



Eight Ways to Ensure Employee-Level Qualification

For reasons of safety, security, and quality control, it's important to know who is on your site and what they're doing. For this reason, many employers are very careful about prequalifying contractors, making sure they have the equipment and expertise needed to perform contracted tasks safely, on-budget and on-schedule. If your contractor prequalification process stops at the company level, you may not have insight into and control over who is performing work on your site or on your behalf.

Keep reading for advice that will help ensure your contractor employees are fully qualified and have the support they'll need to do the job right.

Company-Level Prequalification

Taking bids or proposals for any contract project is a matter of shopping for the best deal for the highest quality product or service. You can increase your chances of getting the best deal for your money by pre-qualifying your contractors. The company-level prequalification process looks at several factors that enhance risk management, rather than allowing you to focus on one factor to the exclusion of other, important information. For example, it won't do you any good to hire the lowest bidder if the contractor goes bankrupt before completing your project. Likewise, it won't do any good to hire a contractor with highly qualified personnel if the company itself is mismanaged.

During this initial prequalification process, you should find out about any potential contractor's:

Work history. Has the company done the type of work that you need? How recently? Was the work completed to satisfaction, and can the company provide references? If they can, that's great—but bear in mind they won't provide you with a list of their unsatisfied customers or jobs that were left hanging. To find out whether your contractor has a history of unhappy clients or customer complaints, check with the Chamber of Commerce, online listings that include reviews, and any applicable professional associations. If the contractor is not registered with the professional association, they may not be the best choice for your job.

You can also ask about upcoming jobs. Is the schedule consistent with the number of experienced employees, or is it possible that the contractor would be overextended? Contractors that are overextended may not be able to complete your job in a timely fashion, or may have to hire new employees, to complete your work—and new employees add a layer of risk for you. Also, ask whether the contractor's client base is diversified, or whether they depend heavily upon a single client. Contractors who are insufficiently diversified may let you down if their largest client fails or replaces them.

Financial stability. By asking for basic information like annual contract volume, sales, net worth, and cash reserves, you can be reasonably assured ahead of time that your contractor won't go under financially without completing your project. A privately-held company may not be willing to provide complete financial documents, however, any piece you get can give you valuable information. A company with low cash reserves or significant early billings, for example, may not be able to reliably pay its employees, or to continue in operation if it goes through a period of reduced income. If the company is paying excessive dividends to the owners, the owners may not be leaving enough cash in the company to support its continuing operation. You may not be able to directly identify all of these issues from information provided to you by the contractor, but you can ask the contractor to document that its financials are annually audited by a reputable firm, which will provide some measure of assurance that the contractor is financially solid.

Insurance coverage and surety bonding. You should only hire contractors that can assure you that they carry adequate levels of general insurance, and any other insurance coverage that may apply, like engineering errors and omissions coverage or auto liability coverage. You may also want to require surety bonding, so that you are covered in the event that the contractor fails to finish the job.

Safety record. In addition to the risk your contractor will not finish your job, whether for reasons of financial insecurity, fraud, or simple incompetence, there is also the risk your contractor will create a hazard in your workplace. Ask pointed questions about their safety record. What is their workers' compensation experience modifier? If it's greater than one, you may want to investigate further—why has their safety experience been worse than comparable employers? The company's injury and illness statistics, such as fatalities, serious injuries and lost time injuries can also give you a metric that is easy to compare with other candidates for the job.

For companies that have passed initial prequalification, you may wish to request additional information, like copies of their overall safety management programs, and any specific potential high risk operations and procedures that are applicable either to your workplace or to the job tasks the contractor will be expected to perform, such as electrical work or confined space entry.

Closing the Gap in Risk Reduction

Many companies stop when they have done what they can to ensure a potential contractor is financially solvent and generally dependable. Unfortunately, that can leave a gap in their risk management process, at the level of the individual employee. If the task you're contracting may involve one or more subcontractors, a specialized service, security-sensitive, or safety-critical, you will not want to risk the potential for an "un-qualified supervisor" overseeing the work of untrained or incompetent individual workers. Fortunately, it is possible to take steps to ensure that each employee who is sent to work on your contract is adequately trained and qualified.

The idea that employers can and should exercise oversight of contractors down to the level of individual employee qualifications is not new. Many employers already know to step carefully around U.S. Citizenship and Immigration Services rules about hiring undocumented workers. Some employers have been prosecuted for classifying individual workers as independent contractors to sidestep immigration rules; others have been found to have "constructive knowledge" that a contractor was hiring undocumented workers, which is a violation of federal immigration laws.^{1,2} In general, employers are expected to have some idea who's working for them, even at the level of individual contractor employees.

¹Maurer, Roy. *The Risks of Hiring Undocumented Workers*. (2016). SHRM. Retrieved 17 April 2017, from <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/the-risks-of-hiring-undocumented-workers.aspx>

²U.S. Citizenship and Immigration Services. *Handbook for Employers: Guidance for Completing Form I-9* (2017). *Uscis.gov*. Retrieved 17 April 2017, from <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>

For employers in some industries, ensuring that a contractor's individual employees meet specific qualifications is a regulatory requirement. For example, in 1999, the Pipeline and Hazardous Materials Safety Administration (PHMSA) finalized its Operator Qualification rules, 49 CFR Part 192 Subpart N (gas), and Part 195 Subpart G (liquid). Those rules require that pipeline operators "document that certain employees have been adequately trained to recognize and react to abnormal operating conditions that may occur while performing specific tasks."³ The requirement, interestingly, applies to pipeline operators, not directly to contractors. It is PHMSA's view that operators are responsible for ensuring that no unqualified person performs specific, covered tasks along the pipeline. PHMSA, at least, believes that screening contractor's individual employees is something that facility operators can and should do.

PHMSA's goal, of course, is to enhance pipeline safety and security, but that's not the only potential benefit of an operator qualification program. If you put an effective employee-level qualification and training program in place, you'll close gaps in your risk reduction efforts that include:

- *Security and access control.* Unless you exercise some control over the individual workers who come onto your site, you may be opening the door to trouble. Enforcing qualifications for individual employees can help you to ensure that workers who come onto your site have had the same background checks and drug and alcohol testing that you require of your own employees.
- *Accident prevention.* Even if a contractor has a good safety record, unqualified individual workers increase the risk of incidents. An employee-level qualification program can help you ensure that workers who are chosen for your contract possess the proper credentials.
- *Quality control.* Poor-quality work can lead to poor-quality product, as well as production delays, if work must be re-done. Ensuring that your contractor supplies you with qualified personnel reduces this risk.

So, how can you go about creating a program to ensure that every worker on your site has the qualifications to do the job right, the first time, without putting your people or your facilities at risk?

³PHMSA - Operator Qualification. (2017). *Phmsa.dot.gov*. Retrieved 4/15/17, from <https://www.phmsa.dot.gov/pipeline/tq/oq>

Employee-Level Qualification and Training

Employee-level qualification and training programs have some common elements. Your program will have to be customized to your site, and to the work you're contracting.

Here are eight strategies you can use to ensure that contractor personnel meet qualifications:

- *Identify applicable training and qualification requirements.* Make sure to perform a risk assessment for the area in which contractors will be working, each task they will be expected to perform, and any incidental hazards they may be exposed to. They may need to receive the same basic safety training and orientation that applies to all workers on-site; job- or task-specific qualifications or training; and additional training that applies to specific parts of your facility. For example, workers who are conducting pipe-breaking operations may need basic site safety training, lockout/tagout training, and chemical-specific hazard training. If they will be working in a noisy area, you may also have to ensure that they are enrolled in a hearing conservation program.
- *Put it in the specs.* In your specifications, make sure that you identify the specific training and credentials each worker is required to have. Potential contractors who are not willing and able to supply workers who are properly credentialed should be removed as a potential source before the proposal or bid is ever prepared.
- *Put it in the contract.* There should be a contractual requirement for each contractor to ensure that each employee will meet your specific requirements.
- *Audit the contractor's records.* Make sure your contractors comply with the terms of the contract, including personnel qualification provisions, by conducting periodic compliance audits.
- *Evaluate the contractor's personnel, as needed.* The PHMSA operator qualification rules require employers to have a procedure for evaluating any operator, including contractor personnel, if there is reason to believe that the operator's performance contributed to an accident or that the operator is no longer qualified to perform a specific task. This is a good policy generally; you should have a procedure in place that details how you will address concerns that may arise about the behavior or qualifications of contractor employees while they are on your site.⁴
- *Coordinate your programs.* If there are site-specific programs that you require of your own workers, coordinate with the contractor so their employees complete the same training. This can include coordinating schedules so service providers can take the training at your site, or it can mean they use a specified training provider, curriculum or online program.

⁴eCFR — Code of Federal Regulations. Title 49, Part 195, Subpart G—Qualification of Pipeline Personnel (2017). Ecf.gov. Retrieved 17 April 2017, from https://www.ecfr.gov/cgi-bin/text-idx?SID=7c189b00f55d30d0b797fbd87a4afe02&mc=true&node=sp49.3.195.g&gn=div6#_top

- *Set up joint recordkeeping.* Rather than simply allowing the contractor to provide written assurances about required training and qualifications, have your contractors upload the required documents (for example, licenses and certificates) to your database. If the database is jointly maintained, when the contractor uploads updated documentation, it will automatically be in your system.
- *Communicate changes.* If there are changes to your site, your process, your equipment, your personnel, or anything else that could impact the qualifications required of your contractors, make sure you keep them in the loop. For example, if you begin another project that makes it necessary to temporarily change the emergency evacuation plan for your facility, and training is necessary of your personnel, make sure that your contractors, and their employees, are also made aware of the change, and provided with appropriate training.

Transparency at Every Level

Hiring a contractor is often done to reduce risks—companies that specialize in certain types of work should be more experienced, better equipped and more thoroughly trained for that task than your own employees. Unfortunately, if you're not careful, hiring a contractor can increase your risk instead. One way to minimize your exposure is to ensure there is transparency between you and the contractor, not just at the company level, but all the way down to the level of individual employees: who are being sent to your site, working on behalf of your organization, and are these individuals qualified and competent?

Additional Sources:

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