

## Roofing Contractor or Labor Broker

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Let's suppose a building owner has a significant reroofing project to complete and wants to make sure they do all they can do to assure success. They assemble a team of facility management, procurement, risk management, and possibly a roof consultant, to execute the roof replacement process.

Once they have decided on a reroofing design solution, they turn their efforts into pre-qualifying prospective roofing contractors. Potential bidders are rated based on their demonstrated capabilities, project references, company history, safety records, financial stability and other quality metrics.

Qualified bidders then compete for the work and a successful bidder is awarded the project. The successful contractor makes all the required submittals, and then stages and loads the project. Everything seems to be tracking as planned.

The actual roofing work commences. At some point it is discovered, despite contract language to the contrary, that the prime roofing contractor has subcontracted the roofing work to another contractor or crews. The prime contractor has a project manager or superintendent on site, but most of the roofing mechanics are not employees of the prime contractor. The owner's team is understandably surprised at this development.

Is subcontracting of roof-related work bad or out of the ordinary? Consider sheet metal installation - depending on the local market, it is fairly common-place for sheet metal work to be done by a specialty sheet metal sub, under the roofing contractor's direction. It is also common to have a subcontractor provide for roof removal and disposal (tear-off), a customary practice in southern California. Other than coordination issues, these arrangements are not usually a problem.

Over the past few years, we have noticed in the marketplace a definite increase of subcontracting of roof system installation. As the new roof system is what is left at the completion of the work, who installs it is a critical issue. This is my concern and the purpose for writing this article.

As a roof consultant with 40-plus years of experience, one of my more important tasks is to identify, pre-qualify, and recommend specific roofing contractors to a client. Many times this recommendation is based on experience on multiple successful projects. Sometimes we even qualify, or know to ask for, a particular foreman and crew.



So what don't I like about this subcontracting trend? This is change, and change is unsettling. If I hire a contractor on the basis of their past performance and reputation, and then find out there is someone else on the roof I have never heard of, well, that strikes me as wrong!

The practice of subcontracting the roofing installation presents a number of concerns:

1. Is this subcontractor qualified to install the roof system I specified? In talking with four major roofing manufacturers, they indicated they are all aware (but not happy) about the practice of their licensed contractors subbing to other firms. Three of the four indicated that, in the end, their agreement is with the "prime", and the prime is ultimately responsible for the workmanship under their contractor agreement. The fourth manufacturer indicated that, per their contractor license agreement, any subcontracting of the roofing membrane work must be by another contractor who is also licensed by the manufacturer. I'm not thrilled by any of these responses, but the fourth manufacturer is probably doing this best.
2. And then there is the issue of liability insurance. Most of our clients have specific insurance limits and coverage they require the contractor to have. The client typically has painstakingly considered liability coverages limits, deductibles, policy "tails", as well as additional insured language. Does the subcontractor have the same coverage? Are all workers covered? Is their insurance carrier well-rated?
3. What about the legal status of the roof mechanics? Who is responsible to determine whether each roof mechanic on the jobsite has the legal status to be working? There are news reports occasionally showing ICE raids on workplaces. How does one avoid being in that headline?
4. I am also concerned with the safety record of these subcontractors. Some of our clients use ISNetworld, Browse or similar organizations to help qualify their contractors. The subcontracting of labor (installation) may well not fit the client's safety program.
5. Who assures that the subcontractors are properly trained? Are they skilled at installing increasingly complex roof systems? This training aspect has to keep roofing membrane manufacturers up at night, as they are warranting the workmanship for as long as 30 years!

What has caused this rise in subcontracting of roofing labor? There are several possible explanations. The severe shortage of roofing mechanics is well known in our industry. The practice of "labor sharing" is perhaps a way to flex the available labor pool, making labor a more fluid resource.



Are government regulations the cause? Several industry sources, with which I have spoken to, note that subcontracting became more noticeable when the Affordable Care Act became law. The ACA requires any company having 50 or more employees to offer health care insurance or pay a penalty. Further, the Family Medical Leave Act (FMLA) applies to any private sector employer who engages in commerce, industry, or other activities that affect commerce, and who have 50 or more employees. Could it be that roofing contractors are trying to stay below the 50 employee limit for competitive reasons? When these contractors need more manpower, subcontracting is the only option that allows them to stay below the 50 employee limit.

In fairness, I recently experienced the positive effect of a contractor having access to numerous subcontract crews. After a catastrophic hail event severely damaged a million square foot roof, a prime roofing contractor was able to install a temporary roof on the entire facility in a week. I doubt this response would have been possible with any single contractor's in-house employees.

The use of subcontract labor is a challenge that we need to address and better manage. Here are some best practices I feel should be part of that subcontractor management process:

1. During the bid process, require all bidders to name all potential subcontractors, and provide a COI for each. Owner has the right to accept or reject any and all subs.
2. Require all subcontract agreements to include the terms and conditions of the prime agreement.
3. Require E-verify confirmation to verify the legal status of all workers on the project.
4. Require the roofing manufacturer to acknowledge and accept each subcontractor installing their membrane.
5. Require all contractors to meet the client's safety qualifications.
6. Require all contractors to provide proof of state and local registrations/licenses, where such are required.
7. Require the prime contractor to provide proof of payment to subcontractors, as well as provide lien waivers from all subs.

The roofing industry is enjoying a busy period, where roofing work is generally plentiful and labor resources are strained. Subcontracting of roofing labor is not likely to go away anytime soon, and the incumbent risks must be better identified and managed.