



Subcontractor Prequalification Impacts and Effects on a Multi-Employer Construction Site

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Subcontractor Prequalification Impacts and Effects

- CONSTRUCTION PROJECTS INHERENTLY COME WITH A VARIETY OF RISK
 - Financial risks due to muddy contract language, budget overruns and bad planning.
 - Project delivery risks from project delays, poor scheduling and faulty construction.
 - Risks from safety hazards that lead to worker accidents and injuries.
 - Legal risks from worker injuries/death and lawsuits.
 - Fines associated with regulatory non-compliance.



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Subcontractor Prequalification Impacts and Effects

- Owners View
 - On time / Within Budget
 - No impact to employees, community or environment
 - In accordance with contract
- Prime Contractor
 - On time / Within Budget
 - No impact to employees, community or environment
 - In accordance with contract
 - Optimize Profits
- Legal View
 - Zero Litigation
- Regulatory View
 - Compliance



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Subcontractor Prequalification Impacts and Effects

- Hiring subcontractors adds an additional layer where things can go wrong.
 - Hazards created by subcontractors and their employees
 - Liability from third party lawsuits
 - Schedule delays
 - Cost overruns
 - Regulatory noncompliance
- While it is impossible to completely eliminate the risks associated with execution of work activities on a multi-employer worksite , prime contractors can mitigate them through a more structured prequalification process. Doing a little research prior to awarding contracts can make the difference in making a project safe and profitable.



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Change in Philosophy

- From
 - Reactive
 - Prior work history
 - Low costs
 - Geographical location
 - Time
- To
 - Proactive
 - Prequalification
 - Overarching management plan
 - Pre-job tasks and risk assessment
 - Post-job evaluation



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What is Subcontractor Prequalification

- **What**
 - Contractor prequalification is an information gathering and assessment process that determines a contractor's capability, capacity, resources, management processes, and performance.
- **When**
 - Pre Bid
 - During
 - Upon Completion
- **Why**
 - Mitigate Risks to Project



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Subcontractor Data for Evaluation

- Many construction leaders talk about subcontractor prequalification in terms of the 3 C's: [character](#), [capacity](#), and [capital](#). While these are all important factors to consider, it's better to expand into a wider range of data. Here are some of the top categories to consider:
 - **Safety Record**
 - OSHA 300 information
 - Citations issued
 - Experience Modification Rate (3 year)
 - Safety training programs and/or safety meeting policy
 - EMR
 - Near-misses
 - **Quality**
 - Project Performance History
 - Supplier References
 - General Contractor References
 - **Insurance**
 - Insurance Coverage Limits in Place
 - Brokerage
 - Surety/Bonding
 - **Litigation information**
 - Active litigations cases
 - Labor law violation history
 - Judgements filed against company
 - Contract default or contract termination history
- **Financial**
 - Dun & Bradstreet number (if available)
 - Financial history
 - Current year revenues
 - Working capital
 - Total and current assets
 - Net equity
 - Current liabilities
 - Average monthly billings
 - Turnover (Efficiency)
 - Backlog
- **Company Info**
 - Company ownership
 - Company management
 - Number of employees
 - Minority / disadvantaged business status
 - Historical project experience
 - Current project portfolio
 - Resumes of relevant employees
 - List of suppliers/subcontractors they will be employing



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Regulatory Requirements

- 1926.16(a)
 - The prime contractor and any subcontractors may make their own arrangements with respect to obligations which might be more appropriately treated on a jobsite basis rather than individually. Thus, for example, the prime contractor and his subcontractors may wish to make an express agreement that the prime contractor or one of the subcontractors will provide all required first-aid or toilet facilities, thus relieving the subcontractors from the actual, but not any legal, responsibility (or, as the case may be, relieving the other subcontractors from this responsibility). *In no case shall the prime contractor be relieved of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract.*
- 1926.16(b)
 - By contracting for full performance of a contract subject to section 107 of the Act, *the prime contractor assumes all obligations prescribed as employer obligations under the standards contained in this part, whether or not he subcontracts any part of the work.*
- ..1926.16(c)
 - 1926.16(c)
 - To the extent that *a subcontractor of any tier agrees to perform any part of the contract, he also assumes responsibility for complying with the standards in this part with respect to that part.* Thus, *the prime contractor assumes the entire responsibility under the contract and the subcontractor assumes responsibility with respect to his portion of the work. With respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility.*
- 1926.16(d)
 - Where joint responsibility exists, both the prime contractor and his subcontractor or subcontractors, regardless of tier, shall be considered subject to the enforcement provisions of the Act.



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Case Study

- Large scale EPC contractor performing work on construction of elevated water storage tanks.
- Typical execution was win project and
 - Subcontract site prep, underground and civil activities
 - Self perform erection of elevated water tower
 - Subcontract painting, electrical, final grade and fencing
 - Utilized geographical local subcontractors they had previously worked with
- No prequalification of subcontractors
- No Company representation during subcontractor's work activities
- Any issues with this methodology?



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Case Study

- During this period subcontractor's safety performance was 7x times worse than Company performance
- Numerous Third Party lawsuits due to injuries
- Numerous complaints from owners and communities



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Case Study

- Company implemented a robust subcontractor prequalification program
- Eliminated numerous subcontractors for execution of future work
- Partnered with numerous subcontractors to raise level of performance and compliance
- Shared training, procedures and best practices



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Case Study

- Outcome
 - Raised level of subcontractor's capabilities
 - Improved subcontractor's safety performance to meet or in some cases exceed Company's performance
 - Reduced Third Party litigation
 - Satisfied clients and communities
 - Reduced Regulatory noncompliance and citations
 - Robust database of competent and compliant subcontractors for future work activities



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Process for Subcontractor Prequalification

- There are many ways to build a detailed subcontractor prequalification process - from simple forms to robust third-party platforms.
- Whichever you choose, your process should include:
 - ✓ Initial underwriting on standard metrics (stability, past performance, safety, financial health, ethics, compliance, etc.)
 - ✓ Additional assessment of higher risk trades (e.g. curtainwall) in terms of setting approval authority and limits
 - ✓ Additional assessment of potential subcontractor risk in new markets/geographies
 - ✓ Setting overall company risk tolerance, both in terms of capacity and mitigation strategies
 - ✓ Establishing clear process for review and approval of exceptions
 - ✓ Setting a cadence for updating subcontractor qualifications: annual, bi-annual, or quarterly
 - ✓ Coordinating with project management to create feedback loops with onsite teams
- From there, you can establish a database of prequalified subcontractors for your estimating team to choose from. Or, build a list for upfront evaluation prior to bid selection and contract award.



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Conclusion

- It's a harsh reality of this industry:
 - General contractors will always have to take on some level of risk when selecting subcontractors.
 - However, through a structured qualification process, they can figure out the subcontractors who are the best for a given job — and put controls in place so that they're always protecting themselves.

