U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:

DEC 27 2002

Sean Purcell
Safety Officer
RPCarbone Company
5885 Landerbrook Drive, Suite 10
Cleveland, OH 44124-4031

Re: What are an employer's obligations under 1926 Subpart R with respect to testing mortar? What OSHA responsibilities does a controlling contractor have under Subpart R when it subcontracts duties placed by Subpart R on the controlling contractor? 1926.752(a)(1); mortar testing requirements; contracting out controlling contractor duties.

Dear Mr. Purcell:

This is in response to your letter of March 19, 2002, requesting clarification of the mortar testing requirements in §1926.752(a)(1) and of controlling contractor responsibilities under the new steel erection standard. We apologize for the delay in responding. We have paraphrased your questions below.

Question (1): *Section 1926.752(a)(1) requires that "the mortar in masonry piers and walls has attained, on the basis of an appropriate ASTM standard test method of field-cured samples, either 75 percent of the intended minimum compressive design strength or sufficient strength to support the loads imposed during steel erection." However, there is no "appropriate ASTM standard test method" for mortar strength. ASTM C780 - Method for Preconstruction and Construction Evaluation of Mortars for Masonry assesses the consistency of field-mixed mortar, but does not assess the compressive strength of the mortar. What, then, are employers required to do under this provision?*

Answer

Since there currently is no ASTM standard test method to test the compressive strength of field-cured mortar, OSHA will not enforce the requirements of §1926.752(a)(1) until such time as we are able to define an appropriate substitute or until an appropriate ASTM test method is developed.

Question (2): *Subpart R places several specific responsibilities on the controlling contractor. May a general contractor contract with the steel erector to perform those duties? If so, is the controlling contractor responsible if the steel erector fails to perform them?*

Answer

There are several requirements in the new standard that require specific actions by the controlling contractor. While the controlling contractor may contract with another entity to perform them, the controlling contractor remains responsible for compliance with those duties. For example, in Qs&As 13 and 14 of the compliance directive, we stated:

> ***Question 13: Can the controlling contractor contract with subcontractors to perform the work required by §1926.752(a)? If so, is the controlling contractor still responsible for these duties after subcontracting them out?***
>
> Answer: Under §1926.752 (a), the controlling contractor "shall ensure that the steel erector is provided" with written notification that the concrete has cured to the specified degree. While the controlling contractor may contract with subcontractors to do the requisite tests and provide the written notification, the controlling contractor remains responsible for ensuring that the subcontractor does that work. If the subcontractor fails to do the test and provide the notification, the controlling contractor may be cited for a violation under §1926.752(a).
>
> ***Question 14: Section 1926.752(a)(1) requires the controlling contractor to ensure that the steel erector is provided with written notifications that the concrete and masonry meet certain specified strength requirements. To what extent is the controlling contractor responsible for the accuracy of the strength assessments in the written notifications?***
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> Answer: As explained in Q&A #12, the controlling contractor can choose to either: (1) conduct the tests itself, if it has the expertise to do so; or (2) select an entity that has the expertise to do the test. If the controlling contractor does the tests itself, it is responsible for the accuracy of the tests.
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> If the controlling contractor selects someone else to do the tests, it is responsible for exercising reasonable care in the selection of the testing entity. As long as it has a reasonable basis for believing that the testing entity is competent and capable of doing the work, and the controlling contractor has no actual knowledge that the tests results are wrong, erroneous test results will not constitute a violation of 1926.752(a).

Note that, for some of the controlling contractor responsibilities, there may be practical difficulties in contracting with the steel erector to perform them. For example, one of the duties is to provide written notification to the steel erector that anchor bolt modifications/repairs have been approved by the project engineer of record (see 1926.752(a); .755(b)). A primary reason for this provision was to the address the fact that the steel erector often does not know that an anchor bolt was modified or repaired. Without that knowledge, it would not know to check with the project engineer to find out if the modification/repair was adequate. The duty for ensuring that this notification is made was placed on the controlling contractor because it is usually in the best position to obtain that information (see volume 66 of the Federal Register at page 5206).

If you need additional information, please contact us by fax at: U.S. Department of Labor, OSHA, Directorate of Construction, Office of Construction Standards and Guidance, fax # 202-693-1689. You can also contact us by mail at the above office, Room N3468, 200 Constitution Avenue, N.W., Washington, D.C. 20210, although there will be a delay in our receiving

correspondence by mail.

Sincerely,

Mark Cornell /for RBS

Russell B. Swanson, Director
Directorate of Construction

NOTE: OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at http://www.osha.gov.