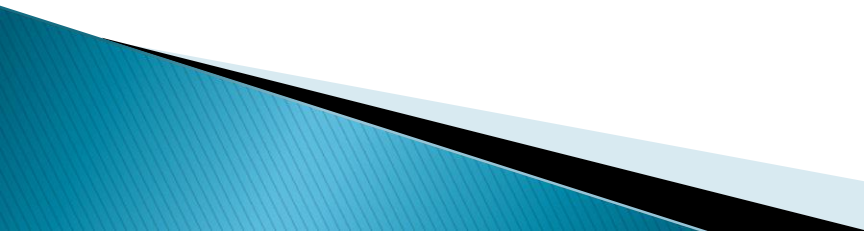
Below the metadata is a large graphic with the text "OSHA INSTRUCTION" and the U.S. Department of Labor Occupational Safety and Health Administration logo. At the bottom of the page, there are two text boxes containing the following information:

DIRECTIVE NUMBER: CPL 2-0.124 **EFFECTIVE DATE:** December 10, 1999

SUBJECT: Multi-Employer Citation Policy

The browser's taskbar at the bottom shows the Windows start button, several open applications, and the system clock displaying 4:23 PM on 12/10/1999.

MULTI-EMPLOYER WORKSITE POLICY

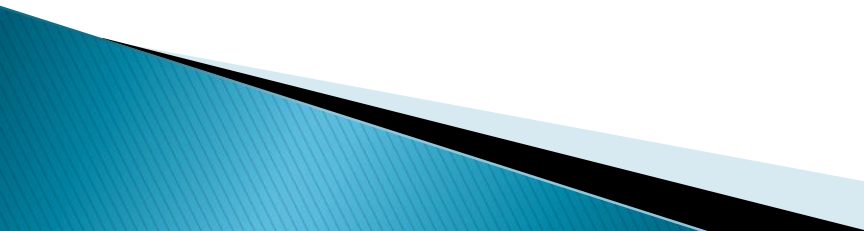
- ▶ Exposing Employer-An employer whose own employees are exposed to the hazard.
 - ▶ Creating Employer-The employer that caused the hazard.
 - ▶ Correcting Employer-An employer who is responsible for correcting a hazard.
 - ▶ Controlling Employer-An employer who has control over the exposing, creating, and/or correcting employer(s).
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IMMUNITY FROM A CITATION AS AN EXPOSING EMPLOYER

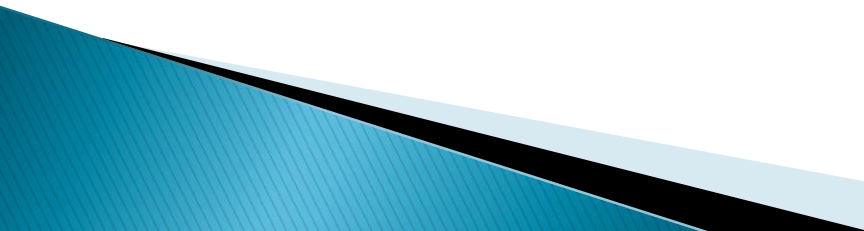
- ▶ Employer does not have the authority or ability to correct the hazard.
- ▶ Feasible measures have been taken to minimize the hazard.
- ▶ Feasible measures have been taken to minimize the employees' exposure to the hazard.
- ▶ Employer has asked the controlling employer to correct the hazard.
 - In imminent danger situations, the employer has removed its employees from the job or area to avoid the hazard.
 - Documents to prove attempts to get hazard(s) corrected make the most convincing case.

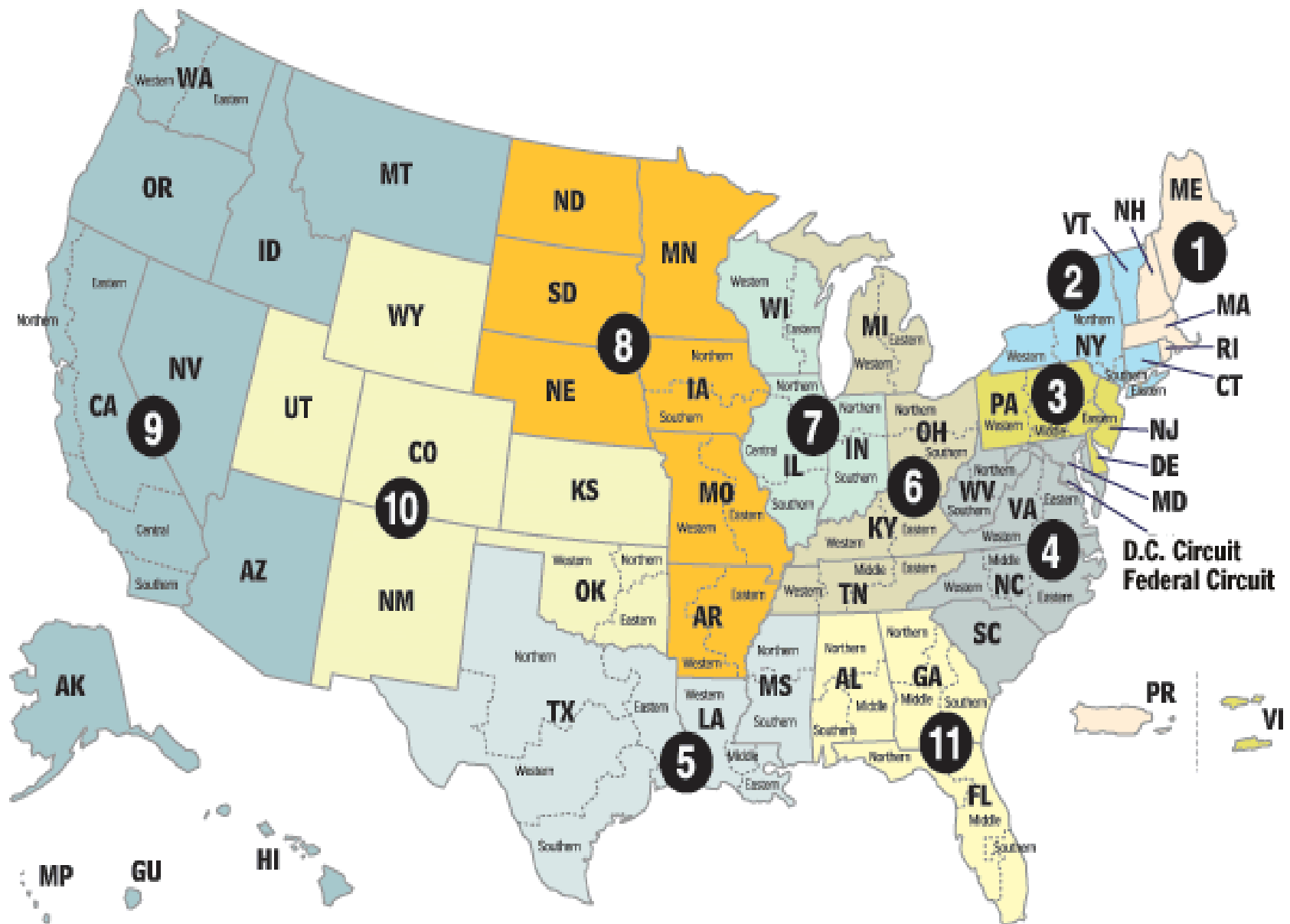
STEPS IN APPLYING MULTI-EMPLOYER DOCTRINE

- ▶ Determine exposing, creating, correcting or controlling
 - ▶ Determine if actions by employer satisfies duty to exercise reasonable care
 - ▶ Duty for reasonable care is less than what is required of an employer protecting its own employees


 - ▶ NOTE: only exposing employers can be cited for General Duty Clause violations
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REASONABLE CARE FACTORS

- ▶ Scale of the project
 - ▶ Nature and pace of work
 - ▶ How much the controlling employer knows about safety and health practices
 - ▶ Implementation of controlling employer's safety and health management system
 - ▶ Frequency of inspections when a sub-contractor has a history of non-compliance
 - ▶ An employer cannot shift its responsibilities for safety and health through a contract with subcontractors
- 



Conclusion

- ▶ Development and implementation of an effective and comprehensive contractor management program for all jobsites can reduce injuries, illnesses and fatalities.
 - ▶ It can also ensure compliance with hiring client's safety and health policies of all contractors onsite to eliminate work slowdowns or shutdowns
 - ▶ And, it can reduce the likelihood of OSHA activity and citations at jobsites
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Thank You

Questions?

