

# **Think four times when a GC asks you for scaffolding or a stair tower for other subs to use at a construction site**

By

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Typically, general contractors provide scaffolding and stair tower equipment at a jobsite for all subcontractors to use during a project. This saves the GC money and it's impractical for subcontractors to provide their own equipment.

The GC is in the best position to provide supervision at the construction project and to transfer the risk of liability in the use of the scaffolding or a stair tower to each subcontractor through indemnification agreements and/or additional insured insurance requirements.

Yet, often, a GC may ask a subcontractor to provide this equipment at the jobsite so all subcontractors can use it. This is usually the sub with the broadest insurance coverage and highest umbrella limits.

GC's will use their insurance program as excess coverage, protecting them from most claim situations, such as injury to subcontractors and architects' employees. This approach saves a GC thousands of dollars in insurance and related costs. *Result: The subcontractor assumes a tremendous amount of liability without the ability to transfer risk to others and control the jobsite supervision.*

Scaffolding and stair tower service contractors usually provide this equipment at a construction jobsite utilizing equipment rental/lease agreements. They furnish, install, and dismantle the equipment at the jobsite.

The GC or subcontractor (lessee) assumes much of the responsibility in these agreements. Here are several key points in the lease agreements:

- Lessee agrees to release, defend, protect, indemnify, and hold harmless the service contractor from every kind of loss, liabilities, expense, demands, or claims.
- Lessee agrees to carry at least a \$5,000,000 in commercial general Liability insurance and to add the service contractor as an additional insured.
- *Lessee is responsible at all times for the scaffolding and/or stair tower while on the jobsite.* Lessee acknowledges that the installed scaffolding was in good order and adequate for the purpose.

As you can see from this equipment lease contract language, the GC and/or subcontractor shoulders substantial risk by accepting liability for the use of this

equipment by others, which makes it essential to have someone on the job supervising the use of the equipment and inspecting its condition at all times.

It's quite likely that the GC or subcontractor will be found partially negligent at the time of an injury or claim based on these responsibilities alone. *By signing an indemnification agreement with the GC or scaffolding service or stair tower contractor, you are assuming 100% of the damages even if you are only partially responsible.*

Scaffolding and stair towers present a significant risk of serious injury or death to one or more employees on the job. The potential risk for multi-million dollar claims is significant and occurs more frequently than you might think. *The assumption of this risk requires purchasing much higher umbrella limits to properly protect the lessee of the equipment from large claim settlements.*

If you are asked to provide the scaffolding and or stair tower equipment in a bid, here is my recommendation:

- 1) **Decline to accept it.** Ask your GC to consider another subcontractor, because your insurance carrier has declined to accept this risk. If you advise your insurance company of this situation, they will likely decline to insure.
- 2) **Decline to accept it.** It would not be practical for you to enter into separate construction contract agreements with all the subcontractors at the jobsite. While you are not in a position to do this, the GC is. If your GC does not provide you with significant advance notice of this arrangement, it's unlikely that you can get all the certificates of insurance and indemnity contracts from the subcontractors that would potentially use the equipment. It's also likely that one or two of the contractors might not have sufficient insurance coverage and/ or limits of coverage. Will you be able to disqualify the subcontractor from the job because of this situation?
- 3) **Decline to accept it.** You are not in a position to supervise the other subcontractors who may use the scaffolding or stair tower equipment at the jobsite.
- 4) **Decline to accept it.** Advise the GC that this arrangement has a severe loss potential and you cannot increase your umbrella limits for just one job. Insurance carriers will typically require you to increase your umbrella limits for your entire insurance program and not for this one job.
- 5) Although this is not recommended, get significantly more compensation to cover your additional costs if you choose to accept it. I would require the GC to pay for the additional premium required by your insurance company to cover this increased exposure, including the cost of higher umbrella limits, the risk associated with excessively high claim settlements, and the cost associated with implementing a risk transfer program with all the subcontractors on the jobsite. If

you don't have an approved equipment use contract in place, hire an attorney to draw it up and monitor the certificate of insurance process. Your project manager will be required to spend a significant amount of time procuring the proper paper work from all subcontractors.

*The GC is in the best position to manage this situation, so please do everything you can to avoid it.*

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